

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
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UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
KENNETH R. PAYNE,)
JOHANN M. SMITH,)
DANIEL G. DANKER, CONSTANCE)
BROOKS-KIEFER,)
HEARTLAND FINANCIAL SERVICES,)
INC., AND JMS INVESTMENT)
GROUP, LLC.)
)
Defendants.)

Civil Action No. IP00-1265 C -T/G

RECEIVER'S MOTION FOR ORDER
INCLUDING THE ASSETS OF KENNETH PAYNE IN THE RECEIVERSHIP

James A. Knauer, the acting Receiver in these proceedings, in support of his *Receiver's Motion for Order Including the Assets of Kenneth Payne in the Receivership* states:

1. On August 10, 2000 the United States Securities & Exchange Commission (the "SEC") commenced the within proceedings against the Defendant Kenneth Payne and others.
2. On August 10, 2000 the court issued an order entitled *Order Preserving Funds and Other Assets* (the "Freeze Order"). The Freeze Order, among other things, provided that:

...all funds, assets or other property belonging to or in the possession custody or control of Defendants Kenneth Payne...Heartland Financial Services, Inc.... be preserved and are prohibited, directly or indirectly, from being transferred, assigned, encumbered, pledged, dissipated, concealed or otherwise disposed of."

3. On August 10, 2000 the court issued an order, enjoining and restraining, among other things, the individual defendants in this action from:
“transferring selling, assigning, pledging dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts, or other property belonging to Defendants or in their possession, custody or control, wherever located.”
4. About August 12, 2000 Payne vacated his personal residence and, presumably, secreted or destroyed his personal records as part of his plan to flee this jurisdiction and conceal assets of the Heartland Companies. Thus the Receiver has encountered considerable difficulty in locating records pertaining to Payne.
5. The Receiver was appointed on August 21, 2000 as the Receiver for Heartland Financial Services, Inc., JMS Investment Group, Inc. and other named entities (the “Heartland Companies”).
6. Upon his appointment, the Receiver began to take possession of the assets of the Heartland Companies.
7. Subsequent to the issuance of the various freeze orders, the Defendant Payne was subsequently returned to this jurisdiction and is presently in jail awaiting trial on the criminal charges against him stemming from his involvement with the Heartland Companies.
8. The results of the Receiver’s investigation have confirmed most, if not all, of the factual allegations of the SEC against Payne as set forth in the SEC complaint filed herein.
9. On June 7, 2001, a default judgment was entered in these proceedings against Kenneth Payne by the clerk of the court, by the terms of which Payne is deemed to admit all of the allegations of the SEC complaint.
10. Since the early days of his appointment, the Receiver has been attempting to determine the interest of Kenneth Payne or Heartland in a certain condominium in the country of Belize.
11. The Receiver contacted the manager of the condominium

development in Belize during the initial 30 days following his appointment and was told that the Belize condominium seller had declared a default under the contract due to the failure of Kenneth Payne to make a balloon payment that came due prior to the appointment of this Receiver.

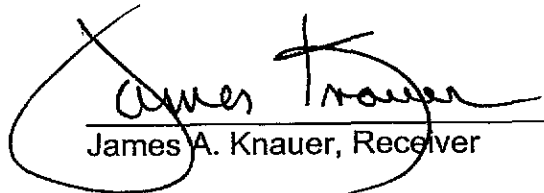
12. The accountants for the Receiver have traced the funds used to purchase the Belize condominium from the assets of the Heartland Companies to Payne and in some instances directly from the Heartland Companies to Belize to make payments used for the contract purchase of the Belize condominium, however, prior to June 28th, 2001, the Receiver had been unable to obtain a copy of the contract purchase agreement or to verify the true owner of the unit or the alleged circumstances of its forfeiture other than as described herein.
13. In February, 2001, the Receiver retained the services of a Belize law firm to investigate the circumstances surrounding the alleged forfeiture of Kenneth Payne's interest in the Belize condominium.
14. The Receiver has made numerous requests to the Belize law firm for status reports, but last heard from them in April of this year at which time they claimed they had identified the Belize condominium seller and were going to talk with him about the Receiver's claim.
15. Last Thursday the Receiver received what he would describe to the court as a Belizean foreclosure action which was filed on or about June 1, 2001 in the Supreme Court of Belize seeking a judgement against Kenneth Payne and a forfeiture of his interest in the Belize condominium (a copy of which is attached hereto as Exhibit "A" and hereafter referred to as the "Foreclosure").
16. According to information contained in the Foreclosure, the Belize condominium of Kenneth Payne is owned by the operator of the development where it is located (Royal Palm Villas), which is completely contrary to the information previously provided to the

Receiver by his former Belizeian law firm.

17. Against this background of facts and developments, the Receiver contacted his Belizean counsel last Friday (June 29, 2001), who, predictably, promised that they would look into the Foreclosure and call the Receiver back (a copy of the Receiver's fax to his former Belizeian counsel is attached hereto as Exhibit "B").
18. Upon the failure of his Belizeian counsel to contact him by Monday, July 2, 2001 and concerned with the possibility of a default judgment being entered in the Supreme Court of Belize against Kenneth Payne forfeiting his interest in the Belize condominium, the Receiver has engaged a second law firm to assist him, namely the law firm of Shoman & Chebat in Belize City, Belize.
19. Shoman & Chebat have requested the Receiver to provide them with evidence of his authority to act for the interests of Kenneth Payne in the Foreclosure.
20. Although a judgment has been entered in these proceedings against Kenneth Payne, to date, the Receiver is not presently serving as a Receiver over the assets of Kenneth Payne except in limited instances in which the Receiver has requested court approval to take possession of specified assets of Payne or any of the other individual Defendants or received the consent of one of the individual defendants to do so in order to protect or preserve property which might eventually constitute an asset of this Receivership.
21. Given the evidence amassed by the Receiver since his appointment which confirms the allegations of the SEC in its complaint, together with the entry of judgment against Kenneth Payne in this action the Receiver requests that the court expand the scope of his authority to include the assets of Kenneth Payne and specifically the interest of Kenneth Payne in the Belize condominium.
22. According to information contained in the Foreclosure, the balance due from Kenneth Payne is about 64% of the original purchase price and

the value of the unit (subject to confirmation which the Receiver is in the process of obtaining) has increased substantially since the date of its purchase more than 7 years ago.

THEREFORE; the Receiver requests that the authority of the Receiver in these proceedings be expanded to include the assets of Kenneth Payne and for all other proper relief.


James A. Knauer, Receiver

CERTIFICATE OF SERVICE

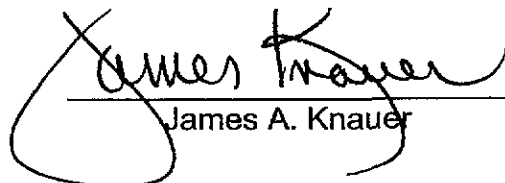
The undersigned hereby certifies that the foregoing has been served upon the following parties by placing a copy of the same in the United States Mail, first class postage pre-paid, on this 3rd day of July, 2001:

Paul A. Montoya
Kara M. Washington
Jeannette L. Lewis
United States Securities
and Exchange Commission
500 West Madison Street
Suite 1400
Chicago, Illinois 60661

Fred D. Scott
Attorney at Law
55 Monument Circle
Suite 814
Indianapolis, Indiana 46204

Dexter B. Johnson
Mallon & Johnson, P.C.
19 S. LaSalle Street
Suite 1202
Chicago, Illinois 60603

Dennis Zahn
Symmes, Voyles, Zahn, Paul & Hogan
700 Jefferson Plaza
One Virginia Avenue
Indianapolis, Indiana 46204


James A. Knauer

Kroger, Gardis & Regas, L.L.P.
111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-2152

IN THE SUPREME COURT OF BELIZE A.D. 2001

Action No.203

	(ROYAL PALM INN LIMITED	PLAINTIFF
BETWEEN	(AND	
	(KENNETH PAYNE	DEFENDANT

TO: KENNETH PAYNE of Heartland Financial Services, 8060 Knew Road – Suite 232, Indianapolis, Indiana 46250, U.S.A.

TAKE NOTICE that ROYAL PALM INN LIMITED a company duly incorporated in Belize and having its registered office at San Pedro Town, Ambergris Caye has commenced an action against you, Kenneth Payne in the Supreme Court of Belize by Writ of that Court dated the 5th day of June 2001 which writ is indorsed as follows:

STATEMENT OF CLAIM

1. By an Agreement in writing dated the 5th day of October 1994 made between the Defendant of the first part the Plaintiff of the second part and Royal Palm Villas Limited a Company incorporated in Belize with its registered office situate at Coconut Drive San Pedro Town, Ambergris Caye of the third part, the Defendant agreed to purchase Strata Lot Number 23D of the Royal Palm Villas Project situate at Ambergris Caye for the sum of US\$59,950.00 in the currency of the United States of America together with interest thereon as in the Agreement stated.
2. It was also agreed by the parties in writing and confirmed on the 25th day of November 1994 that the Plaintiff would construct a condominium unit on the said premises at the price of US\$59,950.00 to be paid by the Defendant.
3. In accordance with the terms of the Agreement the Defendant paid an initial deposit of US\$1,000.00 and four subsequent instalments and interest thereon amounting to US\$60,396.40 by way of payment for the said strata lot.
4. At the Defendant's request the Plaintiff agreed to provide financing for the Defendant in the sum of US\$59,950.00 in order to procure the construction of a condominium unit on the said premises and the Defendant agreed to repay the same together with interest thereon to the Plaintiff in 60 equal monthly instalments of US\$644.23 commencing on the 25th day of June 1995 with final balloon payment of the balance due on the 25th day of June 2000.
5. The condominium unit was duly constructed by the Plaintiff and pursuant to the Agreement the Defendant paid to the Plaintiff the monthly instalments of US\$644.23 as agreed.
6. The Defendant has failed to pay the balloon payment due on the 25th day of June 2000 pursuant to the terms of the Agreement.

7. Under Clause 10 the Agreement the Defendant also agreed that he would abide by such covenants restrictions rules or regulations established by Royal Palm Villas Limited and that the building, when completed, would be managed by the Plaintiff.

8. Covenants and Restrictions prepared by the said Royal Palm Villas Limited and provided to the Defendant, provided that the Defendant would pay such assessments as were determined to be necessary to promote the recreation, health, safety and welfare of the residents of the Royal Palm Villas complex, which assessments included cable fees in the sum of Bz\$32.50 per month and Association Dues in the sum of Bz\$100.00 per month which sums were to be paid to the Plaintiff.

9. The Defendant has neglected to pay Association Dues since the month of July 2000 to the present date.

10. The Plaintiff has notified the Defendant verbally and in writing that the above payments are overdue and has made demand for the same but notwithstanding the repeated demands by the Plaintiff therefor the Defendant has wrongfully and in breach of the said Agreement failed and refused to pay the said balloon payment, or the said Association Dues.

11. By his said conduct the Defendant has evinced an intention no longer to be bound by the Agreement and has repudiated the same and the Plaintiff as it was entitled to do has accepted the said repudiation by the issue and service of the writ herein.

12. By reason of the matters aforesaid the Plaintiff has lost the benefit of the said Agreement and lost the revenue it would otherwise have received thereunder and has suffered loss and damage.

PARTICULARS

Balloon payment due on June 25, 2000 with interest thereon.	US\$76,255.89
Association dues from July 2000 to the date hereof together with interest thereon at 5% per month for late payment.	US\$ 1,157.79

AND the Plaintiff claims:

- (i) Possession of Strata Lot 23D;
- (ii) The said sum of US\$76,255.89 together with interest thereon at 5% per month until payment;
- (iii) The said sum of US\$1,157.79 for Association dues and interest thereon at 5% per month.

AND the Plaintiff claims possession of the said premises, and the said sum of \$77,413.68 together with interest at the rate of six percent per annum from the date of this Writ until payment and costs.

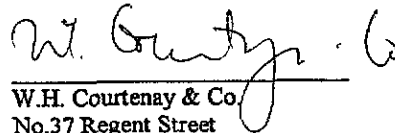
This Writ was issued by W.H. Courtenay & Co. whose address for service is at No.37 Regent Street in Belize City Attorneys for the Plaintiff of San Pedro Town, Ambergris Caye.

AND you are required within 21 days after the service of this notice, inclusive of the day of such service, to defend the said action by causing an appearance to be entered for you in the said Court to the said action.

AND TAKE NOTICE that in default of your so doing, the said Royal Palm Villas Limited may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your attorney at the Office of the Registrar of the Supreme Court of Belize.

DATED the 11th day of June 2001.



W.H. Courtenay & Co.
No.37 Regent Street
Belize City
Belize
Attorneys-at-Law for the Plaintiff.

IN THE SUPREME COURT OF BELIZE A.D. 2001

Action No. 203

BETWEEN

(ROYAL PALM INN LIMITED
(
(AND
(
(KENNETH PAYNE

PLAINTIFF

DEFENDANT

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

TO: **KENNETH PAYNE** of Heartland Financial Services, 8060 Knew Road – Suite 232, Indianapolis, Indiana 46250, U.S.A.

WE COMMAND YOU that within 21 days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of **ROYAL PALM INN LIMITED** a company incorporated in Belize with its registered office situate at Coconut Drive, San Pedro Town, Ambergris Caye.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

^{5th} WITNESS HIS LORDSHIP **ABDULEI CONTEH**, Chief Justice of Belize the day of *June* in the year of Our Lord Two thousand and one.

N.B. – This Writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by attorney at the Office of the Registrar in Belize City.

STATEMENT OF CLAIM

1. By an Agreement in writing dated the 5th day of October 1994 made between the Defendant of the first part the Plaintiff of the second part and Royal Palm Villas Limited a Company incorporated in Belize with its registered office situate at Coconut Drive San Pedro Town, Ambergris Caye of the third part, the Defendant agreed to purchase Strata Lot Number 23D of the Royal Palm Villas Project situate at Ambergris Caye for the sum of US\$59,950.00 in the currency of the United States of America together with interest thereon as in the Agreement stated.

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12. By reason of the matters aforesaid the Plaintiff has lost the benefit of the said Agreement and lost the revenue it would otherwise have received thereunder and has suffered loss and damage.

IN THE SUPREME COURT OF BELIZE A.D. 2001

Action No.203

IN THE MATTER OF AN INTENDED ACTION

(ROYAL PALM INN LIMITED
BETWEEN (AND
(KENNETH PAYNE

PLAINTIFF

DEFENDANT

Before the Registrar in Chambers

The 30th day of May 2001

UPON HEARING Counsel for the Plaintiff

AND UPON READING the Affidavit of James Janmohammed sworn on the 24th day of April 2001

IT IS HEREBY ORDERED THAT:

1. Leave be granted pursuant to Order 3 Rule 4 of the Supreme Court Rules to issue a Writ of Summons against the Defendant who resides out of the jurisdiction;
2. Leave be granted pursuant to Order 12 Rule 6 of the Supreme Court Rules to serve Notice of the Writ of Summons on the Defendant out of the jurisdiction by sending the same to the Defendant by registered post; and
3. That the Defendant shall enter appearance to the Writ of Summons within 21 days of the date of posting thereof.

DATED the 1st day of June 2001.


Deputy Registrar.

KROGER, GARDIS & REGAS
Bank One Center/Circle
111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-5175
(317) 692-9000
Fax (317) 264-6832

FAX TRANSMISSION

Vanessa Vogue	

FILELINE: re Kenneth Payne

FROM: Jim Knauer

DATE: June 29, 2001

ORIGINAL: will will not be mailed

As you will recall, I am the Federal Receiver in the case of US Securities & Exchange Commission vs Kenneth Payne (and others) presently pending in the United States District court for the Southern District of Indiana. In conjunction with my appointment as Receiver, I engaged your firm to investigate the attempted forfeiture of a condominium in Belize which was being purchased on contract by Kenneth Payne.

Mr. Welch of your firm has not been responsive to my requests for information, despite several times you told me he was proceeding. It appears the information he initially gave me was in error, as he told me the condominium was owned by an individual although I insisted that all of the information in my possession indicated it was owned by the Royam Palm Villas.

Nevertheless Mr. Welch in April told me in a conference call with you that he knew the owner and would contact him and gain an understanding of his position and attempt to obtain a copy of the purchase agreement. I have not heard anything since then, despite your two e-mails telling me he was investigating.

This week we received what I refer to as a foreclosure complaint from Royal Palm Limited, so it seems that my original understanding was correct that they are the contract sellers.

My interest as the receiver for Kenneth Payne must be protected. Moreover, if the value of the condominium substantially exceeds the debt due (approx \$77,000 US), which I

understand to be the case, then I am in a position to pay off the debt almost immediately. Please review this information and contact me immediately.

Confidentiality Note

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that dissemination, distribution, or copying of this fax is strictly prohibited. If you have received this fax in error, please immediately notify the sender at the telephone number provided above and return the original message to us at the address above via the United States postal Service. Thank you.

-F:\COMMON\JAKDOC\FAX3.WPD June 29, 2001