

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION
BETWEEN**

CAUSE NO: 159
of 2012



PHILLIP HYRE and KEVON HYRE

Plaintiffs

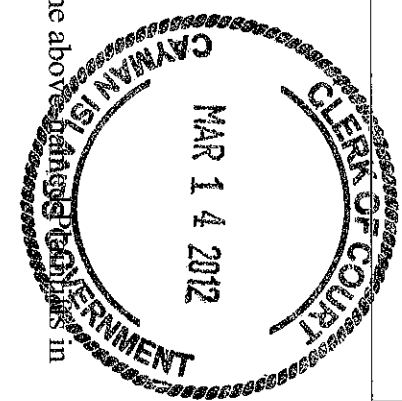
AND:

HSBC BANK (CAYMAN) LIMITED

Defendant

ORIGINATING SUMMONS

**TO: HSBC Bank (Cayman) Limited
HSBC House
68 West Bay Road
P. O. Box 1109
Grand Cayman, KY1-1102
Cayman Islands**



THIS ORIGINATING SUMMONS has been issued against you by the above named persons in respect of the claim set out on the next page.

Within 14 days after the service of this Originating Service on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P. O. Box 495GT, George Town, Grand Cayman, 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 day of 2012

IMPORTANT

Directions for acknowledgment of service are given with the accompanying form.

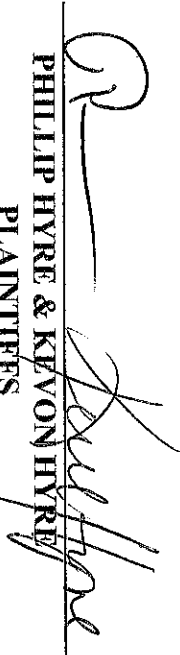
NOTE: This Originating Summons may not be served later than 4 calendar months (or, if leaves is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

INDORSEMENTS

The Plaintiffs claims are for an injunction restraining and prohibiting the Defendant whether by himself, his servant or agent or otherwise, from any end all action pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to sell the several properties owned by the Plaintiffs and which properties the Defendant holds the first legal charges over.

An Order of mandamus that the defendant provides the requisite content to the stratifying of the housing units situate on Block 22E and Parcels 78 & 80 Prospect, and consent to the sale of raw land situate at West Bay North West Block 4E Parcels 118, 119, 120, and also to sell the apartment units after being stratified in order that Plaintiffs might realize monies from the sales of the said units, and in order to pay off the sum of monies owed to the Defendant.

The Plaintiff in addition to paragraphs 1 and 2 above claim that the two percentage surcharge by the Defendant, to be reversed. The Plaintiff believes that the Defendant equally contributed to the problems by failing as a lender to work with the Plaintiff. In short, there was no contract of an “*uberrimae fidei*”. Had the Defendant allowed the Plaintiff not only to stratify the property but also allowed the sales to be effected based on paragraph 8 (clause 9 of the Covenants section of the Mortgage Loan contract), the loan would have been paid off.


PHILLIP HYRE & KEVON HYRE
PLAINTIFFS

This Originating Summons was prepared and issued by Phillip Hyre & Kevon Hyre, the Plaintiffs herein whose address for service is House # 24, Apt. 1 Poinsettia Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN

CAUSE NO: of 2012

PHILLIP HYRE and KEVON HYRE

Plaintiffs

AND:

HSBC BANK (CAYMAN) LIMITED

Defendant

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF
ORIGINATING SUMMONS**

Important: Read the accompanying direction 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.
 Yes No
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 Plaintiffs (tick the appropriate box)
 Yes No

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

This Originating Summons was prepared and issued by Phillip Hyre & Kevon Hyre, the Plaintiffs herein whose address for service is House # 24, Apt. 1 Poinsetta Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

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 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 Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below:

Phillip Hyre & Kevon Hyre,
House # 24, Apt. 1 Poinsettia Lane,
Tropical Gardens,
P. O. Box 1671, Grand Cayman,
KY1-1109, Cayman Islands

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

The Originating Summons was issued and prepared by Phillip & Kevon Hyre, Plaintiffs herein, whose address for service is House # 24, Apt. 1 Poinsettia Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

Notes for Guidance

1. Each Defendant (if there is 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 serving on the day it 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 Originating 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 NAME, 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 authorized 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.

NOTE: This Originating Summons may not be served later than 4 calendar months (or, if leaves is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

STATEMENT OF CLAIM

1. Plaintiffs entered into a Mortgage Loan contract (“the Mortgage”) dated March 26, 2009, with the Defendant, to establish a credit facility in the amount of US\$1,189,024.00. The Mortgage is attached to this Statement of Claim marked “A”.
2. The purpose of this credit facility was to assist with the refinancing of (a) an existing duplex registered as Prospect Block 22E Parcel 78 Grand Cayman (b) an existing triplex registered as Prospect Block 22E Parcel 80 Grand Cayman and (c) raw land registered as West Bay North West Block 4E Parcels 118,119 and 120.
3. This credit facility was repayable upon the variable rate of interest based on the HSBC Bank (Cayman) Limited’s Base Lending Rate PLUS 0.50% per annum. At the time the current total effective rate was 3.75% per annum.
4. The repayment was agreed to be made by way of variable monthly payments in the sum of US\$6,436.05 per month representing a blended payment of principal and interest amortized over a 23 year term. The first payment was due and payable on the 30th April 2009 and was duly made. There was also included in this agreement, a late payment clause, which stipulated that if a payment was not received on the due date, the overdue installment and interest would be charged at a rate of 2 per cent per annum above the interest rate
5. The maturity date stipulated in this agreement was March 30 2032
6. As security, the Defendant registered a First Legal Charge over (1) the existing duplex registered as Prospect Block 22E Parcel 78 Grand Cayman and stamped to cover US\$487,805.00 and (2) the existing triplex registered as Prospect Block 22E Parcel 80 Grand Cayman and stamped to cover US\$487,805.00. In addition they registered a collateral Charge on the raw land registered as West Bay North Block 4E Parcels 118,119 and 120 and stamped to cover US\$214,634.00.
7. The Defendant also required, and the Plaintiffs duly purchased, a policy of insurance, to adequately cover all risks as relates to the existing duplex and triplex identified as forming part of the agreement, with a stipulation that in the event of any loss, the replacement value would be payable to HSBC Bank (Cayman) Limited.
8. The Plaintiffs and the Defendant covenanted in clause 9 of the Covenants section of the Mortgage Loan contract that the plaintiffs would not transfer the mortgaged property during the term of the mortgage by way of **sale, parting with possession, leasing, letting or mortgaging without first obtaining the Banks approval.**
9. Clause 12 of the said Covenants section of the Mortgage Loan contract, stipulated that should the plaintiffs experience any event which could reasonably be expected to materially and adversely affect the Plaintiffs ability to perform their obligations under the said Mortgage Loan contract, they should notify the Defendant.

10. Around the period of July of 2010, the Plaintiffs started to experience financial difficulties, which adversely impacted their ability to meet the monthly payments due under the agreement. This fact the Plaintiffs verbally communicated to the Defendant and held meetings with the Defendant, which meetings were arranged exclusively for discussions between the Plaintiffs and the Defendant, and involved discussions during which the Plaintiffs proposed to the Defendant, the fact that only the sale of certain of properties held by the Defendant as security for the Mortgage, could rectify the situation of the arrears owed to the Defendants, and that the Plaintiffs wished to sell the said properties which the Defendant held as security for the Mortgage, the proceeds of which would more than satisfy the outstanding arrears.
11. The Plaintiffs further provided to the Defendants, proof of approved financing offered to the proposed purchasers of these properties and their being willing and able to move to completion on the purchase of the said properties.
12. Despite the several consistent and persistent overtures made by the Plaintiffs to the Defendant in this regard, the Defendant unreasonably withheld its consent to the sale of these properties, which if sold would realize the sum of C1\$1,805,000.00 that includes C1\$1,620,000.00 to be derived from the apartment and C1\$185,000.00 from the three raw land as listed above, and the total sum of the mortgage loaned to the Defendant by the Plaintiff has an approximate balance of C1\$950,000.00. The Defendant has remained constant in the withholding of its consent to any sale of any of the properties held by the Plaintiff as security for the Mortgage.
13. By letter dated September 10, 2010 the Defendant informed the Plaintiffs of the state of their delinquency regarding their obligation to satisfy the monthly payments. Subsequent upon this letter being received by the Plaintiffs, several further meetings were held with the Defendant at which the plaintiffs placated the Defendants to agree to the stratifying the units situated on block 22E and Parcels 78 & 80 Prospect Registration. It was pointed out to the Defendant by the Plaintiffs that this process would allow the expeditious sale of the units, and that all that was required from the Defendants was a simple letter in support of this stratifying process. Again the Defendant unreasonably withheld its consent and instead reiterated its demand that that the Plaintiffs satisfy the outstanding arrears.
14. By a letter dated February 14, 2011, the Plaintiffs wrote to the Defendants, reiterating the proposal to stratify and sell the units referred to in paragraph 13 of this Statement of Claim, and seeking the consent of the Defendant. The defendant remained unmoved and again unreasonably withheld its consent.
15. By a letter dated May 31, 2011, the Plaintiffs wrote to the Defendants, informing that the Plaintiffs had a willing and able purchaser for Block 4E Parcel 119. The closing was set to take place on or before June 17, 2011, and the Plaintiffs offered an assurance that all of the proceeds of this sale would be applied to the outstanding arrears and Mortgage balance. The monies realized will be paid to the Defendant's (HSBC) account DIRECTLY FROM THE Purchaser(s) Attorney's in order to make the loan sustainable or paid off whichever materialized. The Plaintiffs reiterated their request for the Defendant's consent to the

stratifying of the property mentioned in paragraph 13 of this Statement of Claim, as well as informing the Defendant that the other properties had been listed for sale. The Plaintiffs assured the Defendants that the proceeds from all of these sales would be applied to the Mortgage balance directly. Again the defendants unreasonably withheld their consent neither to this sale, nor to the stratifying proposal.

16. On the 8th June 2011, the Defendant wrote to the Plaintiffs, indicating that the Mortgage was in arrears in the sum of US\$16,075.23, and threatened legal action. This letter was perceived by the Plaintiffs as being pernicious and insensitive, and was received as being demonstrative of total disregard for the previous meetings held between the Plaintiffs and the Defendant, as well as the continuous, consistent and unwavering efforts being made by the Plaintiffs to satisfy their financial obligations to the Defendant, by way of liquidating the properties being held by the defendant as security. The Defendant also in that letter suggested to the Plaintiffs that they should report to them any ongoing financial issues, a matter that the Plaintiffs had reiterated both verbally and in writing previously to the defendant.

17. The Plaintiffs in furtherance of their efforts to satisfy their financial obligations to the Defendant, arranged a meeting with the defendant, at which meeting they presented a Mr. Reginald Delapenha, who is a licensed building contractor, who cited to the Defendant that he had undertaken to complete the outstanding construction on the units for which stratification was being sought, using his own resources, in order that the Plaintiffs could sell the units. Again the Defendants unreasonably withheld its consent.

18. On June 16 2011, the Plaintiffs again wrote to the defendants, recalling the events of the meeting with Mr. Delapenha and informing the Defendant that the Plaintiffs had buyers who are deemed to be ready, willing able to purchase most of the apartment units, but that the Plaintiffs were unable to move forward with these sales unless the defendants agreed to the stratifying of the project. The Plaintiffs also indicated that there was a purchaser willing and able to complete sale to him of Block 4E Parcel 119 within the same month, and they had signed sales agreement in respect of another piece of the properties held by the Defendants as security. The Plaintiffs made an impassioned plea for a loan payment holiday since they were actively pursuing the liquidation of these assets in order to satisfy their financial obligations to the Defendant. Again the Defendant unreasonably withheld their consent.

19. On the 13th of July, the Plaintiffs again wrote to the Defendant, reiterating their commitment to paying off the debt they owed to the Defendant, and pointed out to the Defendant that their unreasonable withholding of consent to any of the proposals by which the Plaintiffs were seeking to realize monies, in order to satisfy their financial obligations to the Defendant were being frustrated by the conduct of the defendant in all the circumstances. The Plaintiffs also informed the Defendant that they must now inform the several purchasers that all of the sales offers had been terminated, and that the Plaintiffs had now resigned themselves to the mercy of the bank as far as bringing the debt matter to resolution.

20. The Plaintiffs again wrote to the Defendant on July 14, 2011, in which it was outlined to the Defendant that yet another sales agreement had fallen through the day prior to as the Defendant was unwilling to consent to the sale. This sale was in relation to Block 4E Parcel

118. The Plaintiffs also informed that Block 4E Parcel 119 was due to have a closing the next day and that the Plaintiffs would not be able to complete the sale without the consent of the Defendant. Again the required consent was withheld by the defendant with the result that this sale also fell through.
21. By an email correspondence dated July 19, 2011 the Defendant wrote to the Plaintiffs stating that no future credit requests would be considered, until the requirements outlined in the Defendants letter dated June 8, 2011, are met. This communication also informed the Plaintiffs that Defendant had referred the matter of the Plaintiffs delinquency to their Legal Counsel for action, and that going forward all communication will be handled by their Legal representative.
22. The Plaintiffs still had a purchaser for one of the apartments and this person finally cancelled the purchase agreement on July 28, 2011.
23. By a letter dated August 29, 2011, and sent by OGIER, the Legal representative of the Defendant, the Plaintiffs was advised that the Defendant was making a formal and final demand on the Plaintiffs for the repayment of the full balance of the outstanding sums secured by the charges to include principal and interest within three months of the date of the demand, or else the Defendant will proceed to sell the properties, through private sales or foreclosure.
24. On Wednesday January 25, 2012, the Plaintiff and his consultant had a meeting with the Defendant Legal Counsel at the Counsel's office to ask the Plaintiff a permission to stratify the apartment and in addition to a three month period to seek alternative financing, and or to again sell the properties to pay off the loan. Again, the Defendant refused to the request for the Plaintiff to stratify the property, but only granted the Plaintiff a one month extension, expiring 1 of March, 2012, for any financing arrangement by the Plaintiff. The Plaintiff consultant made it known to the Defendant that through their Attorney that one month is not adequate to (1) put a package together and (2) to seek an alternative financing.
25. If the Plaintiffs had been in receipt of the Defendant's consent and allowed to sell the various properties, on the several occasions that they had entered into agreements for sale to qualified purchasers, who were ready willing and able to close and complete sales, the proceeds there from would have netted C1\$835,000.00 considering the balance owed to the Defendant is C1\$950,000.00. A complete sale of all properties would realize the sum of C1\$1,805,000.00.

AND THE PLAINTIFF claims:

1. An injunction restraining and prohibiting the Defendant whether by himself, his servant or agent or otherwise, from any end all action pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to sell the several properties owned by the Plaintiffs and which properties the Defendant holds the first legal charges over.
2. An Order of mandamus that the defendant provides the requisite content to the stratifying of the housing units situated on Block 22E and Parcels 78 & 80 Prospect, and consent to the sale of raw land situate at West Bay North West Block 4E Parcels 118, 119, 120, and also to sell the apartment units after being stratified in order that Plaintiffs might realize monies from the sales of the said units, and in order to pay off the sum of monies owed to the Defendant.
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