

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. 126 OF 2017

BETWEEN:

THE PROPRIETORS OF STRATA PLAN 62

PLAINTIFF

AND:

FRANCOIS ODERMATT

1st DEFENDANT

AND:

CATHERINE ODERMATT

2nd DEFENDANT

AND:

THE EXECUTORS TO THE ESTATE
OF CLAIRE SIMARD ODERMATT

3rd DEFENDANT



WRIT OF SUMMONS

TO: **Francois Odermatt**
c/o Travers Thorpe Alberga

Catherine Odermatt
c/o Travers Thorpe Alberga

The Executors to the Estate of Claire Simard Odermatt
c/o Travers Thorpe Alberga

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 495 Grand Cayman KY1-1106, Cayman

Islands, 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 21st day of July 2017

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 Plaintiff is a Strata Corporation registered as Strata Plan 62 and known as “**Lacovia**”, on West Bay Road, Grand Cayman.
2. The First Defendant, the Second Defendant and the Third Defendant (together the “**Defendants**”) are the proprietors in common of block 12E, parcel number 54H24, a strata lot known as “**Unit 24**” at Lacovia.
3. The Plaintiff is entitled pursuant to Article 36(a) of the By-Laws (as revised from time to time) (the “**By-Laws**”) to levy monthly contributions (“**Strata Fees**”) to a fund established by the Plaintiff for payment of the Plaintiff’s administrative expenses for the control, management and administration of the common property.
4. It was an agreement between the Plaintiff and the Defendants that the Plaintiff would meet the cost of paying the insurance premiums, cable, phone, sewage, water, electricity and maintenance and administration costs, such costs to be reimbursed to the Plaintiff by the Defendants in a timely fashion (the “**Facilities Agreement**”).
5. From October 2007 to the present day, the Defendants have failed to pay to the Plaintiff, in full or at all, the Strata Fees and reimbursement of costs incurred under the Facilities Agreement (together the “**Debt**”) which the Plaintiff has duly levied and demanded. The Defendants continue to default on payment of the Strata Fees and costs under the Facilities Agreement and as such the Debt continues to increase.
6. At all material times the Plaintiff has sent monthly or quarterly statements for Strata Fees and costs owed under the Facilities Agreement (the “**Strata Statements**”) to the Defendants in the manner requested by the Defendants.
7. Towards the satisfaction of the Debt, and in order to bring the total sum of the Debt down, the Plaintiff and the Defendants agreed through words and/or conduct, and evinced from the Strata Statements from October 2007, that Unit 24 would be placed into the rental pool, administered by the Plaintiff, such that it could be let on a short-term basis for intermittent periods (the “**Rental Agreement**”). It was a term of the Rental Agreement that a fee of 20% of the gross rental income from Unit 24 would be retained by the Plaintiff (the “**Rental Pool Commission**”). The Rental Pool Commission was varied by agreement in February or March 2011 in that it increased to 30% of the gross rental income to be consistent with other proprietors who had agreed to allow their units to be placed into the rental pool.

8. It was a further term of the Rental Agreement that a fee of 1% would be deducted from the gross rental income on a monthly basis to be retained by the Plaintiff (the “**Management Commission**”).
9. Under Article 1(c) of the By-Laws the Defendants must repair and maintain Unit 24 and keep it in a state of good repair. In order to assist the Defendants with this obligation it was a further term of the Rental Agreement that the Plaintiff would meet all expenses necessary for the repair and maintenance from time to time (“**Maintenance Expenses**”) on the condition that (a) the Plaintiff would be reimbursed for Maintenance Expenses by the Defendants; and (b) that such reimbursement would be provided in a timely fashion.
10. It was a further term of the Rental Agreement that the Defendants would reimburse the Plaintiff for miscellaneous expenses incurred during the period of the Rental Agreement.
11. It was a further term of the Rental Agreement that the remainder of the income from the rental of Unit 24, after the deduction of the Rental Pool Commission and the Management Commission, was to be applied to the Debt, costs and expenses owed by the Defendants to the Plaintiff.
12. By agreement the Rental Agreement was terminated in November 2014.
13. In breach of the Maintenance Expenses term, the Defendants have failed to reimburse the Plaintiff for Maintenance Expenses in a timely fashion or at all. In breach of Article 1(c) of the By-Laws the Defendants have let Unit 24 lapse into disrepair.
14. Notwithstanding the Rental Agreement having been extant between October 2007 and November 2014, the Debt has in fact increased. Accordingly, by letters dated 1 February 2017 and 22 June 2017 the Plaintiff demanded the sums due under the Rental Agreement as well as those sums owed on that portion of the Debt that still remains outstanding and due to be paid. The Defendants have failed to make any further payment to satisfy the Debt.
15. By a resolution dated 16 June 2017, the Plaintiff deemed the sum of US\$160,186.22 due and payable as the Debt to the Plaintiff, pursuant to Section 6(3) of the Strata Titles Registration Law (2013 Revision) (the “**Resolution**”).
16. Should the Defendants continue to fail in their obligation to pay Strata Fees, the Debt will continue to increase each month.
17. The Plaintiff claims interest at the rate of 5% over prime bank lending rate in accordance with paragraph 36(a) of the Second Schedule of the Strata Corporation By-Laws.

18. Further, the Plaintiff claims any outstanding sums due under the Rental Agreement and its costs, including legal costs, arising from the Defendant's failure to pay the Debt.

AND the Plaintiff Claims:

1. The principal sum of US\$160,186.22;
2. The amount of the continuing Debt up until the date of Judgment;
3. Contractual interest as set out at paragraph 17 above;
4. Interest; and
5. Costs.

Priestleys
PRIESTLEYS

TO: The Clerk of the Court

AND TO: The Defendants

This Writ of Summons is issued by Priestleys Attorneys-at-Law for the Plaintiff herein whose address for service is
Second Floor, Caribbean Plaza, 878 West Bay Road, P.O. Box 30310, Grand Cayman, KY1-1202

**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, PO Box 495, 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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.

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 fourteen (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 is 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 steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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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AND:

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AND:

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2nd DEFENDANT**

AND:

**THE EXECUTORS OF THE ESTATE
OF CLAIRE SIMARD ODERMATI

3rd 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.
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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) _____

Address for service:

Please see 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 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 Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

PRIESTLEYS
ATTORNEYS-AT-LAW
SECOND FLOOR, CARIBBEAN PLAZA
878 West Bay Road
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

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

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