

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO. 78 OF 2020

BETWEEN:



IVAN JOHN SUTLIC

Plaintiff

AND:



TOMMY SOFIELD

Defendant

\_\_\_\_\_  
WRIT OF SUMMONS  
\_\_\_\_\_



To the Defendant:

Tommy Sofield  
199 Seymour Drive  
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, P.O. Box 495 Grand Cayman KY1-1106, Cayman Islands, 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 28<sup>th</sup> day of April 2020

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 Acknowledgement of Service are given with the accompanying form.

## PARTICULARS OF CLAIM


1. The Plaintiff is a resident of the Cayman Islands and since 18 July 2017 has been the registered proprietor of the property known as 108 Roxborough Street which is registered as parcel 623 of block 24E of the Spotts Registration section of Grand Cayman ("Property").
2. The Defendant is an individual residing in the Cayman Islands who was, immediately prior to 18 July 2017, the registered proprietor of the Property.
3. On 27 April 2017 the Plaintiff and the Defendant (together the "Parties") entered into a contract under which the Defendant agreed to sell and the Plaintiff agreed to purchase the Property ("Purchase Agreement").
4. At the time of entering into the Purchase Agreement, it was expressly acknowledged by both Parties, that the boundary wall on the north-east corner of the Property had been constructed by the Defendant such that it encroached on the neighbouring land ("Encroachment"). The Plaintiff was induced to enter into the Purchase Agreement on the basis of an assurance given by the Defendant that an Indemnity would be granted in relation to the Encroachment.
5. On 16 June 2017, prior to completion of the sale and purchase of the Property, the Defendant, as the "Indemnitor", and the Plaintiff, as the "Indemnitee", entered into a Deed of Indemnity ("Deed of Indemnity") the relevant terms of which include:
  - 5.1. Clause 2: The Indemnitor irrevocably agrees, to the maximum extent permitted by applicable law, to indemnify and save harmless the Indemnitee from and against:
    - 5.1.1. all judgments, orders, penalties or fines awarded or imposed in, or an amount paid in relation, to any demand or legal proceeding, pending or completed, that arises or has arisen out of any conduct or matter associated with the Encroachment ("Proceeding"), which the Indemnitor is or may be liable; and
    - 5.1.2. after the disposition of a Proceeding, the expenses ("Expenses"), including costs, charges and expenses, including legal and other fees actually and reasonably incurred by the Indemnitee in respect of that Proceeding.
  - 5.2. Clause 3: To the maximum extent permitted by law, Expenses actually and reasonably incurred by the Indemnitee in connection with any Proceedings including all reasonable legal expenses incurred and any retainer required, shall be paid by the Indemnitor in advance of the final disposition of such Proceeding as and when either a request for a payment of the expenses is received from the Indemnitee or the expense becomes due and payable, whichever is earlier;
  - 5.3. Clause 4: The Indemnitee shall notify the Indemnitor in writing of any Proceeding against him for which indemnification will or could be sought under the Deed;

- 5.4. Clause 5: If any claim arising from any right to indemnification conferred by the Indemnitor pursuant to the Deed is not paid in full by the Indemnitor within 30 days after a written claim has been received by the Indemnatee, the Indemnatee may, at any time thereafter, bring suit against the Indemnitor to recover the unpaid amount of the claim as a debt and, if successful in whole or in part, the Indemnatee will be entitled to be paid also the expense of prosecuting such claim.
6. By letter dated 7 December 2018 (“7 December Letter”), attorneys for the registered proprietor of the neighbouring property (“Silver Thatch”) wrote to the Plaintiff demanding the removal and remediation of the Encroachment. Notice of this letter was provided to the Defendant by letter dated 9 January 2019, in accordance with Clause 4 of the Deed of Indemnity. No response was received.
7. On 2 July 2019, a Writ of Summons (“Writ”) was issued by Silver Thatch in the Grand Court of the Cayman Islands under cause no. 105 of 2019 against the Plaintiff seeking, *inter alia*, removal and remediation of the Encroachment. Notice of this Writ was provided to the Defendant by letter dated 10 July 2019, in accordance with Clause 4 of the Deed of Indemnity. No response was received.
8. The Writ was resolved by way of a Consent Order dated 24 January 2020 (“Consent Order”) under which it was ordered by consent that:
  - 8.1. the Plaintiff shall, within 90 days of execution of the Settlement and Release Agreement, make all reasonable efforts to rectify the encroachment onto the neighbouring property by:
    - 8.1.1. Demolishing the existing border wall;
    - 8.1.2. Rebuilding a similar boarder wall of 3ft height along the proper boundary;
    - 8.1.3. Removing and re-locating the encroaching pool equipment and slab so that there is no further Encroachment;
    - 8.1.4. Removing any encroaching plants and gardening equipment, including but not limited to, the sprinkler system, from the neighbouring Parcel; and
    - 8.1.5. pay to Silver Thatch the sum of CI\$7,223.00 in full and final settlement of any and all costs incurred by Silver Thatch in relation to the Writ.
9. By letter to the defendant dated 28 January 2020, the Plaintiff made a written demand for payment in the sum of CI\$50,723.67 (“Indemnity Sum”) in accordance with the Deed of Indemnity as follows:
  - 9.1. Remedial works to rectify encroachment onto the Property CI\$27,889.12;
  - 9.2. Legal fees paid to Silver Thatch CI\$7,223.00;

- 9.3. Current Legal Fees incurred CI\$14,741.55; and
- 9.4. Professional fees incurred CI\$870.00.
10. The Indemnity Sum has not been paid in full or at all by the Defendant and the Plaintiff claims this sum in damages against the Defendant in accordance with Clause 5 of the Deed of Indemnity.
11. The Plaintiff also claims costs pursuant to clause 2 of the Deed of Indemnity as specified in paragraph 5.1.2 above.
12. Further, the Plaintiff claims interest pursuant to s.34 of the Judicature Law (2017 Revision) and the Judgment Debt (Rates of Interest) Rules 2012 and claims interest on the debt as follows:
  - 12.1. Pre-judgment simple interest on the debt, from the date the Plaintiff's cause of action arose to the date of judgment or payment in full if sooner;
  - 12.2. Post-judgment simple interest upon the principal amount of the judgment with effect from the date of service of the judgment until the date of payment in full.

AND the Plaintiff Claims:

1. The sum of CI\$50,723.67.
2. The Plaintiff's costs of this action as pleaded in paragraph 11 above
3. Interest pursuant to s.34 Judicature Law (2017 Revision) as more specifically pleaded in paragraph 12 above; and
4. Such further and other relief as the Court may deem just.

  
\_\_\_\_\_  
**PRIESTLEYS**  
**Attorneys for the Plaintiff**

**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.

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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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 installments or otherwise.

**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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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

**CAUSE NO.                      OF 2020**

**BETWEEN:**

**IVAN JOHN SUTLIC**

Plaintiff

**AND:**

**TOMMY SOFIELD**

Defendant

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**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

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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 intends to contest the proceedings (*tick appropriate box*)

Yes [ ]      No [ ]

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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 [ ]

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

Address for service: \_\_\_\_\_

*Please see 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 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.

*Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

**PRIESTLEYS**  
ATTORNEYS-AT-LAW  
SECOND FLOOR, CARIBBEAN PLAZA  
878 WEST BAY ROAD  
PO BOX 30310  
GEORGE TOWN, GRAND CAYMAN  
CAYMAN ISLANDS, KY1-1202

*Endorsement 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 endorsement]