

Second Amendment pursuant to GCR O.20 r.5. on 11th May 2009
Amended pursuant to GCR O.20.R1 on 29th day of May 2008
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 186 OF 2008
LEGAL AID No. 31/07

BETWEEN:

DEBRA MOHAMMED

Plaintiff

-AND-

MARK PARCHMENT

Defendant



**AMENDED WRIT OF
SUMMONS (2ND AMENDMENT)**

TO: Mark Parchment
c/o Commercial Loans Department
Scotiabank & Trust (Cayman) Ltd
Scotia Centre
6 Cardinal Avenue

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8th day of April 2008
Re-issued 29th May 2008
Re-issued 11th May 2009

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue, unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. By a written agreement ("the agreement") dated 3rd August 2004 the Plaintiff rented a property known as 95 Rev. Blackman Road, West Bay, Grand Cayman ("the property") from the Defendant.
2. The Plaintiff covenanted to pay monthly rental payments of CI\$1500 per month for a two year period from 1st August 2004.
3. As an aside to the said rental agreement, By the said agreement the Plaintiff paid a CI\$8,000 so called non refundable purchase option credit, (the "Option Deposit") The Plaintiff also covenanted to pay monthly rental payments of CI\$1500 per month. The deposit or 'credit' was to secure an option to purchase the Property at the end of the two year rental agreement, being an amount that would eventually be credited against the purchase price of the property on completion of sale, (i.e. "the Option Agreement").
4. A further condition of the Option Agreement was that if the terms of the rental agreement were properly fulfilled, the Defendant would agree to reduce the agreed on price of the Property (CI\$175,000) by CI\$1, 000 per month.
5. The property consisted of a rear unit with two bedrooms which the Plaintiff intended to occupy, and a front unit with four bedrooms which the Plaintiff intended to rent out to tenants, a number of which were already in occupation of the Property.
6. By the said agreement the Plaintiff covenanted to keep the said premises in good condition and repair and at the expiration of the lease to surrender up the same in as good order and condition as when entered upon, loss by fire inevitable accident, act of God or ordinary wear and tear accepted.
7. By the said Agreement the Defendant, in the event of destruction in whole or in part of the Property, would provide the Plaintiff with an option to (a) accept the insurance proceeds for the damage and continue with the purchase of the property as per the agreement, and (b) declare the Agreement null and void. The Plaintiff chose to continue with the purchase of the Property (i.e. purchase option to be exercised by the end of the 24 month leases agreement), but was denied the insurance proceeds by the Defendant.
8. It was an express and implied term of the Agreement that if serious damage was caused to the property by an act of God then the Plaintiff would not be responsible for repairs to the property, which resulted from it. It was also explicit in the Registered Land Law (2004 Revision) that rent would be suspended in the event of premises becoming wholly or partially unfit for occupation and use after *inter alia* a hurricane.
9. On 11th September 2004 Hurricane Ivan caused considerable damage to the property.
10. The Defendant was notified of the damage caused to the property and made a claim to British American Insurance Co. (Cayman) Ltd for damages to the building and contents of the property. The total amount paid to the Defendant by British American Insurance Co.

(Cayman) Ltd was CI\$33,020. The final cheque from the insurance company was issued on 26th November 2004. It is not known what the true extent of the damage was since the Defendant did not produce details of the insurance arrangements (deductibles, whether property was under-insured etc), and the only information available is the amount of the insurance pay-out to the Defendant.

11. The Defendant subsequently arranged for only very limited repairs to the property to be undertaken, leaving the property in a state of considerable disrepair.
12. By reason of the foregoing the Defendant breached the implied term of the rental contract that he would repair all damage to the property caused by an act of God, and the Defendant was also in breach of the Option Agreement which stated that the insurance monies would be extended to the Plaintiff to bring back the Property to as far as possible the condition it was in when the agreements between the parties were signed.
13. By reason of the Defendant's refusal to repair the property within a reasonable time the Plaintiff arranged for some repairs to take place and personally paid for these repairs. There was no re-imbursment of rent monies already paid when the hurricane struck, and there was no suspension of rent in accordance with the Registered Land Law (2004 Revision) and in fact, the Plaintiff was told by the Defendant to deduct said repairs from monthly rentals to be paid to the Defendant in the months following the hurricane.
14. The Plaintiff was unable to move into the property until March 2005 because damage to the Property meant that it was not habitable.
15. Because the Plaintiff would not undertake the major repairs and renovations to the Property as called for by both the rental agreement and the Registered Land Law, the Plaintiff's quiet enjoyment of the property was substantially interrupted and she was caused distress, discomfort, inconvenience and disruption to her lifestyle.
16. The Plaintiff expended considerable amounts of money on the Property in order to make it habitable including replacing furniture damaged during the storm, whilst at the same time renting alternative accommodation for herself and family.
17. The Plaintiff when signing the Rental/Option agreement agreed to an option to purchase the Property at CI\$175,000. Hurricane Ivan damaged the Property to the extent of at least CI\$33,000, which monies were never extended to the Plaintiff or put into repairing the property as per the Option/Rental Agreement.
18. In addition, by reason of the Defendant's breach of the Rental Agreement and the Option Agreement contract, the Plaintiff was unable to rent out three of the bedrooms in the front unit to tenants for a number of months.
19. At all times the Plaintiff duly paid her rent on time or utilized rental monies to repair the storm damage to the Property and replace damaged furniture, on occasions on the instructions of the Defendant during periods when rent should have been suspended.
20. Not having received any worthwhile support from the Defendant with regard to re-imbursment of monies spent by the Plaintiff on storm property damage the Plaintiff quite rightly held back partial rent from the Defendant for two months. The reaction of the Defendant was to sue for rental arrears, forfeiture of the CI\$8,000 Option Deposit (credit) and possession of the Property.
21. By reason of the matters aforesaid, the Plaintiff has suffered the following loss and damage:

SUB TOTAL CI\$2,000

- (f) CI\$1,000 per month for 21 months being the amount agreed to be credited against the purchase price by way of on-time monthly rental payments

SUB TOTAL CI\$21,000

GRAND TOTAL CI\$57,299.82

22. Further the Plaintiff claims pre-judgment and post-judgment interest at a rate of 6¼% pursuant to s.34 Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2006.

AND the Plaintiff claims:

- (1) Damages
- (2) Pre and Post Judgment Interest
- (3) Further or other relief

Dated: 8 April 2008

Re-Dated: 29 MAY 2008

Re-Dated 11th May 2009



STUARTS WALKER HERSANT
Attorneys at Law for the Plaintiff

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If A Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

***See over for notes for guidance
Please complete overleaf***

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 28 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a **FIRM** and an attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communication for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Stuarts Walker Hersant
Attorneys-at-Law for the Plaintiff
Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman

Attention: Irvin Banks
Reference: 2424

Endorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

Kyle Broadhurst
Broadhurst Barristers
40 Linwood Street
George Town
P.O. Box 2503
Grand Cayman
Cayman Islands