



IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 88 of 2020

BETWEEN:

- (1) NEIL PURTON
- (2) MICHELLE PURTON

Plaintiffs



- and -

- (1) DAVID HOLDEN
- (2) MICHELLE HOLDEN

Defendants

WRIT OF SUMMONS



TO:

David Holden
Michelle Holden
Galway Quay
Crystal Harbour

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 495G, George Town, Grand Cayman, 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 28th day of May 2020.

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. By this claim, the Plaintiffs ("**the Purtons**") seek damages from the Defendants ("**the Holdens**") for breach of a contract dated 29 May 2017 ("**the Contract**") for the sale of West Bay Beach North, Block 17A Parcel 47 ("**the Property**") and for the Purtons to carry out additional works thereto.

BACKGROUND

2. At all material times prior to 31 July 2017, the Purtons were the registered freehold proprietors of the Property.
3. In or around early 2017, the Purtons were approached by a third party agent with an enquiry over whether the Purtons would be interested in selling the Property. The Purtons responded that they would sell the Property for a net sales price of no less than US\$6m.
4. In or around May 2019, the Holdens determined to purchase the Property but indicated that they wished additional work to be carried out. The most significant of these works consisted of:
 - 4.1 The construction of a Master Bedroom extension;
 - 4.2 The construction of a Carport.
5. Given that both of these works required additional time in order to obtain planning permission and Building Control approval, it was agreed that these works ("**the Additional Works**") would take place after the date for completion of the sale and that the contract price would be structured such that a separate price would be payable for those works.
6. The First Plaintiff ("**Mr Purton**") was not satisfied with such an arrangement without further assurances. In particular he was concerned that it should not be possible for the Holdens to seek to pay a lower amount by paying the amount designated as the "*purchase price*" and deciding not to proceed with the works taking place (and thereby avoiding paying for them).

7. On 29 May 2017, the Holdens' attorney ("**Mr Giglioli**") provided an assurance to the Purtons that:

"We do not believe we need to put in the language sought here particularly in light of the latest amendment (which effectively gives rise to a separate obligation to construct the carport and bedroom extension for US\$315,000.00—an obligation distinct from the sale of the house). Simply put, if the Holdens were to back out of the extension/carport or either of them, Neil would have a claim in damages..." ("the Assurance")

8. Relying on the Assurance, the Purtons entered into the Contract.

CONTRACTUAL TERMS

9. The Contract was dated 29 May 2017 and headed "*Offer to Purchase*".

10. Under the terms of the Contract:

10.1 The Offer to Purchase was open until 31 May 2017;

10.2 The "*Purchase Price*" was US\$5,985,000

10.3 The Completion date was 31 July 2017.

11. Clause 5 of the Contract incorporates additional conditional as "*Addendum A*" which, in turn incorporates "*Addendum B – Offer to Purchase Agreement*".

12. Under the terms of Addendum B:

12.1 At Clause C and D.1 and D.2, there were a number of Additional Works which the parties have agreed that the Purtons would carry out after the Completion Date.

12.2 Clause A.3 of the Contract required the Purtons and Holdens to agree Plans and Specifications prior to 14 June 2017. By email sent by Mr Giglioli on 23 June 2017 it was confirmed that all conditions had been satisfied.

12.3 Clause D of the Contract required the Additional Works to be carried out at the cost of the Purtons.

12.4 Clause E of the Contract required the Car Port to be completed within 10 weeks of the date on which planning permission and building permit approval have been granted.

12.5 At K.1.1 the "total purchase price" was stated to be:

"US\$6,300,000.00 (Six Million Three Hundred Thousand United States Dollars) apportioned as to US\$5,985,000.00 (Five Million Nine Hundred and Eighty-Five Thousand United States Dollars) for the Property and US\$315,000.00 (Three Hundred and Fifteen Thousand United States Dollars) for the Additional Works."

12.6 Pursuant to Clause H.3, the price for completion of the Car Port was US\$65,000 payable upon satisfactory completion and if completed within 10 weeks of the date on which planning permission and building permit approval have been granted.

12.7 Pursuant to Clause H.4, the price for completion of the Master Bedroom was US\$250,000 payable upon satisfactory completion.

13. A copy of the Contract is appended to this Statement of Claim and the Plaintiffs will rely upon the full terms of the Contract at trial for its full meaning and effect.

14. On a true construction of the Contract, Addendum B required the Holdens to permit the Purtons to carry out the Additional Works.

15. Alternatively, a term ought to be implied into the Contract that the Holdens must allow the Purtons to carry out the Additional Works.

16. Alternatively, if the Contract, on a true construction, contains, no such express or implied term the Contract should be rectified to reflect the outwardly expressed common intention of the Parties (as reflected in the assurance) that the Holdens be required to permit the Purtons to carry out the Additional Works.

17. In the further alternative, given the common understanding of the parties when entering into the Contract (and the matters pleaded below), the parties are estopped

from denying that the Holdens are required to permit the Purtons to carry out the Additional Works.

CONSTRUCTION OF THE CAR PORT

18. The transfer of the Property completed on 31 July 2017. Given that the Additional Works were not complete, the Mr Giglioli retained US\$315,000 representing the amounts due upon satisfactory completion of the Car Port and the Master Bedroom.
19. The Car Port was constructed, and the works completed to the satisfaction of the Holdens and signed off on 3 August 2018.
20. Planning permission for the Car Port was granted by the Central Planning Authority on 12 December 2019 subject to 2 conditions that have been satisfied.
21. Building permit approval was granted by the Cayman Islands Government Department of Planning on 28 February 2020 and a Certificate of Completion was issued on 14 April 2020 and as such payment of US\$65,000 became due to the Purtons from the Holdens.
22. To date the Holdens have failed or refused to pay the sum of US\$65,000 or any sum.

BREACH OF CONTRACT

23. In the premises, by failing to pay to the Purtons the sum of US\$65,000 and by retaining the said sum from the purchase price, the Holdens are in breach of contract.

CONSTRUCTION OF THE MASTER BEDROOM EXTENSION

24. The transfer of the Property completed on 31 July 2017. Given that the Additional Works were not complete, the Mr Giglioli retained US\$315,000 representing the amounts due upon satisfactory completion of the Car Port and the Master Bedroom.
25. There were then a number of delays caused by the Holdens in completing the Master Bedroom:
 - 25.1 An application was made in July 2017 for planning permission which was granted on 13 September 2017. Thereafter, Mr Purton instructed an architect and structural engineer to produce plans for the structure.

25.2 The plans for the structure were submitted to the Holdens in November 2017. These plans included a necessary support column in the Master Bedroom.

25.3 The Holdens raised no objection to the plans and the plans were thus submitted to BCU in or around November 2017.

25.4 In an email from Mr. Holden to Mr. Purton on 5 March 2019, Mr Holden informed Mr Purton that he did not wish to have a column in the Master Bedroom. While not required to do so in accordance with the Contract, Mr Purton agreed to assist Mr Holden and therefore arranged for further structural plans removing the column.

25.5 On 25 April 2018, the Holdens requested a delay until September 2018. Again, while not required to permit such a delay under the terms of the Contract, in order to assist the Holdens, this request was acceded to by the Purtons.

25.6 On 8 May 2018, BCU approval was granted allowing the commencement of work and thereafter the Purtons were ready willing and able to commence work.

26. However, notwithstanding the Purtons being ready willing and able to perform, the Holdens refused (in breach of contract) to permit the Purtons to carry out the works to construct the Master Bedroom:

26.1 At a meeting at the house in early July 2018 Mr Holden verbally advised Mr Purton that it was likely that they would not proceed with the Master Bedroom extension works

26.2 On 1 August 2018, Mr Giglioli confirmed in writing that the Holdens had instructed that the Master Bedroom was not being proceeded with;

26.3 On 1 September Mr Giglioli formally informed Mr Purton that the Holdens did not want to proceed and confirmed this was because of the "*difficulties they have encountered with the Additional Works*";

26.4 On 18 October 2018, Mr Giglioli informed Mr Purton that he would be returning the retained sum of US\$250,000 in respect of the Master Bedroom Extension to the Holdens.

BREACH OF CONTRACT

27. In the premises, by failing to permit the Purtons to carry out the Additional Works to complete the Master Bedroom and by returning the retained sum of US\$250,000, the Holdens are in breach of contract.

28. The breach of contract has caused loss and damage to the Purtons in that:

28.1 They have carried out all Additional Works set out at D3, D4 and D5 for which they have received no reimbursement;

28.2 They have paid to engage architects engineers (structural, electrical, plumbing and mechanical), Government fees for planning, building permit and infrastructure fee in respect of the Master Bedroom for which they have received no reimbursement;

28.3 Had the Holdens not breached the Contract, the Purtons would have carried out the Additional Works to the Master Bedroom and therefore received payment of US\$250,000.

The Purtons are therefore entitled to and claim damages in respect of the Holdens' breaches amounting to US\$250,000 less, the cost of completing the Master Bedroom. The best estimate of this amount US\$80,328.35 with particulars to be provided in due course.

29. Further, the Purtons are entitled to and claim interest on such sums at such a rate and for such a period as the Court shall consider just and fair.

And the Plaintiffs claim:

- Damages of US\$65,000 for the Car Port and US\$169,671.65 for the Master Bedroom Extension to the total sum of US\$234,671.65 or a sum to be assessed.
- Interest
- Costs
- Further or other relief



KSG Attorneys-at-Law

Attorneys for the Plaintiff

**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 495G, 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 installments 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, 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:

**(1) NEIL PURTON
(2) MICHELLE PURTON**

Plaintiffs

- and -

**(1) DAVID HOLDEN
(2) MICHELLE HOLDEN**

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.

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

(Signed).....

Attorney for the Plaintiff

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.

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

KSG
Attorneys at Law
4th Floor Harbour Centre
42 North Church Street
PO Box 2255 KY1-1107
George Town
Grand Cayman

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]