

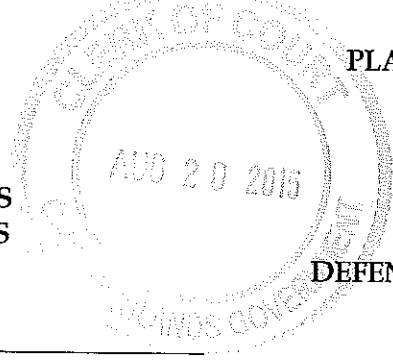
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **G0145** OF 2015

BETWEEN:

THE PROPRIETORS OF STRATA PLAN No.70

AND:



PLAINTIFFS

(1) PETER LEWIS  
(2) JOAN LEWIS

DEFENDANTS

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WRIT OF SUMMONS

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TO: PETER LEWIS & JOAN LEWIS of 170, Boggy Sand Road, West Bay, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, the Proprietors of Strata Plan No. 70 of P.O BOX 30121, Grand Cayman, KY1-1201 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands 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 any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 20<sup>th</sup> day of August 2015.

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 that date of original issuance unless renewed by order of the Court

IMPORTANT

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

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STATEMENT OF CLAIM

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The Parties

1. The Plaintiffs are the registered owners of the properties comprised in Strata Plan No. 70, situate at Registration Section West Bay South, Block 5C, Parcel 225 and more commonly known as Windsong, Boggy Sand Road, West Bay, Grand Cayman ("the Windsong Strata").
2. The Windsong Strata, and the four condominium properties of which it comprises, as appurtenant thereto enjoy the benefit of a 3ft pedestrian right of way over the property situate at Registration Section West Bay South, Block 5C, Parcel 222 and more commonly known as 170 Boggy Sand Road, West bay Grand Cayman ("the Right of Way").
3. Mr. Peter Lewis and his wife are the registered owners and occupiers of 170 Boggy Sand Road ("the Lewis' Property").
4. A plan is annexed hereto, on which the said Right of Way is coloured red.

The Right of Way

5. The Right of Way enjoyed by the Windsong Strata is by virtue of a grant contained in a conveyance dated 25 June 1985 made between Robert W. Turner & Marnel E. Turner (Lewis' predecessors in title) of the one part and the Windsong Strata on the other part ("the Grant"). A copy of the said Grant is annexed hereto.
6. The Right of Way was provided for the purposes of facilitating the members of the Windsong Strata, their families, tenants, invitees, and guests access and egress to the beach.

7. The Right of Way has at all times been exercised reasonably by the members of the Windsong Strata in connection with their use and enjoyment of their property.

*The Defendants' Conduct*

8. The Defendants have caused or permitted gates to be erected (at the points marked 'X' and 'Y' on the annexed plan) which gates the Defendants wrongfully cause or permit to be kept locked in exercise of a pretended right to prevent the Windsong Strata, its tenants, invitees, and guests from using the Right of way, unless their names appear on the Land Register.
9. In furtherance of the said pretended right the Defendants have only provided two keys (one for each gate) to each of the four condominiums of the Windsong Strata. Copies of the said key can only be made by the Defendants.
10. It is averred that under the terms of the Grant, the Windsong Strata, its tenants, invitees, and guests are entitled to the unhindered and unobstructed use of the Right of Way.
11. Despite numerous requests, (and alternative suggestions being made), by the Windsong Strata, the Defendants have refused and still refuse to unlock the gates and/or provide the Windsong Strata with sufficient keys to the gates to allow the members of the Windsong Strata, their tenants, invitees and guests the unhindered use of the Right of Way to which they are entitled.
12. Since 11 August 2015, the Defendants have prevented the members of the Windsong Strata from use of the Right of Way. Since this date the Defendants have removed the paving which were previously placed along the Right of Way.
13. In addition to keeping gates locked, on 13 August 2015, the Defendants caused or permitted a further gate to be placed in front of the gate erected and marked 'X' on the annexed plan so as to further obstruct, hinder and prevent the Windsong Strata and its authorised users from enjoying the Right of Way. An additional key was provided to each of the four condominiums of the Windsong Strata.
14. Accordingly, the locked gates, the additional gate the removal of the paving stones are causing and constitute a substantial interference and disturbance with the rights of the Windsong Strata and a nuisance to the Windsong Strata, its tenants, invitees and guests in obtaining unhindered access and egress to the beach.
15. By reason of the matters aforesaid, the Windsong Strata has been and is being caused nuisance and annoyance and has suffered loss and damage.

16. The Windsong Strata believes that the Defendants will continue to obstruct, hinder and prevent use of the Right of Way unless restrained by order of the Court.

**AND THE PLAINTIFF THEREFORE CLAIMS**

- (1) Damages;
- (2) Interest thereon at the rate of 2<sup>3</sup>/<sub>8</sub>% per annum or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (3)
  - a) An injunction restraining the Defendants by themselves, their servants or agents from maintaining the locked gate on the Right of Way; and/or
  - b) An injunction restraining the Defendants by themselves, their servants and agents or otherwise, howsoever from placing or allowing to be placed upon the said Right of Way or any part of it anything obstructing, restricting, preventing, or otherwise interfering with the reasonable enjoyment of the Right of Way by the Plaintiff and those authorised by them for passage at all times and for the purposes of access and egress to the beach on foot and from doing any act whereby the Plaintiff and those authorised by them may be hindered or obstructed from the free lawful use of the said Right of Way.
- (4) a declaration that the Plaintiff is entitled to a right of way along the way coloured red on the plan annexed hereto, for themselves, their agents, tenants, licensees and guests, on foot, and at all times for the purposes of access and egress to the beach;
- (5) The costs of this action; and
- (6) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 20<sup>th</sup> day of August 2015

*Nelson & Co*

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Nelson & Co.  
Attorneys for the Plaintiffs

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, and Grand Cayman KY1-1105 Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:** The Defendants

# REGISTRY MAP EXTRACT



CERTIFIED TRUE COPY

SECTION : WEST BAY SOUTH

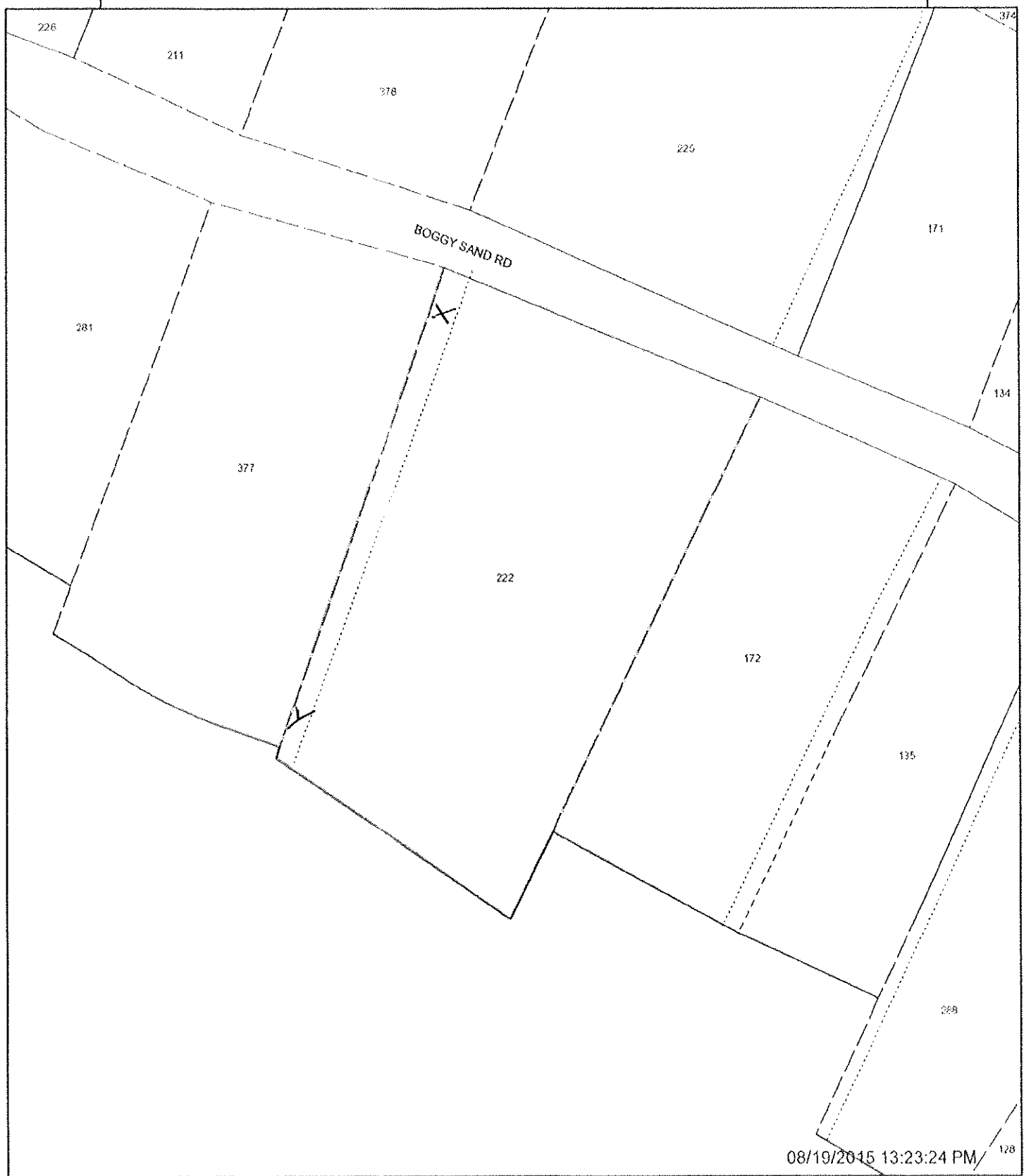
Block/Parcel(s) : : 5C 222



*Handwritten signature*  
REGISTRAR OF LANDS

Last Mutation Date: 7/7/2015

Registry Map Extracts must be printed to fit a paper size of 8.5" x 11" in order to retain a scale of 1:500  
Lands and Survey Department © Cayman Islands Government. All Rights Reserved  
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CERTIFICATE OF IDENTIFICATION

Name ROBERT W. TURNER

I HEREBY CERTIFY that the above named person appeared before me on the 25th day of June 1985 and being identified by xxx (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name MARNEL E. TURNER

I HEREBY CERTIFY that the above named person appeared before me on the 25th day of June 1985 and being identified by xxx (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name \_\_\_\_\_

I HEREBY CERTIFY that the above named person appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and being identified by \_\_\_\_\_ (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

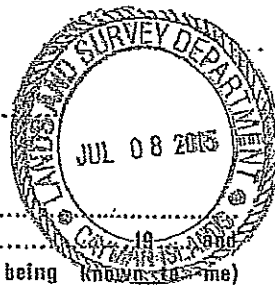
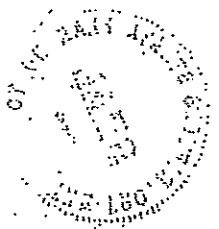
Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name \_\_\_\_\_

I HEREBY CERTIFY that the above named person appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ being identified by \_\_\_\_\_ (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

Signature and designation of the person certifying



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BETWEEN:

THE PROPRIETORS OF STRATA PLAN No.70

PLAINTIFFS

AND:

(1) PETER LEWIS  
(2) JOAN LEWIS

DEFENDANTS

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes                       No

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3. If the claim against the Defendants 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 box)  
 Yes                       No

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Service of the Writ is acknowledged accordingly

Signed .....

Attorney for

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 communications 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.

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
CAYMAN ISLANDS  
Attn: C Flanagan/N Dixey

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

[Empty box for Defendant's Attorney indorsement]

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

Please complete overleaf

## 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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.