



AND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2022

RIP TIDE LTD.

PLAINTIFF

and

WEST INDIES BROKERS

DEFENDANT

WRIT OF SUMMONS

TO: **WEST INDIES BROKERS** of F.C.M. Ltd. Governor’s Square, Unit 2-105 Lime Tree Bay Road, P.O. Box 1982, Grand Cayman KY1-1104, 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 20th day of September 2022

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 2022

BETWEEN:

RIP TIDE LTD.

PLAINTIFF

and

WEST INDIES BROKERS LIMITED

DEFENDANT

STATEMENT OF CLAIM

The Parties

1. The Plaintiff is an exempted company incorporated in the Cayman Islands under registration 77133. Mr. Claude Yonnet (“**Mr. Yonnet**”) is the sole shareholder and director of the Plaintiff.
2. The Defendant is a resident Cayman Islands Company under registration number 153615.
3. The Defendant is a broker member company of the Cayman Islands Real Estate Brokers Association (“**CIREBA**”). Ms. Malin Ratcliffe (“**Ms. Ratcliffe**”) established the Defendant in 2005. She is the Owner and/or and employee and/or a Broker and/or an Agent of the Defendant. Ms. Ratcliffe is a Member of CIREBA.
4. Ms. Ratcliffe, at all relevant times, acted for and on behalf of the Defendant. In the alternative, and without prejudice the pleadings below, the Defendant is vicariously liable for the representations made by Ms. Ratcliffe, as pleaded at paragraphs 9 to 17 and 26, below.

The Property

5. Between 2009 and 2019 the Plaintiff built a residential dwelling on land owned by the Plaintiff and situated in the Cayman Islands at Block 10E, Parcels H22, H10 and H11 (the “**Property**”). During the course of 2020 Ms. Ratcliffe approached Mr. Yonnet’s wife, Trish Yonnet (“**Ms. Yonnet**”) and asked if she could show the

Property to a potential purchaser. Mr. and Ms. Yonnet agreed. This showing proceeded but did not result in a purchase.

6. In or around 20 July 2021 Ms. Ratcliffe contacted Ms. Yonnet and stated she knew of a potential purchaser for the Property in Hong Kong and requested permission to take some photos of the Property. Permission was granted on the basis that they would be shown to that one potential purchaser and no one else.
7. On or around 9 August 2021 it came to Ms. Yonnet's attention that the photographs taken were being shown by Ms. Ratcliffe to persons beyond the potential purchaser in Hong Kong. Ms. Yonnet contacted Ms. Ratcliffe and requested that she stop showing the photographs.
8. Other than as pleaded at paragraphs 5 to 7, above, the Plaintiff gave no permission to the Defendant to advertise or list the Property for sale, whether through the CIREBA multiple listing system ("**MLS**") or otherwise. No agreement that the Defendant, and/or Ms. Ratcliffe, should or could list the Property for sale was agreed at any time.

The Representations

9. In or around July 2021, Ms. Yonnet discussed with that Ms. Ratcliffe the possibility that the Defendant sell the Property on the Plaintiff's behalf. Ms. Ratcliffe arranged an appointment with Ms. Yonnet at the Property. That meeting took place at the Property on 20 July 2021. Ms. Ratcliffe stated to Ms. Yonnet that the commission payable by the Plaintiff upon the sale of the Property through the Defendant would be 5%. Upon Ms. Yonnet querying that rate Ms. Ratcliffe, acting for and on behalf of the Defendant, represented to Ms. Yonnet that she and/or the Defendant were regulated by CIREBA and that 5% commission was the standard CIREBA rate for properties at or around the value of the Plaintiff's Property. The commission rate of 5% was therefore non-negotiable (the "**First Representation**"). Ms. Ratcliffe, in making the First Representation, intended that it should be communicated to the Plaintiff and that the Plaintiff would rely on it and thereby agree to a rate of 5% commission.
10. On or around 15 February 2022 Ms. Ratcliffe phoned Ms. Yonnet and informed her that there was a potential offer for the Property and that she was meeting the potential purchaser and their realtor at the Kimpton Seafire, Grand Cayman. The same day Ms. Ratcliffe called Ms. Yonnet and confirmed that she had received an offer for the Property in the sum of US\$26 million and that she had been provided with a letter to that effect. Ms Yonnet, again, queried the level of commission and Ms. Ratcliffe made a further representation (the "**Second Representation**") to Ms. Yonnet that the commission on the sale of the Property if this offer was accepted

by the Plaintiff would be 5%, that the rate was fixed by CIREBA and that the Defendant had to abide by it. Ms. Ratcliffe, in making the Second Representation, intended that it should be communicated to the Plaintiff and that the Plaintiff would rely on it and thereby agree to a rate of 5% commission.

11. On or around 15 February 2022 an Offer to Purchase (“OTP”) from Hamstead Holdings Ltd., dated 16 February 2022 was emailed by Ms. Ratcliffe to Mr. Yonnet. The OTP was open for acceptance by the Plaintiff until 18 February 2022 at 5pm.
12. In reliance on Ms. Ratcliffe’s First Representation and Second Representation (together the “**Representations**”), the Plaintiff agreed to pay 5% commission on the sale of the Property to Hamstead Holdings Ltd. (although the purchaser was later amended by agreement to Emerald Seas) and to accept the sum of US\$26 million which had been offered. But for the Representations, the Plaintiff would not have agreed to a commission of 5% and would only have agreed to a commission of 4% or less upon the sale of the Property.
13. The Defendant made, or caused to be made, some amendments to the OTP which was otherwise accepted by the Defendant on or around 18 February 2022 and returned to Ms. Ratcliffe. Hamstead Holdings Ltd. agreed to the amendments to the OTP and a sale was therefore agreed.
14. Completion took place on 25 March 2022 and the attorneys responsible for the conveyancing transferred the sale monies to the Plaintiff, less the 5% commission agreed.
15. Ms. Ratcliffe’s Representations, made for and on behalf of the Defendant, were false and were made knowingly.
16. In the alternative, Ms. Ratcliffe and/or the Defendant, as the Plaintiff’s agent in a real estate transaction, owed a duty of care to the Plaintiff to act with all reasonable care and skill in advising it on the standard commission rates applicable to the sale of the Property within the Cayman Islands. Negligently, and in breach of the duty of care owed to the Plaintiff, Ms. Ratcliffe made the Representations, both of which were false.

PARTICULARS OF FALSITY

The standard CIREBA rate of commission for properties within the Cayman Islands sold for a sum exceeding US\$9,995,000 is 4%, not 5%.

PARTICULARS OF NEGLIGENCE

Ms. Ratcliffe, acting for and on behalf of the Defendant, was negligent in that she failed to exercise any, or any proper, care in advising the Plaintiff of the standard CIREBA commission rates applicable on the sale of the Property.

17. By reason of the above breach and negligence of the Defendant, the Plaintiff has suffered loss and damage.

PARTICULARS OF DAMAGE

But for the Representations, the Plaintiff would have agreed to a commission of 4% or less upon the sale of the Property, not a 5% commission. The Plaintiff will contend that damages are to be assessed by the difference between the 5% commission rate agreed and a reasonable and commercial commission rate which would otherwise have been agreed but for the Representations.

Subsequent Conduct

18. On 8 April 2022, Mr. Yonnet emailed Ms. Ratcliffe stating that it had come to his attention that the standard CIREBA commission rate for a property valued at US \$26 million was 4% and asking *“what possible explanation can you provide for having charged a 5% commission on the [Property]? I am obviously very unhappy to find that you told Trish that the standard rate was 5% which is clearly incorrect.”*
19. On 8 April 2022 Ms. Ratcliffe responded to Mr. Yonnet by email. In that email she stated *“For clarification purposes, when officially listing a property within the CIREBA MLS system, the rates have been adjusted at 4%, however going as far back as the 23 years of real estate in Cayman, a specialist high rate / selling price point of an off market over US\$10M property has always produced at 5% - this is what I led upon and which was agreed to.*
20. The Plaintiff at no time requested that Ms. Ratcliffe list the Property “off-market”, which is understood to mean outside of the CIREBA MLS. Paragraph 8 is repeated.
21. On 19 May 2019 Nelsons, instructed on behalf of the Plaintiff, wrote a letter before action to the Defendant, requesting that it pay to the Plaintiff the sum of US\$260,000, representing the difference in value between a 4% commission on the sale of the Property and a 5% commission, together with legal costs.

22. On 26 May 2022, acting on behalf of both the Defendant and Ms. Ratcliffe, Travers Thorp Alberga (“TTA”) responded to this letter denying that false Representations had been made.
23. By letter dated 13 June 2022, Nelsons referred the dispute between the parties to CIREBA for determination. By letter dated 11 July 2022, CIREBA responded declining to determine the dispute and stating that “CIREBA believes this particular issue is best handled through the legal system which is equipped to take evidence under oath etc. to arrive at a decision.”
24. In that letter CIREBA further stated:

“In 2004 the commission rate for properties exclusively listed by a CIREBA Member through the MLS with a listing price which is over \$10 million was decreased to 4%. This has not changed. It is also a CIREBA rule that a property that is exclusively listed with a Member must be through a signed CIREBA listing agreement and be entered into the MLS.

On rare occasions our Members encounter Vendors who do not wish to have their property exclusively listed. These are non-listed or ‘pocket listings’ and the commission is subject to an agreement between the Vendor and the Brokerage Company. In these cases there is no rule against agreeing on a commission rate higher or lower than CIREBA rates but generally the commission rate for these properties is lower than a listing on the MLS as they usually will not incur the level of marketing and other expenses compared to a property exclusively listed and marketed through the MLS.”

25. Further correspondence thereafter passed between the parties.

The Alternative Case

26. In the alternative, paragraphs 9 to 17 are repeated save that it is alleged that Ms. Ratcliffe’s Representations were that the standard commission rate applicable in the Cayman Islands for a sale outside of the CIREBA MLS was 5%, as set out in her email dated 8 April 2022.

Costs and Interest

27. The Plaintiff is 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.

28. The Plaintiff claims its legal costs in pursuing the Defendant for its damage and loss.

THE PLAINTIFF THEREFORE CLAIMS:

- (1) Damages to be assessed;
- (2) Interest in accordance with s.34 of the Judicature Law (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) as amended from time to time;
- (3) Costs; and
- (4) Such further and other relief as this Honourable Court may seem just.

DATED at Grand Cayman this 20 September 2022



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: GC OF 2022

BETWEEN:

RIP TIDE LTD.

PLAINTIFF

and

WEST INDIES BROKERS

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: K McClymont/ 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.