



AND COURT OF THE CAYMAN ISLANDS

CAUSE NO. / 2022

BETWEEN:

THE PROPRIETORS, STRATA PLAN NO. 597

PLAINTIFF

AND:

THE PROPRIETORS, STRATA PLAN NO. 905

DEFENDANT

WRIT OF SUMMONS

TO: The Proprietors, Strata Plan No. 905
P.O. Box 77, Grand Cayman KY1-1301

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of West Bay, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 22nd day of July 2022.

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 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. / 2022

BETWEEN:

THE PROPRIETORS, STRATA PLAN NO. 597

PLAINTIFF

AND:

THE PROPRIETORS, STRATA PLAN NO. 905

DEFENDANT

STATEMENT OF CLAIM

The Company, Resort 597 and Residences 905

1. The Plaintiff is a strata corporation established pursuant to s.5(1) of the Strata Titles Registration Act (2013 Revision) (the “Act”), and comprising all proprietors of strata lots within Strata Plan No. 597, otherwise known as Lighthouse Point Resort and consisting of eleven strata lots (of which nine are residential condominium units, and the remaining two are occupied by commercial users), located on the shoreline of West Bay, Grand Cayman and more particularly described as Block 1E, Parcel 15, West Bay North West (hereinafter referred to as “Resort 597”). This matter affects the residential proprietors of the Plaintiff.
2. The Defendant is a strata corporation established pursuant to s.5(1) of the Act, and comprising all proprietors of strata lots within Strata Plan No. 905, otherwise known as Lighthouse Point Residences and consisting of twelve residential strata lots, located adjacent to Resort 597 on the shoreline of West Bay, Grand Cayman and more particularly described as Block 1E, Parcel 14, West Bay North West (hereinafter referred to as “Residences 905”).
3. Prior to any development, Parcels 15 and 14 on which Resort 597 and Residences 905 were respectively later constructed, were owned by a Cayman Islands ordinary company named Lighthouse Point Development Ltd (“the Company”), the directors and beneficial owners of which at all material times were and are, husband and wife, Jay and Nancy Easterbrook.
4. In January 2018, Parcel 15, was stratified by the Company into strata lots as Strata Plan No. 597 by registration as a strata plan under s.10 of the Act, and the strata lots were sold by the Company to various individual purchasers. In accordance with s.5 of the Act the proprietors of the strata lots in the strata plan became a corporation, named “the Proprietors, Strata Plan No. 597” and pursuant to its Articles and the Act, was entitled to manage and administer the common property and act as agent for the proprietor of each strata lot.
5. The Proprietors, Strata Plan No. 597 is the Plaintiff herein representing its, and the interests of the nine individual residential proprietors of the individual strata lots therein.

6. In May 2020 Parcel 14 was stratified by the Company into strata lots as Strata Plan No. 905 by registration as a strata plan under s.10 of the Act. The Defendant is the successor in title to the Company being strata corporation “the Proprietors, Strata Plan 905” representing its, and the interests of the individual proprietors of the twelve individual strata lots therein.
7. The construction of “Residences 905” by the Company was completed with the grant of a Certificate of Fitness for Occupancy by the Cayman Islands Central Planning Authority on 26 June 2020.

The Agreement and the Instruments

8. By email dated August 12, 2017 the Company, as then owner of Parcel 14 (later Strata Plan 905), sought a right to a fire access, said by the Company to be required by the Planning Department and the Fire Marshall, over the common property of Resort 597 for the benefit of both Resort 597 and Parcel 14 (i.e. later Strata Plan 905), in consideration of a perpetual right over and against Parcel 14 in favour of the Plaintiff’s residential proprietors, to use the existing sea water pool on, and a fresh water pool to be built on, what was to be the common property of Strata Plan 905. The Plaintiff agreed to such request. By email of August 13, 2017 the Company supplied to Resort 597 a plan showing the proposed fire access.
9. Pursuant to such agreement the following Covenants in Registered Land Act Form RL 31 of the Registered Land Rules (2018 Revision) were entered into:
 - (i) By Instrument No. 11970/17 registered as set out below on title to Parcel 15 on 4 January 2018 the Proprietors, Strata Plan No. 597 (as they are legally described under the Act) as Covenantor, covenanted with the Company, as Covenantee, that:

"IN CONSIDERATION OF a peppercorn The Covenantee shall have the right to have access for fire-fighting vehicles through the driveway of the Covenantor's Parcel to the Covenantee's Parcel, being registration Section West Bay North West, Block 1E, Parcel 14".

The document was witnessed for both Covenantor and Covenantee by one Paul Simon who was the attorney for the Covenantee.

- (ii) By Instrument No. 11971/17 registered as set out below on title to Parcel 14 on 4 January 2018, the Company as the registered owner of Parcel 14 as Covenantor covenanted with the Proprietors, Plan No. 597 as Covenantee:

"TO IMPOSE COVENANTS IN THE TERMS SET OUT BELOW:

The Covenantee shall have the right to have access for fire-fighting vehicles through the driveway of the Covenantor's Parcel to the Covenantee's Parcel being registration Section West Bay North West, Block 1E, Parcel 15 and the Covenantee, its registered proprietors, tenants, family members (while residing in the strata lot) of proprietors or tenants and guests (while residing in the strata lot) of registered proprietors or tenants shall have the right without charge, to access the Covenantor's Parcel and use the sea pool and fresh water pool to be located or located thereon.” (Emphasis added)

The document was witnessed for both Covenantor and Covenantee by the said Paul Simon who was the attorney for the Covenantee and thereafter acted upon sales to the individual proprietors of strata lots within Residences 905.

10. In the circumstances, each strata lot owner – the Proprietors, Strata Plan No. 597 in respect of Parcel 15, and the Company and its successors, the Proprietors, Strata Plan No. 905, in respect of Parcel 14 - gave positive covenants as set out above. These were positive covenants and, pursuant to s.93 of the Registered Land Act (2018 Revision), binding in each case against successors in title of the Covenantor and Covenantee upon notification on the Land Register.

The proper construction of the right of access to and use of the two pools.

11. In due course the fresh water pool was built on Residences 905's common property. The Plaintiff submits that the proper construction and meaning of the right to access and use the two pools is as follows:-
- (i) The nine individual residential proprietors of Resort 597, their family members, tenants and guests (while residing in the strata lot) have a right of access to and use of the pools which right would be subject to reasonable rules for the use of the pools (including the reasonable cost of maintenance) which rules and cost would affect all permitted users and make no distinction between what use was permitted to and cost imposed upon, residential proprietors, family members, tenants and guests of Resort 597 on the one hand and what use was permitted to and cost imposed upon, proprietors, family members, tenants and guests of Residences 905 on the other.
 - (ii) The words “without charge” do not entitle the proprietors of Resort 597, their family members, tenants and guests, to use the pools free of any charge but mean that Resort 597's residential proprietors are not required to pay anything in the nature of an entrance charge additional to the cost of maintenance and upkeep equivalent to that paid by proprietors of Residences 905.

Registration, actual and constructive notice

12. On 4 January 2018, Instrument 11970/17 was registered on title to the common property of the Strata Plan 597 in favour of the Proprietors of Strata Plan 905. On 4 January 2018 Instrument 11971/17 in favour of the Proprietors, Strata Plan No. 597 (and its successors by virtue of s.93 of the Registered Land Act) was registered on title to the common property of Strata 905.
13. By an error of the Registrar of Lands, both Instruments No. 11970/17 and No. 11971/17 were registered only in the Appurtenances Section of the Land Register for the common property of Strata Plan No. 905. In fact, Instrument No 11970/17 was correctly registered in the Appurtenances Section but Instrument No 11971/17 of Strata Plan 905 was noted in the Appurtenances Section instead of the Incumbrances Section. Nevertheless any person consulting the Parcel Register of the common property of Strata Plan 905 would immediately have his attention drawn to Instrument No 11971/17 and become aware of the rights of Resort 597's residential owners to use the sea water and fresh water pools on Residences 905's common property. The Plaintiffs will inter alia rely upon s.30 of the Registered Land Act which states:

“Entries to constitute actual notice

*30 (a). Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of **every** entry in the register relating to the land, lease or charge”.*

[Emphasis added]

14. Accordingly, the Company and every successor in title will be deemed to have had actual notice of Instrument 11971/17 and the rights therein set out. Yet further, any purchaser of Residences 905's strata lots from the Company will have been bound to investigate title and in equity any purchaser would be affected by any instrument, matter or thing within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his attorney (in this case Paul Simon), or would have come to the knowledge of his attorney if such inquiries and inspections had been made as ought reasonably to have been made by the attorney. Accordingly, in addition to actual notice, any purchaser of the Residences 905's strata lots would be deemed to have had constructive notice.

The present state of the Parcel Register

15. Irrespective of or in addition to the matters set out in paragraphs 12, 13 and 14 above, on July 16, 2021 the Parcel Register for the common property of Residences 905, Block IE, Parcel 14, was corrected by the Registrar of Lands to move the reference to Instrument 11971/17 from the Appurtenances Section to the Incumbrances Section. The title to Block IE, Parcel 14 was on July 16, 2021 amended to read correctly in the Incumbrances Section:

“Subject to the Restrictive Covenants in favour of IE 15 as listed in filed instrument [i.e. referring to Instrument No. 11971/17 in the column to the left].”

and the title to the common property of Resorts 597, i.e. Block IE, Parcel 15 amended in the Appurtenances Section to read correctly:

“The benefits of the Restrictive Covenants over IE 14 as listed in Instrument 11971/17”.

The Plaintiff's rights against the Defendants

16. By s.23 of the Registered Land Act the above registrations of the rights of the Plaintiff's residential registered proprietors to use the sea and freshwater pools in accordance with Instrument No 11971/17 is conclusive against the Defendant. Section 23 of the Act states:

“ the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject —

(a) to the . . . incumbrances . . . shown in the register; and ”

In the circumstances and in accordance with s.23 there can be no question but that both common property parcel registers, Block IE Parcel 15 and Block IE Parcel 14 show the right of the residential registered proprietors of Resort 597 to the use of the pools on Residences 905's common property in accordance with Instrument No 11971/17.

The Defendant’s initial acceptance of the obligations set out in the covenant contained in Instrument 11971/17

17. By an email dated July 7, 2020 Nancy Easterbrook on behalf of Residences wrote to the Plaintiff stating:

“Good day occupants of Lighthouse Point Resort;

As I receive weekly enquiries, I wanted to update you on access to the pool at Lighthouse Point Residences. The pool is not open yet for your use. Prior to use, Pool rules and a liability release will be required, which we are working on.”

18. By an email dated July 20, 2020 Nancy Easterbrook on behalf of Residences wrote to the Plaintiff by its Executive Committee stating inter alia:

“I am writing to have a preliminary discussion on the Pool use at the new Residences. We have been working to get all matters finalised, and as such I have attached a draft Pool Use Rules for you to look over.

These same Pool Use rules for Strata #597 had been sent to the Owners at the Residences along with their own general pool use rules.

The Residences Owners are suggesting that the Resort Owners share in the monthly operating costs of the pool, and therefore contribute to it financially to help offset the cost of pool service twice a week, cleaning, salt and other additives.

As the pool use is a right for decades to come, I feel that this is a reasonable request to help share in some of the cost to the pool” (Emphasis added).

19. The Plaintiff will if necessary rely upon the said emails to indicate that Residences 905 and its proprietors were perfectly aware of the rights set out in Instrument 11971/17. Draft Pool Use Rules were attached to the email of July 20, 2020.

20. Save that the Defendant was not entitled to differentiate between the rights of the Resort 597 residential proprietors and the rights of the Residences 905 proprietors, as manifested by the draft Pool Use Rules supplied, the Plaintiff had and has no objection to reasonable pool rules and payment of a fair share of the cost of pool upkeep equipment and maintenance.

The breach of covenant

21. By letter dated 21 September 2020 Campbells, attorneys on behalf of the Defendant, wrote to the Plaintiff asserting that the Plaintiff / its proprietors had no legal right to access the property of Residences 905 for use of the sea and freshwater pools. The letter wrongly stated that the covenant to access the pools was not registered against the common property of Residences 905, Block IE Parcel 14, when it clearly was. In any event from and after July 16, 2021 there could be no possible argument about registration.

22. At all times from the completion of the two pools and commencement of their use and despite requests and in breach of covenant, the Defendant has prevented and/or failed to allow the Plaintiff's residential registered proprietors to have access and use of the two pools in accordance with the covenant set out in Instrument 11971/17.

Declaration, Specific Performance and Damages

23. The right of access to and user of the pools is very valuable. The shore adjacent to the buildings is rocky and unsuitable for sunbathing and swimming and access to the sea through the seawater pool for swimmers and divers is most convenient. Further, for those who do not wish to brave the sea, the freshwater pool is an enormous benefit. The benefits extend far further than the mere personal enjoyment of the residential condominium owners. The condominiums are frequently rented and the rental value of condominiums in Resort 597 are inevitably substantially higher if renters have access to the pools.
24. The Plaintiff is entitled to and seeks as against the Defendant, (i) a declaration that the residential registered proprietors of Strata Plan 597 are entitled to access and the use of the sea and fresh water pools on Residences 905's common property in accordance with Instrument No 11971/17, and (ii) specific performance of the covenant contained in Instrument 11971/17, on the basis that the Plaintiff abides by the same reasonable rules for pool use accepted by the proprietors of Residences 905 including paying a share of the reasonable cost of maintenance, equipment and upkeep, equivalent to that paid by proprietors of strata lots in Residences 905.
25. The Plaintiffs are entitled to and seek against the Defendant, an account or an inquiry pursuant to GCR Order 43 into what damage they and/or each of their residential proprietors have suffered by reason the Defendant's said breach of covenant, (i) in respect of the denial of the pleasure of the use of the two pools, and (ii) the reduction in the rents receivable by proprietors by reason of their inability to rent condominium units in Resort 597 with use of the pools.

Interest

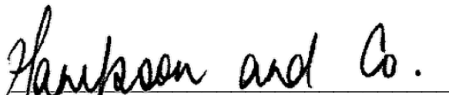
26. The Plaintiff pleads and relies on s.34 of the Judicature Act (2021 Revision), and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules (2021 Revision) ("the Rules"), promulgated by the Rules Committee pursuant to s.34 of the said Act, and claims interest as follows:
- (a) Pre-judgment interest on damages found to be due on an inquiry or taking of an account at the prescribed rate of 2 $\frac{3}{8}$ % per annum under the Rules;
 - (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the prescribed rate of 2 $\frac{3}{8}$ % per annum under the Rules; and
 - (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 2 $\frac{3}{8}$ % per annum under the Rules.

AND THE PLAINTIFF THEREFORE CLAIMS:

- (a) a Declaration that in accordance with the terms of Instrument 11971/17 the registered proprietors of the residential condominiums in Resort 597, their tenants and guests (while residing in the strata lot) have the right without charge (other than paying a share of the reasonable cost of maintenance equipment and upkeep equivalent to that paid by owners of condominiums in Residence) to access the Defendant's common property being Block IE Parcel 14 and use the sea pool and fresh water pool thereon;

- (b) Specific performance of the positive covenant contained in Instrument 11971/17 requiring the Defendant to give access to the Defendant’s common property being Block IE Parcel 14 and allow use of the sea pool and fresh water pool thereon to the registered proprietors of the residential condominiums in Resorts, their tenants and guests (while residing in the strata lot) without charge, other than paying a share of the reasonable cost of maintenance equipment and upkeep equivalent to that paid by owners of condominiums in Residences;
- (c) An accounting or inquiry pursuant to GCR Order 43 into what damages the Plaintiff/its residential registered proprietors has suffered by reason of the Defendant’s breach of the covenant contained in Instrument 11971/17 requiring them to give access to the Defendant’s common property and to allow use of the sea pool and fresh water pool thereon to the registered proprietors of the residential condominiums in Resort 597, their tenants and guests (while residing in the strata lot) without charge, other than paying a share of the reasonable cost of maintenance equipment and upkeep equivalent to that paid by owners of condominiums in Residences 905.
- (d) Interest as more particularly set out at paragraph 26 above.
- (e) Its costs of this action, and such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 22nd day of July 2022



Hampson and Company
Attorneys for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of its said attorneys, at Apollo House East, 4th Floor, 87 Mary Street, George Town, P.O. Box 698, Grand Cayman KY1-1107

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. / 2022

BETWEEN:

THE PROPRIETORS, STRATA PLAN NO. 597

PLAINTIFF

AND:

THE PROPRIETORS, STRATA PLAN NO. 905

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

Hampson and Company
Attorneys-at-Law
Apollo House East, 4th Floor
87 Mary Street
P.O. Box 698 Grand Cayman KY1-1107
Cayman Islands

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

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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.