



D COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2024

BILIKA HARRY SIMAMBA

PLAINTIFF

AND:

JULIE ARNALL

1ST DEFENDANT

PROPRIETORS OF STATRA PLAN No 491

2ND DEFENDANT

=====
WRIT OF SUMMONS
=====

**TO: (1) Julie Arnall of 93 Phelan Close, Grand Cayman
(2) Proprietors of Strata Plan No 491, 30 Fairlawn Road, Grand Cayman**

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff 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, P.O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment 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 2024

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 Defendant holds herself out to be a specialist in mundane administrative matters. She is the owner of Apartment No. 6 in the property registered as Strata Plan 491 registered under the Strata Titles Registration Act (the Second Defendant), Registration Section: South Sound, Block 15C, Parcel 252 commonly known as Hyre Point, a set of 8 apartments (the Complex). She is a member of the Executive Committee of the Complex together with Sophia Wilson-Leslie, who owns No. 5, and Carla McGarvey-Blair, who is co-owner of No. 7. All the owners as a whole, who comprise the Second Defendant, are vicariously liable for the actions complained of regarding the First Defendant as she is acting, in law, on their behalf and is representing herself as such.

2. The Plaintiff is a retired Attorney at Law, having retired from the Cayman Islands Civil Service as Senior Legislative Counsel, and is Absolute Owner of Apartment 8, free from encumbrances.

3. By virtue of the Strata Titles Registration Act (the Act) and all other relevant common law obligations, it is the duty of all owners to act in accordance with those obligations at all times and, in particular, it is the duty of members of the Executive Committee to act as trustees for the Complex, respecting the rights of owners, and to act in their common interest.

4. The Plaintiff is involved in litigation in Ontario and because of an injunction issued in that case, applying to him and the other party to that litigation, a Judge of the Superior Court of Justice in Ontario issued an order in on 28 January 2021 freezing all his assets, severely limiting his income during this time and ability to sell any asset. As a result, and escalating maintenance costs of his apartment, despite having for years been one of the most diligent in paying strata fees, and helping improve the Complex, he fell into arrears. As a result of proceedings brought by the Second Defendant (Strata Plan 291 v Bilika H. Simamba, No. SC 198/2023) in the summary court, Magistrate Hernandez issued a Charing Order Absolute on 22 November 2023 for the sum of CI\$ 10, 005-82 on his apartment.

5. Before the Charing Order Absolute was granted, the Plaintiff offered to enter into a payment plan as had been done in relation to other owners who had fallen in arrears in the past. The First Defendant, acting unilaterally, without the approval of the other members of the Executive Committee went ahead with the proceedings. The Plaintiff, acting in good faith, started to pay in accordance with the terms he had suggested in the rejected proposal for a payment plan. Despite that, the Plaintiff unilaterally continued to pay consistently every month sums over and above the monthly strata fees of CI\$ 475.00 per month (to ensure that the sum was decreasing every month) as follows:

2024-03-15	CI\$ 500.00
2024-04-18	CI\$ 500.00
2024-05-01	CI\$ 600.00
2024-06-01	CI\$ 700.00
Total Paid since Order Absolute	CI\$ 2,300.00

6. When the amount paid is deducted from the amount of the charge, the amount remaining outstanding at present is only CI\$ 7, 705.82 and yet the First Defendant continues to want to sell the apartment to recover that amount. The Plaintiff also stated that, depending on certain interim orders he is seeking in the proceedings in Ontario, he may be able to increase the amount of each payment and perhaps liquidate the sum in one payment.

7. While the Plaintiff continued to pay, the First Defendant, again unilaterally without the approval of the Executive Committee, brought a convoluted application before the summary court (heard on 5 April 2024) asking for power to enter the apartment for purposes of valuation (not to sell) on the wrong assumption that she had a right to sell without a court order. But then, in the Submissions on Behalf of the Plaintiff in those proceedings (SC No. 193 of 2023) dated 28 March 2024 considered at that hearing, it was said in para 5 of those submissions on behalf of the Strata:

Ms. Carver applied at the hearing for a line to be inserted into the Order affirming that the power to sell had immediate effect. The purpose of this application was that the Department of Lands had previously requested such wording be inserted into an order on an unrelated matter. Ms. Carver's submission was that the effect of the Order, in any event, gave the immediate power to sell but the addition of this wording would assist in registering the charge and affecting the sale with the Department of Lands. This application was rejected on the basis that such issues were a matter between the Plaintiff and the Department of Lands and that the Court would make the order in the standard form as set out in Form No. 34 of the Grand Court Rules. The Order was made in these terms. (Underlining added)

The underlined words are a euphemistic way of stating that, upon issuance of a Charging Order, there is no automatic power of sale without a court order specifically to sell. So, while the Plaintiff in those proceedings (the Strata) did not expressly apply for sale, they obliquely asked if the Charging Order, when it was made, could include a power of sale. They were doing this because they knew that the Charging Order per se did not confer a power of sale and that they did not have a power of sale except with a court order. The Magistrate refused to add the words they requested.

8. But this oblique request (which was made at the giving of the Charing Order Absolute) was not part of the formal application before the court when the Strata applied for a power to enter. Indeed, Ms. Alice Carver, the attorney from the law firm of Nelson's appearing on behalf of Attorney Colm Flanagan, also stated that there was no need for a court order to sell anyway

and that they were coming to court merely for a power to enter for purposes of valuation. That was wrong in law and the Magistrate said so.

9. The Plaintiff, significantly, citing Grand Court authorities and practices in Cayman which were different between recovery of strata fees, argued that the Magistrate, while she had a power to issue the charging order, had no jurisdiction under section 14 as read with para 2 of Schedule to the Summary Court Rules to order sale as, under that Schedule, a Magistrate had no jurisdiction in a matter that would change title to land. The Plaintiff also explained that recovery of mortgage debt and strata titles debt were different. Under the former, in Cayman, there was an automatic power of sale in the mortgage agreement and in the Registered Land Act, section 75, without a court order so long as the sale was by “public auction”, which case law had interpreted to mean that a public sale through a public website was technically a public auction. On the contrary, there is no equivalent power in the Strata By-Laws nor in the Strata Titles Registration Act allowing a power to sale without a court order and court supervision.

10. The Magistrate, in a ruling delivered orally on 18 April 2024 and later in a written judgement dated 26 April 2024, while rejecting the Plaintiff’s argument as to lack of jurisdiction, refused to grant the order to sell, stating that she did not have an application before her that complied with the necessary procedural requirements.

11. Significantly, in para 14 of her ruling, she quoted from Grand Court Rule Order 32 r 2(2) which states that:

(2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions –

- (a) appointing the party or person who is to have the conduct of the sale;*
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;*
- (c) fixing a reserve or minimum price;*
- (d) requiring payment of the purchase money into Court or to trustees or other persons;*
- (e) for settling the particulars and conditions of sale;*
- (f) for obtaining evidence of the value of the property;*
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be public auction, and the remuneration to be allowed him.*

12. The Magistrate also advised that her ruling court be appealed to the Grand Court. Nelsons, acting under instructions unilaterally given by the First Defendant, did not appeal the ruling nor bring what the Magistrate stated would be proper proceedings. Instead, she continued with measures to sell the property without a court order.

13. In pursuit of that, the First Defendant obtained a valuation from JEC Property Consultants which says in part, “Instructing Party Julie Arnell (sic) for the Proprietors of Strata Plan No. 491”

and “CLIENT: The Proprietors of Strata Plan No. 491”. This valuation was obtained without the approval of the Executive Committee. If the Executive Committee or owners approved it, this is another reason why they will also be liable.

14. Upon obtaining the valuation, the First Defendant sent draft resolutions to the other members of the Executive Committee asking them to sign to authorize the sale. In as far as the Plaintiff is aware, the other members refused to sign, stating that the judgment of Magistrate Allard made it clear that she had refused the application to enter the premises for purposes of valuation and that, in any case, the Magistrate had made it clear that although she had power to sell (which the Plaintiff disputed), no proper application had been brought before her.

15. The First Defendant has since pressured the other Members of the Executive Committee and other owners to sign a resolution to sell, misrepresenting, in her latest efforts, that if they did not sign to authorize the sale, they may incur legal liability.

16. The valuation obtained by the Second Defendant places the value of No 8, the Plaintiff's property, at CI\$ 365, 000.00. This is below market price. Hyre Point 2 has been advertised on the Remax website for CI\$ 395, 000, more than CI\$ 30, 000.00 above the valuation for No. 8. Further, another 2BR in the same Complex was in December 2021 valued at CI 425, 000.00, which is CI\$ 60, 000.00 more than No. 8 belonging to the Plaintiff. On an educated guess that can be backed up by a valuation at the trial, the Plaintiff's property must be worth approximately CI \$ 500, 000.00 as it an end unit and is the only apartment right next to the swimming pool.

17. On the whole, the First Defendant has targeted the Plaintiff's apartment as it is fully paid and there is no mortgage company that would prevent the sale.

18. The Plaintiff, while reserving his rights to bring criminal charges against the First Defendant and any of the Owners who cooperates with her to sell the Plaintiff's apartment, the Plaintiff for now claims jointly and severally against the First Defendant and the Second Defendant damages for actual and/or attempted blackmail, illegal appropriation of property, illegal sale, breach of trust, theft, conspiracy to defraud, which orders are further elaborated further below in this Statement of Claim.

19. Since the First Defendant has been holding herself out as being authorized by the proprietors of Units 1, 2, 3, 4, 5, 6 and 7 and/or the Executive Committee to sell the apartment, the owners can avoid liability for the claims stated below by circulating and signing (a) a resolution removing the First Defendant from the Executive Committee; and/or (b) a resolution indicating that they disagree with her actions to sell and clarifying that they will not be party to the sale.

20. If the property is **not sold** by the time the court makes any orders, the Plaintiff seeks the following orders:

1. An injunction to prevent the First and Second Defendant from selling, advertising for sale or taking any action aimed at selling Apartment No. 8.
2. That the Grand Court exercise its power of discretionary review of decisions of the summary court by calling up the matter from the summary court and asking the First Defendant as to why she should not be punished for contempt of court and to punish her if she fails to purge her contempt.
3. General damages to be assessed.
4. Such other incidental orders as the court deems appropriate.
5. Interest on the said sums.
6. Costs.

21. If the property **is sold** before the court can grant an injunction:

1. A declaration that the sale was illegal and ordering annulment of the sale and order return of the apartment to the Plaintiff, plus legal and other incidental costs.
2. If the apartment is not returned to the Plaintiff, the First Defendant and the Second Defendant shall pay the Plaintiff damages on the basis of the true value of the apartment.
3. General damages to be assessed.
4. Such other incidental orders as the court deems appropriate.
5. Interest on the said sums.
6. Costs in these proceedings.

IN THE ALTERNATIVE, if all the acts complained of are being committed with the approval of any of the owners, the claims shall be read as being made against each owner. The owners must also note that, even if they are not authorizing the acts, according to the laws of agency, they will still be liable since Julie Arnall is acting with ostensible authority (colour of authority) from the Owners.

[Or where the Plaintiff's claim is for a debt or liquidated demand only]

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount of claimed (to which should be added interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.]

BH Simamba

BILIKA HARRY SIMAMBA

In Person

5 June 2024

THIS WRIT was issued by Bilika Harry Simamba whose address for service is 30 Fairlawn Road, Apartment 8, Grand Cayman, P O Box 1393, George Town, Grand Cayman, KY1-1110, Cayman Islands. Phone: 345-928-2644 (cell, WhatsApp only), bsimamba@yahoo.co.uk

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN: BILIKA HARRY SIMAMBA PLAINTIFF

AND:

JULIE ARNALL 1st DEFENDANT
PROPRIETORS OF STATRA PLAN No 491 2nd DEFENDANT

ACKNOWLEDGEMENT 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 of Summons is acknowledged accordingly

(Signed) Attorney for the Defendant

NOTE ON ADDRESS FOR SERVICE

Attorney: Where the Department 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/she must give his/her post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

Bilika Harry Simamba
Plaintiff in Person
30 Fairlawn Road # 8
P O Box 1393
George Town
Grand Cayman, KY1-1110
Cayman Islands

Tel: 345 928 2644 (cell, WhatsApp only)

Email: bsimamba@yahoo.co.uk

Endorsement by Defendant’s Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of ***Acknowledgement 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 GT, 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 2), the Defence must be served within 14 days after the time for acknowledgement of service of the Writ, unless in the meantime a summons for Judgment is served on the Defendant.

If a Statement of Claim is not indorsed on the Writ, the Defence need not be served until 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 for 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 Acknowledgement, 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 installments or otherwise.

See over for Notes of Guidance

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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/her.
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 in 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 a Defendant is sued as an individual **TRADING N 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 his 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.