



**GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: OF 2021**

**THOMPSON REALTY LTD. T/A CENTURY 21**

**PLAINTIFF**

**and**

**ROBERT BODDEN**

**DEFENDANT**

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**WRIT OF SUMMONS**

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TO: **ROBERT BODDEN**, 54 Spice Drive, Bodden Town, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of P.O Box 30069, Grand Cayman, Cayman Islands, KY1-1201 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you 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 3<sup>rd</sup> day of December 2021

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

**IMPORTANT**

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2021

BETWEEN:

THOMPSON REALTY LTD. T/A CENTURY 21

PLAINTIFF

and

ROBERT BODDEN

DEFENDANT

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**STATEMENT OF CLAIM**

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**The Parties**

1. The Plaintiff is a company incorporated in the Cayman Islands under registration 23112.
2. The Defendant is an individual who is, and was at all material times, resident within the Cayman Islands.
3. The Plaintiff is a real estate business dealing with property within the Cayman Islands. The Defendant is a Realtor, operating within the Cayman Islands.

**The Agreement**

4. On or around 19 June 2018 the Plaintiff and the Defendant executed an Independent Contractors Agreement (the "**Agreement**"). The Agreement was for an indefinite term, terminable upon 30 days' notice by either party or otherwise in accordance with the terms of the Agreement.
5. The Agreement contained the following express terms *inter alia*:
  - (i) The Defendant represents and warrants that he will not, during the term of the Agreement, offer or agree to provide service, with or without compensation, in relation to real estate related activities within the Cayman Islands unless such services are provided through the Plaintiff and in accordance with the terms of the Agreement (clause 1(e)).
  - (ii) All payments whether of real estate commission, referral fees, property management or rentals proceeds in respect of activities of the Defendant must be paid directly to the Plaintiff without set off or deduction whatsoever (clause 4).
  - (iii) The Plaintiff shall pay to the Defendant his share of all such payments collected within 4 business days after the funds have been collected and have cleared the Plaintiff's bank account, provided all necessary due diligence has been collected by the Defendant and is on the Plaintiff's file (clause 4).

- (iv) The Plaintiff shall be entitled to deduct from such payments any monies owed to it by the Defendant under the terms of the Agreement (clause 4).
- (v) In the event that the Defendant is offered any incentive bonuses by a client, all such bonuses, if monetary, shall be paid to the Plaintiff who after a deduction of any monies owed to it by the Defendant shall pass such bonus on to the Defendant in its entirety (clause 4).
- (vi) In the event such incentive is of a non-monetary nature, the Defendant shall report all such incentives to the Plaintiff who shall record the incentive at its fair market value as income for the Defendant (clause 4).
- (vii) Either the Plaintiff or the Defendant may terminate the Agreement for any reason (with or without cause) by delivering 30 days' written notice to the other party (clause 8(a)).
- (viii) Once terminated the Defendant shall not be entitled to any compensation after his engagement is terminated (clause 8(d)).
- (ix) All pending sales and listings taken by the Defendant during the term of the Agreement are the Plaintiff's proprietary material, as are all documents and items pertaining to such transactions (clause 10).
- (x) All operating and/or financial data and projections, client lists, pricing, plans, methods, designs, keys, computer programs, contracts, agreements, literature, policies, manuals, brochures, books, schedules correspondence and other materials furnished to the Defendant, or any Assistant the Defendant may have engaged, by the Plaintiff in connection with the Defendant's duties under the Agreement are and shall remain the property of the Plaintiff and upon termination the Defendant shall deliver all such materials (the "**Proprietary Materials**"), including copies thereof, to the Plaintiff. (clause 10).
- (xi) The Defendant shall not at any time during the term of the Agreement or after termination, make available to any competitor or potential competitor of the Plaintiff, or divulge, disclose or communicate to any person, firm, corporation or other business entity in any manner whatsoever, any confidential or proprietary information covered by the Agreement, including, without limitation, the Proprietary Materials, unless authorised to do so in writing by the Plaintiff or required by law or judicial or regulatory order (clause 11).
- (xii) The Defendant shall not at any time during or after termination of the Agreement utilise any of the Plaintiff's confidential or proprietary information including, but not limited to, the Proprietary Materials, for himself, or any person or entity other than the Plaintiff unless authorised to do so in writing (clause 11).
- (xiii) The Defendant shall neither solely nor jointly with or on behalf of any other person directly or indirectly for a period of one year after the expiration or termination of the Agreement contact, solicit or engage in real estate business with any of the Plaintiff's clients, customers, or leads contained in the Plaintiff's database, or cause or permit any person, directly or indirectly, under the Defendant's control to do any of the acts or things prohibited by the Agreement (clause 11).

- (xiv) The remedy of damages for any breach of clause 11 may be inadequate and in the event of such a breach the Plaintiff shall be entitled to make an application to the appropriate court for injunctive relief against the Defendant. Such relief shall not affect the Plaintiff's right to seek to recover any loss and damage by it as a result of the Defendant's breach (clause 11).
  - (xv) The Defendant shall be required to indemnify the Plaintiff in respect of all legal costs and expenses incurred as a result of any proceedings taken to enforce the Plaintiff's rights in accordance with the terms of the Agreement (clause 11).
  - (xvi) Clauses 10 and 11 survive and continue in full force notwithstanding any termination or the Agreement (clause 12).
6. From the commencement of the Agreement it was agreed between the parties that the Defendant would be remunerated on the basis of the following commission plan, as set out in the Plaintiff's "**Commission Plan**" at that time in effect:
- (i) From the gross commission received from each relevant real estate transaction the following fees would be deducted:
    - i. 6% Royalty Fee;
    - ii. 2% CIREBA Fee; and
    - iii. 8% Agent Advertising Fund.
  - (ii) Net commission would therefore be 84% of the original commission;
  - (iii) Of the net commission the Defendant was entitled to 55% and the Plaintiff was entitled to 45% in the event that the Defendant represented both the listing side and buying side of the real estate transaction. If the Defendant represented only the listing side of the real estate transaction, the Defendant was entitled to 52.5% and the Plaintiff was entitled to 47.5% of the net commission of the real estate transaction. If the Defendant represented only the buying side of the real estate transaction, the Defendant was entitled to 50% and the Plaintiff was entitled to 50% of the net commission of the real estate transaction.
7. From January 2021 it was agreed between the Plaintiff and the Defendant that the commission structure would be amended to the following, as set out in the Plaintiff's amended commission plan entitled "Commission Plan – Independent Contractor":
- (i) From the gross commission received from each relevant real estate transaction the following fees would be deducted:
    - i. 6% Royalty Fee;
    - ii. 1% CIREBA Fee; and
    - iii. 6% Agent Advertising Fund.
  - (ii) Net commission would therefore be 87% of the original commission;
  - (iii) Of the net commission the Defendant was entitled to 53% and the Plaintiff was entitled to 47%.

8. This commission structure remained in place until termination of the Agreement.

### Termination of the Agreement

9. On 2 October 2021 the Defendant sent an email to the Plaintiff providing written notice of termination of the Agreement, purporting to be termination with immediate effect. This was in breach of clause 8(a) of the Agreement which required 30 days' notice to be provided. By way of letter dated 13 October 2021, however, the Plaintiff accepted the notice and the immediate termination. As such the Agreement terminated on 2 October 2021.

### Breaches of the Agreement

10. During the term of the Agreement the Defendant was involved in various real estate transactions from which the Defendant personally profited and which the Defendant failed to declare to the Plaintiff. The Defendant failed to account to the Plaintiff for any sums owing to the Plaintiff from these transactions in accordance with the terms of the Agreement.
11. The Defendant committed the following breaches of the Agreement during its term:
  - (i) In breach of clause 1(e) of the Agreement the Defendant did provide or agreed to provide real estate services for which, whether directly or indirectly, the Defendant received compensation. Such services were not provided through the Plaintiff in accordance with the terms of the Agreement and the Plaintiff was not informed that the transactions had taken place.
  - (ii) In breach of clause 4 the Defendant has received payments, or otherwise caused payments to be made to persons other than directly to the Plaintiff for relevant transactions.
  - (iii) By virtue of diverting these payments away from the Plaintiff the Defendant caused the Plaintiff loss and prevented the Plaintiff from deducting any fees from such payments owed to the Plaintiff by the Defendant in accordance with the terms of the Agreement in further breach of clause 4.
  - (iv) If, which shall become apparent from discovery, the Defendant received incentive bonuses offered by clients, with monetary or for a non-monetary value during the term of the agreement and failed to declare them this is in breach of clause 4.
  - (v) In breach of clause 10 the Defendant failed to treat pending sales and listings taken by the Defendant during the term of the Agreement as the Plaintiff's proprietary material.
  - (vi) In breach of clauses 10 and 11 the Defendant utilised the Plaintiff's confidential or proprietary information for himself and for his own personal gain to the Plaintiff's detriment without the Plaintiff's authorisation.

(together the "**Term Breaches**")

## Post Termination of the Agreement

12. Subsequent to, or around the time of, the termination of the Agreement the Defendant, directly or indirectly, approached one or more of the Plaintiff's clients in an attempt to solicit work from them.
13. After termination of the Agreement the Plaintiff therefore continued to breach the terms of the Agreement. In particular the Defendant:
  - (i) made use of the Plaintiff's Proprietary Material in breach of the terms of the Agreement in breach of clause 11; and
  - (ii) Solicited the Plaintiff's customers or leads in breach of clause 11.

(together the "**Termination Breaches**")

14. By way of Notice dated 6 October 2021 and served on the Defendant by email, Nelsons Attorneys at Law Ltd., instructed by the Plaintiff, wrote to the Defendant demanding that he cease and desist any continuing breaches of the Agreement and that he sign undertakings to that effect (the "**Undertakings**"). The Defendant signed the Undertakings and returned them to Nelsons by email on 6 October 2021. The Undertakings were set out as follows:

*"By signing this letter you confirm that:*

1. *You will not breach the terms of the Agreement, as they apply after the date of termination of the Agreement, in any manner from this date forward. This includes, but is not limited to, an undertaking that you will not:*
  - a. *Directly or indirectly solicit or engage in real estate business with any of Our Client's customers or leads contained in Our Client's database for a period of one year from termination of the Agreement;*
  - b. *Directly or indirectly encourage any other person to solicit or engage in real estate business with any of Our Client's customers or leads contained in Our Client's database for a period of one year from termination of the Agreement;*
  - c. *Use, or make available to any competitor or potential competitor of Our Client, any of Our Client's proprietary material, as defined in the Agreement;*
  - d. *Approach Our Client's employees/consultants/staff/agents and encourage them to breach or terminate their relationship with Our Client or encourage them to use proprietary material in a manner which would breach the Agreement"*
15. On 13 October 2021 Nelsons wrote a letter to the Defendant, sent by email, setting out the Plaintiff's position on the breaches at paragraphs 11 to 13 of this Statement of Claim and requesting that the Defendant render an account of all real estate transactions not disclosed to the Plaintiff since 19 June 2018. On 17 October 2021 KSG Attorneys responded to the letter, limited to requesting a copy of the Agreement. On 18 October 2021 such copies were provided.

16. On or around 8 November 2021, in breach of the Undertakings, in particular 1(a) of the Undertakings, the Defendant approached Ms. Delene Cacho, an existing client of the Plaintiff's, of which the Defendant was aware, and sought to solicit real estate business from her.
17. On 9 November 2021 KSG Attorneys at Law Ltd. responded substantively to the Nelsons' 13 October 2021 letter. KSG Attorneys at Law Ltd., on behalf of the Defendant, disclosed three real estate transactions (the "**Declared Transactions**") which the Defendant had entered into in breach of the terms of the Agreement. The Declared Transactions did not amount to full and frank disclosure of all real estate transactions entered into by the Defendant during the term of the Agreement or otherwise in breach of the terms of the Agreement.

### Remedies

18. The Defendant has profited from the Term Breaches by failing to declare monies received from real estate transactions in breach of the Agreement and thereby preventing the Plaintiff from receiving monies due to it from the relevant transactions. Such profit having been made by the Defendant from the unlawful Term Breaches, the Defendant is now under a duty to account to the Plaintiff for the proceeds obtained as a result of the Term Breaches. The Plaintiff is entitled to an account to be taken or an inquiry to be made.
19. If the Defendant has profited from the Termination Breaches by soliciting clients from the Plaintiff or by otherwise profiting or benefiting from use of the Plaintiff's Proprietary Material the Defendant is now under a duty to account to the Plaintiff for the proceeds obtained as a result of the Termination Breaches. The Plaintiff is entitled to an account to be taken or an inquiry to be made.
20. The Defendant has been unjustly enriched by virtue of profiting from the Term Breaches and the Termination Breaches and the Plaintiff is therefore entitled to damages for unjust enrichment.
21. The Defendant has continually breached the terms of the Agreement including by virtue of the Term Breaches and the Termination Breaches, and has breached the terms of the Undertakings on at least one occasion. The Plaintiff therefore seeks an injunction restraining the Defendant, whether by himself, his servants or agents or otherwise, from breaching the terms of the Agreement, such as they apply beyond the date of termination of the Agreement.

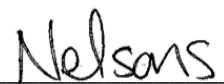
### Costs and Interest

22. The Plaintiff claims its legal costs in pursuing the Defendant for its damage and loss on the indemnity basis in accordance with clause 11 of the Agreement and, in the alternative, in accordance with the Court's standard powers to award costs.
23. The Plaintiffs are entitled to interest on any loss and damages at a rate of 2 3/8% per annum calculated pursuant to the Judicature Law (2021 Revision) and the Judgment Debt (Rates of Interest) Rules (2021 Revision), as amended from time to time.

**THE PLAINTIFFS THEREFORE CLAIM:**

- (1) An order that an account be taken or an inquiry be made for all monies received by the Defendant, or persons other than the Plaintiff, arising from the Term Breaches and/or the Termination Breaches of the Agreement;
- (2) An order for the payment by the Defendant to the Plaintiff of such sums as found due the Plaintiff after the taking of such an account or the making of such an inquiry;
- (3) An order that the Defendant does pay to the Plaintiff damages and/or compensation for unjust enrichment;
- (4) An injunction restraining the Defendant, whether by himself, his servants or agents or otherwise, from breaching the terms of the Agreement, such as they apply beyond the date of termination of the Agreement, and in particular an injunction prohibiting the Defendant from:
  - a. receiving, directly or indirectly, any payments for any real estate instructions entered into in breach of the terms of the Agreement;
  - b. keeping, retaining, making use of, or providing to any persons other than the Plaintiff any of the Plaintiff's confidential or proprietary material, including but not limited to, the Proprietary Materials;
  - c. either solely or jointly with or on behalf of any other person, directly or indirectly, contacting, soliciting or engaging in real estate business with any of the Plaintiff's clients, customers or leads contained in the Plaintiff's database, or causing or permitting any person, directly or indirectly, under the Defendant's control to do any of the acts or things prohibited in the Agreement prior to 2 October 2022; or
  - d. approaching the Plaintiff's employees/consultants/staff/agents and encouraging them to breach or terminate their relationship with the Plaintiff.
- (5) An Order that the Plaintiff does return or destroy any of the Plaintiff's confidential or proprietary material still in his custody, possession or power;
- (6) Interest 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;
- (7) Costs in accordance with clause 11 of the Agreement and paragraph 5(xv) of this Statement of Claim; or
- (8) Costs, in the alternative; and
- (9) Such further and other relief as this Honourable Court may seem just;

**DATED** at Grand Cayman this 3<sup>rd</sup> day of December 2021



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**Nelsons**  
**Attorneys for the Plaintiff**

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

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons., Attorneys-at-Law, for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2021

BETWEEN:

THOMPSON REALTY LTD. T/A CENTURY 21

PLAINTIFF

and

ROBERT BODDEN

DEFENDANT

**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 Defendant

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

Nelsons  
Attorneys at Law  
PO Box 30069  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1201  
Attn: A Carver  
Ref: 8469-0001

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

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**

**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.