

IN THE GRAND COURT OF THE CAYMAN ISLANDS

G0391
CAUSE NO. OF 2008

BETWEEN:

AVENDELL INVESTMENTS INC.



PLAINTIFF

AND:

ROBERTSON DESIGN BUILD LTD

FIRST DEFENDANT

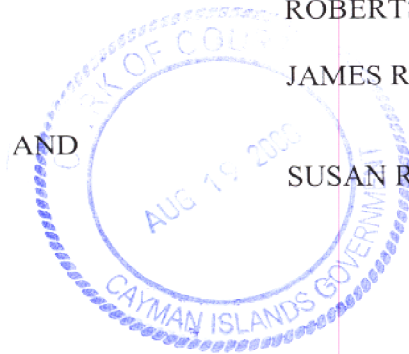
JAMES ROBERTSON

SECOND DEFENDANT

AND

SUSAN ROBERTSON nee WILSON

THIRD DEFENDANT



WRIT OF SUMMONS

TO: The First Defendant
Robertson Design Build Ltd.
P.O. Box 31988 SMB
Harbour Place
103 South Church Street
Grand Cayman
Cayman Islands
KY1-1208

AND TO: The Second Defendant
James Robertson
c/o Turner & Roulstone

AND TO: The Third Defendant
Susan Robertson nee Wilson
c/o Turner & Roulstone



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 19th day of August 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 Plaintiff (“Avendell”) is a company incorporated pursuant to the laws of the Cayman Islands.
2. The First Defendant, Robertson Design Build Ltd. (“Robertson Design Build”), is a company incorporated pursuant to the laws of the Cayman Islands.
3. The Second and Third Defendants, James Robertson and Susan Robertson nee Wilson respectively (collectively, the “Robertsons”), are husband and wife and business people who reside in the Cayman Islands.

The Joint Venture

4. Avendell is the registered owner of properties in the Cayman Islands, specifically being Savannah Block 20D, Parcels 276, 277, 278, and 280 (the “Land”).
5. Avendell and James Robertson, purportedly on behalf of a company to be incorporated, entered into a joint venture agreement dated 18 May 2005 (the “Joint Venture Agreement”) for the purposes of developing the Land by way of the construction of residential condominiums for sale to third parties (the “Development Project”).
6. Robertson Design Build was incorporated in the Cayman Islands on the 14 day of September 2005, pursuant to the *Companies Law* (as revised). Avendell is not aware whether or not the Joint Venture Agreement was ratified by Robertson Design Build and pleads and relies on section 81 of the *Companies Law (2007 Revision)*.
7. The Joint Venture Agreement provided, *inter alia*, that James Robertson or Robertson Design Build would pay to Avendell US\$910,000.00 for the first building in the Development Project, which payments would be made monthly in the amount of US\$10,000.00 (the “Monthly Payments”) from the date of commencement of

construction of the Development Project. The Development Project commenced construction on 28 August 2006.

8. Pursuant to the Joint Venture Agreement, James Robertson or Robertson Design Build was also obliged to provide Avendell with, *inter alia*, a residence with a market value of US\$1,250,000.00. They have not done so.
9. In accordance with the Joint Venture Agreement, Robertson Design Build commenced paying the Monthly Payments to Avendell in September 2006. Monthly Payments of US\$10,000.00 were made by Robertson Design Build to Avendell for the months September 2006 to June 2007.
10. Robertson Design Build ceased making Monthly Payments after June 2007 and neither Robertson Design Build nor James Robertson has made any of the further Monthly Payments to date.
11. On 19 June 2008, Avendell made demand for payment of the amount of US\$120,000.00 (the "Debt") being the outstanding Monthly Payments for July 2007 to June 2008 which were then due pursuant to the Joint Venture Agreement. Avendell further informed James Robertson and Robertson Design Build that the Joint Venture Agreement had been terminated for, *inter alia*, their failure to make the payments due to Avendell.
12. Robertson Design Build and James Robertson have failed or neglected to pay the Debt or any make any of the ongoing Monthly Payments.

The Rental Agreement

13. Pursuant to an oral agreement (the "Rental Agreement"), the Robertsons leased Avendell's property at 260 Prospect Point Road ("the House") from June 2006 to May 2008. Avendell permitted the Robertsons to live rent free in the House for May 2006.

The Rental Agreement provided that the Robertsons were required to pay rent of US\$3,000.00 per month for each of June, July and August 2006 and that from September 2006 until the end of the lease (at the end of May 2008), the Robertsons would be required to pay rent in the amount of US\$10,000.00 per month.

14. The Robertsons last rental payment was for their June 2007 rent.
15. The Robertsons are indebted to the Plaintiff in the amount of US\$120,000.00 for unpaid rent.
16. It was a term of the Rental Agreement that the Robertson would pay for the utilities for the House during their tenancy.
17. The Robertsons had outstanding accounts with The Water Authority – Cayman totalling CUS\$380.97 when they vacated the House (the “Unpaid Water Bill”). The Water Authority – Cayman terminated water service to the House as a result of the Unpaid Water Bill. In the result, Avendell paid the Water Authority – Cayman in full for the Unpaid Water Bill in order to have water service to the House restored.

AND THE PLAINTIFF claims against Robertson Design Build and James Robertson:

1. US\$910,000.00 for the cash payments owing under the Joint Venture Agreement;
2. US\$1,250,000.00 for the loss of clear title and ownership of the Grand Residence which they were to provide to Avendell; and
3. A declaration that the Joint Venture Agreement has been validly terminated;

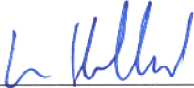
AND THE PLAINTIFF claims against the Robertsons:

4. US\$120,000.00 for unpaid rent on the House; and
5. CUS\$380.97 for reimbursement for the Water Bill;

AND THE PLAINTIFF claims against all of the Defendants:

6. 7 ¼ % per annum simple interest or such other rate as this court may deem fit; and
7. Costs.

If, within the time for returning the Acknowledgment of Service, the Defendants pay the total amount claimed of CI\$2,000,000.00 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



[Signature of Plaintiff or his Attorney]

THIS WRIT was issued by **SOLOMON HARRIS** of 2nd Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of its said Attorneys-at-law.

**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 acting in person.
2. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.
3. 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 acknowledgment 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.

4. 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 instalments or otherwise.

See over for notes for guidance

Please complete overleaf

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 authorized 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.

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SECOND DEFENDANT

AND

SUSAN ROBERTSON nee WILSON

THIRD 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) _____

[DEFENDANT]

Address for service: P.O. Box 1990, George Town, Grand Cayman

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.

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

Solomon Harris
Attorneys-at-law
3rd Floor, First Caribbean House
P.O. Box 1990
Grand Cayman
Cayman Islands, KY1-1104

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

