



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: OF 2021

BETWEEN:

**(1) ALAN TORCHINSKY
(SUING AS EXECUTOR OF THE ESTATE OF BEN TORCHINSKY)**

**(2) RAYMON TORCHINSKY
(SUING AS EXECUTOR OF THE ESTATE OF BEN TORCHINSKY)**

(3) RABSCO INC

(4) BRACSO INC

PLAINTIFFS

V

**(1) SURESH PRASAD
(2) WHITE DOVE INTERNATIONAL LTD**

DEFENDANTS

WRIT OF SUMMONS

TO: (1) SURESH PRASAD

Le Bleu (the Blue House), Britannia Estates, Britannia Drive, PO Box 127, Grand Cayman, Cayman Islands, KY1-1601

AND TO: (2) WHITE DOVE INTERNATIONAL LTD

PO Box 10636, Grand Cayman, KY1-1006

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set-out on the following pages.

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 Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with an action and judgment may be entered against you forthwith without further notice.

Issued: 23 June 2021

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.

DATED this 23 day of June 2021

FILED this 23 day of June 2021



TRAVERS THORP ALBERGA
Attorneys-at-Law for the Plaintiffs

TO: The Registrar of the Financial Services Division

AND TO: the Defendants

STATEMENT OF CLAIM

PARTIES

1. The first and second Plaintiffs are the Executors of the Estate of Benjamin Torchinsky (“Mr Torchinsky”) and sue in that capacity alone.
2. The third and fourth Plaintiffs (“Brasco” and “Rabsco”) are both companies incorporated in the Cayman Islands. Mr Torchinsky held beneficial interests in both Brasco and Rabsco during his lifetime.
3. The first Defendant (“Mr Prasad”) had been an employee and occasional business partner of Mr. Torchinsky and had engaged in the business of building and selling houses.
4. To the best of the Plaintiffs’ knowledge, the second Defendant (“WDI”) is or was at all material times a company owned and controlled by Mr Prasad. Since 7 June 2011 WDI has been the legal owner of a property known as Le Bleu/ West Bay Beach South, Block 12D Parcel 55 (the “Property”).

SUMMARY OF THE CLAIM

5. Mr Torchinsky, both personally and through Brasco and Rabsco, advanced Mr Prasad over US\$2.5 million to purchase and develop the Property. An agreement of sale and transfer to Brasco were drawn up and signed. Before the transfer was registered, Mr. Prasad persuaded Mr. Torchinsky to give him some time to sell the Property. If he could do so then the profits would be shared. If he couldn’t then Mr Torchinsky would have the right to call for the transfer to be registered. As construction of the house was nearing completion in December 2013, Mr. Torchinsky died. Since that time Mr. Prasad has failed to sell the Property, instead moving into it and later charging it for his own benefit. The Plaintiffs now claim title to the Property amongst other relief.

THE AGREEMENT

7. The Property was acquired by WDI on 7 June 2011. At the time the intention was to build a spec house. The purchase price and other costs were funded by a US\$235,000 loan advanced by Rabsco on 30 March 2011 secured by a promissory note of the same date and a US\$275,000 mortgage from Scotia Bank (the “Scotia Charge”).

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This **STATEMENT OF CLAIM** is filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address for service is Harbour Place, 103 South Church St., Grand Cayman, Cayman Islands (Ref: M1081-004)

8. In late 2011 or early 2012 Mr Torchinsky decided that the Property would be developed as a bespoke residence for his own use. The house was designed and built to accommodate Mr Torchinsky's physical infirmities. An Agreement for Sale (the "Agreement") and a transfer of title in the Property to Brasco ("Transfer") were signed by Brasco and WDI in April 2012. It was subsequently resolved that Brasco would be replaced by Rabsco as the Transferee.
9. The Plaintiffs will rely on the terms of the Agreement and Transfer for their full force and effect but note in particular the following express terms:
 - (a) By Clause 1.1 of the Agreement, the Completion Date was defined as 15 May 2012.
 - (b) By Clause 1.1 of the Agreement, the Purchase Price was defined as US\$735,000.
 - (c) By Clause 2 of the Agreement WDI agreed to sell the Property to the Transferee Rabsco for the Purchase Price.
 - (d) By Clause 4.3 of the Agreement, WDI was required to deliver the Transfer together with any such documents and assurances as may be required to fully and completely effect the legal and valid transfer of clear title to the Transferee on the Completion Date.
 - (e) By Clause 5.1 of the Agreement, if the sale had not completed by the Completion Date either party was entitled to serve a notice requiring the other party to complete the transaction ("Notice to Complete") at any time after the Completion Date.

THE COLLATERAL AGREEMENT OR VARIATION

10. Shortly before the Completion Date, Mr Prasad represented to Mr Torchinsky that he believed the Property could be sold at a significant profit. The parties entered into an oral collateral agreement containing the following express terms (the "Collateral Agreement") all of which were discussed and agreed during the course of conversations between Messrs Torchinsky and Prasad during this time (mid 2012), alternatively varied the Agreement to incorporate the following terms:
 - (a) The Defendants would use their best endeavors to market and sell the Property for the best mutually acceptable price.

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This **STATEMENT OF CLAIM** is filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address for service is Harbour Place, 103 South Church St., Grand Cayman, Cayman Islands (Ref: M1081-004)

- (b) The Plaintiffs would not serve a Notice to Complete and/or performance of the Agreement and/or transfer of title would be suspended for a reasonable period of time to enable the Defendants to comply with its obligation under paragraph (a) above.
 - (c) If the Property could be sold at a mutually acceptable price within a reasonable time then the profit after repayment of all sums advanced by the Plaintiffs would be shared equally between the parties.
 - (d) If the Property could not be sold at a mutually acceptable price within a reasonable time then the Plaintiffs would be free to serve a Notice to Complete and/or give notice to lift suspension of performance of the Agreement and/or require title to the Property to be conveyed back to Rabsco or Brasco.
11. Further, it was an implied term of the Collateral Agreement and/or the Agreement (the “Implied Term”) that WDI would not charge the Property without the Plaintiffs’ consent whilst Mr Prasad continued to market it. The Implied Term should be implied by law because it was so obviously necessary to give effect to the parties’ intentions that it went without saying. There was no need for WDI to borrow against the Property because all or substantially all the acquisition and construction costs were being funded by the Plaintiffs.

CONSIDERATION

12. Between 30 March 2011 and 12 March 2013 the Plaintiffs collectively advanced Mr Prasad and/or WDI the sum of US \$2,510,000; the greater part of this sum was advanced by Rabsco. This far exceeded the Purchase Price and included a payment made on 19 November 2012 to Scotia Bank of US\$ 275,000 in order to repay the Scotia Charge. The Plaintiffs have in fact paid the Defendants all or substantially all of the costs incurred by them in acquiring the land and building the house situated on the Property.

SUBSEQUENT EVENTS

13. Mr Torchinsky died on 23 December 2013. Following his death, the first and second Plaintiffs met with Mr Prasad in Grand Cayman to enquire as to his and WDI’s progress with marketing the Property in accordance with the Collateral Agreement. Mr Torchinsky had informed them of both the Agreement and the Collateral Agreement at around the time it was concluded.

14. At the meeting in Grand Cayman, Mr Prasad offered to transfer title to the Property to the first and second Plaintiffs (thereby acknowledging their beneficial interest in it) but they agreed that the Defendants should continue to have a reasonable time in which to market the Property in accordance with the Collateral Agreement.
15. Unbeknown to the Plaintiffs and without their consent, Mr Prasad moved into the Property shortly after Mr Torchinsky's death. Also unbeknown to the Plaintiffs and without their consent, Mr Prasad caused WDI to breach the Implied Term and charge the Property several times between 2016 and 2019 in respect of borrowings from a Terrance Bray in the sums of CA\$ 1.3m and US\$ 500,000 (the "Unauthorized Borrowings"). So far as the Plaintiffs are aware, none of the Unauthorized Borrowings has been applied to benefit the Property. The Property has been substantially complete since 2013.

SPECIFIC PERFORMANCE

16. The Defendants have by now had a reasonable time in which to market the Property and find a suitable buyer. They have not done so. Accordingly, the Plaintiffs have served a Notice to Complete by letter dated 20 April 2021.
17. Having failed to comply with the notice, the Defendants are in breach of the Agreement. The Plaintiffs are entitled to and seek an order for specific performance. It would be wholly unconscionable for the Defendants to continue to enjoy the benefits of the Property any longer and place the Plaintiffs' remaining equity in the Property at risk of further unauthorized borrowing.
18. Damages would never be an adequate remedy given the background set out above and also the fact that, so far as the Plaintiffs are aware, neither of the Defendants has any or sufficient assets from which to meet an award of damages.

BREACH OF THE IMPLIED TERM

19. Should the Second Defendant be unable to convey clean title because of the Unauthorized Borrowings, the Plaintiffs will seek a declaration that the Defendants shall indemnify them for any amounts they are required to pay the chargees in order to obtain clean title.

20. The Second Defendant is liable for its breach of the Implied Term by charging the Property. The First Defendant is liable for procuring the Second Defendant's breach of the Implied Term.

EQUITABLE CLAIMS

21. In the circumstances pleaded above, noting in particular the fact that the Plaintiffs have between them paid all or substantially all of the acquisition and construction costs of the Property on the understanding they would take title in the event the Property could not be sold within a reasonable time, and it has not been sold, the Plaintiffs will in the alternative seek a declaration that the Property is held on resulting, alternatively constructive trust for them and an order requiring the Second Defendant to convey clean title to them.
22. Should the Second Defendant be unable to convey clean title because of the Unauthorized Borrowings, the Plaintiffs will seek an order that the Defendants indemnify them by way of equitable compensation for any amounts they are required to pay the chargees in order to obtain clean title and also an account in equity so as to enable to Plaintiffs to pursue tracing remedies.
23. Further, the Plaintiffs are entitled to a declaration that the Defendants are estopped from denying that the Plaintiffs are the beneficial owners of the Property, upon the principles of proprietary estoppel against the factual background set out above noting in particular the Defendants' conduct in causing the Plaintiffs to lend them all or substantially all of the acquisition and construction costs of the Property on the understanding the Plaintiffs would take title in the event the Property could not be sold within a reasonable time (which has not happened).
24. Further, the Plaintiffs are entitled to an order that the Defendants are estopped from denying that the Plaintiffs are the beneficial owners of the Property, upon the principles of issue estoppel, having sworn statements to the effect the Property was Mr Torchinsky's in an affidavit dated 21 September 2017 in FSD Cause number 88 of 2017 and a witness statement in FSD Cause number 242 of 2020 on 12 March 2021.
25. Further, the Plaintiffs are entitled to exercise all of the rights and remedies available to the chargee under the Scotia Charge, having discharged the charge in full themselves, including a right to take possession of the Property.

26. Further, the Plaintiffs are entitled to equitable compensation in respect of a reasonable payment of rent in the sum of US\$15,000 for each month the First Defendant has resided in the Property.
27. Alternatively the Plaintiffs are entitled to repayment of all sums loaned to the Defendants (repayment of which is now demanded) together with a commercial rate of interest.

AND THE PLAINTIFFS CLAIM:

- (1) Specific performance of the Agreement to give up possession of and convey clean title to the Property to Rabsco.
- (2) A declaration that the Defendants are liable to indemnify them in respect of any losses occasioned by the Plaintiffs in repaying the Unauthorized Borrowings;
- (3) A declaration that the Property is held on trust for the Plaintiffs and/or that the Defendants are estopped from denying that the Plaintiffs are the beneficial owners of the Property and an order pursuant to the Court's equitable jurisdiction requiring the Defendants to convey clean title to them;
- (4) Equitable damages and/or an indemnity for any losses occasioned by the Plaintiffs in respect of the Unauthorized Borrowings;
- (5) An account in equity pursuant to which each Defendant is liable to the Plaintiffs by way of equitable compensation equal to the amount of the Unauthorized Borrowings, and/or their traceable proceeds or substitutes each Defendant received;
- (6) A declaration that the Plaintiffs are entitled to exercise all of the rights and remedies available to the chargee under the Scotia Charge and all necessary orders giving effect to such rights and remedies including an order for possession, and/or
- (7) Rent in the sum of US\$15,000 for each month the First Defendant has resided in the Property;

- (8) Alternatively the Plaintiffs are entitled to repayment of all sums loaned to the Defendants together with a commercial rate of interest.
- (9) Further and/or other relief including all necessary directions to the Registrar of Lands in order to protect the Plaintiffs' interest in the Property; and
- (10) Interest until judgment or earlier payment at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Act (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time, or at such other rate and for such period as the court may think fit; and
- (11) Costs.

DATED this 23 day of June 2021

FILED this 23 day of June 2021



TRAVERS THORP ALBERGA
Attorneys-at-Law for the Plaintiffs

TO: The Registrar of the Financial Services Division

AND TO: the Defendants

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(3) RABSCO INC

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PLAINTIFFS

V

(1) SURESH PRASAD
(2) WHITE DOVE INTERNATIONAL LTD

DEFENDANTS

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.
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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)

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 Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Travers Thorp Alberga
Attorneys-at-Law
P.O. Box 472
Grand Cayman, KY1-1106
Cayman Islands
Phone: +1 (345) 949-0699
Facsimile: +1 (345) 949-8171
ATTN: Ian Huskisson
Ref: M1081-004

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