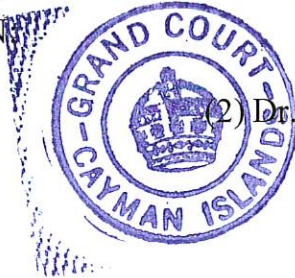


IN THE GRAND COURT OF THE CAYMAN ISLANDS

169
CAUSE NO. OF 2009

BETWEEN



(1) Gordon Richens
(2) Dr. Enoka Manawadu-Richens

Plaintiffs

- and -

(1) Robertson Design Build Ltd.
(2) James Robertson
(3) Susan Robertson



Defendants

WRIT OF SUMMONS

TO: James Robertson, Susan Robertson and Robertson Design Build Ltd.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 GT, 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 *7th* day of April, 2009.

NOTE – This Writ may not be served later than 4 calendar 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

Parties

1. The Plaintiffs are members of the public who contracted with and deposited money on trust with the First Defendant's Estate Agent, Mr. Doug Sell of Butler Properties, in the circumstances set out below.
2. The First Defendant is a company incorporated in the Cayman Islands with registration number 154845 and its registered office at P.O. Box 31988, Harbour Place, 103 South Church Street.
3. The Second and Third Defendants are directors and officers of the First Defendant. The Second Defendant was also a party to the relevant contract with the Plaintiffs as set out below.

Background

4. On September 2, 2006 the Plaintiffs entered into a Purchase Agreement ("The Agreement") with the First Defendant for the purchase of a condominium unit at the development known as "The Bluffs at Pedro". The development was to be constructed on land located in Savannah Registration Section, Parcels 28D276, 28D277, 28D278, 28D279 and 28D280.
5. The Plaintiffs agreed to purchase Residence No. 11 (Strata Lot No. H 11), containing 4,089 square feet together with a garage space known as Garage Space No. 11 (Strata Lot No. H 24), containing 440 square feet at The Bluffs at Pedro. The total purchase price for Residence No. 11 was US\$825,000.00.

6. The Plaintiffs intend to rely on the full terms and conditions of the Agreement at trial and, in particular, will rely on the following terms and conditions of the Agreement:

1. *The Vendor hereby agrees to sell and the Purchaser hereby agrees to purchase the Residence for a price (the "Purchase Price") of eight hundred and twenty five thousand United States Dollars (US\$825,000), of which the sum of None United States Dollars (US\$ -0-) is now paid as a down payment to the Vendor's Estate Agent, as stakeholders. The further sum of one hundred and twenty three thousand seven hundred and fifty United States Dollars (US\$123,750) as a deposit shall be paid to the Vendor's Estate Agent, on or before September 8th 2006. Upon receipt of a copy of the notice referred to in the following sub-clause 2 (a) the Vendor's Estate Agent shall pay over the deposit(s), together with any interest earned, to the Vendor, provided however that such interest shall form a credit against the Purchase Price on closing.*

2. *The balance of the purchase price namely, seven hundred and one thousand two hundred and fifty United States Dollars (US\$701,250) shall be paid to the Vendor as follows:*

(a) The sum forty one thousand two hundred and fifty United States Dollars (US\$41,250) not later than seven (7) days after written notice by the Vendor that construction of the Development is underway. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.

3. *In the event that construction on the Development has not commenced by October, 31, 2006 the Vendor or the Purchaser may rescind this Agreement by notice to either party. Upon the Agreement being so rescinded, the Purchaser shall be entitled to a return of the Down Payment(s), together with all interest that may have accrued thereon, but not to any further compensation, costs or otherwise.*
4. *Completion of Phase I shall take place (i) no later than October, 31, 2008 in respect whereof time shall be of the essence or, at the option of the Vendor, not later than fourteen (14) days after such earlier date as the Vendor shall notify the Purchaser that the Residence is complete and ready for occupation and that a Certificate of Fitness for Occupancy has been issued by the Central Planning Authority of the Cayman Islands, in respect whereof time shall be of the essence. Provided however that the Vendor shall have the right to postpone the date fixed for completion for a reasonable time if, for causes beyond its control, the Residence is not complete and ready for occupancy by the date set out herein and when (Ii) the Vendor has complied with all of its obligations under this Agreement; and (iii) the Vendor has remedied any defects as agreed by the Vendor and Purchaser in the pre-delivery inspection, unless waived by the Purchaser.*
11. *In the event that the Residence is not complete and ready for occupation on the date fixed for completion hereunder, subject to the proviso to Clause 3 hereof, the Purchaser may rescind this*

Agreement. Upon the Agreement being so rescinded, the Purchaser shall be entitled to a return of the Down Payment(s) and all other moneys (if any) paid hereunder, and this Agreement shall forthwith be terminated and the Purchaser shall have no right of action or claim against the Vendor in respect hereof.

15. This Agreement and the closing thereof is conditioned upon due registration by the Registrar of Lands of a Strata Plan in respect of and, in the event that such registration be not effected on the date fixed for completion hereunder, subject to the proviso to Clause 3 hereof, either party shall have the right to rescind this Agreement. Upon the Agreement being so rescinded, the Purchaser shall be entitled to a return of the down payment(s) and all other moneys (if any) paid hereunder and this Agreement shall forthwith be terminated and the Purchaser shall have no right of action or claim against the Vendor in respect hereof.

22. This Agreement shall be governed and construed according to the laws of the Cayman Islands, and the parties hereto submit to the jurisdiction of the courts of the Cayman Islands.

7. In accordance with clause 1 and 2(a) of The Agreement, the Plaintiffs paid US\$123,750.00 on September 5, 2006 and a further US\$41,250.00 on September 14, 2006 for a total deposit of US\$165,000.00.
8. On September 22, 2006 a letter dated September 19, 2006 was faxed from the First Defendant and signed by the Second Defendant as the Development's "Chief Architect" to the Plaintiffs stating the following:

“Pursuant to Section 2(a) of the Bluffs at Pedro Sales Agreement for Villa 11, please accept this as official notification that Robertson Design Build Limited, Developers of The Bluffs at Pedro has begun construction of the Development as of August 28th, 2006. The next payment of U.S. \$41,250 is now due.”

9. It has since come to the attention of the Plaintiffs that the Second Defendant is not licensed as an architect in the Cayman Islands, nor anywhere else. Thus, the September 19, 2006 notice was fraudulent and in breach of section 2(a) of The Agreement.
10. Although it was represented by the First and Second Defendant that construction had commenced on August 28, 2006, the Plaintiffs have since learned that no such construction had ever commenced. There was no communication from the First Defendant to the Plaintiffs that construction would be delayed or postponed.
11. In an undated memorandum from Avendell Investments, Inc. (“Avendell”) the investors of The Bluffs at Pedro were advised that Avendell is the rightful owner of Section, Parcels 28D276, 28D277, 28D278, 28D279 and 28D280. The memorandum specifically states:

‘Avendell understands that Robertson may have entered into various agreements with some or all of you regarding the Bluffs at Pedro Development which purport to provide title to these units. Robertson is not and was not the owner of the Property.

Avendell understands that you may have received a copy of a Joint Venture Agreement between Avendell and James Robertson.

Regarding the agreement between Avendell and a corporation James Robertson would be forming, the Joint Venture Agreement clearly provided that Avendell "shall not transfer title to the land to the corporation to be formed".'

12. According to Cayman Islands Land Register search, Avendell Investments Inc. is the proprietor of Block and Parcel Numbers 28D276, 28D277, 28D278, 28D279 and 28D280.
13. At no time did the Defendants have legal title to the lands they purported to sell pursuant to The Agreement.
14. Construction on the Development did not commence nor was it completed by the October 31, 2008 completion date set out at section 4 of the Agreement. The Defendants did not send any notice postponing completion.
15. On November 21, 2008 the Plaintiffs' attorneys sent a letter to the First Defendant rescinding the Agreement pursuant to clause 11, the letter stated the following:

'We have been instructed by Gordon Richens and Enoka Manawadu-Richens in relation to the above matter.

We bring your attention to the wording of clause 11 of the Purchase Agreement which provides as follows:

"In the event that the Residence is not complete and ready for occupation on the date fixed for completion hereunder, subject to the

proviso to Clause 3 hereof, the Purchaser may rescind this Agreement. Upon the Agreement being so rescinded, the Purchaser shall be entitled to a return of the Down Payment(s) and all other moneys (if any) paid hereunder, and this Agreement shall forthwith be terminated and the Purchaser shall have no right of action or claim against the Vendor in respect hereof."

Our clients intend to exercise this right of rescission with immediate effect. We would be grateful if you could provide for the return of the Down Payments made and all other moneys paid according to the Agreement which amounts to US\$165,000.00. If our clients have not received payment within 7 days we will have no choice but to seek further action.

We look forward to your response.

16. On December 18, 2008 the Plaintiffs' attorneys received the following correspondence from the First Defendant's attorneys:

'We are instructed by Robertson Design Build Limited and refer to your letter of 21 November 2008.

Unfortunately, this correspondence has only just been received as it was sent to a Post Office Box to which our client no longer has access. Please direct future correspondence to this firm.

We are in the process of taking instructions in relation to your letter and will revert to you as soon as we are able, but in view of the approaching Christmas break we may not be able to substantively respond until the New Year.

In the meantime, we are not authorised to accept service of any documents on behalf of our clients.'

17. There was no further contact from the Defendants' attorneys until follow up requests were made by the Plaintiffs' attorneys. By return email dated March 23, 2009 the Defendants' attorneys advised that they had been "disinstructed" from acting for the Defendants.

Claims

18. In breach of clause 3 and clause 11 of the Agreement, the Defendants have failed to remit the Down Payment Monies to the Plaintiffs, or to give any good reason as to why such payment is not forthcoming, or to clarify to the Plaintiffs the present location of the Monies.
19. Further or alternatively the Plaintiffs are entitled at common law to repayment of the Monies by virtue of rescission of the contract. Rescission entitles the Plaintiffs at common law to return of the Monies, plus interest at a rate to be determined by the court.
20. Further or alternatively, the Monies paid to the Defendants by the Plaintiff and any assets traceable thereto are the subject of a Constructive Trust over which the Plaintiffs are beneficiaries.
21. Further or alternatively, the Second and/or Third Defendants are liable in Tort for procuring or causing the First Defendant to breach its obligations under The Agreement.

Piercing the corporate veil

22. Yet further or alternatively, the Plaintiffs plead that the court is entitled to pierce the corporate veil and order the Second and/or Third Defendants to personally recompense the Plaintiffs. The Plaintiffs state, and the fact of the matter is, that the Second and/or Third Defendants are the controlling minds for the First Defendant and have caused it to default on its obligations to the Plaintiffs, as follows:
- a. The Second and/or Third Defendants represented that the First Defendant had title in the property when they knew, or ought reasonably to have known, that it did not;
 - b. The Second and/or Third Defendants have fraudulently deceived the Plaintiffs by causing the First Defendant to state that construction for the Development had begun when in fact it had not;
 - c. The Second Defendant willfully and deliberately misled the Plaintiffs by stating that he was the Chief Architect for the Development, when he was not licensed as such; and
 - d. The Second and/or Third Defendants misappropriated Monies paid to the First Defendant from the First Defendant for their own personal use.
23. In the circumstances, the Plaintiffs plead that piercing the corporate veil is justified. The Second and Third Defendants, as officers and/or directors and/or agents of the First Defendant have acted with deliberate impropriety. In addition or in the alternative, it would be contrary to the interests of justice to refuse the Plaintiffs a remedy against the Second and Third Defendants directly. In addition or in the further alternative, the corporate structure is no more than a façade or sham concealing the true position.

24. The Plaintiffs reserve their right to plead further in relation to these causes of action upon receipt of the Defence and/or proper and full disclosure of documents by the Defendants.

No waiver of right to pursue criminal prosecution

25. All of the above remedies are claimed without prejudice to the Plaintiffs' rights to pursue a criminal prosecution against the Second and/or Third Defendants once the full facts emerge which justify that course of action, e.g., should it emerge that the Second and/or Third Defendants have wrongfully appropriated the Monies for their own purposes.

AND THE PLAINTIFFS CLAIM:

Against the First Defendant:

1. Damages for breach of contract in the sum of US\$165,000.00;
2. All relevant equitable proprietary remedies to recover the Monies, including but not limited to following the Monies or tracing them into any assets purchased therewith.
3. Interest pursuant to s.34 of the Judicature Law (2007 Revision);
4. All necessary consequential orders, accounts and inquiries;
5. Costs on a full indemnity basis;
6. Such further or other relief as this Honourable Court deems just.

Against the Second Defendant

1. Damages for breach of contract in the sum of US\$165,000.00; alternatively
2. Damages for the tort of procuring a breach of contract, in the sum of US\$165,000.00 plus interest from September 4, 2006 at such rate as the court thinks just and equitable; alternatively
3. All relevant equitable proprietary remedies to recover the Monies, including but not limited to following the Monies or tracing them into any assets purchased therewith.
4. Interest pursuant to s.34 of the Judicature Law (2007 Revision);
5. All necessary consequential orders, accounts and inquiries;
6. Costs on a full indemnity basis;
7. Such further or other relief as this Honourable Court deems just.

Against the Third Defendant

1. Damages for the tort of procuring a breach of contract, in the sum of US\$165,000.00 plus interest from September 4, 2006 at such rate as the court thinks just and equitable, alternatively.
2. Damages for the tort of procuring a breach of contract, in the sum of US\$165,000.00 plus interest from September 4, 2006 at such rate as the court thinks just and equitable; alternatively

3. All relevant equitable proprietary remedies to recover the Monies, including but not limited to following the Monies or tracing them into any assets purchased therewith.
4. Interest pursuant to s.34 of the Judicature Law (2007 Revision);
5. All necessary consequential orders, accounts and inquiries;
6. Costs on a full indemnity basis;
7. Such further or other relief as this Honourable Court deems just.

April 7, 2009

Bodden & Bodden

Bodden & Bodden
Attorneys for the Plaintiffs

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And To: Clerk of the Court

This Writ and Statement of Claim was issued by Bodden & Bodden, Attorneys for the Plaintiffs, whose address for service is: PO Box 10335, Grand Pavilion Centre, 802 West Bay Road, George Town, Grand Cayman, KY1-1003 (Reference: 1087-0002)