

THE GRAND COURT OF THE CAYMAN ISLANDS

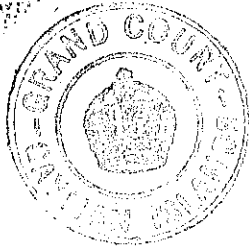
CAUSE NO. ^{G0292} OF 2008

BETWEEN DAWN McLEAN-SAWNEY

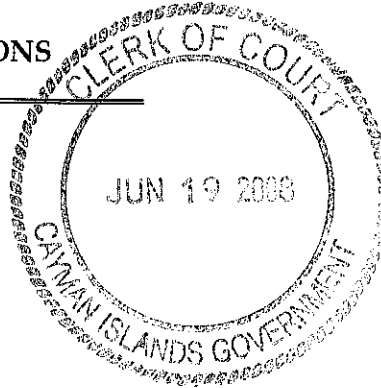
PLAINTIFF

AND MERLENE McGAW-CARTER

DEFENDANT



WRIT OF SUMMONS



To: Merlene McGaw-Carter
Florida
USA

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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 19th day of June 2008.

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. The Defendant is the registered owner of the Property situated at 102 Buttonwood Avenue in George Town, Grand Cayman, more particularly described as Block 25, Parcel 295 ("the Property").
2. On 2 June 2005, the Plaintiff and the Defendant entered into a Lease with Purchase Option Agreement in respect of the Property ("the Agreement") wherein the Plaintiff is described as Lessee and the Defendant described as Lessor.
3. Clause 32 of the Agreement provides:

"Purchase Option: It is agreed that the Lessee shall have the option to purchase real estate known as: 102 Buttonwood Avenue, Block 25, Parcel 295 for the Purchase Price of CI\$ 180,000.00 with a down payment of CI\$ 32,400.00 and a deposit of CI\$ 18,000.00 (amount to be determined and agreed by Lessor and Lessee) payable upon exercise of said Purchase Option and with a closing date no later than thirty days thereafter. This Purchase Option be exercised in writing no later than 01 August 2008, but shall not be effective should the Lessee be in default under any term of this Lease or upon any termination of this Lease. If the Lessee or Lessor does not follow through with the purchase option of the above mentioned home, this down payment will be considered rent (as above \$900 x 12 x 3 years) and it will not be returned to Lessee. However the CI\$ 18,000.00 deposit will be returned to Lessee".
4. The Agreement was drafted by the Defendant and it has always been the Plaintiff's intention to exercise her right to purchase the property prior to the expiration of the Lease period, i.e. 2 July 2008.
5. Clause 1 of the Agreement provides:-

"Rent: Lessee agrees to pay without demand, to Lessor as rent for the demised premises the sum of CI\$ 1,650.00 per month in advance on the first day of each calendar month

beginning 1 July 2005 payable to Merlene McGaw Carter. Note: CI\$ 900.00 goes towards Purchase Price of the home and CI\$750.00 is applied as rent. If the house is not purchased then the entire CI\$ 1,650.00 is applied as rent". Notwithstanding the above, on 31 October 2006, the Defendant unilaterally increased the rent to CI\$1,725.00 per month

6. Clause 5 of the Agreement provides:

"On execution of this Lease, Lessee deposits with Lessor CI\$2,000.00 AND a house deposit of CI\$ 16,000.00, receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, on the full and faithful performance by him of the provisions hereof. (TOTAL DEPOSIT OF CI\$ 18,000.00) (CI\$ 10,000.00 TO BE GIVEN BY JULY 1, 05, CI\$4,000.00 in October 05 and CI\$ 4,000.00 in January 06)."

7. Time was not stipulated to be of the essence anywhere in the Agreement.

8. As at 4 June 2008, the Plaintiff had, in pursuance of the Agreement, paid the Defendant CI\$ 14,000.00 of the CI\$ 18,000.00 deposit and had paid CI\$ 900.00 a month since June 2005 towards the down payment of CI\$32,400, which will be paid in full at the end of June 2008.

9. The Plaintiff has also expended CI\$45,342.82 in upkeep and renovation to the Property.

10. The Defendant lives in Florida, United States of America and the Plaintiff has over the past three years corresponded with the Defendant by email. The Plaintiff does not know of the Defendant's physical address. All payments due to the Defendant in respect of the Agreement have been made to the Defendant's agent as the Defendant, from time to time, instructs. Since 5 February 2007, the Defendant's agent has been her nephew Boblee McBean.

11. On 4 June 2008, the Plaintiff, through her attorneys Mourant de Feu & Jeune, wrote to the Defendant exercising the Purchase Option under the Agreement effective 1 July 2008. The

letter enclosed a bank draft for CI\$ 4,000.00 representing the balance deposit payment. The letter was served on Boblee McBean on 4 June 2008. By this letter, the Plaintiff had expressed confirmation of her intention to purchase the property within the stipulated option period.

12. On 9 June 2008, the letter together with the bank draft was returned by Boblee McBean to Mourant de Feu & Jeune without any explanation.
13. On 9 June 2008, a copy of the letter as sent to the Defendant by email. Mourant de Feu & Jeune also requested the Defendant to provide her physical address so that the original letter and bank draft may be sent to her. The Defendant did not reply.
14. The Plaintiff has secured financing from Cayman Islands Development Bank for the purchase of the Property. The Plaintiff has at all material times been and is now ready and willing to fulfill all her obligations under the Agreement to see to the purchase of the Property.
15. On 18 June 2008, the Defendant's attorneys, Appleby, wrote to advise that they are reviewing the matter. Notwithstanding the letter of 4 June 2008 and the email of 9 June 2008, the Defendant has thus refused and refuses to take any steps towards the completion of the Agreement.
16. Without the Defendant's co-operation, or the Court's intervention, the Plaintiff will not be able to close on the purchase of the Property as stipulated on the Agreement leaving the Plaintiff vulnerable to a risk of the property being sold by the Defendant to a third party.

AND the Plaintiff claims:

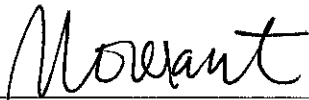
1. Specific performance of the contract in writing between the Plaintiff and the Defendant dated 2 June 2005 for the sale by the Defendant to the Plaintiff of the Property known as 102, Buttonwood Avenue, Block 25B, Parcel 295.

2. Further and/or alternatively damages for breach of contract in addition to or in lieu of specific performance or at common law.
3. Alternatively, a declaration that the contract is discharged by reason of the repudiation of it by the Defendant;
4. Repayment to the Petitioner of the deposit of CI\$ 14,000.00 and down payment of CI\$ 32,400.00 paid under the contract with interest and repayment of the CI\$45,342.82 expended by the Plaintiff for improvements to the Property.
5. A declaration that the Plaintiff is entitled to a lien or charging order on the said property for the deposit, down payment and improvements (together with interest thereon) and any damages or costs awarded in this action.

In any event:

6. Interest
7. Costs
8. Further or other relief as the Court deems fit.

Dated this 19th day of June 2008



Mourant du Feu & Jeune
Attorneys-at-Law for the Plaintiff

This WRIT AND STATEMENT OF CLAIM was filed by Mourant du Feu & Jeune, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is 3rd Floor, Harbour Centre, PO Box 1348, George Town, Grand Cayman, Cayman Islands. (2035260/RAMMU/MdFJ/ 1249475/1)

**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 the Defendant or by the 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

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 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 his 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.

BETWEEN DAWN McLEAN-SAWNEY

PLAINTIFF

AND MERLENE McGAW-CARTER

DEFENDANT

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

IMPORTANT. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, **THIS FORM MAY HAVE TO BE RETURNED.**

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*).

yes

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

Please complete overleaf

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 communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Mourant du Fue & Juene
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN (ref: MR/3724-0000)

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