

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO ¹²⁵⁴ of 2008

BETWEEN: PHILIP PACE

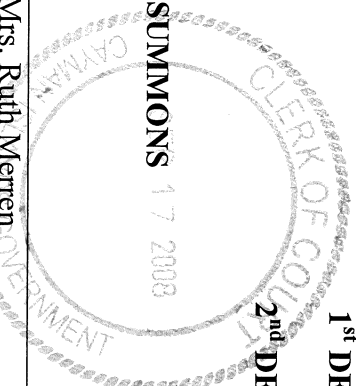
PLAINTIFF

AND: SPENCER MERREN

1st DEFENDANT

RUTH MERREN

2nd DEFENDANT



WRIT OF SUMMONS 17 2008

TO THE DEFENDANTS:

Mr. Spencer Merren
P. O. Box 30429 SMB
Grand Cayman
Cayman Islands

Mrs. Ruth Merren
P. O. Box 30429 SMB
Grand Cayman
Cayman Islands

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 17th day of September 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO of 2008

BETWEEN: PHILIP PACE

PLAINTIFF

AND: SPENCER MERREN

1st DEFENDANT

RUTH MERREN

2nd DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, at all material times, was and is a resident of the Cayman Islands and the registered joint proprietor of property located at West Bay North West, Block 3D, Parcel 134 (“the Plaintiff’s Property”). The remaining joint proprietor of the Plaintiff’s Property is the Plaintiff’s wife, Mrs. Nancy J. Saur.
2. At all material times the First and Second Defendant were and are residents of the Cayman Islands and being the registered proprietors of property formally known as Registration Section West Bay North West, Block 3D, Parcel 11 (“the Defendant’s Property”).
3. On, or about, June 2007 the Defendants, either themselves, or through their authorized and nominated agents, removed trees, shrubs, coastal sand and coral rock from both the Defendant’s Property and the Plaintiff’s Property.
4. Without notice or permission, the Defendants and their nominated and authorized agents did and continued to trespass on and upon the Plaintiff’s Property, continuing thereafter to irrevocably destroy large areas of coastal sea grape forest, trees and shrubs and remove trees, shrubs, coastal sand and coral rock from the Plaintiff’s Property, of an approximate area of 9000 square feet.
5. The Plaintiff notified the Cayman Islands Planning Department (“the Planning Department”) of the unauthorized excavation of the Plaintiff’s Property, where it was confirmed by the Planning Department that the Cayman Islands Central Planning Authority did not grant planning permission for the Defendants’ excavation and/or development from or on the

Plaintiff's Property or the Defendant's Property. The Planning Department, on 25 October 2007, stated they had sent the Defendants a cease and desist notice ("the Notice"), requiring them to immediately cease the development and submit a completed planning application.

6. As a result of the damage to the Plaintiff's Property, the Plaintiff instructed APEC Consulting Engineers Ltd to provide their engineering opinion in relation to the condition of the effect it had upon the Plaintiff's Property's boundary.

7. By letter, dated 4 April 2008, APEC Consulting Engineers Ltd confirmed that:

"It is our opinion that the earth work operations, within the storm ridge at the adjacent parcel, categorized mainly as the removal of native material, has created an unstable edge of excavation that abuts Parcel 134 (Block 3D)...It is our opinion that the edge of the excavation is not stable and may promote further slope instability or slippage that would impact Parcel 134 (Block 3D). We believe that positive steps need to be taken to rectify and stabilize the edge of the excavation so as to not further undermine this property. Such actions may include the construction of retention structures, use of ground grouting and/or filling the excavation to the pre-excavation elevation."

8. The Plaintiff subsequently instructed Deloitte to provide a specific quotation as to the most suitable structure and rebuilding, with associated costs, required to protect the Plaintiff's Property. Deloitte's professional and independent estimate for the required work totals CI\$68,100.79.

9. As a result of the irrevocably destroyed coastal sea grape, trees and shrubs, the Plaintiff sought a landscape proposal to install and replace shrubs and sea grapes trees on and upon the Plaintiff's Property; including the clearance and removal of existing debris. The proposal submitted by Cayman Growers for such work totals CI\$113,550.00.

10. Despite being served with the Notice by the Planning Department, on or about October 2007, in June 2008, the Defendants and its authorized agents continued with the excavation and destruction of the Defendant's Property and the Plaintiff's Property.

11. The Defendants, either themselves, or through their authorized and nominated agents, have trespassed on and upon the Plaintiff's Property, have irrevocably destroyed and removed the coastal sea grape trees and shrubs located on and upon the Plaintiff's Property and have continued to excavate and remove land, rock, trees and shrubs, contrary to the Planning Department's instructions. The said acts were done without knowledge or consent of the Plaintiff, constituting trespass and/or conversion.
12. The Plaintiff has sustained costs associated with obtaining Deloitte's report, a land valuation and boundary survey, which the Plaintiff claims reimbursement of.
13. Through his attorney, the Plaintiff served the Defendants with a letter before action, requesting the matter be resolved without legal proceedings, by either satisfying the outstanding sum owed due to their acts and/or omissions, or consider a transfer of property for an equivalent value.
14. Despite demand, the First and Second Defendant have failed/refused to repair and/or deal with this matter.

AND THE PLAINTIFF CLAIMS:

1. Damages for trespass to land, including damages for reinstatement, inconvenience, stress, diminution in value of the Plaintiff's Property and loss of enjoyment of the Plaintiff's Property;
2. Damages for wrongfully converting the Plaintiff's property;
3. Interest pursuant to the Judicature Law (1994 Revision);
4. Costs; and
5. Any further order this Honourable Court deems appropriate.



CAMPBELL

Attorneys-at-Law for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Campbells, Attorneys-at-Law for and on behalf of the Plaintiff, whose address for service is 4th Floor, Scotia Centre, George Town, Grand Cayman (Ref: BJH/07847).

BETWEEN: PHILIP PACE

PLAINTIFF

AND: SPENCER MERREN

1st DEFENDANT

AND: RUTH MERREN

2nd DEFENDANT

ACKNOWLEDGEMENT 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 name of the Defendant by whom or on whose behalf the service of this Writ is being acknowledged.

Yes

No

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

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 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 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:

Campbells & Co.
Attorneys-at-Law
P. O. Box 884 GT
Fourth Floor
Scotia Centre
George Town, Grand Cayman
Ref: BJH/07847

Indorsement by Defendants' Attorney (or by Defendant if suing in person) of his name, address and reference, if any in the box below:

--

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 495, 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.