

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

The Honourable Mr Justice Andrew J. Jones QC

In Chambers, 12th February 2013



CAUSE NO. FSD0080 OF 2011-AJJ

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF CARIBBEAN ISLAND DEVELOPMENTS LTD (IN OFFICIAL LIQUIDATION)

ORDER

UPON HEARING Counsel for the Joint Official Liquidators (the "JOLs") of Caribbean Island Developments (In Official Liquidation) (the "Company") and Counsel for the Liquidation Committee (the "LC") on paragraphs 1, 2 and 3 of the JOLs' Summons dated 5 February 2013

AND UPON reading the Fourth Affidavit of Peter Anderson sworn on 5 February 2013 and the exhibits thereto

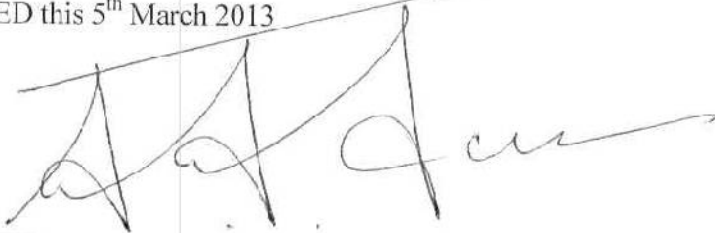
IT IS HEREBY ORDERED AND DIRECTED that:-

1. The JOLs are hereby authorised and directed to commence proceedings against CIBC First Caribbean International Bank Ltd for breach of duty in connection with the exercise of its power of sale as chargee of the property comprised in Colliers registration section, Block 73A, parcel 103.

2. The JOLs are hereby authorised to enter into deeds of assignment (in the form of the draft annexed hereto) for the purpose of enabling them to pursue, in the name of the Company, causes of action which presently belong to certain of the Company's creditors.
3. The JOLS are hereby authorised and directed to commence proceedings against RE/MAX and/or those individuals and companies carrying on business in the Cayman Islands under the name "RE/MAX" for breaches of duty owed to the Company and for misrepresentations made to the Company's creditors (whose causes of action have been assigned to the Company).
4. The Fourth Affidavit of Peter Anderson and its Exhibit No. "PDA 4" shall be sealed (pursuant to CWR O.24, r.6) until after the conclusion of the proceedings commenced pursuant to the directions contained in paragraphs 1 and 3 of this Order.
5. The JOLS' costs and the LC's costs of this application shall be paid out of the assets of the Company as an expense of the liquidation.

DATED this 12th day of February 2013

FILED this 5th March 2013



HONOURABLE MR. JUSTICE ANDREW J. JONES Q.C.
JUDGE OF THE GRAND COURT



Dated [●]2013



DEED OF ASSIGNMENT

HARNEYS

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(REF: DWH/AMA/043260.0001)

A handwritten signature in black ink, appearing to be "AW", is written over a horizontal line.

This DEED OF ASSIGNMENT is made and entered into on [●] 2013 by and between:

- (1) **CARIBBEAN ISLAND DEVELOPMENTS (in official liquidation)** (the “**Company**”);
- (2) **PETER D. ANDERSON and MATTHEW J. WRIGHT** of RHSW (Cayman) Limited, Windward 1, Regatta Office Park, PO Box 897, Grand Cayman KY1 1103, Cayman Islands, as joint official liquidators acting for and on behalf of the Company (the “**JOLs**” which shall include all and any successor official liquidators of the Company, whether they are a partner or employee of the same RHSW (Cayman) Limited, and whether acting as sole official liquidator or jointly). Acting in their capacity as JOLs and not assuming personal responsibility (together with the Company, the “**Assignee**”); and
- (3) [NAME] of [ADDRESS], a creditor of the Company (the “**Assignor**”),

(collectively, the “**Parties**”).



WHEREAS:

- (A) The Company was incorporated as a resident Cayman Islands limited liability company on 20 June 2006, with registration number CR#169666, for the purpose of building a luxury resort of condominiums on a series of plots of land known as plot 73A in the North of the Cayman Islands (“**Colliers Land**”);
- (B) Pursuant to an Order dated 8 July 2011, the Grand Court of the Cayman Islands (the “**Court**”) appointed Peter D. Anderson and Graham Robinson of RHSW (Cayman) Limited to be the Joint Official Liquidators of the Company, which appointment commenced the winding up of the Company;
- (C) Pursuant to an affidavit dated 31 January 2012, enclosing formal notification to the Liquidation Committee of the Company dated 24 January 2012, Graham Robinson resigned as Joint Official Liquidator, and pursuant to an Order of the Court dated 14 August 2012, Matthew J. Wright was appointed as Joint Official Liquidator in place of Mr Robinson;
- (D) By the aforementioned Order dated 8 July 2011, the JOLs were directed by the Court to investigate what causes of action may exist against certain parties that they may pursue on behalf of the Company;
- (E) By an Order dated [●] February 2013, the Court authorised the JOLs to enter into deeds of assignment (in the form of this Deed) for the purpose of enabling them to pursue, in the name of the Company, causes of action which belong to certain of the Company’s creditors;
- (F) By the same Order of [●] February 2013, the Court further authorised and directed the JOLs, inter alia, to “*commence proceedings against RE/MAX and/or those individuals and companies carrying on business in the Cayman Islands under the name “RE/MAX” for breaches of duty owed to the Company and for*

misrepresentations made to the Company's creditors (whose causes of action have been assigned to the Company)";

- (G) On [●] the Assignor did contract to purchase from the Company the condominium(s) with unit number(s) [●] and made the following payments to the Company pursuant to its obligations under the Sale and Purchase Agreement(s) annexed hereto at Schedule 1:

[Sum; date of payment; unit number; deposit, first, or second instalment],

Totalling US\$[●].

- (H) The condominium complex was not built by the company and accordingly the Assignor has submitted a proof of debt in the liquidation (annexed hereto at Schedule 2) in the amount of US\$[●] being the amount paid under the Sale and Purchase Agreement [with interest] (the "Assignor's Proof of Debt") which has not yet been adjudicated by the JOLs;
- (I) The Assignor has described to the JOLs and their legal counsel and/or provided them with information or evidence of the circumstances surrounding their entering into the Sale and Purchase Agreement which leads the JOLs to believe that actionable misrepresentations were made to the Assignor by RE/MAX, and therefore that the Assignor has a claim against RE/MAX that has reasonable prospects of success (the "Assignor's Claim(s)" or "Claim(s)"); and
- (J) The Assignor wishes to assign and the JOLs wish to take an assignment of the Assignor's Claim(s) upon the terms set out below.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals

The foregoing recitals are incorporated herein as a material part of this Agreement.

2. Definitions

Terms defined in the Recitals set out above shall bear the meaning ascribed to them above, and otherwise the following terms shall bear the meanings ascribed to them below as follows:

"Assigned Property" means the Assignor's Claim(s) and all choses in action and associated and ancillary rights arising in relation thereto subject to the Assignor's Share.

"Assignor's Share" means the entitlement the Assignor retains to the Assigned Property in the form of the proceeds of the Assigned Property ascertained in accordance with Clause 5 below.



“Encumbrance” means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge adverse interest of any kind, lien, assignment, option, restriction, hypothecation, title, or other third party right, interest or claim of any kind, or any other encumbrance or security interest of any kind (including, without limitation, any liability imposed or right conferred by or under any legislation) or any other type of preferential arrangement (including, without limitation, a title transfer or retention arrangement) having similar effect.

3. **Assignment**

The Assignor hereby irrevocably and unconditionally assigns and transfers to the JOLs all of their respective right, title and interest in and benefit to the Assigned Property.

4. **Consideration**

In consideration for the agreement of the Assignor to make and undertake the assignment and transfer of the Assigned Property to the JOLs in accordance with clause 3 above, the JOLs shall pay to the Assignor the sum of US\$10.00.



5. **The Assignor's Share**

- 5.1 The JOLs covenant and agree that, upon recovery by the JOLs or the Company of any sums from RE/MAX pursuant to the rights, choses in action and property constituting the Assigned Property and hereby assigned to the JOLs on behalf of the Company by way of clause 3 above (**“the Recovered Sum”**), the JOLs shall ascertain and thereafter hold the Assignor's Share upon trust to be applied as set out below.
- 5.2 The Assignor's Share of the Recovered Sum shall be ascertained in the following manner:
- (a) The Assignor's contribution to the costs incurred as a result of the pursuit of the Assignor's Claim(s) calculated in accordance with Schedule 1 hereto, shall be deducted first from the Recovered Sum and paid to the Company's attorneys; and
 - (b) One third of the amount remaining after deducting the Assignor's share of costs under (a) shall be held by the JOLs as nominee for the Assignor and paid as the Assignor may direct.
- 5.3 Any part of the Recovered Sum remaining after 5.2 shall be paid into the liquidation estate of the Company.
- 5.4 The total quantum of the Assignor's Proof of Debt shall be reduced by the amount that they receive under clause 5.2(b) above.
- 5.5 The Assignor will at all times indemnify and keep indemnified the JOLs and their successors in title against all liabilities, actions, proceedings, claims, demands, taxes and duties, and all associated interest, penalties and costs, and

all costs and expenses whatever, incurred by the JOLs in execution of the trusts set out herein.

5.6 The JOLs and the Company shall under no circumstances whatsoever be liable for any loss or damage caused directly or indirectly by any act or omission in their dealings with the Assigned Property or as trustee of the trusts or rights created herein in respect of the Assignor's Share save in the event of the JOLs' own fraud or wilful default.

5.7 For the avoidance of doubt the Assignor's Share shall at no point form or be deemed to form part of the liquidation estate of the Company or otherwise be treated as an asset of the Company in any way, notwithstanding the trusts set out herein. Nevertheless prior to the receipt by the JOLs of the Recovered Sum the Assignor's rights and interest in the Assignor's Share shall be subject to the JOLs' entitlement and right to deal with the Assigned Property as they see fit in their absolute discretion.

6. Assignor's Duties of Cooperation

6.1 The Assignor agrees to provide, to the best of his endeavours, the most complete assistance and all and any cooperation to the JOLs as may reasonably be requested by them for the prosecution of the Assignor's Claim(s).

6.2 The cooperation that the Assignor agrees to provide shall include delivering up to the JOLs all of the documents which are or have been in their possession, custody or power relating to any matter in the Claim(s).

7. Title Covenants

The Assignor represents, warrants and undertakes to the JOLs that, to the extent permitted by law:

7.1 The Assignor holds the full legal and beneficial title to the Assigned Property free of all Encumbrances;

7.2 The Assignor is the sole and absolute beneficial owner of the Assigned Property free of all Encumbrances; and

7.3 Upon the legal title to the Assigned Property being transferred to the JOLs in accordance with the terms of this Deed, the Assignor will have no right in, title to, interest in or claim of whatever nature over or in connection with the Assigned Property.

8. Acknowledgement and Agreement by Assignor

The Assignor further agrees and acknowledges the following:

8.1 That the JOLs are under no obligation or duty to the Assignor, whether under the terms of this Agreement or as a creditor of the Company, to prosecute the Assignor's Claim(s) and owe no duty whatsoever to the Assignor in respect of the conduct of any proceedings or any compromise which may be concluded.



- 8.2 If the JOLs prosecute the Assignor's Claim(s) they will do so in conjunction with other claims held by the Company and other claims assigned to the Company or the JOLs by persons with similar interests to those of the Assignor.
- 8.3 In prosecuting the Assignor's Claim(s) or compromising the Assignor's Claim(s) the JOLs shall be subject only to the supervision of the Grand Court of the Cayman Islands exercising its jurisdiction over the liquidation of the Company (not exercising its jurisdiction over trustees) and the JOLs shall be entitled to act in accordance with such directions as the Court may give in respect of the Assignor's Claim(s).
- 8.4 That the JOLs intend (but are not obliged) to commence proceedings in respect of the Assignor's Claim(s) in the Grand Court of the Cayman Islands, and the Assignor agrees and undertakes that he will not commence any proceedings or assert any claims in respect of the Assignor's Claim(s) in the Grand Court of the Cayman Islands or in any other court or in any other jurisdiction.

9. Notices

9.1 Communications in Writing

Any notice under or in connection with this Deed shall be in writing and shall be delivered by hand or sent by first class mail or by facsimile transmission to the addresses set out below or to such other address as may be notified in writing by any party to the others from time to time.

The JOLs:

Address: RHSW (Cayman) Limited,
 Windward 1, Regatta Office Park,
 PO Box 897, Grand Cayman KY1 1103,
 Cayman Islands

Fax: +1 (345) 949 8295

Email: Peter Anderson (Peter.Anderson@rawlinson-hunter.com.ky),
 Matthew Wright (Matthew.Wright@rawlinson-hunter.com.ky).



The Assignor:

Address: []

Fax: []

Attention: []

9.2 Delivery

Any notice shall be deemed to have been duly given

- (a) if delivered by hand, when left at the address referred to in Clause 8.1;
- (b) if sent by mail, two days after posting it in the case of domestic mail, or seven days after posting by airmail, in the case of international mail;
- (c) if sent by facsimile transmission, upon confirmation (mechanical or otherwise) of completion of such transmission in legible form by the sender thereof; and
- (d) if emailed, upon the date recorded therein as sent.

10. Amendment, Variation and waiver

No amendment, waiver or variation of this Deed shall be effective unless it is in writing and signed by all of the parties hereto.

11. Entire Agreement

The Parties each acknowledge that this Deed represents the entire agreement between them, or any of them, regarding its subject matter and that they are not relying on any representation, warranty or commitment (whether orally or in writing) made by any of the others in entering into it, otherwise than as set out in this Deed.

12. Execution

This Deed may be executed in any number of counterparts. The parties agree that an exchange of executed copies of this Deed from each party to each other party by email shall constitute valid and effective delivery of this Deed. This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

13. Governing Law and Jurisdiction

This Deed and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of the Cayman Islands.

The parties irrevocably agree that the Courts of the Cayman Islands have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed (including any dispute regarding the existence, validity or termination of this Deed or the consequences of its nullity) and the Assignor irrevocably submits to the jurisdiction of such courts.

[Signature page overleaf]



Executed and delivered as a Deed

By: _____
PETER D. ANDERSON
As Joint Official Liquidator of
Caribbean Island Developments

Date:

Executed and delivered as a Deed

By: _____
[NAME OF ASSIGNOR]
As Assignor

Name:

Date:

Executed and delivered as a Deed

By: _____
MATTHEW J. WRIGHT
As Joint Official Liquidator of
Caribbean Island Developments

Date:

Executed and delivered as a Deed

By: _____
[NAME OF ASSIGNOR]
As Assignor

Name:

Date:



Schedule 1

1. The term “costs” as referred to at clause 5.2 shall be taken to include the following:
 - (a) All of the fees, disbursements and expenses incurred by the JOLs and/or the Company in the pursuit of the Assignor’s Claim(s);
 - (b) To the extent that this is not already included in (a) above, all of the fees, disbursements and expenses incurred by the JOLs’ attorneys and the JOLs’ Lead Counsel in the pursuit of the Assignor’s Claim(s);
 - (c) Any costs payable by the Company to RE/MAX as a result of the pursuit of the Assignor’s Claim(s);
 - (d) Less any sums in costs ordered to be paid by RE/MAX AND in fact recovered from RE/MAX. (“Costs”).

2. Where the Assignor’s Claim(s) is successful such that clause 5.2(a) is triggered, the portion of Costs that shall be deducted from the proceeds awarded as a result shall be calculated as follows:

Where TC – Total amount of Costs incurred in the pursuit of all of the assignors’ claims + total amount of costs incurred in the pursuit of the Company’s claim against Remax (see (F) above).

Where NA = The total number of assignors that have entered into Deeds of Assignment with the Company + 1 (as representative of the Company).

Where ACS = the Assignor’s share of the Costs (“Assignor’s Costs Share”)

Calculation: $ACS = TC / NA$

3. For the avoidance of doubt, where the Assignor’s Claim(s) is unsuccessful in its entirety (such that no settlement, award and/or damages results at all) there shall be no requirement for the Costs incurred in respect thereof to be reimbursed to the Company, directly or indirectly, as provided for under clause 5.2(a), in accordance with the calculation set out at paragraph 2 above, or at all.

