

IN THE GRAND COURT OF THE CAYMAN ISLANDS

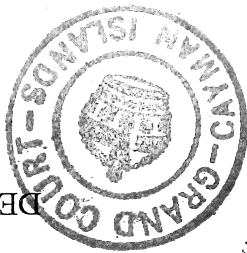
CAUSE NO: 0490 OF 2008

PLAINTIFF

WILLESLEY LALOR

DEFENDANT

MARLON COLLINS



WRIT OF SUMMONS

TO: Mr. Marlon Collins of # 2 Party Lane, Marina Drive, Grand Cayman

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 16th day of October 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.

"I hereby confirm that I am closing on the purchase of property situated at Sports Block 25 Parcel 204, within the next two days.

alio:

8. Before the transaction was completed the Defendant asked the Plaintiff to lend him CI\$10,000.00 to pay the stamp duty on the Transfer of Land. The Plaintiff assisted the Defendant in obtaining a loan from Financial Integrated Services Ltd. for CI\$10,000.00 by guaranteeing the loan. The Defendant, in a letter dated 21 June 2007 to Mrs. Karen Diaz at Financial Integrated Services Ltd (the "Loan Repayment Letter"), said *inter alia:*
7. It was a term of the Verbal Agreement that the Defendant would obtain the balance of the purchase price from money which he told the Plaintiff he had in Guyana. The Defendant did not specify how much money he had in Guyana but represented, in June 2007, that he would pay to the Plaintiff the balance of CI\$77,000.00 from funds he held in Guyana in full discharge of the purchase price. The Plaintiff relied on the Defendant's representation in part because the Defendant is an Accountant and as such gave the Plaintiff strong reason to believe that he could be trusted and relied upon as a professional man familiar with business practices.
6. Pursuant to the Verbal Agreement, the Defendant obtained a loan from Royal Bank of Canada ("RBC") for CI\$468,000.00 but was unable to get a loan for the balance of the purchase price because his salary did not come within the debt ratio parameters of RBC.
5. The Plaintiff advertised the Property for sale at the price of CI\$590,000.00. The Defendant viewed the Property and sought to negotiate the sale price with the Plaintiff. Eventually, in or around May 2007, an agreement was reached verbally (the "Verbal Agreement") whereby the parties agreed *inter alia* that the Plaintiff would sell the property to the Defendant at an agreed price of CI\$545,000.00.
4. The Plaintiff had a loan for CI\$282,000.00 with Cayman National Bank ("CNB"). The CNB loan was secured against the Property by a registered charge.
3. The Plaintiff was the Registered Proprietor with absolute title of the property legally described as Registration Section Sports, Block 25B, Parcel 204 located at Party Lane, Marina Drive, Grand Cayman (the "Property"). The Property is a duplex with an additional 2 bedroom 1 bathroom attic. At the time the Property was advertised for sale, the Plaintiff resided in # 2 Party Lane.
2. The Defendant is an Accountant from Guyana who resides in the Cayman Islands.
1. The Plaintiff has Caymanian status and permanently resides in the Cayman Islands.

STATEMENT OF CLAIM

- I further wish to confirm that I will undertake to inform you when the purchase is completed and to ensure that the purchaser reimburses an amount of CI\$10,000.00 plus the attendant charges (Amount of CI\$10,175.00) not later than 4:00 pm on Friday June 22nd, 2007".
9. The Defendant defaulted on the loan of CI\$10,000.00, as a result of which the Plaintiff had to discharge the loan on 27 June 2007. The Plaintiff has claimed payment of the CI\$10,000.00 from the Defendant but the Defendant despite promises to repay the sum has failed to do so.
10. In July 2007, the Defendant contacted the Plaintiff by telephone and asked him to attend at a lawyers' office for the purpose of executing the title documents to transfer the Property to the Defendant. The firm of Campbells, Attorneys-at-Law represented the Defendant's lender Royal Bank of Canada. The Defendant during the telephone conversation requested the Plaintiff to inform Campbells that a deposit had been received by the Plaintiff even though no such deposit had been paid to the Plaintiff.
11. The Plaintiff informed CNB that he had a purchaser for the Property and that he would be discharging the Charge. CNB produced a redemption figure of CI\$280,743.65 and a Discharge of Charge.
12. The Plaintiff attended the offices of Campbells, Attorneys-at-Law and signed the documents and informed Campbells that a "deposit had been paid". The Plaintiff thereafter paid the monies received from Campbells, namely CI\$468,000, to CNB. Transfer of title of the Property to the Defendant was completed in April 2008.
13. Pursuant to the terms of the Verbal Agreement, the Defendant told the Plaintiff at some time in June or early July 2007 that he planned to travel to Guyana in the second week of July to get the balance of the money owed to the Plaintiff. The Defendant did not, however, travel to Guyana. The Defendant told the Plaintiff that he was prevented from removing his money because of the Guyanese Government.
14. Pursuant to the Verbal Agreement, the Defendant, then told the Plaintiff that his daughters were traveling to Grand Cayman from Guyana and that the Defendant's brother was going to send the money with the Defendant's daughters to perform the Verbal Agreement. The Defendant's daughters arrived in Grand Cayman but the Defendant failed to pay the remaining money owed to the Plaintiff.
15. The Plaintiff went to Campbells' office and told them that he had not previously given them the correct facts regarding payment of the 10% deposit. The Plaintiff explained that, as a result, he had not received the full contractual purchase price for the Property.
16. As a result of this meeting with the Plaintiff, an attorney at Campbells, Lisa Parsons, telephoned the Defendant. This phone call resulted in the Defendant calling the Plaintiff to explain that he was trying to get a loan and he would take the Plaintiff to the bank as proof that he was attempting to get a "student loan". The Plaintiff went with the

22. The Defendant has been enriched by ultimately receiving the benefit of CI\$10,000.00, which was loaned from Financial Integrated Services Ltd.

Particulars of Unjust Enrichment

21. Alternatively, in respect of the CI\$10,000.00, loaned from Financial Integrated Services Ltd., ultimately received by the Defendant and repaid by the Plaintiff, the Defendant has been unjustly enriched at the Plaintiff's expense.

20. The Plaintiff seeks interest, under section 34 of the Judicature Law (2007 Revision), from 31st August 2007, the date when the Defendant was to repay the full amount of the remaining money to the Plaintiff, as evidenced in the Written Agreement dated 18th July 2008.

19. The Defendant has so far paid CI\$5,000.00 to the Plaintiff, leaving CI\$82,000.00 outstanding for the purchase price and the loan with Financial Integrated Services Ltd.

(b) the CI\$10,000.00 loan from Financial Integrated Services Ltd. for payment of stamp duty, which was ultimately received by the Defendant, but repaid by the Plaintiff.

(a) the amount still owing for the agreed purchase price of the Property, namely CI\$77,000.00;

18. As a result of the matters set out above, the Defendant has breached the Verbal Agreement and/or agreements, as evidenced in writing in the Written Agreement, by failing to repay by the 31st August 2007 to the Defendant:

Particulars of Breach

"it is agreed that the Buyer will pay the remaining balance of Seventy Seven Thousand Cayman Dollars (CI\$77,000.00) in addition to the amount of Ten Thousand Cayman Dollars (CI\$10,000.00) loaned by the Seller to the Buyer to make the total amount payable to EIGHTY SEVEN THOUSAND CAYMAN DOLLARS (CI\$87,000.00) on or before the 31st August 2007."

17. The Plaintiff instructed his secretary to prepare a written agreement dated 18 July 2007 (the "Written Agreement") evidencing the terms agreed between the Plaintiff and Defendant for the sale of the Property. This agreement was signed by both parties and their signatures were witnessed. The Plaintiff will rely upon this document at the hearing of this matter. The Written Agreement states *inter alia* that

Defendant to Cayman Islands Development Bank, on Dr. Roy's Drive. The banker told the Defendant that they had only received the loan application three (3) days before and it had not yet been processed. After leaving the bank, the Plaintiff did not hear anything further about the "student loan".

23. The enrichment was at the expense of the Plaintiff, in that the Plaintiff repaid the loan with Financial Integrated Services Ltd., which was a subtraction of wealth from the Plaintiff that ultimately benefited the Defendant.

24. The enrichment was unjust, on the ground and/or grounds that there was:

- (a) a total failure of consideration, as the Defendant agreed to repay the loan with Financial Integrated Services Ltd., but never did; and/or
- (b) an absence of consideration, as the Defendant agreed to repay the loan with Financial Integrated Services Ltd., but never did; and/or
- (c) a fraudulent misrepresentation on the part of the Defendant, as set out below; and/or

(d) an unconscionable bargain in favour of the Defendant and/or unconscionable conduct on the part of the Defendant and/or exploitation of the Plaintiff's weakness by the Defendant, as:

- i. the Plaintiff was at a serious disadvantage as against the Defendant, as the Defendant is an Accountant and the Plaintiff is not a sophisticated professional, therefore, there was an inequality of bargaining power between them;
- ii. the Defendant behaved unconscionably, *inter alia*, by seeking to have the Plaintiff assist him with providing him financing for the stamp duty. This resulted in the Plaintiff guaranteeing a loan with Financial Integrated Services Ltd. for the Defendant, which the Defendant did not repay; although in the Loan Repayment Letter the Defendant stated that he would "undertake to...ensure that the purchaser reimburses an amount of C\$10,000.00 plus the attendant charges (Amount C\$10,175.00) not later than 4:00 pm of Friday June 22nd, 2007" to Financial Integrated Services Ltd.;
- iii. the Plaintiff did not have the benefit of independent legal advice, before guaranteeing the loan; and
- iv. from the matters set out above and below the transaction was not fair, just and reasonable; and/or

(e) a mistake of fact by the Plaintiff.

25. The Plaintiff claims simple interest pursuant to section 34 of the Judicature Law (2007 Revision) from 31st August 2007, the date when the Defendant was to repay the full amount of the remaining money to the Plaintiff, as evidenced in the Written Agreement dated 18th July 2007.

26. Alternatively, as a result of the matters as set out above, the Defendant has committed the Tort of Deceit.

Particulars of Deceit

27. The Defendant made the following representations to the Plaintiff:

(a) the Defendant induced the Plaintiff to enter into the Verbal Agreement, expressly and/or impliedly by representing, in June 2007, to the Plaintiff that he had a lump sum of money in Guyana that would be sufficient to pay the Plaintiff the balance of the purchase price of the Property; and/or

(b) the Defendant expressly and/or impliedly represented, in June 2007, to the Plaintiff that he was going to repay CI\$10,000.00 loan from Financial Integrated Services Ltd., with the lump sum he had in Guyana or with other money; and/or

(c) the Defendant, also expressly and/or impliedly and/or by conduct represented to the Plaintiff on several occasions that he was going to obtain a loan to discharge the balance of the purchase price.

28. It is believed that the Defendant made the representation and/or representations to the Plaintiff: knowing it and/or them to be false, and/or without belief in its and/or their truth, and/or recklessly and/or carelessly as to whether it was and/or they were true or false, for the following reasons:

(a) the Defendant has failed to perform the agreement for sale from the alleged lump sum in Guyana or otherwise pursuant to his representation that he would do so;

(b) the Defendant failed to supply the Plaintiff with a proper explanation as to why he was unable to remove his funds from Guyana and supplied no details of the excuse that the Guyanese Government would not allow him to remove the money;

(c) the Defendant made two specific representations to the Plaintiff that he would procure the funds from Guyana but did not do so as follows:

i. the Defendant did not travel to Guyana in the second (2nd) week of July 2007 as he represented to the Plaintiff he would do; and/or

ii. the Defendant told the Plaintiff that his brother would arrange for money, from Guyana, to be sent to Grand Cayman with the Defendant's daughters who were traveling to Grand Cayman. When they arrived, they did not bring the money with them. No explanation was given as to why they did not bring the funds;

34. By a letter dated 14th March 2008 the Plaintiff's attorneys-at-law wrote to the Defendant informing him that he was in breach of contract and that he should pay the sum of CI\$85,000.00 owed to the Plaintiff within the next fourteen (14) days failing which legal proceedings would be issued.

33. Pursuant to the Verbal Agreement, in early May, the Plaintiff moved from # 2 Party Lane in to # 1 Party Lane. The Defendant moved into # 2 Party Lane which is a much better appointed apartment. The Plaintiff continued to live at # 1 Party Lane, Marina Drive, Block 25B, Parcel 204, as the Defendant had not paid him the full purchase price for the Property. It was a term of the Verbal Agreement made in or around March or April 2007 that the Plaintiff would continue to live at # 1 Party Lane which is an apartment located in the Property until the Defendant paid to him the outstanding balance of the purchase price.

32. The Plaintiff claims interest, under section 34 of the Judicature Law (2007 Revision), from June 2007, the date upon which the false representation and/or representations was and/or were made by the Defendant and relied on by the Plaintiff.

(c) as only CI\$5,000.00 has been paid to date, the Plaintiff still owes CI\$82,000.00.

(b) CI\$10,000.00 ultimately received by the Defendant for the loan with Financial Integrated Services Ltd. and;

(a) CI\$77,000.00 owing on the agreed purchase price of the Property; and/or

31. As a result of the matters above, the Plaintiff has suffered loss and damage, as he has not collected the full:

Particulars of Loss

30. By signing the legal documents at Campbells which enabled the Defendant to become the Registered Proprietor of the Property, the Plaintiff in executing the documents and procuring the Discharge of Charge acted in reliance upon the representations made by the Defendant whom he trusted as an Accountant and a professional man of standing.

29. The Defendant made the above representations with the intent that the Plaintiff should act upon them. This the Defendant did by using the RBC loan to partially pay the purchase price. Further, the representation relating to the lump sum in Guyana was made to give believability to the scheme and induce the Plaintiff to carry out the transaction.

(d) the Defendant promised that he was going to obtain a loan to discharge the balance of the purchase price, but has failed to do so and there has been no evidence that the Defendant has actually obtained a loan or has made any further attempts to do so.

THIS WRIT has been issued by Truman Bodden & Company whose address for service is 5th Floor Anderson Square Building, Shedd Road, George Town, P.O. Box 866, Grand Cayman KY1-1103, CAYMAN ISLANDS.

Truman Bodden & Company
Attorneys-at-Law for the Plaintiff

Truman Bodden & Company

Dated this 16th day of October 2008

- (a) Payment of the sum of CI\$82,000.00 pursuant to the Sale Agreement pleaded in the statement of claim;
- (b) Aggravated and/or exemplary and/or punitive damages;
- (c) Interest, to be assessed, pursuant to section 34 of the Judicature Law (2007 Revision) for such period and at such rate as the court shall deem just, alternatively pursuant to the equitable jurisdiction of the court;
- (d) Costs, to be taxed, if not agreed; and
- (e) All further necessary or appropriate accounts, inquiries, declarations, orders and such other relief as the court shall think fit.

AND THE PLAINTIFF claims:

- 37. The Plaintiff seeks aggravated and/or exemplary and/or punitive damages for the distress and/or hardship and/or inconvenience and/or worry and/or strain and/or anxiety and/or unhappiness and/or disappointment caused to the Plaintiff and his family.
- 36. Pursuant to the Verbal Agreement, the Plaintiff was to pay CI\$1,800.00 per month rent to the Defendant, which he did for 3 months. However, the Plaintiff ceased making rental payments to the Defendant in October 2007 because of the Defendant's persistent failure to complete the Sale Agreement by payment of the balance of the purchase price. The Plaintiff informed the Defendant that he could deduct the rent arrears from the balance of the purchase price. This arrangement operated from October 2007 until September 2008 when the Defendant changed the locks. This action was unlawful and caused the Plaintiff and his family much distress, hardship, inconvenience, worry, strain, anxiety, unhappiness and disappointment.
- 35. On the 2nd October 2008, the Defendant had the locks changed to the doors of apartment # 1 Party Lane. The Plaintiff and his wife and child were not able to regain possession of # 1 Party Lane Property and had to spend one night in a partially constructed property as they had nowhere else to go. The Defendant's action was in breach of the Verbal Agreement and subsequently the Defendant facilitated the Plaintiff's repossession of # 1 Party Lane. However, on 1st October 2008 the Plaintiff and his family chose to move out of # 1 Party Lane.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

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.

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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgement of service.

3. 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.

4. 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 named stated on the Writ of Summons)".

5. 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.

6. 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.

7. 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.

8. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.

9. 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

BETWEEN: MR. WILLESLEY LALOR PLAINTIFF

AND: MR. MARLON COLLINS 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 the costs of applying to set it aside. is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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

2. State whether the Defendant intends to contest or otherwise participate in 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 of Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

Address for Service:

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 the 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 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.

Truman Bodden & Company
PO Box 866GT
Anderson Square Building
George Town
Grand Cayman
Ref: PSB/1548

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