

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO. 110 OF 2008**

**BETWEEN:      THE PROPRIETORS OF STRATA PLAN NO. 33      PLAINTIFF**

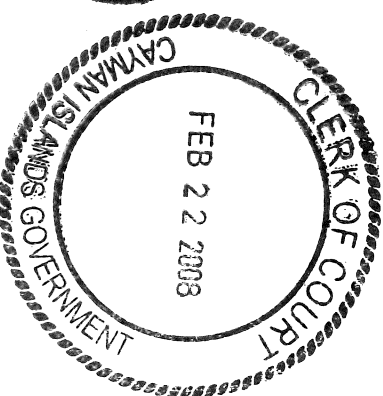
**AND:            DONNITA LEA MOIST            DEFENDANT**

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**WRIT OF SUMMONS**

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**TO:            DONNITA LEA MOIST**  
P.O. Box 30640 SMB  
North West Point Road  
West Bay  
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 495, Grand Cayman KY1-1106, Cayman Islands, 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 22<sup>nd</sup> day of February 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. At all material times, the Plaintiff is and was a corporation incorporated under the Cayman Islands Strata Titles Registration Law (1996 Revision) (“the Law”), to control, manage and administer common property located at Westwood Villas Strata for the benefit of all proprietors, including the Defendant (“the Corporation”).
2. The Defendant, at all material times, was the registered owner, proprietor and occupier of Unit 2, Westwood Villas Strata, more particularly known as Registration Section West Bay North West, Block 1E, Parcel 9H2 (“the Property”).
3. At all material times, the Corporation’s executive committee (“the Executive Committee”), operated within the Law and the provisions of its byelaws (“the Byelaws”).
4. The Plaintiff relies on the contents of its Byelaws within these pleadings, more specifically: Pursuant to Clause 36 of the Byelaws, the Corporation shall:
  - (a) *Control, manage and administer the common property for the benefit of all proprietors.*
  - (b) *Keep in a state of good and serviceable repair and properly maintained the fixtures and fittings used in connection with the common property.*
  - (c) *Pay all existing and future rates, taxes, assessments and outgoings now or hereafter imposed on or payable in respect of the common property.*

(i) *Subject to the contribution and payment by the proprietors as herein provided keep and maintain all fixtures and fittings in and about each and every strata lot in good repair and condition including the renewal and replacement of all worn or damaged parts.*

5. Clause 35 (ii) of the Byelaws provides that a proprietor, more specifically the Defendant, shall pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of the strata lot.

6. Clause 35 (iii) of the Byelaws further states that a proprietor, more specifically the Defendant, shall pay to the Corporation within one calendar month of demand:

- a. *All contributions to the fund for administrative expenses levied by the Corporation pursuant to Clause 6 (2) of the Byelaws; and*
- b. *Such share as shall from time to time be proportionate to the unit entitlement which his strata lot bears to Westwood Villas of all and any costs and expenses incurred by the Corporation in connection with the performance of its duties under the law and under these Byelaws.*

*Provided always that:*

- a. *In the event of any such payments not being made within one calendar month of such demand he shall pay interest thereon at the rate of 2% per annum above the prime rate prevailing in the United States of America at the time of default which such interest shall accrue from day to day until full payment; and*

*b. In the event of any such payments (together with interest accrued) not being made within days of such demand or in the event of his becoming bankrupt or making composition with his creditors or being a corporation entering into liquidation then and in any of these events he shall and does hereby irrevocably authorise and permit the Corporation to enter into possession of his strata lot and further does hereby irrevocably appoint the Corporation to be the receiver of the rents and profits of his Strata lot in each case until such time as the said payments (together with interest accrued) have been made by him to the Corporation.*

7. Clause 37 (vi) of the Byelaws enables that the Corporation to do all things reasonably necessary for the enforcement of the Byelaws and the control, management and administration of the common property.

8. The Plaintiff is also entitled to commence an action against the Defendant pursuant to Section 6 (3) of the Law.

9. On 17 November 2007, having provided correct and sufficient notice to all unit owners, the Corporation held its annual general meeting ("AGM"). At the AGM, the Defendant, although not providing the required and necessary proxy paperwork, appointed Ms. Paula Thompson to attend and act as her proxy. All parties at the AGM discussed, voted and approved, amongst other things, the replacement of the Corporation's roof, and remediation of the exterior of the Corporation's building and grounds, for all its member's units.

10. To pay for such works a special assessment of CI\$80,000.00 was agreed to be established in order to satisfy this work. Consequently, an individual unit special assessment of CI\$20,000.00 (“the Special Assessment”) was voted and approved.
11. It was further approved at the AGM that the Special Assessment be paid by the unit owners, including the Defendant, in two payments of CI\$10,000.00 each, with the first payment due on 14 December 2007 and the second payment due on 31 January 2008. All other unit owners within the Corporation have paid the Special Assessment apportioned to their unit.
12. In breach of her obligations under the Byelaws, the Defendant has failed, refused and/or neglected to pay:
  - a. Any, or all, of the Special Assessment;
  - b. Her portion of the Corporation’s insurance premium, which totals CI\$1,149.00;
  - c. Her allocated share of the 2007 Corporation expenses, totaling CI\$1,084.41; and
  - d. Her proportion of 2007 Corporation expenses concerning unit number 1, when the Defendant was the proprietor and registered owner of this property until February 2007, totaling CI\$348.69.
13. Further, pursuant to Clause 35 (ii) of the Byelaws, each proprietor shall pay the monthly strata fees of CI\$450.00 on the first day of every month (“the Strata Fees”). In breach of the Byelaws, the Defendant has failed, refused and/or neglected to pay the Strata Fees for 2008. The Plaintiff therefore claims the sum of CI\$900.00 in payment of January and February

2008's monthly Strata Fees, accruing at a rate of CI\$450.00 per month, until satisfied in full.

14. Despite the Plaintiff making formal written demand upon the Defendant, on 5 December 2007, 28 December 2007 and 19 January 2008 for the outstanding debt, the Defendant failed to provide any or any substantive response and failed to make any such payment in satisfaction thereof.

15. Through its attorneys, the Plaintiff made formal written demand for the outstanding debt on 7 February 2008. Following this demand letter, the Defendant, by email to the Plaintiff's attorneys, on 7 February 2008, acknowledged and approved the outstanding debt, stating "*The strata had a meeting was held while I was away and decided that they were going to put an assessment on us and start charging monthly fees which is fine except they put these charges immediately.....I have no problem with the assessment like I said but I can't pay it immediately. I should be given some time to pay.*"

16. By reason of the matters aforesaid the Plaintiff has suffered loss or damage in the amount of the Defendant's unpaid and outstanding debts.

**AND THE PLAINTIFF claims:**

- a) The sum of CI\$23,482.10;
- b) Interest calculated pursuant to Clause 35 (iii) (a) of the Strata Byelaws at a rate of 2% per annum of the prime rate prevailing in the United States of America at the time of default (6.50% per annum) which interest shall accrue from day to day until payment, from 28 December 2007 to 19 February 2008, totaling CI\$221.54, continuing to accrue thereafter at a rate of CI\$4.22 per day until payment;

c) Costs.

If, within the time for returning the acknowledgment of service, the Defendant pays the total amount claimed of C\$23,703.64, including interest and legal costs, further proceedings will be stayed. The money must be paid to the Plaintiff or its Attorney.

**DATED** this 22<sup>nd</sup> day of February 2008

**FILED** this 22<sup>nd</sup> day of February 2008



**CAMPBELL**

Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court  
Court Office

The Defendant

BETWEEN: THE PROPRIETORS OF STRATA PLAN NO. 33 PLAINTIFF

AND: DONNITA LEA MOIST 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.

2. State whether the Defendant intends to contest the proceedings (tick the 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:

***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/15141

**Indorsement by Defendant's 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 instalments 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.