

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 49 OF 2018

BETWEEN:

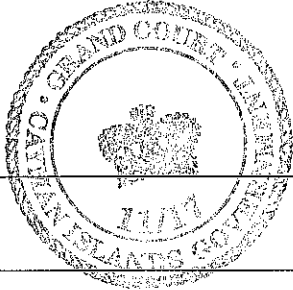
MCGLYNN ENTERPRISES LTD



PLAINTIFF

AND:

MAGDA-ZOE EMBURY



DEFENDANT

WRIT OF SUMMONS

TO: Magda-Zoe Embury of 105 Abbey Way, George Town, Grand Cayman, 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 495G, 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 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 19th day of March 2018

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.

GENERAL INDORSEMENT

The Plaintiff's claim is for (a) repayment of US\$48,795.79 by reason of breach of trust together with interest at common law, alternatively pursuant to statute; and (b) damages of US\$73,824.90 by reason of negligence together with interest pursuant to statute. Alternatively, the Plaintiff claims damages of US\$122,596.30 by reason of negligence together with interest pursuant to statute.

The Plaintiff instructed the Defendant in August 2012 to act as its attorney-at-law in respect of its purchase of Rum Point Block 33E Parcel 103H16 (**Property**). The closing of the purchase was scheduled for 14 September 2012. On 10 September 2012, the Defendant provided the Plaintiff with a Completion Statement which indicated *inter alia* that, to enable the purchase of the Property to be completed, the Plaintiff should transfer to the Defendant:

- (a) US\$48,679.94 in respect of the charge to stamp duty on the transfer of the Property; and
- (b) US\$91.46 in respect of registration fees for the transfer of the Property;
- (c) additionally, US\$24.39 for the purpose of obtaining a certified land register after closing.

The Plaintiff duly transferred those sums to the Defendant on 12 September 2012, and the Defendant assumed an obligation as trustee to apply those sums for the aforesaid purposes. The Defendant, in breach of trust, failed to apply those sums for the aforesaid purposes; and, for the avoidance of doubt, has not applied them for any other purpose on the Plaintiff's behalf or at its direction. The Plaintiff claims repayment of those sums, together with interest as aforesaid.

As a result of the Defendant's aforesaid failure to apply the sums payable in respect of the charge to stamp duty and the registration fees for the transfer of the Property for those purposes, the Property was not transferred to the Plaintiff. The Plaintiff did not appreciate until June 2016, due to unrelated matters, that the Property had not been transferred to it, and thereafter took the necessary steps to achieve registration. These included making the following further payments:

- (a) US\$60,850 in respect of the charge to stamp duty on the transfer of the Property;
- (b) US\$2,439.02 in respect of registration fees for the transfer of the Property;
- (c) US\$58,104.88 in penalties for late payment of stamp duty and registration fees; and
- (d) US\$1,202.40 in respect of further conveyancing fees (together, **Further Payments**).

The Further Payments were necessitated by the Defendant's negligence in failing to ensure that the purchase of the Property, including registration, was completed on 14 September 2012. In the event

that the Defendant repays the aforesaid US\$48,795.79 claimed for breach of trust, the Plaintiff's loss as a result of such negligence will be as follows:

- (a) US\$12,170.06 in respect of the charge to stamp duty;
- (b) US\$2,347.56 in respect of registration fees;
- (c) US\$58,104.88 in penalties for the late payment of stamp duty and registration fees; and
- (d) US\$1,202.40 in respect of further conveyancing fees.

The Plaintiff accordingly claims damages in the aforesaid amounts, together with interest pursuant to statute. Alternatively, absent repayment of the sums claimed for breach of trust, the Plaintiff claims damages in the amount of the Further Payments, together with interest pursuant to statute.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$122,620.59, together with interest and costs, further proceedings will be stayed. The money must be paid to the Plaintiff or its Attorneys.

Appleby (Cayman) Ltd.

APPLEBY (CAYMAN) LTD

THIS WRIT OF SUMMONS was issued by Appleby (Cayman) Ltd of 71 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. 438094.0002/AJB/ASJ), Attorneys-at-Law for the Plaintiff, whose address for service is that of its said attorneys.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgement 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, PO BOX 495, George Town, Grand Cayman, Cayman Islands.

2. A Defendant who states in his Acknowledgement 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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 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.

BETWEEN:

MCGLYNN ENTERPRISES LTD

PLAINTIFF

AND:

MAGDA-ZOE EMBURY

DEFENDANT

ACKNOWLEDGEMENT 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

Attorneys for Defendant

Date: 2018

Please complete overleaf