

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The First Plaintiff is the registered owner of Registration Section West Bay South Block 5C Parcel 439 (“Parcel 439”). The Plaintiff was registered as proprietor on the land register pursuant to Instrument No. 7991/19 on 20/08/19. The Second Plaintiff is the registered Proprietor of Registration Section West Bay South Block 5C Parcel 438 (“Parcel 438”).
2. The Defendant is the registered owner of Registration Section West Bay South Block 5C Parcel 225 (“Parcel 225”).
3. That on 06/09/1989 an Easement was registered in favour of West Bay South 248 (“Parcel 248”) and by extension Parcels [438 & 439^[Mal]] a phased strata plan known as (“the Boggy Sands Strata Plan No.823”). This easement is recorded in the Incumbrances Section on the land register of Parcel 225 pursuant to Instrument No. 4788/89 which is a 22 ft. vehicular right of way along the eastern boundary of Parcel 225 as indicated on the Registry Map in which the Plaintiff pass on/over parcel 225.
4. That on 25/07/1983 there is also an Easement registered in favour of West Bay South 5C Parcel 222 (“Parcel 222”) and recorded in the Incumbrances Section of the land register of Parcel 225 which is a 18ft. vehicular Right of Way along the eastern boundary of Parcel 225.
5. The two easements effectively run over each other on Parcel 225. One Right of Way being 18ft and the other 22ft.

This Writ of Summons and Statement of Claim is issued by Waide DaCosta, LLB, Attorney-at-Law for the Plaintiff whose address for service is P.O. Box 591, Unit #1 Eucalyptus Building, George Town, Grand Cayman KY1-1502, Cayman Islands.

6. That the Chief Lands and Survey Officer confirmed that pursuant to the 2010 Lands Registry Procedure Manual that the individual strata units compromised in the Boggy Sands Strata Plan No. 823 located on Block 5C Parcel 438 benefit from the private Right of Way over Parcel 222 throughout the time the Plaintiffs owned Parcels 438 and 439 and have entered and exited its' property via the paved road on/over Parcel 225. That the Plaintiffs did nothing to vary the route of this road.
7. That since the 21st March 2023 the Defendant have unlawfully created a nuisance by obstructing these easements at the entrance of the easements on the boundary of Parcel 225 and Parcel 439 by installing fence posts and a rolling gate. That certain of the residents of the Defendant also park their vehicles on the legal Right of Way thereby impeding the Plaintiffs' ingress and egress over the said Right of Way. There is also vegetation, including trees and foliage that encroach unto the Right of Way.
8. The Plaintiffs filed a complaint with the Cayman Islands Department of Planning with respect to the illegal structure, being the rolling gate, and the Defendant forthwith removed the rolling gate however the fence and the posts remain which unlawfully encroach into the legal Right of Way enjoyed by the Plaintiffs. The residents of the Defendant property continue to park their vehicles thereby obstructing the legal easement.
9. The Defendant have parked vehicles on the easements, placed utilities including water and electric on the easement, constructed gate posts, fences on the easement. All of these obstructions impede the registered easements granted in favour of the Plaintiffs.
10. The encroachment of the vegetation (including trees and foliage) may be due to the Defendant misunderstanding its legal obligations to the Plaintiffs by affording a 22ft. vehicular easement over Parcel 225. There has been ample time for the Defendant to remove the said intrusions and obstructions that impeded the registered easement in favour of the Plaintiffs.
11. The Plaintiffs fear if the situation is allowed to continue it will further get out of control where it is likely that some harm could come to the Plaintiffs and their guests whilst traversing the easement. With the present situation it leaves the Plaintiffs no choice but to seek relief from the Grand Court of the Cayman Islands.

And the Plaintiffs claim:

1. a declaration that the Plaintiffs are entitled to vehicular rights of way and/or vehicular and pedestrian right of way and uninterrupted passage over the residential premises known as Registration Section West Bay North West Block 5C Parcel 225 by virtue of section 138 (2) of the Registered Land Law (2018 Revision) in the form of the plan hatched in red attached to this Writ and Statement of Claim.
2. an injunction with a penal notice restraining the Defendant by itself, its' agents or otherwise howsoever from restricting, preventing or otherwise interfering with the Plaintiffs' reasonable enjoyment of such right of way at Registration Section West Bay North West Block 5C Parcel 225;
3. an injunction with a penal notice compelling the Defendant to permanently remove the gate, and a portion of the fence installed at the boundary of Parcel 225 and Parcel 439 where the same encroaches on the easements;
4. an injunction with a penal notice compelling the Defendant to permanently remove the vehicles, gate posts, fences driveway and vegetation (including trees and foliage) that impedes the easement;
5. Interest on all sums due found to the Plaintiffs pursuant to S. 34 Judicature Act (2007 Revision) at the prescribed rates from the date of the injury and for such period as may be just.
6. Costs.
7. Filing and Bailiff Fees.
8. Such Further or other relief as may be deemed just by this Honourable Court.

Dated this 03rd day of April, 2023



Waide DaCosta
Attorney-at-Law for the Plaintiffs

This Writ of Summons and Statement of Claim is issued by Waide DaCosta, LLB, Attorney-at-Law for the Plaintiff whose address for service is P.O. Box 591, Unit #1 Eucalyptus Building, George Town, Grand Cayman KY1-1502, Cayman Islands.

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 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 a 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 leaf 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 authorized 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. OF 2023

BETWEEN: BOGGY SANDS DEVELOPMENT LTD.
AND
THE PROPRIETORS OF STRATA PLAN NO. 823 PLAINTIFFS

AND: THE PROPRIETORS, STRATA PLAN NO. 70 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
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 of Summons 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

Attorney-at-Law, on behalf of the Defendant

Address for the Defendant:

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 be represented 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 Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

**Waide DaCosta
Attorney-at-Law
P.O. Box 591
Unit #1, Eucalyptus Building
Shedden Road, George Town
Grand Cayman KY1-1502
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.