



COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

BETWEEN:

- (1) CHRISTOPHER CARROLL
- (2) MALLORY CARROLL

Plaintiffs

AND

- (1) RODERICK HARBECK
- (2) CAYMAN ISLANDS SOTHEBY'S INTERNATIONAL REALTY

Defendants

WRIT OF SUMMONS

- TO:**
- (1) Roderick Harbeck of Unit 2, Coccoloba Condominiums, 1002 South Church Street, Grand Cayman, PO Box 1537, KY1-1110
 - (2) Cayman Islands Sotheby's International Realty of 5-104 Governor's Square, Seven Mile Beach, Grand Cayman, PO Box 30567, KY1-1203

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 Acknowledgment of Service stating therein whether you intend to contest these proceedings.

This Writ and Statement of Claim was issued by Christopher Carroll, admitted as an attorney-at-law in the Cayman Islands, acting on behalf of himself and Mallory Carroll, and whose address for service is 59 Arvia, Bimini Drive, PO Box 703, KY1-1107.

STATEMENT OF CLAIM

Parties

1. The Plaintiffs were at the material times the renting occupants of Unit 2 Coccoloba Condominiums, 1002 South Church Street, Grand Cayman (the "**Property**").
2. The first Defendant (Roderick Harbeck, referred to as the "**Landlord**" hereafter in this Statement of Claim) was at the material times the owner of the Property and Landlord of the Plaintiffs.
3. The second Defendant (Cayman Islands Sotheby's International Realty, referred to as the "**Landlord's Agent**" hereafter in this Statement of Claim) was at the material times the real estate agent of the Landlord in respect of the initial rental of the Property to the Plaintiffs.

Cause of Action

4. The cause of action for the Plaintiffs' claim is fraudulent misrepresentation and deceit under common law tortious principles.
5. Specifically, the Plaintiffs assert fraudulent misrepresentation and deceit by the Defendants regarding the nature, functionality and maintenance of the air-conditioning system of the Property. The Plaintiffs assert that fraudulent misrepresentations and deceit by the Defendants were inducements that the Plaintiffs relied upon when entering into a series of rental leases for the Property. The Plaintiffs would later learn the Property was not safe for human habitation due to toxic mould caused by malfunctioning and unmaintained air-conditioning appliances.

Leases

6. The relevant leases (together the "**Leases**"), pursuant to which the Landlord received **US\$172,321.91** in total from the Plaintiffs, are as follows:
 - (a) lease of the Property between the Landlord and Christopher Carroll¹ term beginning 29 April 2019 and ending 28 April 2020 pursuant to which the Plaintiffs would pay to the Landlord over the course of 12 months **US\$62,621.91** (being a security deposit of US\$4,817.07 and 12 months' rent at US\$ 4,817.07 per month) ("**Lease 1**");

¹ Only Christopher Carroll is party to the Leases as the "Lessee", whereas Mallory Carroll (as his wife) and Evelyn Carroll (as his daughter) are the other occupants and are referred to in the Leases as the "Lessee's immediate family".

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- (b) lease of the Property between the Landlord and Christopher Carroll term beginning 29 April 2020 and ending 28 April 2021 pursuant to which the Plaintiffs would pay to the Landlord over the course of 12 months **US\$61,200.00** (being 12 months' rent at US\$5,100.00 per month) ("**Lease 2**"); and
 - (c) lease of the Property between the Landlord and Christopher Carroll term beginning 29 April 2021 and ending 28 April 2023 pursuant to which the Plaintiffs would pay to the Landlord over the course of 10 months **US\$48,500.00** (being 10 months' rent at US\$4,850.00 per month) ("**Lease 3**") before discovering the fraudulent misrepresentations and deceit of the Defendants on 26 January 2022 and the extent of danger and leaving the property on the same day (with removal of all personal possessions completed by 28 January 2022 and the keys returned to the Landlord's Agent on that same day).
7. The Plaintiffs entered into the above Leases in reliance on, and inducement by, fraudulent misrepresentations made by the Defendants. Accordingly, the Plaintiffs seek rescission and damages as remedies.

Fraudulent Misrepresentation and Deceit: Overview

8. On 20 April 2019, the Plaintiffs arrived from England to the Cayman Islands for the first time with their young daughter Evelyn Carroll (then aged 3 years old). They stayed in the Comfort Suites as the temporary accommodation provided by Christopher Carroll's new employers and began looking for a new home reasonably close to Evelyn's school (Montessori by the Sea, Prospect Point Road) and Christopher's office at that time (Walkers, Elgin Avenue).
9. On 23 April 2019 the Plaintiffs viewed the Property, which was ideally located for their purposes, and were shown by the Landlord's Agent.
10. Evident to the Plaintiffs while viewing the Property was a vertical air-handler appliance in a utility closet situated in the middle of the Property. It was clearly old, as were all the other visible appliances, such as the washing machine, tumble dryer, fridge, dishwasher and oven. The Plaintiffs were led to believe by the Landlord's Agent that the vertical air-handler was the only air-handler appliance in the Property and was installed post-Hurricane Ivan in 2004.
11. The Plaintiffs followed up after viewing the Property with the Landlord's Agent (specifically, with Ms. Basia Harris) by email to ask (amongst other questions regarding the Property):
- "The appliances are quite old. Are they insured? Any plans to update?"*
12. In response, on 24 April 2019 the Landlord's Agent replied to the Plaintiffs stating that the Landlord had responded:

*"No plans to update appliances as they are **fully functional** [emphasis in bold added]."*

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13. It would later become evident that the Defendants gave the above representation knowing it to be false and without any genuine belief that it was true, or recklessly not caring if it was true or false, with the intention of inducing the Plaintiffs into Lease 1.
14. In actual fact:
 - (a) there were two air-handler appliances in the Property and not just the one shown to the Plaintiffs;
 - (b) the air-handler appliances were not fully functional;
 - (c) both air-handler appliances were old and beyond their reasonable lifetimes for safe usage in a tropically hot and highly humid climate;
 - (d) the Defendants had no reasonable basis on which to make such a representation; and
 - (e) the Defendants (especially the Landlord) would later take extraordinary steps to prevent the discovery by the Plaintiffs of the true state of the appliances.
15. The Plaintiffs had no prior experience or knowledge of air-conditioning appliances and the Defendants were able to exploit this information advantage to deceive. As such, in reliance on and induced by the above fraudulent misrepresentation, which would be followed by many more fraudulent misrepresentations and acts of deceit, the Plaintiffs (acting through Christopher Carroll) would decide on 29 April 2019 to:
 - (a) enter into Lease 1 for the use of the Property as the Plaintiffs' primary dwelling; and
 - (b) sign the related "Pre-Lease Inspection Checklist and Report", which required the Plaintiffs to agree the "Central Air Conditioners" were "Maintained".
16. The Landlord's Agent's deceit was also in relation to its conduct and statements during a physical inspection of the Property immediately before Lease 1 and the Pre-Lease Inspection Checklist and Report was signed. During this inspection, the Landlord's Agent overstated the maintenance of the air-conditioning and omitted key information regarding the air-conditioning appliances, specifically the existence of a horizontal air-handler appliance concealed above a ceiling in a bathroom. This omission would prevent both an initial inspection of the appliance and also the Plaintiffs from subsequently being able to request it being inspected and maintained.
17. Additionally, despite questions by the Plaintiffs regarding whether the air-conditioning was maintained and the Plaintiffs expressing reluctance to sign the "Pre-Lease Inspection Checklist and Report" on the basis that they did not know and could not verify if the air-conditioning was "Maintained", the Landlord's Agent would represent that there was no cause for concern. In the context of deciding whether to sign the Pre-Lease Inspection Checklist and Report, the

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Plaintiffs specifically questioned the Landlord's Agent on the maintenance of the air-conditioning and the musty smell of the Property, and also queried why a filter was not fitted for the vertical air-handler. In response to the Plaintiffs' concerns, the Landlord's Agent represented that the air-conditioning was "Maintained" and, as the Landlord had expressed, fully functional.

18. The Plaintiffs took reassurance from the Landlord Agent's representations, which they relied upon, and which induced them into signing the Pre-Lease Inspection Checklist and Report and Lease 1.
19. Despite subsequent written requests by the Plaintiffs to the Landlord's Agent for confirmation of the basis for its representations leading to Lease 1, no such information has been provided. Accordingly, the Plaintiffs assert that the relevant representations were made by the Landlord's Agent at least recklessly not caring if true or false.
20. The Landlord's fraudulent misrepresentations and deceit were far more extensive and relate to all of the Leases. The Landlord would go to great lengths to prevent issues with the air-conditioning being discovered, including by:
 - (a) preventing any reputable technician entering the Property to perform a full service or maintenance on either air-handler;
 - (b) by performing no works, servicing or checks whatsoever of any description on the horizontal air-handler during the tenancy, despite specific requests from the Plaintiffs for servicing of the air-conditioning system and complaints regarding physical irritation from the conditioned air;
 - (c) repeating groundless statements that the air-conditioning system remained adequately functional despite the Plaintiffs raising performance issues and no inspection or servicing having occurred on which such statements could be based;
 - (d) withholding information on the air-conditioning system and the existence of a horizontal air-handler concealed above a ceiling in a bathroom and servicing the bathrooms and bedrooms despite knowing from the Plaintiffs that:
 - (i) at the latest by October 2019, air cooling performance from that air-handler was sub-optimal; and
 - (ii) at the latest by April 2020, the Plaintiffs were experiencing physical irritation from the air that air-handler dispensed;
 - (e) by paying and briefing tradesmen to come and perform limited superficial inspections on deliberately tight scopes of work and to deceive the Plaintiffs that there were no issues with the air-conditioning or consequent mould;

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- (f) using general handymen unqualified to perform air-conditioning repairs and maintenance to do minor cosmetic work to give the false impression of maintenance on the vertical air-handler; and
 - (g) ignoring recommendations for further air-conditioning maintenance from the few responsible tradesmen that were used and deliberately deceiving the Plaintiffs on the existence and/or validity of such recommendations.
21. The Plaintiffs assert that the above behavior was because the Landlord knew the poor functionality of the air-conditioning before the start of Lease 1 and feared the issue and consequent mould would be discovered.
22. As such, the Landlord would make many more fraudulent misrepresentations and deceitful statements after the start of the tenancy, upon which the Plaintiffs would rely, and which would induce them into entering into Leases 2 and 3 despite their ongoing and repeated concerns expressed regarding the air-conditioning, the need for its maintenance, and fears explicitly concerning mould contamination in such air-conditioning.
23. The only credible explanation for the Landlord not explaining the existence of the concealed horizontal air-handler or ever having it checked in any respect during a 34-month tenancy is that the Landlord knew what would be found: it was not functional.
24. The Landlord's conduct cannot be attributed to lack of relevant expertise on his part. Throughout the tenancy, the Landlord would hold himself out to the Plaintiffs as a person of relevant expertise in air-conditioning systems and mould contamination on the basis of being an architect and construction businessman specifically experienced in such climates. In this regard, he would also point to the expertise in air-conditioning of his son and business partner Aiden Harbeck. The Landlord would use his expertise to berate the Plaintiffs for what he called "unfounded speculation" regarding how air-conditioning systems worked, claiming mould growth in the air-conditioning systems was impossible for lack of permeable surfaces, and that the air-conditioning systems were still fully functional. Such statements of purported fact were made despite neither air-handler having been serviced during the tenancy, and no checks or works whatsoever on the horizontal air-handler, even though the Plaintiffs repeatedly raised concerns regarding physical irritation from the air they would later discover was coming from that specific air-handler.
25. As detailed further below, the actual facts regarding the Property later confirmed to the Plaintiffs were that:
- (a) both air-handlers and all return ducting were extensively infested with mould, which would later be confirmed through laboratory testing of samples to include toxic species; and

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- (b) the cause of such mould was that the air-handlers were excessively old and totally unmaintained, meaning these appliances were not (and could not have been at any material time) fully functional.
26. On 26 January 2022, as soon as the Plaintiffs discovered the actual facts after unilaterally instructing air-conditioning and mould experts to inspect the air-conditioning in the Property, the Plaintiffs took immediate steps to rescind the contract as quickly as possible, including by:
- (a) finding alternative temporary accommodation and sleeping at a different property from 26 January 2022; and
 - (b) moving out completely on 28 January 2022 and returning the keys the Landlord's Agent on that same date.
27. When returning the keys to the Landlord's Agent on 28 January 2022, the Landlord's Agent's employee Jonathan Sparrow took receipt of the keys and admitted to the Plaintiffs that the Landlord was not a good Landlord.
28. Following testing, laboratory results confirmed "Very High Relative" mouldiness in the Property and that "Re-occupancy is ill-advised until further remediation and re-assessment are conclusive."
29. The Plaintiffs assert that no person with relevant experience (such as the Defendants) could reasonably have expected such appliances to be fully functional or remain reasonably functional absent extensive care and maintenance, let alone any substantive care or maintenance, or that a resulting mould infestation would not quickly occur in such a humid tropical environment.
30. The deliberate resistance of the Landlord to provide such care and maintenance, whilst having knowledge of the Plaintiffs' physical suffering, was clearly motivated by deceit for profit and is evidence that he was aware all along of issues.
31. In summary, the words and conduct of both Defendants in relation to Lease 1 and the Landlord in relation to Leases 2 and 3 were acts of fraudulent misrepresentation and deceit made with the intention of inducing the Plaintiffs to enter into such contracts and then to prevent the discovery of such deceit after the fact. The Plaintiffs assert that the Defendants made the above representations knowing them to be false, without any genuine belief that they were true, or recklessly not caring if they were true or false.

Fraudulent Misrepresentation and Deceit: Chronology of Material Facts

32. The deceit in this claim is factually framed by the sheer volume of events in the timeline during which the Landlord had the opportunity to act responsibly and honestly but chose not to do so. In other words, it is by viewing the totality of the Landlord's behaviour over a 34-month period

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that his actions are clearly beyond mere negligence. The actions of both Defendants at the start of the tenancy in April 2019 is framed by their later actions up to and including present day. Accordingly, in order to fully particularise a claim of this nature, a non-exhaustive chronology of material facts relevant to the fraudulent misrepresentations and deceit is provided as follows:

- (a) **23 April 2019:** Plaintiffs view Property, which has been unoccupied since February 2019, with the Landlord's Agent. Plaintiffs query musty smell, which Landlord's Agent explains is due to lack of occupancy. Only a single vertical air-handler unit is visible to Plaintiffs situated alongside the hot water tank in a small storage room behind a door. The vertical air-handler appliance is clearly old and the labelling on it indicates it was manufactured in 2004: "MFD: 06/2004". The Plaintiffs do not know at the time what the labelling meant, but the appliances were described by the Landlord's Agent as being installed after Hurricane Ivan in 2004. The Plaintiffs confirm interest in the Property to Agent by email and raise questions including on state of the old appliances.
- (b) **24 April 2019:** Landlord, via Landlord's Agent, confirms the appliances are fully functional.
- (c) **29 April 2019:** Christopher Carroll signs Lease 1 and Pre-Lease Inspection Checklist and Report on basis of representations and deceit by Landlord and Landlord's Agent regarding functionality and maintenance of air-conditioning appliances. Plaintiffs move in and immediately seek further clarification on air-conditioning maintenance from the Landlord.
- (d) **30 April 2019:** the Landlord emails the Plaintiffs to explain the requirements for air-conditioning appliance maintenance. The Landlord refers to separate supply and return ducting systems for the bedrooms and living room in the context of explaining where filters need to be changed, but only refers to one air-handler unit. The Landlord does not refer to any planned servicing or maintenance.
- (e) **21 October 2019:** Mallory Carroll reports to the Landlord air-conditioning functionality issues in the master bedroom. The Landlord deceives the Plaintiffs into believing the air-conditioning was being maintained and represents that periodic maintenance will follow, but the air-handler appliances receive no checks at this time nor any scheduled servicing after this time. No mention is made of the horizontal air-handler.
- (f) **5 March 2020:** Christopher Carroll signs Lease 2 based on the above deceit.
- (g) **23 April 2020:** Plaintiffs report to the Landlord physical symptoms consistent with mould exposure and a mould sighting on the bathroom supply air vent. The horizontal air-handler supplying air into bathroom is still not mentioned by the Landlord and it is not inspected nor maintained in response. Around this date, Ancel's Air Conditioning

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& Appliance Repairs attended to briefly conduct a superficial inspection of the vent where the mould was seen. Dust cleaning was recommended. The air-handlers and connecting ducts were not checked and maintenance was not performed.

- (h) **4 July 2020:** Following a fluid leak from the vertical air-handler appliance, Andro attend to do limited work emptying the overflow tray of the vertical air-handler and attribute the issue to a lack of maintenance. Andro advise maintenance of air-handlers every 3 months. The Landlord does not act on this advice.
- (i) **21 September 2020:** the Plaintiffs request a mould inspection and the Landlord sends Sean Ebanks from Pro-Clean allegedly to check for mould, despite the fact that Pro-Clean does not offer a full service for mould remediation, duct cleaning or servicing air-conditioning systems. The air-conditioning and ducting is not actually inspected and no mould is found, but high humidity is found. Sean Ebanks recommends to the Landlord that the air-conditioning should be fully serviced by a reputable company and to assess what could be the cause for high humidity and how it could be corrected as he did not identify the cause of the high humidity. The Landlord does not act on this advice.
- (j) **5 November 2020:** Mallory Carroll requests to the Landlord that the air-conditioning be serviced following performance issues. Without any basis in fact, the Landlord states the air-conditioning is functioning fine and suggests changing the filters again.
- (k) **7 November 2020:** Mallory Carroll flags external wall leaks during heavy rain. The Landlord explains that the problem pre-dates Lease 1 and he had hoped a renovation of the condominium on the floor above had fixed the problem. The Landlord would later attempt an insurance claim under storm coverage to claim the existing damage was newly caused by Tropical Storm Eta. The Plaintiffs do not know if he was successful in his insurance claim but the leaking was not fixed during their tenancy and the wall would continue to leak periodically during heavy rain causing humidity issues in the Property.
- (l) **8 March 2021:** As part of negotiations for Lease 3, the Plaintiffs request a full air-conditioning service and duct investigation because of musty smells, sneezing and irritation. The Landlord agrees, thereby inducing the Plaintiffs into Lease 3, but does not make good on this agreement.
- (m) **18 March 2021:** Christopher Carroll signs Lease 3 based on the above deceit.
- (n) **15 August 2021:** Mallory Carroll requests again an air-conditioning service.
- (o) **16 August 2021:** In further discussion with Landlord, Mallory Carroll sends a video showing damp and mould staining around the vertical air-handler. The Landlord sends Complete Construction to carry out superficial cleaning. Complete Construction are generalist repair people that were used by the Landlord for minor maintenance and

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works, including maintaining patio mosquito screens, repairing broken kitchen units and hanging hooks for a hammock. The Landlord used Complete Construction to deceitfully create the impression to the Plaintiffs of air-conditioning maintenance on the vertical air-handler.

- (p) **14 December 2021:** Plaintiffs discover mould in ducting for themselves and inform the Landlord.
- (q) **15 December 2021:** Sean Ebanks from Pro-Clean attends the Property in person for a second visit and is shown the mould. Sean Ebanks explains he is not qualified to inspect air-conditioning systems and that Pro-Clean does not sample or test mould. Christopher Carroll updates the Landlord, who states he will send a handyman to assist with access to the ducting for closer inspection.
- (r) **21 December 2021:** The handyman arrives and removes the master bedroom supply vent grill. Mould is clearly visible. The Plaintiffs update the Landlord.
- (s) **23 December 2021:** Air-conditioning tradesmen from iCool attend to remove visible mould but discover more mould and report this fact to the Landlord and Plaintiffs. iCool bring the horizontal air-handler to the attention of the Plaintiffs for the first time. iCool make the Plaintiffs aware that there is still mould in supply ducting from the horizontal air-handler after they have finished their day of work.
- (t) **4-22 January 2022:** the Plaintiffs and Landlord engage in dispute over email and telephone regarding a proposal by the Plaintiffs that the air-conditioning be inspected by air-conditioning professionals. The Plaintiffs insist on the basis that Mallory Carroll was pregnant and because of the potential risks to the baby. The Landlord is highly resistant to any air-conditioning technician attending and clearly agitated by the Plaintiffs' insistence. The Landlord ultimately refuses the Tenant's request and instead sends handymen to look at other issues (specifically, bathroom extractor fans). The Plaintiffs lose confidence in the good faith of the Landlord and start to suspect deceit, so make plans to perform their own independent investigations.
- (u) **25-26 January 2022:** Plaintiffs instruct air-conditioning experts (Otis Air and Polar Bear) and mould experts (GrimeX) to attend to investigate. Widespread mould found and attributed to absence of maintenance of air-conditioning by Otis Air. Polar Bear test air quality and humidity in the Property whilst air-conditioning has been running with fan on "AUTO", with all doors and windows shut, and without the showers/bath having been run that day and find high humidity. Polar Bear confirm the bathroom extractor fans were not a material factor as the climate is tropical, meaning air extracted by the fans must be replaced by the high humidity air from outside, which does not sufficiently lower humidity to prevent mould. Instead, Polar Bear recommended a performance check on the air-conditioning appliances. The Plaintiffs start to move out and sleep elsewhere in temporary accommodation.

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- (v) **28 January 2022:** Plaintiffs complete move out. Andro attend to inspect air-conditioning on Landlord's instructions and find mould, which they attribute to poor maintenance of the air-handler appliances and the drains blocking. The Plaintiffs give the keys to the Property back to the Landlord's Agent and they confirm they are aware that the Landlord is not a good landlord. The Tenants notify the Landlord that they have vacated the Property.
33. In addition to the above, the Plaintiffs assert that in hindsight the Landlord was generally evasive and deceitful in discussions regarding the functionality and maintenance of the air-conditioning appliances throughout the above timeline, including in numerous telephone conversations between the Landlord and Mallory Carroll (which were a regular occurrence).
34. The Landlord's course of conduct throughout the relevant time indicates at least blind-eye knowledge of the problems to be found if the air-conditioning appliances were properly inspected or serviced by an air-conditioning technician with reasonable care and skill (and which were immediately found when such a technician eventually carried out such an inspection).
35. The Plaintiffs assert that in order to deceive for so long the Landlord deliberately kept communications wherever possible to telephone discussions with Mallory Carroll because, by her own contemporaneous admission, air-conditioning was "voodoo" to her. The Landlord was opportunistic in exploiting any misunderstandings of the air-conditioning system and maintenance requirements that the Plaintiffs displayed.

Fraudulent Misrepresentation and Deceit: Summary

36. In summary, the Plaintiffs claim that the totality of the Defendants conduct particularised over the total relevant period shows knowledge (actual or blind-eye) that the air-conditioning appliances were not at any material time fully functional nor adequately maintained nor free from high levels of mould, and that there was never any intention to carry out appropriate maintenance on the air-handlers during the tenancy.
37. Indeed, given the age of the appliances, the total absence of maintenance is in itself evidence of this point: it must have been known to Defendants that the air-conditioning appliances were not fully functional and were in fact in need of replacement or repair that the Landlord was unwilling to carry out during the relevant time period.
38. Dishonesty is the only credible explanation as to why the aging air-handlers were not serviced by the Landlord - whom has extensive expertise and experience in construction and real estate in this climate - during a 34-month tenancy, despite numerous specific requests and issues

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highlighted by the Plaintiffs and recommendations made by the Landlord's own tradesmen (notably, Andro and Pro-Clean).

Particulars of Loss and Damage

39. The reliefs claimed by the Plaintiffs for fraudulent misrepresentation and deceit are rescission of the Leases and damages at common law with no remoteness limit. As a result of the fraudulent misrepresentation and deceit, the Plaintiffs have suffered both financial and non-financial loss and damage and seek relief on the basis of tortious principles.
40. Firstly, the Plaintiffs claim the amount of US\$172,321.91 paid to the Landlord by the Plaintiffs. The Plaintiffs have calculated the US\$172,321.91 figure on the basis of it being the total amount of rent and deposit monies paid over to the Landlord, as a consequence of the fraudulent misrepresentations, for an unsafe dwelling. The basis for this calculation reflects that compensation for housing disrepair due to landlord negligence ranges from 25% to 50% of rent of the property; however, in cases where a property is completely uninhabitable and the causation involves landlord dishonesty (rather than mere negligence), 100% compensation of rent is appropriate.
41. In addition, under the tort of deceit the Plaintiffs claim:
- (a) **financial damage:** being directly related medical costs (including blood and urine tests for the Plaintiffs, antifungal medication and a CT scan for Christopher Carroll, and the cost of replacing and decontaminating various possessions), the costs of investigating the air-conditioning and mould, and costs incurred relocating and finding alternative accommodation, estimated presently to be approximately US\$5,000.00 (subject to the assessment of the Court); and
 - (b) **non-financial damage:** estimated by the Plaintiffs (subject to the assessment of the Court) to be worth US\$350,000.00 in relation to:
 - (i) **pain and suffering and loss of amenities:** the health issues² of the Plaintiffs and their young daughter Evelyn Carroll (aged between 3 and 6 during the tenancy) that arose in the Property (and which were alleviated during two extended periods of time spent in the United Kingdom away from the Property and since leaving the Property), which variously included:
 - i. chronic fatigue;
 - ii. headaches;

² Supported by contemporaneous notes, including medical records, WhatsApp and email messages.

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- iii. difficulty sleeping;
- iv. anxiety;
- v. unusual levels of forgetfulness and confusion;
- vi. eye irritation and bleeding;
- vii. sneezing;
- viii. nose, throat, ear and skin infections;
- ix. sinus irritation and infections;
- x. menstruation and fertility problems, including an early-stage miscarriage³;
- xi. nausea; and
- xii. persistent diarrhoea;

- (ii) **physical inconvenience and discomfort:** for the inconvenience and discomfort associated with unnecessarily living in musty, humid and mould infested air throughout the tenancy – exacerbated by pandemic response measures - and also the inconvenience associated with having to move out upon discovering underlying issues and mould, noting in particular the inconvenience and suffering of Mallory Carroll who was at this time heavily pregnant and anxious to leave a Property which would be especially hazardous for a new-born baby to live in; and
- (iii) **aggravated damages:** for compensation for mental distress due to the manner in which the tort was committed, which involved the Landlord going to great lengths to deceive the Plaintiffs of his expertise and good intentions in order to gaslight and manipulate the Plaintiffs, causing extreme mental anguish to the Plaintiffs upon the realisation that the Landlord was in actual fact dishonest and Evelyn Carroll, in particular, had been exposed to unsafe living conditions for so long whilst so young.

42. In quantifying the above figure of US\$350,000.00, the Plaintiffs recognise the inherent difficulty in quantifying compensation for non-financial damage and the impressionistic nature of any

³ Note: whilst Mallory Carroll would become pregnant during the tenancy, this was only possible in 2021 during an extended break from the Property of around 2 months in the United Kingdom followed by 16 days quarantined in a different Cayman Islands property, during which all symptoms of the family would alleviate before becoming exacerbated again upon re-entering the Property.

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calculation used. However, as the Landlord knows, the Plaintiffs moved to the Cayman Islands from London in the hope of obtaining clean air and a healthier lifestyle for themselves and their daughter, and left behind professionally successful and personally happy lives in London to try and fulfil that goal. The Landlord's deceit destroyed that goal and robbed them of the primary purpose of being in the Cayman Islands, blighted them with physical and mental pain and suffering, and tainted what could have been happy years for the Plaintiffs with their young daughter. The value of this loss is priceless to the Plaintiffs. The Plaintiffs also assert that the price and marketing of the Property was not as an inexpensive home, but rather as a luxury home - rented under the prestigious Sotheby's brand - the inherent value of which was precisely to facilitate high levels of happiness, convenience and comfort. In stark contrast, what was received in reality was a confusing nightmare, which was poisoning the Plaintiffs and their child. In light of this, the calculation the Plaintiffs have used is US\$10,000.00 for each month the Property was rented (34 months in total) plus US\$10,000.00 for the month of temporary accommodation and relocation.

43. In relation to the causation of pain and suffering of the Plaintiffs being due to the existence of mould in the Property, caused in turn by the deceitfully hidden malfunctioning nature of the air-conditioning appliances, the Plaintiffs assert that this causation is clearly shown on the balance of probabilities. Both Plaintiffs have received test results showing abnormal levels of Aspergillus antibodies and Chris Carroll was prescribed oral antifungal medication (Mallory Carroll could not receive the same due to being pregnant). The outcome of those tests – on individuals in their mid-thirties that are healthy with no underlying health conditions – demonstrates that the mould in the Property was physically affecting the Plaintiffs and on the balance of probabilities was the cause of the health issues. Additionally, the Plaintiffs' health issues have subsided since permanently leaving the Property, and also were alleviated during their various prolonged periods away from the Property.
44. In total, the Plaintiffs claim US\$527,321.91 in general and aggravated damages under tortious principles plus interest subject to the Court's assessment.
45. The Plaintiffs further claim exemplary damages, to be assessed by the Court, on the basis that the Defendants showed dangerously dishonest conduct motivated by the pursuit of profit that must be deterred in future. The Landlord in particular showed extraordinary recklessness to young human life by:
 - (a) knowing a young child, Evelyn Carroll, was living in the Property;
 - (b) having full knowledge that Mallory Carroll was pregnant; and
 - (c) attempting to deceive the Plaintiffs as to the existence and extent of the mould infestation even after, without doubt, obtaining actual knowledge of the full extent of the same from iCool in December 2021, and attempting, through threats of legal

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proceedings intended to intimidate, to prevent the Plaintiffs from ending their lease in order to continue profiting from the tenancy without remediating the mould or maintaining the air-conditioning appliances.

46. On the advice of their obstetrician, the Plaintiffs understand that under no circumstances should a baby have been exposed to the environment that existed in the Property, meaning the Plaintiffs potentially escaped tragedy by uncovering the Landlord's deceit at the time that they did and by having sufficient financial means and legal expertise not to be bullied into staying in an uninhabitable home. However, on the basis that other's might not be so lucky, the Plaintiffs request that the Court considers exemplary damages as a message to landlords and their agents in the Cayman Islands that they cannot act with impunity in similar circumstances involving dishonesty to profit from unsafe properties at the expense of the health of children.
47. Regarding the apportionment of damages between the Defendants, the Plaintiffs acknowledge the more wide-ranging conduct of the Landlord. However, but for the veneer of respectability provided by the Landlord's Agent's brand to the Landlord – which was provided despite its own confessed doubts over the character of the Landlord - and its initial role in the deceit and fraudulent misrepresentations, the Defendants would never have become involved in the Property nor suffered their related damages. For this reason, the Plaintiffs contend that the Defendants should have joint and several liability subject to assessment by the Court.

Claim for Interest

48. Further, the Plaintiffs claim interest under the equitable jurisdiction of the Court.

Pre-Action Conduct

49. On 4 March 2022 the Plaintiffs sent the Defendants a pre-action letter detailing their Claim. This letter notified the Defendants of the general principles of pre-action conduct and that the Court will expect the parties to have exchanged sufficient information to (amongst other things): (a) understand each other's positions; (b) make decisions about how to proceed; and (c) try to settle the issues without proceedings. The letter also notified the Defendants that failure to respond would lead to the Plaintiffs commencing legal proceedings in the Cayman Islands against the Defendants and may increase their liability for costs.
50. The Plaintiffs' pre-action letter provided the following to the Defendants:
 - (a) extensive video evidence of the Otis Air air-conditioning inspection;
 - (b) Environmental Relative Mouldiness Index Analytical Report – household dust sample results – date of sampling 26 January 2022;

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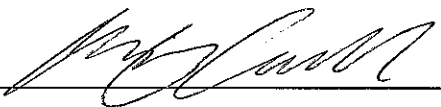
- (c) Mould Report – air-conditioning supply duct sample results – date of sampling 26 January 2022; and
 - (d) photos of air-conditioning taken by Otis Air on 26 January 2022.
51. The Plaintiffs' pre-action letter requested the following from the Defendants within 14 days:
- (a) documents and/or correspondence from 2019, 2020, 2021 and 2022 confirming the results and recommendations of any actual or purported inspection, works or maintenance of the Property's air-conditioning system including the name of such service provider and, in particular, the results of the enquiries which the Defendant's made in order to represent that the air-handler appliances were "fully functional" and remained so during the tenancy; and
 - (b) documents and/or correspondence from 2019, 2020, 2021 and 2022 confirming the results of any actual or purported inspection for mould, including the name of such service provider.
52. The pre-action letter also requested a substantive response within 21 days of the date of the letter.
53. On 22 March 2022 Paul Keeble of Hampson and Company confirmed to the Plaintiffs by email that he is instructed by the Landlord. On 24 March 2022, Kyle Broadhurst of Broadhurst Attorneys-at-Law confirmed to the Plaintiffs by email that he is instructed by the Landlord's Agent.
54. At present date, no substantive response or documents have been received from either of the above instructed attorneys, nor any proposed timeline for the same, despite follow-up requests. Paul Keeble has confirmed that he is not instructed to accept service of process in this matter.
55. Accordingly, the Plaintiffs assert that the Defendants have not complied with the general principles of pre-action conduct and requests that the Court considers this in a costs assessment.

And the Plaintiffs Claim

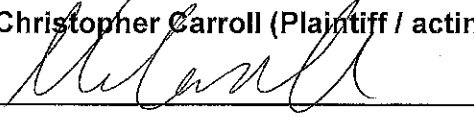
- (1) Damages on the basis of tortious principles (including aggravated and exemplary damages).
- (2) Interest under the equitable jurisdiction of the Court.
- (3) Costs.

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DATED this 13th day of April 2022



Christopher Carroll (Plaintiff / acting in person as attorney-at-law)



Mallory Carroll (Plaintiff)

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**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, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 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 Plaintiffs 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 overleaf for Notes for Guidance

This Writ and Statement of Claim was issued by Christopher Carroll, admitted as an attorney-at-law in the Cayman Islands, acting on behalf of himself and Mallory Carroll, and whose address for service is 59 Arvia, Bimini Drive, PO Box 703, KY1-1107.

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.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

BETWEEN:

- (1) CHRISTOPHER CARROLL
- (2) MALLORY CARROLL

Plaintiffs

AND

- (1) RODERICK HARBECK
- (2) CAYMAN ISLANDS SOTHEBY'S INTERNATIONAL REALTY

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

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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.

Christopher Carroll (acting in personal capacity for both Plaintiffs)
59 Arvia, Bimini Drive, PO Box 703,
KY1-1107

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

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