



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

CAUSE NO: _____ OF 2022

BETWEEN:

- (1) VALENTINO SALVI**
- (2) KEYSHA SAILSMAN**

PLAINTIFFS

AND:

- (3) GEMINI DEVELOPMENT LIMITED**

DEFENDANT

WRIT OF SUMMONS

TO: Gemini Development Limited
P.O. Box 77 WB, Grand Cayman KY1-1301

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

Within 14 days (or, if leave is required to effect service out of the jurisdiction, such other period as is specified in the attached Acknowledgement of Service of Writ of Summons) 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 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 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 day of July 2022.

This Writ of Summons and Statement of Claim was issued by KSG, attorneys for the Plaintiffs, whose address for service is 4th Floor Harbour Centre, 42 North Church Street, PO Box 2255, Grand Cayman KY1-1107, Cayman Islands [JK/2688]

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 Acknowledgement of Service are given with the accompanying form.

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STATEMENT OF CLAIM

The Parties

- 1. The Plaintiffs are individuals resident in the Cayman Islands.
- 2. The Defendant is a company incorporated under the laws of the Cayman Islands.

Factual Background

The Agreement

- 3. By an agreement in writing dated the 24th day of July 2020 the defendant agreed to sell and the plaintiff agreed to buy a parcel of land known as Registration Section West Bay North East, Block 8A, Parcel 129H2 (the "Property") upon which the defendants would construct a dwelling prior to the completion of the sale ("Agreement").
- 4. Clause 3 of the Agreement required that the plaintiffs pay to the defendant's real estate agent the sum of CI\$62,900 by way of deposit ("Deposit"). The plaintiffs duly paid the deposit.

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5. Clause 4 of the Agreement is in the following terms:

4. Completion

4.1 Save as hereafter provided, completion shall take place not later than twenty-one (21) days after such date as the Vendor shall notify the Purchaser that the Vendor has:

4.1.1 Completed construction of the Dwelling;

4.1.2 completed the registration of the Strata Plan;

4.1.3 completed the registration of the By-Laws;

4.1.4 received from the Registrar of Lands notification that a register has been opened for the Strata Lot; and

4.1.5 received a Certificate of Fitness for Occupancy for the Dwelling on the Strata Lot from the Central Planning Authority of the Cayman Islands,

in respect whereof time shall be of the essence (the "Completion Date").

4.2 In the event that by the 30th day of June, 2021 the items set out in sub-clauses 4.1.1 to 4.1.5, inclusive, have not been achieved or are not available, either party may by notice in writing to the other rescind this Agreement whereupon the Purchaser shall be entitled to the return of the Deposit and any other funds paid without interest and the Purchaser shall accept the same in full satisfaction of all claims under this Agreement and thereupon this Agreement shall forthwith be terminated and neither party shall have further rights against the other in respect hereof.

6. The Agreement also included Clause 22 as follows:

22. Completion Notice

22.1 If the sale shall not be completed on the Completion Date, either party, being then himself ready able and willing to complete, may serve on the other party, within fifteen (15) days, notice to complete the transaction in accordance with

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this condition. A party shall be deemed to be ready, able and willing to complete if he could do so but for some default or omission of the other party.

22.2 Upon service of a Completion Notice, it shall become a term of this Agreement that the transaction shall be completed within seven (7) days of the date of service and, in respect of such period, time shall be of the essence.

22.3 If the Purchaser does not comply with a Completion Notice:

22.3.1 the Purchaser shall return forthwith all documents delivered to him by the Vendor and, at his own expense, procure the cancellation of any entry relating to the Agreement in the Land Register; and

22.3.2 without prejudice to any other rights or remedies available to him, the Vendor may:

- a) retain the Deposit together with all other monies paid; and*
- b) re-sell the Strata Lot.*

22.4 If the Vendor does not comply with a Completion Notice, the Purchaser, without prejudice to any other rights or remedies available to him, may give notice to the Vendor forthwith to repay to the Purchaser any sums paid by way of Deposit or otherwise under this Agreement and interest on such sums, at the rate of three per centum (3%) per annum above the prime lending rate for Dollars of the Cayman National bank, from four(4) working days after the date of service of the notice until payment. The Purchaser shall not be entitled to specific performance of this Agreement, but shall forthwith return all documents delivered to him by the Vendor and, at the expense of the Vendor, procure the cancellation of any entry relating to this Agreement in the Land Register.

22.5 Where, after service of a Completion Notice, the time for completion shall have been extended by agreement or implication, either party may again invoke the provisions of this condition.

7. By email of 1st of April 2022, from the defendant to the plaintiffs' personal email addresses, the defendant wrote, *inter alia*: "It brings us great pleasure to inform you that we have

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received the Certificate of Occupancy on your new house, and are ready to proceed with the closing process!" ("1st April Email").

8. The 1st April Email did not notify the plaintiff that the defendant had:
 - 8.1 completed the registration of the Strata Plan;
 - 8.2 completed the registration of the By-Laws;
 - 8.3 received from the Registrar of Lands notification that a register has been opened for the Strata Lot;

Accordingly, the 1st April Email was not a valid notification pursuant to Clause 4.1 of the Agreement ("Clause 4 Notice") and no Completion Date arose.

9. On the 2nd May 2022, the defendants sent by email a "Notice to Complete" purportedly pursuant to Clause 22 of the Contract ("Clause 22 Notice"), requiring completion to occur within 7 days of the giving of the notice. This stipulated that completion must occur by the 9th of May 2022.
10. The defendant was not entitled to serve a Clause 22 Notice absent the service of a valid Clause 4 Notice. No notice that complies with the requirements of Clause 4 has been served on the plaintiffs, whether on the 1st April 2022, or to date of issue of the proceedings.
11. The plaintiffs were not in position to complete on the 9th May 2022 and on the 11th May 2022 the defendant emailed the plaintiffs indicating that it was exercising its rights pursuant to clause 22.3 for failure of the plaintiffs to comply with a Clause 22 Notice, and that it was voiding the Agreement.
12. On the 12th May 2022 the plaintiffs caused correspondence to be sent to the defendant denying that valid notice had been served pursuant to Clause 4 and also on the 12th of May 2022 caused further correspondence to be sent to the defendant indicating that they were ready, willing, and able to complete the transaction contemplated under the Agreement on the same day.

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13. In response to the offer to complete on the 12th of May 2022 the defendant, in breach of contract indicated that the contract had been terminated and that it would refuse to perform the contract then or at any time.

14. As a result of the defendant's breach of contract, the plaintiffs have suffered loss and damages.

Particulars of loss and damages

15. The plaintiffs have:

15.1 paid a deposit of \$62,900.

15.2 Paid for upgrades to the property totalling \$19,387.55 to the defendants

15.3 Paid for further upgrades and expenses in anticipation of closing for the property totalling \$6,245.74 broken down as follows:

Storage Solutions (Custom closets)	\$5,420.74
BCQS Home evaluation	\$825

16. The plaintiffs have also lost the benefit of the capital appreciation of the property representing the difference in value of the property as agreed in the Agreement of \$629,000 and the current market value of the property to be assessed.

AND THE PLAINTIFFS CLAIM AS AGAINST THE DEFENDANT:

(1) A Declaration that:

- a. The 1st April Email did not constitute a valid Clause 4 Notice;
- b. No Clause 4 Notice has been served on the plaintiffs;
- c. No valid Clause 22 Notice has been served on the plaintiffs;
- d. On the 11th May 2022, the defendant was in repudiatory breach of the Agreement by purporting to void the Agreement;
- e. as of the 11th May or such later date as the court determines that the contract was terminated as a result of the repudiatory breach of the defendant;

(2) Damages to be assessed;

(3) Interest on any damages award pursuant to section 34(1) of the Judicature Act (2021 Revision) or on such other basis as the Court may direct;

(4) Costs; and

(5) Such further or other relief as counsel may advise or the Court thinks appropriate.

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DATED this 5th day of July, 2022.

A handwritten signature in black ink, consisting of the letters 'KSG' in a stylized, cursive font.

KSG
Attorneys for the Plaintiffs

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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, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e., the words "Statement of Claim" appear on the top of page 3), 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 Acknowledgement 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

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.

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DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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 or otherwise participate in 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

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 plaintiffs' 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
Grand Cayman KY1-1107
Cayman Islands

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]