

IN THE GRAND COURT OF THE CAYMAN ISLANDS

403  
CAUSE NO. OF 2009

BETWEEN:

THE NASSAL COMPANY

PLAINTIFF

AND:

CAYMAN TURTLE FARM (1983) LTD.

DEFENDANT



**WRIT OF SUMMONS**

TO: Cayman Turtle Farm (1983) Ltd.  
Registered Office  
P.O. Box 645  
Grand Cayman, KY1-1107  
Cayman Islands

**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 495G, 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 24 day of August 2009.

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 company that is registered in Florida, USA. Its registered office is 415 West Kaley Street, Orlando, Florida, 32806, U.S.A. The Plaintiff engages in the business of construction, including construction management and is recognized worldwide as a leader in the fabrication and installation of immersive and themed environments for entertainment, leisure, museum, zoo and aquariums venues. Services include theming, exhibitry and rockwork fabrication and installation.
2. The Defendant is an ordinary resident company that was registered in the Cayman Islands on 21 April 1983 under Registration Number 3343. Its registered office is P.O. Box 645, Grand Cayman, KY1-1107, Cayman Islands.
3. The Plaintiff entered into an agreement with the Defendant on the 1<sup>st</sup> May 2004 for the provision of construction management services by the Plaintiff to the Defendant (the “Services”) in relation to the construction and improvement of the Cayman Turtle Farm (the “Contract”).
4. The Contract was subsequently varied as follows:
  - 4.1. by Change Order number “Prime-01” dated 30 March 2005, pursuant to which the Plaintiff and the Defendant agreed that the Plaintiff would carry out certain constructions works (the “Works”) at the Cayman Turtle Farm;
  - 4.2. by Change Order #1, Change Order #2 and Change Order #3;

- 4.3. to provide for deductions from the amounts owing from the Defendant to the Plaintiff pursuant to the Contract in respect of local purchases by the Defendant;
- 4.4. to provide for the payment of a Project Delay/Added Cost Fee by the Defendant to the Plaintiff.

(together, the "Works Variations").

5. The Plaintiff commenced provision of the Services and Works from March 2005. The Works and Services were completed by the Plaintiff by October 2006.
6. Taking into account the Works Variations, the total principal sum due (excluding interest) pursuant to the Contract from the Defendant to the Plaintiff for the provision of the Services and Works was US\$3,985,176.11 (the "Final Contract Price").
7. The Defendant made certain payments in partial satisfaction of the Final Contract Price. In June 2007, the Plaintiff and the Defendant agreed to further vary the Contract to provide for the payment by the Defendant of the balance then outstanding of the Final Contract Price of US\$112,748.62 by way of twenty-four equal monthly instalments of US\$4,697.61, commencing on 28 June 2007 (the "Instalment Variation").
8. However, although the Defendant paid the first instalment on 28 June 2007 and subsequently made other ad hoc payments, the last being on 15 November 2007, as at 20 August 2009 and despite numerous demands for payment, the total principal amount

due under the Contract that the Defendant has, in breach of the Contract, failed to pay to the Plaintiff is US\$66,735.55.

9. Pursuant to Clause 13.5.2 of the Contract, amounts due under the Contract which remain unpaid 30 days after the date of the Plaintiff's invoice accrue interest at the legal rate prevailing from time to time at the principal place of business of the Plaintiff. As at 24 August 2009, interest pursuant to the Contract in the amount of US\$43,926.53 has accrued on the balance of the Final Contract Price outstanding from time to time and remains unpaid.
10. Further, by reason of the Defendant's breach of the Contract set out in paragraph 8 hereof, the Plaintiff has suffered loss and damages.

#### **Particulars**

- 10.1. damages arising out of a loss of working capital;
- 10.2. loss of bonding capacity because of reduced working capital;
- 10.3. loss of revenues due to reduced working capital and reduced bonding capacity;
- 10.4. loss of ability to obtain credit as a result of the Turtle Farm's bad debt.

**AND THE PLAINTIFF** claims against the Defendant:

1. Under paragraph 8: US\$66,735.55, being the principal amount outstanding under the Contract;
2. Under paragraph 9: Interest pursuant to the Contract, which as at 24 August 2009 totalled US\$43,926.53 and which has continued to accrue since that date;

3. Further, or alternatively, interest on US\$66,735.55 pursuant to section 34 of the Judicature Law (2007 Revision);
4. Under paragraph 10: damages;
5. Interest on damages pursuant to section 34 of the Judicature Law (2007 Revision);
6. Costs; and
7. Such further and other relief as this Honourable Court may allow.



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**SOLOMON HARRIS,**  
**ATTORNEYS-AT-LAW FOR THE PLAINTIFF**

**THIS WRIT** was issued by **SOLOMON HARRIS** of 3<sup>rd</sup> Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of its said Attorneys-at-law.

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**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

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1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant acting in person.
2. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.
3. 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 acknowledgment 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.

4. 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 for notes for guidance*

*Please complete overleaf*

## 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 I 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.

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**ACKNOWLEDGMENT OF SERVICE  
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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.

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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

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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

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

Cayman Turtle Farm (1983) Ltd.

Address for service: Registered Office, P.O. Box 645, Grand Cayman, KY1-1107,  
Cayman Islands

*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.

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

Solomon Harris  
Attorneys-at-law  
3<sup>rd</sup> Floor, First Caribbean House  
P.O. Box 1990  
Grand Cayman  
Cayman Islands, KY1-1104

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