

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 0153 OF 2009

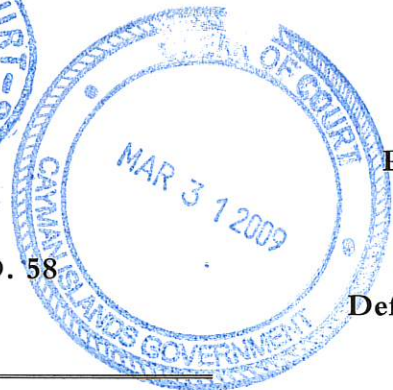
B E T W E E N:

MARKUS STAUDER



AND

THE PROPRIETORS, STRATA PLAN NO. 58



Plaintiff

Defendant

**WRIT OF SUMMONS**

TO: **The Proprietors, Strata Plan No. 85**  
P.O. Box 871  
Grand Cayman KY1-1103  
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, PO Box 495, Grand Cayman, KY1-1106 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 Acknowledgement 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 31st day of March 2009

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 Acknowledgement of Service are given with the accompanying form.

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**STATEMENT OF CLAIM**

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1. The Plaintiff is an individual who has Permanent Residency in the Cayman Islands and for the purpose of this proceeding his address for service is in care of his attorneys, Appleby, of PO Box 190, Grand Cayman, KY1-1104, Cayman Islands.
2. The Defendant is a strata corporation formed pursuant to the Strata Titles Registration Law and has an address for service of P.O. Box 871, Grand Cayman KY1-1103 Cayman Islands.
3. The individual strata lots and the common property of Strata Plan 58 are hereby referred to as the Strata Development.
4. From on or about June of 1998 the Plaintiff has been the proprietor of strata lot 208 in the Strata Development which strata lot has a legal description of Block 13B Parcel 15H23.
5. The Defendant is bound by the obligations set out in the Strata Titles Registration Law (the "**Law**") as amended from time to time with the following specific obligations:
  - a. Pursuant to section 21 (7) of the Law, the by-laws shall bind the Defendant and the proprietors as if such by-laws had been signed and sealed by such corporation and each proprietor and contained covenants on the part of such corporation with each proprietor and on the part of each proprietor with every other proprietor and with such corporation to observe and perform all the by-laws;
  - b. Pursuant to section 6(1)(d) of the Law, the Defendant was obliged to apply insurance monies received by it in respect of damage to the building in rebuilding and reinstating the building so far as it may be lawful so to do.

6. The Defendant is bound by the Defendant's by-laws registered 4 March 1982 with the Lands and Surveys Department of the Cayman Islands with the following specific obligations:
  - a. Pursuant to section 36 (a) of the by-laws, the Defendant is required to control, manage and administrate the common property for the benefit of all proprietors; and,
  - b. Pursuant to section 36 (g) of the by-laws, the Defendant shall as often as any of the development is destroyed or damaged by insured risk it shall rebuild and reinstate the same in accordance with the regulations and planning or development schemes of any competent authority for the time being affecting the same and it is hereby agreed that any moneys are received in respect of the insurance provide for shall be applied so far as the same shall extend in rebuilding or reinstating.
7. The Law and by-laws, expressly and by implication, require that each proprietor be treated fairly by the strata corporation in relation to its treatment of all other proprietors.
8. In September of 2004, the Strata Development was badly damaged by Hurricane Ivan which damage included damage to strata lot 208, other strata lots and the common property.
9. The Defendant negotiated an insurance settlement with its insurer and received funds which, pursuant to the Law and the by-laws, it was required to apply to the reinstatement of the damaged common property and damaged strata lots, including unit 208.
10. The Defendant did not comply with its duties under the Law and the by-laws in the manners as set out in this claim.

#### **Unlawful Use and Occupation of the Plaintiff's Strata Lot**

11. Without prior authorization from the Plaintiff, the Defendant permitted various individuals to occupy his strata lot from on or about September 2004 until on or about

January 2005. The occupation was unlawful in that it was not authorized by the Plaintiff, by the Law or by the by-laws. The Defendant permitted the unlawful occupation in order to provide for living arrangements to a staff member and her friends and/or relations. The Defendant removed or arranged for the removal of the unlawful occupant only upon the Plaintiff discovering the occupancy in January of 2005 and insisting on its termination.

12. The commercial value of the accommodation was CI\$3,000 per month.
13. The Defendant was unjustly enriched to the extent that if received the benefit of a rental accommodation for its staff member at the expense of the Plaintiff.
14. Alternatively, the Defendants use and occupation prevented the Plaintiff from using or renting his unit causing a loss of rent for the period during which the strata lot was unlawfully occupied.
15. Alternatively, the occupation constituted a trespass.
16. Further and in the alternative, the unlawful occupation delayed or prevented the unit's reinstatement which hindered the drying out of the unit and resulted in mold developing in the unit.

#### **Particulars of Loss**

- A. Loss of Rent or Unjust enrichment at rent of the monthly market rate for comparable units for the total months of unlawful occupation the precise period of such occupation being determined in discovery;
- B. The cost of eliminating the mold problem the cost of which being determined upon the Plaintiff regaining access to his unit.

#### **Failure to Secure Occupied Strata Lot**

17. As a result of the Defendant having permitted the occupation of the Plaintiff's strata lot by its staff member, the Defendant was under an legal obligation to ensure that the contents of the Plaintiff's strata lot was properly secured and that the fixtures and fittings of the strata lot were protected from further damage.
18. The Defendant failed to properly supervise the unlawful occupation of the Plaintiff's strata lot or failed to secure the contents of the strata lot during the unlawful occupation. During this occupation, a number of the Plaintiff's personal belongings that were contained in his strata lot went missing or were damaged resulting in loss of property.

### Particulars of Loss

A. Missing Items	\$	15,000.00
i. Bed		
ii. Love seat		
iii. Tennis Gear		
iv. Diving Gear		
v. Cloths		
vi. Carpet		
vii. Wines		
viii. Kitchen items		
ix. Fishing gear		
 B. Damaged Items		 \$3,000.00
i. Fridge		
ii. Lamp		
iii. VCR		
iv. Stereo		
v. Vacuum		
vi. Curtains		
 C. Cleaning (2 times)		 \$500.00
	TOTAL	\$18,500.00

19. The value of the missing and damaged items is US\$18,000 and the cost of the unit clean up required due the unlawful occupation was US\$500 for a total loss under this head of damage of US\$18,500.00.

### **Failure to Property Apply Insurance Proceeds to Reinstatement**

20. The Defendant had an obligation to equitably and professionally apply insurance proceeds to the reinstatement of the common property and all strata lots in accordance with the Law and its by-laws.
21. The Defendant failed to fairly and equitably apply insurance proceeds to the restoration of the Plaintiff's strata lot resulting in a substantial delay in the completion of repairs in relation to other strata lots with similar damage. The strata lot ought to have been completed on or about September 2005 and due to the failure of the Defendant to complete restoration of the Plaintiff's strata lot he was unable to rent or occupy his unit from on or about September 2005 through to on or about January 2006 at which latter time the works were sufficiently completed in order to permit occupation or rental of the strata lot.
22. As a result of such delay, the Plaintiff sustained loss of rent for 5 months at a monthly loss of CI\$3,000 for a loss totalling CI\$15,000.

### **Poor Workmanship**

23. The statutory and by-law requirement to reinstate the strata lot implies that the reinstatement be properly and professionally completed. The Defendant failed to properly reinstate the Plaintiff's strata lot causing delay in usage as pleaded above. Further, the poor workmanship will require the Plaintiff to expend funds to correct deficiencies. The cost of the deficiencies will be provided upon the Plaintiff regaining access to his unit and having required works completed.

### **Particulars**

24. The works required on the Plaintiff's unit include, but are not limited to:
  - i. Adjust front door entrance

- ii. Repair balcony doors
- iii. Replace rusting door hinges
- iv. Replace water damaged sheet rock in first bathroom
- v. Repair chipped cement render in living room
- vi. Repair walls in 2<sup>nd</sup> bedroom
- vii. Clean existing carpet
- viii. Re-grout tiles, appliances and door frames
- ix. Replace sheetrock ceiling to kitchen and kitchen lobby
- x. Re-joint existing baseboards
- xi. Repair/replace existing kitchen cabinets and countertops
- xii. Repairs to bathroom vanity cabinets
- xiii. Remount end en-suite bathroom mirror
- xiv. Replace rust effected screws to power outlets and switches
- xv. Repairs to living room fans

25. The Plaintiff asserts that the Defendant is liable for the cost of repairing deficiencies which ought to have been properly completed pursuant to the Defendant's obligations under the Law and the by-laws.

26. In addition to the above deficiencies, the Defendant failed to properly dry the unit or permitted the unlawful occupant use the unit in a manner causing mold to grow.

### **Thrown Away Travel Expenses**

27. In September of 2005 the Plaintiff made inquiries of a representative of the Defendant regarding the status of the restoration of his strata lot. The stated purpose of the inquiries was to establish whether the Plaintiff could travel from Europe and stay in his refurbished strata lot. The Plaintiff was advised by Tim Hepburn, the manager of the Defendant, that the Plaintiff's unit was completed and could be occupied.

28. On the basis of the Defendant's advice that the repairs to the Plaintiff's strata lot were complete and could be occupied, the Plaintiff and several friends travelled from Europe to Grand Cayman expecting to stay in the Plaintiff's strata lot. Upon arrival in Grand

Cayman, the Plaintiff discovered that the strata lot was not in a condition to be occupied and he and his companions had to find alternative accommodation for the duration of the stay. Had the Plaintiff been accurately informed of the condition of the strata lot he would not have incurred travel and accommodation expenses.

29. The Defendant was negligent in providing advice to the Plaintiff that his unit could be occupied resulting in the Plaintiff and his companions incurring approximately US\$8,000.00 in travel and accommodation expenses.
30. The Plaintiff asserts that the Defendant is liable for these costs incurred due to the costs being incurred as a result of the negligent representation of the condition of the Plaintiff's strata lot.

### **Unlawful Receivership**

31. The Defendant changed the locks of the Plaintiff's strata lot on or about February 2006 on the asserted basis that it was permitted to exercise receivership rights as set out in the Defendant's by-laws. The Defendant has also expended funds on the strata lot in connection with its rental of the Plaintiff's strata lot. Further, without lawful cause, the Defendant switched off the water supply rendering the unit uninhabitable by the Plaintiff causing him to move out. The Defendant threatened to disconnect other services to the unit but it is unknown whether this was actually done to the Plaintiff being unable to occupy the unit as a result of the terminated water supply.
32. The Plaintiff asserts that the Defendant did not have the lawful authority to exercise a right of receivership in that:
  - a. the by-law setting out the right of receivership is *ultra vires* the power of the Defendant and, accordingly, is invalid;
  - b. the Defendant failed to deliver a notice as required pursuant to the by-laws; and,

- c. the Plaintiff is entitled to a set off for the amounts claimed in this proceeding against the amounts the Defendant asserts is owed by him. As a result of such set off, the Plaintiff does not owe the sums the Defendant asserts is owing, or alternatively, at the time the Defendant exercised its purported power of receivership it was not entitled to do so.

33. As a result of the occupation or renting out of the Plaintiff's unit being unlawful, the Defendant has committed a trespass. Accordingly, the cost of any refurbishment to the Plaintiff's strata lot in connection with the receivership was unauthorized and unlawful. The Plaintiff is entitled to:

- a. credit to his account reversing any charges in relation to the refurbishment of the strata lot by the Defendant;
- b. Further and alternatively, the Plaintiff is entitled to an accounting of all items charged or credited to his account in relation to the receivership.
- c. Further, the Plaintiff is entitled to damages for loss of use or ability to rent his unit from the date of the unlawful receivership to the date upon which he obtains access to his unit. The amount of the loss is, at a minimum, the prevailing market rent for the entire period during which the Plaintiff was excluded from his unit.;
- d. Damages for trespass.

### **Accounting**

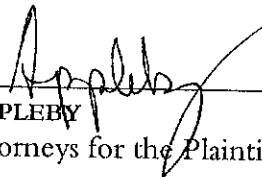
34. The Plaintiff claims he is entitled to an accounting of all credits and debits relating to his strata lot from the date that the Defendant claims the Plaintiff is in default of payment of strata fees.

### **Interest**

35. The Plaintiff claims interest at the rate established by the *Judgment Debts (Rate of Interest) Rules* as amended from time to time for sums found due to him from the Defendant.

AND THE PLAINTIFF claims:

- a) Damages as pleaded herein;
- b) a declaration that the receivership provisions in the by-laws of the Defendant are ultra vires and are unenforceable;
- c) an accounting of the insurance settlement negotiated by the Defendant as it relates to claims for loss of rent made on behalf of the Plaintiffs;
- d) Pre judgment interest calculated in accordance with the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- e) Pre and post judgment interest in accordance with the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- f) Costs on an indemnity basis or standard basis in accordance with the *Court Costs Rules 2001*; and,
- g) Such further and other relief as this Court may deem just.

  
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 APPLEBY  
 Attorneys for the Plaintiff

#### INDORSEMENT

The principal amount claimed in respect of the debt is US\$41,500.00 plus interest of US\$9,677.42 as of the date of filing. The amount of the filing fees to commence the proceeding is US\$243.90 plus ad valorem fees of US\$293.05. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

**INDORSEMENT REGARDING INTEREST**

1. The contractual term upon which interest is claimed is pursuant to the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
2. The prescribed rate of interest is 5% pursuant to the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
3. The date from which interest is payable is 1 January 2005;
4. The total interest claimed as at 25 March 2009 is US\$9,677.42 and
5. The amount of interest accruing due each day is US\$5.69.

This WRIT OF SUMMONS was filed by Appleby, Attorneys-at-Law, for and on behalf of the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (ref: WAS/12039.001)

**Acknowledgment of service of writ of summons (O.12, r.3)**

**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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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  
Please complete overleaf*

### 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 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2009

B E T W E E N:

MARKUS STAUDER

Plaintiff

AND

THE PROPRIETORS, STRATA PLAN NO. 58

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  no

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 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 communication for him should be sent. In the case of a limited company, "residence" means its registered or 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.

Appleby  
Attorneys-at-Law  
75 Fort Street  
PO Box 190  
Grand Cayman KY1-1104  
CAYMAN ISLANDS  
  
Ref: WAS/12039.001

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

