

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION



CAUSE NO. <sup>599</sup> of 2009

BETWEEN:

CONSTRUCTION AND SUPPLY LIMITED

Plaintiff

AND:

CHASE & FAITH BODDEN

Defendants

WRIT OF SUMMONS

TO: Chase & Faith Bodden

**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        day of November 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 and was at all material times a company organized and carrying on business pursuant to the laws of the Cayman Islands and specializing as general building contractors on Cayman Brac.
2. The Defendants are and were at all material times a married couple owning a property at 32 Frigate Drive, Bight, Cayman Brac, (hereinafter 'the home').
3. All negotiations and discussions between the Plaintiff company and the Defendants were carried out on behalf of the Plaintiff through the Plaintiff's owner/director Mr Brinsley Lazzari and all reference to discussions between the Plaintiff and the Defendant herein are to be construed in that manner.
4. On the 15<sup>th</sup> November 2008 the Defendants approached the Plaintiff and asked them to provide a damage repair estimate for damage sustained to their home as a result of Hurricane Paloma.
5. The Plaintiff provided a written damage repair cost estimate to repair the home to its original condition on the 18<sup>th</sup> November 2008 after inspecting the house and gave this to the Defendants. The estimate was for the sum of CI\$55,580.32.
6. The Defendants again approached the Plaintiff on or around early December 2008 and asked him to provide a quotation for the repair work and additional remodeling and upgrading work to the home. The additional work included but was not limited to the following;
  - (a) Resizing the window and door openings to accommodate different size windows and doors in concrete walls
  - (b) Replacing all electrical wiring and fixtures.
  - (c) Removing  $\frac{3}{4}$  ceramic floor tiles in the house.
  - (d) Removing all ceramic wall tiles in the kitchen and bathrooms
  - (e) Removing and replacing the entire roof and ceiling with a new roof of a different design and material.
  - (f) Cutting into concrete walls and installing metal anchors for the roof.

7. On the 17<sup>th</sup> December 2008 the Plaintiff provided the Defendants with a written quotation for the work with the quotation totaling CI\$107,273. The Plaintiff also outlined that they required the sum of CI\$56,191 at the outset of the job upon acceptance of the quotation for materials.
8. On or around the 17<sup>th</sup> December 2008 the Defendants orally accepted the quotation and on the 19<sup>th</sup> December 2008 the Defendants, through their bank, deposited the sum of CI\$56,191 into the Plaintiff's bank account, representing the first draw for materials for the project.
9. After the deposit of the said funds and on the same day the Defendant, Faith Bodden spoke with the Plaintiff and informed them that the Defendants were traveling to Miami and that they would now be responsible for purchasing much of the materials for the contract and requested the sum of CI\$36,000 from the Plaintiff from the monies received by him to do so. The Plaintiff wrote cheque #2876 in the sum of CI\$36,000 as requested and gave this to Faith Bodden.
10. The parties agreed that the Plaintiff should remain responsible for purchasing the metal roof, cement and aggregate.
11. On the 24<sup>th</sup> December the Plaintiff received a telephone call from Faith Bodden asking them to give her Chase Bodden's mother, Bonnie Bodden, a further CI\$10,000 from the monies received by them. The Plaintiff wrote cheque number CNB 2884 in the sum of CI\$10,000 in the name of the Defendants and gave it to Bonnie Bodden for delivery to the Defendants. It was not specified to the Plaintiff what this further money was requested for.
12. Despite the change on the arrangements for the provision of materials the Plaintiff commenced work on the project on the 21<sup>st</sup> January.
13. The Plaintiff experienced numerous delays in completing the project, these problems being as follows:
  - (a) The Defendants stored a 40 ft container full of furniture in the house that the Plaintiff had to work around.
  - (b) As the job progressed the Plaintiff discovered that the Defendants had not supplied materials that they had agreed to supply causing delay and in particular;

- (i) On the 20<sup>th</sup> February the Defendants requested that the Plaintiff order all materials needed to complete the roof including roof insulation, roof framing, roof sheathing, waterseal, fastening and drywall materials.
  - (ii) At other times the Defendants would supply only part of the materials that were required, when informed by the Plaintiff of the deficiency they would have to order the remainder of the materials which took time to arrive on site.
  - (c) The Defendants requested changes to the scope of work for work that had already been completed.
14. As the Plaintiff continued with the work despite being delayed by the actions of the Defendants and being starved of funds, the Plaintiff repeatedly requested further funds due and owing on the contract for work completed and materials purchased.
15. On the 11<sup>th</sup> March 2009 a part payment of monies owed was received of CI\$14,655.
16. On the 17<sup>th</sup> July 2009 the further sum of CI\$10,000 was deposited to the Plaintiff's account from the Defendants.
17. Whenever asked about non payment of monies requested the Defendants stated that their bank was refusing to release the money until the end of the contract.
18. Despite the shortage of funds the Plaintiff continued progress on the home to the stage that all interior work was complete and the Defendants were able to move into the home on or about the 1<sup>st</sup> August 2009.
19. On the 17<sup>th</sup> August 2009 the Defendants who were off island at the time phoned the Plaintiff and requested that they apply a marmoran finish to the exterior of the home. The Plaintiff informed them that this was an extra to the contract and would require additional materials and payment.
20. The Defendants failed to supply the materials or provide funds to the Plaintiff to allow the additional work to be commenced.

21. The Plaintiff sought to meet with the Defendants and attempted to contact them on numerous occasions over the course of mid August and early September in order to arrange progress on the home and complete the contract.
22. On 13th September 2009 the Plaintiff visited the home and was informed orally by Faith Bodden that their services were no longer needed and that they had hired another contractor to complete the project. No explanation was given to the Plaintiff for their decision to terminate the contract.
23. By so doing the Defendant in breach of contract repudiated the contract.
24. The Plaintiff accepted that in those circumstances the contract work could no longer be performed and presented the Defendants with an invoice for work completed to date.
25. The Defendants reviewed the invoice in front of the Plaintiff, threw it on the ground and stated that they had no intention of paying any money.
26. Despite requests for payment of monies due and owing on foot of the breach of contract of the Defendant and for monies due and owing for work performed and materials supplied pursuant to the contract for work dated 17<sup>th</sup> December 2009 the Defendants have failed or refused to pay the monies owing.
27. The Plaintiff seeks damages on foot of the breach of contract of the Defendants and interest.

**Particulars of Loss**

1.	The Plaintiff provided materials and labour to the value	CI\$82,703.15
2.	The Plaintiff was paid the net sum	<u>CI\$34,846</u>
3.	The Plaintiff is owed the sum	CI\$47,857.15

**AND THE PLAINTIFF claims:**

1. CI\$47,857.15

2. Interest in accordance with the lease agreement in the alternative in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
3. Costs
4. Such further and other relief as this Court may deem just

**STATEMENT REGARDING INTEREST**

- a) The rate of interest is 5% per annum.
- b) The date from which interest accrues is the 13<sup>th</sup> September 2009.
- c) The amount of interest owing as of the date of issue of this Writ is \$465.45.
- d) The amount of interest accruing each day following the issue of this Writ is CI\$6.55.

Dated this 30<sup>th</sup> day of November 2009

*Samson d McGrath*

Samson & McGrath  
Attorneys-at-Law for the Plaintiff

**INDORSEMENT**

The principle amount claimed in respect of the debt is CI\$47,857.15 plus interest of CI\$465.45 as of the date of filing. The amount of the filing fees to commence proceedings is CI\$200 plus ad valorem fees of CI\$378.57. If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed in principle, interest and cost of issuing the writ of summons further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.

*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 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 authorised 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 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.



**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.

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

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