

IN THE GRAND COURT OF THE CAYMAN ISLANDS

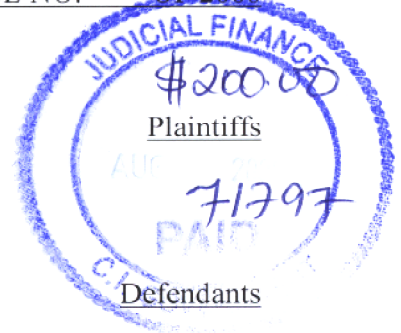
CAUSE NO. **G0397** OF 2008

BETWEEN:

- (1) **STEPHEN WRIGHT**
- (2) **SHIRLEYANN WRIGHT**

and

- (1) **ALFRED POWERY**
- (2) **ALFREDO POWERY**



WRIT OF SUMMONS

**TO: ALFRED POWERY
PO BOX 212 WEST BAY
GRAND CAYMAN
CAYMAN ISLANDS**

**TO: ALFREDO POWERY
PO BOX 212 WEST BAY
GRAND CAYMAN
CAYMAN ISLANDS**



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

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 495GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement 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 22nd 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. By a contract in writing dated 7th July 2006 and made between the Defendants on the one part and the Plaintiffs on the other part the Defendants agreed to sell and the Plaintiffs agreed to buy the freehold interest with vacant possession of 0.3818 acres of the land situated at Seymour Drive / Industrial Drive title to which property is registered at the Land Registry as Registration Section George Town East, Block 19E, Parcel 204 (hereinafter called "the Property") for the sum of C\$230,000. The Property is located in a Heavy Industrial Zone under the Development and Planning Law (2005 Revision) and the written contract is subject to the legal requirements of that Law.
2. The said contract was in the standard CIREBA form. By clause 5 it was provided that the said sale was to take place on or before the completion date of 15th August 2006.
3. Clause 5(4) of the said contract made it a condition of that contract for the Defendants to properly fill the Property with existing land fill on the Property.
4. It was an implied term of the said contract by virtue of the Development and Planning Law (2005 Revision) that provides by section 12(1)(c) that an access road be ensured in industrial zoned Property, and in any event that the Defendants were to build an access road to the Property as none existed and the parties further agreed that the said access road was to be a permanent access road to the Property in compliance with the statutory requirement in section 12(1)(c) of the Development and Planning Law (2005 Revision) or such other provision of the Law as requires an access road to be built to a sub-division of property.
5. The Plaintiffs will refer to the said contract at trial for its full terms, meaning and effect.

6. The Plaintiffs have complied with their obligations under the contract paying the entire purchase price for the Property on or before 9th August 2006. Since that date the Plaintiff have been incurring interest payments upon that mortgage full particulars of which will be provided upon Discovery. The said purchase price of CI\$230,000 was used by the Defendants to extinguish their mortgage indebtedness to Bank of Butterfield (Cayman) Ltd.
7. The first and/or second Defendant(s) were shown by the first Plaintiff the containers, construction material, scaffolding, cement pouring equipment, lumber, wheelbarrow and other equipment that the Plaintiffs intended to store upon the Property, and the Defendants were made aware of the Plaintiffs' need to move the said items from where they were stored at that time onto the Property as soon as the access road to be constructed by the Defendants was completed.
8. On or after 21st September 2006 the Defendants sold an additional 3,000 square feet of the Property to the Plaintiffs for CI\$41,400 in order to satisfy the Planning Department requirements as to land development in a heavy industrial zone. The Plaintiffs purchased this addition land and paid the purchase price in full to the Defendants.
9. In breach of Clause 5(4) of the written contract the Defendants have not completed filling the Property using the existing land fill on the Property or at all. The Defendants, after digging out the top soil, have caused two truck loads of fill to be delivered to the Property leaving a further two or more truck loads of fill to be delivered in order to properly fill the Property.
10. Further, in breach of the mandatory provision in section 12(1)(c) of the Development and Planning Law that provides that in any development of industrial land an access road is ensured, and/or such other provision(s) of the Law requiring the vendor of sub-divided land to provide an access road thereto, and further in breach of an express or alternatively implied term of the said

written contract, whereas the Defendants agreed at the time they entered into the said written contract to build a permanent access road to the Property, the Defendants on or about 10th August 2008 sought and obtained the permission of the owners of the neighbouring land (Block 19E Parcel 203) to build a 30' access road thereby providing the Plaintiffs with the means to lawfully enter and exit the Property.

Particulars of Breach of Contract / Statutory Duty

- (a) The access road is a mere license and creates no easement, therefore amounting to something less than a permanent access road as required by Law and agreed between the parties when the Property was sold; and
- (b) The mere license proposed is of limited duration (3 years) and, therefore, is not permanent as required by Law and as agreed between the parties.

The Plaintiffs insist on the terms of the written contract and the above mentioned provisions of the Development and Planning Law being adhered to and that a permanent access road be constructed forthwith by the Defendants after they have filled the Property as agreed.

11. As set out in paragraph 7 above, the Plaintiffs intended to use this Property to store oversized vehicles and construction equipment, such intention having been explained to the Defendants prior to entering into the said contracts, and as a result of the Defendants' breaches of contract as set out above have been caused loss and damage, *inter alia*, the cost of storing their vehicles at an alternative location. Further details of losses and damages will be provided upon discovery.
12. Further the Plaintiffs claim interest pursuant to Section 34 of the Judicature Law on any amount found to be due to the Plaintiffs at such rate and for such period as the Court thinks fit.

AND the Plaintiffs claim:

- (1) Specific Performance of the said contract for sale.
- (2) Abatement of such proportion of the purchase price paid by the Plaintiffs such as to compensate them for their losses and damages arising out of the Defendants breach(es) of the contract for the sale of land and / or the statutory requirements requiring the Defendants to build an access road.
- (3) Further or alternatively, damages for breach of contract.
- (4) Alternatively:
 - (a) A declaration that by reason of the repudiation of the said contract by the Defendants the Plaintiffs are relieved of all liability for the further performance of their obligations thereunder.
 - (b) Repayment to the Plaintiffs of the purchase price of C\$271,400.
 - (c) Damages for breach of contract.
 - (d) A declaration that the Plaintiffs are entitled to register a charge instrument against the Property for their purchase price and any damages and costs awarded in this action.
- (5) The aforesaid interest pursuant to the Judicature Law to be assessed.

Dated this 22nd day of August 2008
Filed this 22nd day of August 2008



PRIESTLEYS

Attorneys-at-Law for the Plaintiffs

TO: The Clerk of the Court
AND TO: The First and Second Defendants
PO Box 212 WB

This Writ and Statement of Claim are filed by Priestleys, Attorneys-at-Law for the Plaintiffs, whose address for service is Unit 11 Galleria Plaza, 638 West Bay Road, P.O. Box 30310 KY1-1202, George Town, Grand Cayman, Cayman Islands.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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.

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 fourteen (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 steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. _____ OF 2008

B E T W E E N:

(1) **STEPHEN WRIGHT**
(2) **SHIRLEYANN WRIGHT**

Plaintiffs

and

(1) **ALFRED POWERY**
(2) **ALFREDO POWERY**

Defendants

**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 [] No []

Service of the Writ is acknowledged accordingly

(Signed) _____

Address for service:

Please see 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 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.

PRIESTLEYS
ATTORNEYS-AT-LAW
UNIT 11 GALLERIA PLAZA
638 WEST BAY ROAD
PO BOX 30310 KY1-1202
GRAND CAYMAN
CAYMAN ISLANDS

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

[Empty box for Defendant's Attorney endorsement]