



**BETWEEN**

**BASIL SCOTT**

**PLAINTIFF**

**AND**

**MULTIMAX CONSTRUCTION, REPAIR & MAINTENANCE SERVICES LTD**

**DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff is the owner, with his wife, of a piece of land located in Kayla's Estate, Frank Sound, Block 58A and Parcel 123 ("the land") and the Defendant is a building contractor.
2. By a contract made between the Plaintiff and the Defendant on or about 1 December 2008 and contained in the Defendant's quotation dated 1 December 2008, the Defendant agreed, subject to the terms therein appearing and subject to the plans, drawings and cost schedule thereto annexed ("the specifications"), to carry out building works on the land, namely the construction of a house for the Plaintiff and to complete the same within 20-22 weeks of commencement for the inclusive sum of CI\$ 198,335.00.
3. There were implied terms of the contract as follows:
  - (i) that the materials supplied under the contract for the construction of the house would be of satisfactory quality;
  - (ii) that the materials supplied under the contract would be reasonably fit for the particular purposes for which they were being acquired;
  - (iii) that the Defendant would carry out the work with reasonable care and skill;
  - (iv) that the Defendant would complete the works as specified in the contract so that the house as completed would be fit for human habitation;
  - (v) that the Defendant would abide by and follow the Cayman Islands Government, Department of Planning's Building Code and the requirements of the Planning and Building Control Unit.

4. Further the Defendant owed a duty of care in carrying out the works to see that the work it did or supervised was done in a workmanlike manner with proper materials and so that, as regards that work, the house when completed would be fit for human habitation.
5. Further or in the alternative the Defendant owed a duty of care to the Plaintiff in carrying out the works.
6. The Defendant carried out building works on the house between 4 September 2008 and 10 April 2009. In breach of contract, the Defendant, before the house was completed, namely on or about 10 April 2009, abandoned the building works and has never completed the same.
7. Negligently and in breach of its contractual duties the Defendant carried out the building works in a manner which was defective and in breach of the Cayman Islands Government, Department of Planning's Building Code and the requirements of the Planning and Building Control Unit. The Defendant did not follow the "Red Card" procedures and the Plaintiff was forced to instruct an Engineer to inspect the building works and to produce a Report before the Department of Planning would pass the building works.

#### PARTICULARS OF DEFECTIVE WORKS

1. The walls were not constructed of poured concrete as provided by the specifications;
  2. The walls were constructed without being inspected;
  3. The Defendant constructed a stick roof when the specifications allowed for a truss roof;
  4. The roof framing was incomplete;
  5. Work was commenced on the roof before the "belting" inspection had been carried out;
  6. The windows were the incorrect size;
  7. The back door from the Kitchen has had to be relocated because of incorrect measurements;
  8. The building works on the house were not completed.
8. The Plaintiff has thereby suffered loss and damage. Further, the Plaintiff has suffered distress and inconvenience by reason of the Defendant's breaches of contract and/or negligence and such damage is continuing.
  9. By reason of the Defendant's breach or repudiation of the contract the Plaintiff was compelled to employ another contractor to complete the house at an increased cost and was deprived of the use of the land and the house from June 2009 when the Defendant ought to have

completed it until August 2009 when it was completed, whereby the Plaintiff was put to great inconvenience and expense and has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

1. The actual cost of remedial works and outstanding building works for completing the house in compliance with the Cayman Islands Government, Department of Planning's Building Code and the requirements of the Planning and Building Control Unit full particulars whereof are served by way of separate schedule herewith CI\$83,005.33 the Plaintiff reserves the right to recover any further costs in excess of the estimate;
  2. Loss of the use of the house and site from the agreed date of completion of the house to the date of actual completion CI\$2,200.00.
10. The Plaintiff is entitled to and claims interest on the said damages in accordance with section 34 of the Judicature Law (Revision).

AND the Plaintiff claims:

- (1) Damages;
- (2) Interest thereon; and
- (3) Costs

Dated this 13<sup>th</sup> day of August 2009

Mourant du feu & Juene.

Mourant du Feu & Juene

Attorneys-at-Law for the Plaintiff

This WRIT AND STATEMENT OF CLAIM was filed by Mourant du Feu & Juene, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Second Floor, P.O. Box 1348, Grand Cayman KY1-1108, 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 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 495G, 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 installments 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 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.

BETWEEN

BASIL SCOTT

PLAINTIFF

AND

MULTIMAX CONSTRUCTION, REPAIR & MAINTENANCE SERVICES LTD

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.
- 

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

Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

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.*

Mourant du Fue & Juene  
Attorneys-at-Law for the Plaintiff  
Second Floor, Harbour Centre  
P.O. Box 1348  
George Town,  
GRAND CAYMAN (Ref:NQ/2099020/2044518 )

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

[Empty box for defendant's attorney indorsement]