

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. Civ. 0126 of 2010

**BETWEEN: MARK MILLER**

**PLAINTIFF**

**AND; CAYSTAR CONSTRUCTION**

**WINSTON EBANKS**

**DEFENDANTS**

**WRIT OF SUMMONS**

**TO; Caystar Construction**  
P O Box 707,  
West Bay  
GRAND CAYMAN KY 1 - 1303



**AND TO: Mr Winston Ebanks**  
c/o P O Box 707  
West Bay  
Grand Cayman KY 1 - 1303

**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 G, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgement may be entered against you forthwith without further notice.

Issued this                      day of March, 2010

**NOTE:** This Writ may not be served later than 4 calender months beginning with the date of the issue unless renewed by Order of the Court.

**IMPORTANT**

Directions for Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

- 1 The Plaintiff is an individual who is domiciled and resides in the Cayman Islands and at the material time, was and remains the owner of property located at **Registration Section: Lower Valley Block 37E Parcel 72.**
- 2 The Defendants are two individuals who are domiciled in the Cayman Islands and at the material time they traded under a Trade & business License in the name of "Caystar construction" which they held out to specialize as general contractors, sheetrock specialists and renovation experts.
- 3 On or about 23<sup>rd</sup> July, 2009 the Defendants provided a detailed written proposal for the construction of duplex on the said property at a total price of CI\$236,000.00.
- 4 In the proposal it was proposed that the Defendant would be paid by 4 installments as follows to have the construction completed to the following stage:
  - First Payment** - includes completed foundation and floor slab, plumbing, electrical and walls to the belting – CI\$82,000.00
  - Second Payment** – includes completed internal walls, roof, windows, doors and sheetrock – CI\$74,000.00.
  - Third Payment** – includes tiling, fixtures, acrocrete finish, air condition, electrical, plumbing, cabinets and appliances – CI\$71,000.00
  - Final Payment** – includes final inspection for occupancy – CI\$9,000.00.
- 5 This proposal was signed on behalf of the Defendant by Mr Winston Ebanks, as Owner/Director of the Defendant and dated 3<sup>rd</sup> August, 2009.
- 6 The Plaintiff subsequently accepted this Offer and will rely on the content for its full terms and legal effect.
- 7 On or about 21<sup>st</sup> October, 2009 the Defendant by letter of the same date confirmed the said Agreement to construct the said duplex and also confirmed that "to completed the whole construction

project would take upon till January 2010 to finish.", which letter was again signed by Winston Ebanks as Owner/Director.

- 8 The Plaintiff will again rely on the content of this letter for its full terms and legal effect.
- 9 As a result of the said contract, and in reliance on the content of same, the Plaintiff applied for and obtained financing from the Cayman National Bank to complete the construction of the said duplex.
- 10 In furtherance of this, the Cayman National Bank, confirmed that it was their policy, that in order for them to provide the various draw-downs of funds as stipulated in paragraph 4, that they required appropriate Certificates from a properly qualified, independent project manager/ quantity surveyor and DDL Studio, Quantity Surveyors were employed for this purpose.
- 11 Consequently DDL Studio Quantity Surveyors provided an Interim Valuation to the Cayman National Bank dated 26<sup>th</sup> October, 2009 regarding "the house under construction at Block 37 E Parcel 72 Lower Valley" wherein they referred to a "valuation report dated 8<sup>th</sup> June, 2009, referenced 9648/MK in which full specification details are given" indicating that they assessed the value of the land to be CI\$60,000.00 and the building construction at CI\$267,500.00 and that the anticipated market value on completion to be CI\$366,000.00.
- 12 In that Report they assessed that the value of the work carried out to date was CI\$82,060.00 and that the monies necessary to complete the work was CI\$185,440.00.
- 13 Subsequently the said DDL Studio Quantity Surveyors completed a further Interim Valuation for the Cayman National Bank dated 3<sup>rd</sup> December, 2009 wherein they updated the previous Report indicating that the Plaintiff had upgraded various aspects of the building including an aluminum barrel type roof covering, the installation of rainwater goods and upgrades to the kitchen and bathroom cabinetry and worktops, the additional costs of which upgrades were estimated by them to be CI\$11,500.00.
- 14 In the said Report the construction cost was reassessed to CI\$279,000 with a new anticipated Market Value of CI\$379,000.00. The Report also confirmed that the Plaintiff had "paid several deposits for materials not yet incorporated within the works as listed... and that invoices and receipts for these items have been provided and inspected."

- 15 An estimate of the work completed to date was provided at CI\$167,135.00 with a total of CI\$111,865.00 being required to completed the construction,
- 16 Subsequently a further Interim Valuation Report was completed by DDL Studio quantity Surveyors dated 11<sup>th</sup> January, 2010 for the said bank which inter alia confirmed the previous upgrades and confirmed that there were "agreements in place with the Building Contractor that these upgrades will not increase the construction cost due to the off-setting of savings made in the foundation construction so that the construction cost remained at CI\$267,500.00 with an anticipated market value on completion of CI\$379,0000.00.
- 17 The Report went on to assess the value of the work carried out to date at CI\$186,070.00 and the cost to complete the work at CI\$81,430.00.
- 18 The Plaintiff will rely on the content of each of the said Reports for their full terms and legal effect.
- 19 In breach of the contract between himself and the Defendant, although paid CI\$206,000.00 by the Cayman National Bank, has not completed the work to proper specification and in their Report dated 11<sup>th</sup> January, 2010 DDL Studios have specified a number of defects in the construction requiring remedial works and they also confirm that the Plaintiff has "paid several deposits for materials not yet incorporated within the works as listed on the following pages. Invoices and receipts for these items have been provided and inspected and, including shipping and duty, amount to CI\$15,400.00.
- 20 In addition to the defects specified in the DDL Studio's Report, the Plaintiff has now learnt that contrary to the provisions of the contract and contrary to the laws of the Cayman Islands, the Defendants, failed to have a Licensed Electrician complete the work at the premises, and instead it was completed by an unlicensed apprentice, and is not up to standard.
- 21 As a result of the Defendant's breach of contract and negligent workmanship, the Plaintiff has suffered loss and damage.
- 22 Wherefore the Plaintiff Claims:
- (a) The sum of CI\$ 81,430.00 being the amount necessary to complete the construction;
  - (b) CI\$6650.00 being the amount necessary for the remedial works

- (c) Damages for breach of contract
- (d) Statutory interest on any Damages awarded
- (e) An injunction restraining the Defendant from himself, his servants or agents or otherwise from entering on the said property for any reason whatsoever,
- (f) Costs
- (g) Further and/or other relief

Dated this 17<sup>th</sup> day of ~~February~~ <sup>March</sup>, 2010

Brooks & Brooks  
**BROOKS & BROOKS**  
**ATTORNEYS AT LAW FOR**  
**THE PLAINTIFF**

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was filed by  
Brooks & Brooks, Attorneys At Law, P O Box 1355 Grand Cayman KY 1 - 1108  
located at One Artillery Court, Shedden Road, George Town, Grand Cayman**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO. Civ.**

**BETWEEN: MARK MILLER PLAINTIFF**  
**AND; CAYSTAR CONSTRUCTION DEFENDANTS**  
**WINSTON EBANKS**

**ACKNOWLEDGEMENT 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 judgement 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 of Summons is being acknowledged:

2. State whether the Defendant intends to contest the proceedings (Tick appropriate box)

Yes

No

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 judgement entered by the Plaintiff( Please tick box)

Yes

No

Service of the Writ of Summons is acknowledged accordingly

Signed \_\_\_\_\_

Please complete oveleaf

(Attorney) for

(Defendant in Person)

Address for service:

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 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 the Plaintiff's Attorney (or by the plaintiff if suing in person) of his name, address and residence, if any in the box below

**Brooks & Brooks  
Attorneys At Law  
P O Box 1355 GT  
GRAND CAYMAN**

**(Two, Artillery Court, George Town, Grand Cayman)**

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