

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 276 OF 2010

BETWEEN:

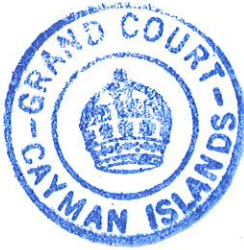
R & H ENGINEERING & ARCHITECTURE LIMITED

PLAINTIFF

AND

EDGAR WEBB

DEFENDANT



WRIT OF SUMMONS



TO: Edgar Webb

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 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 Acknowledgement of Service, stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or 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 judgment may be entered against you forthwith without further notice.

Issued this ^{30th} day of July 2010

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 Acknowledgement of Service are given with the accompanying form

STATEMENT OF CLAIM

1. The Plaintiff is a limited liability company lawfully trading in the Cayman Islands as an engineering and architectural contractor.
2. The Plaintiff and Defendant signed a rental agreement for the lease of premises at Block 14D Parcel 89, George Town on the 9th February 2010 (hereinafter 'the premises'). Those premises belonging to the Defendant as owner and landlord and the Plaintiff was contracting as tenant.
3. The terms of the lease agreement were that the lease would run for a period of a minimum of 12 months beginning at the end of February 2010 at the sum of CI\$600 per month.
4. On or before the end of February 2010 the Defendant paid the sum of CI\$1,200 to the Defendant, representing CI\$600 as a security deposit and CI\$600 for the first month's rent.
5. It was an implied term of the lease that the Plaintiff would pay rent every month thereafter in the agreed sum of CI\$600 on or before the end of each calendar month in advance for the next month.
6. In accordance with the implied term as to payment of rent, the Plaintiff paid such rent each month to the Defendant up to a payment made on 30th April 2010 to cover rent for the month of May 2010.
7. It was a further implied term of the lease that the Defendant would grant peaceful and quiet occupation of the premises to the Plaintiff during the currency of the lease.
8. The lease agreement contained no express clause or condition permitting forfeiture of the lease in any circumstances and specifically there was no express provision for forfeiture of the lease upon non-payment of rent.

9. On or about the 30th April 2010 the Defendant served on the Plaintiff a letter purporting to be a notice to quit asking the Plaintiff to vacate the premises on or before the 25th May 2010.
10. The Plaintiff denies that such notice to quit was valid and denies that any terms of the lease, implied or express had been breached by him.
11. On the same day, the 30th April 2010 the Defendant, in breach of the implied term of peaceful occupation of the premises caused the electricity supply and water supply to the premises to be disconnected.
12. In the letter dated 30th April 2010 the Defendant alleged that the Plaintiff had breached the terms, express or implied of the tenancy agreement.
13. On the 24th May at the premises the Defendant confronted a representative of the Plaintiff, Mr. Rolland Henry, telling me that he wanted him out and threatened to shoot him, further stating 'I will go to prison for you.'
14. In response to that letter the Plaintiff wrote to the Defendant, via his Attorney on the 25th May 2010 disputing that any breach of the terms of the tenancy agreement had taken place.
15. This letter was delivered to the Defendant by the Plaintiff on the 26th May 2010.
16. On or about the 27th May 2010 the premises were locked and secured and no persons were in the building.
17. On the 27th May 2010 the Defendant entered the premises and changed the locks on the property with such action being in breach of the terms of the tenancy agreement and an illegal entry to the premises.
18. Upon illegal entry to the premises the Defendant, his servants or agents changed the locks on the property and thus took occupation of the premises and denied the Plaintiff

access to the premises and to his goods, tools of the trade and possessions held on the premises.

19. Such occupation of the premises constituted a trespass to property and trespass to his goods and breach of covenant of peaceful and quiet occupation of the premises.
20. On the 15th July 2010 after discussion between the parties it was arranged that the Plaintiff would be allowed to collect all items from the premises at 12 noon. The Plaintiff attended and was permitted to collect the following items:
 - (1) Two water tanks
 - (2) One water heater
 - (3) One storage cupboard
 - (4) Drainage gratings, p.v.c. pipes, aluminum sheeting and manhole covers.
21. As the Plaintiff attempted to take the remainder of the items on site the Defendant asked for \$600 in for utilities that he alleged were owed and asked for the payment of that sum before any further items were removed.
22. Upon failure to pay this sum as demanded the Defendant refused to allow any further good, equipment or tools to be removed and threatened to shoot the Plaintiff. At that the Plaintiff left the premises.
23. From the 27th May 2010 to the date of issue of Writ the Defendant has failed or refused to remedy his trespass to property and remains in possession of the property, barring the items removed on the 15th July 2010, to the exclusion of the Plaintiff.

Particulars of Breach of Covenant of Lease Agreement and Trespass to Property

24. By an implied term of the lease the landlord covenanted with the Plaintiff that upon the Plaintiff paying the rent reserved he shall peaceably hold and enjoy the Leased premises during the term of the agreement.
25. On the 27th May 2010 the Plaintiff was informed by an officer of the RCIPS that the Defendant intended to take possession of the property, the Defendant then proceeded

to interrupt the said peaceful possession of the Plaintiff by breaking into the premises and changing the locks to the property.

26. The Plaintiff was out of possession of the premises from the 27th May 2010 and continuing.
27. By reason of the Defendant's breach of covenant and trespass to property the Plaintiff has suffered loss and damage.
28. The Plaintiff claims damages for breach covenant of the tenancy agreement and for trespass to property.
29. In addition to general damages for trespass to property and breach of covenant the Plaintiff seeks aggravated damages for the fear and injury to his dignity and feelings due to the manner of the eviction.
30. Additionally the Defendant's conduct in evicting the Plaintiff from the premises was motivated by the calculation on the Defendant's part that the compensation which he would be required to pay the Plaintiff, if any, would be less than the profit which the Defendant would make from re-letting the premises with the improvements made. Accordingly the Plaintiff claims exemplary damages.

Particulars of Claim for Damages for Breach of the Tenancy Agreement

- (a) The Defendant has retained the one month security deposit belonging to the Plaintiff is the sum of CI\$600.
- (b) The Defendant has been denied access to the premises for the remainder of the term of the lease, being 9 months at \$600 per month.
- (c) The Defendant is entitled to an award of aggravated damages to be assessed due to the manner of the eviction.
- (d) The Plaintiff is entitled to exemplary damages for the conduct of the Defendant in evicting the Plaintiff in the circumstances of the case.

Trespass to Goods and Illegal, Irregular and Excessive Distress

31. In the act of taking possession of the premises the Defendant also took unlawful possession of and illegally distrained the goods, tools, equipment and materials belonging to the Plaintiff.

32. These goods are essential to the running of the Plaintiff's business and the value at date of purchase of such goods are as stated below:

(a)	Double bevel sliding wood chop saw	\$989
(b)	(1) Compressor 2 H.P. 8 gallon	\$1,579
(c)	(1) 14" gasoline Makita cut off saw	\$1,839.96
(d)	(1) wet tile saw 10"	\$2,000
(e)	(1) Hobart Welding Generator	\$6,000
(f)	(1) Lincoln wire feed welding set	\$2,400
(g)	(1) jumping jack compactor	\$4,000
(h)	(1) plate vibrator compactor	\$3,000
(i)	(1) concrete mixer	\$2,400
(j)	(1) concrete poker	\$500
(k)	(2) car jacks (5 ton and 3 ton)	\$800
(l)	(2) tool kits with complete mechanic tools	\$1,200
(m)	(2) starters for 10 H.P. submersible sewage pumps	\$400
(n)	(2) starters for 5 H.P. submersible sewage pumps	\$350
(o)	Assorted tools, clamps and fittings	<u>\$400</u>
	Total value of business goods distrained	\$27,857.96

33. The value of the goods is far in excess of the value of the goods necessary to levy distress against the Plaintiff.

34. The Defendant further distrained property of the Plaintiff which the Plaintiff had placed on the premises by way of furniture and fittings. The goods and value of the said goods at date of purchase are as follows:

(a)	(2) Queen size beds	\$800
(b)	(2) face basins	\$600
(c)	(1) dining room table and (4) chairs	\$400
(d)	(2) table lamps	\$300
(e)	(1) table top gas stove, cylinder & regulator	\$600
(f)	(1) washer/dryer	\$2,400
(g)	(6) sets bed sheets and pillows	\$800
(h)	(1) 50 gallon water heater	\$500
(i)	(1) water storage tank and stand	\$800
(j)	(1) storage cupboard	<u>\$300</u>

Total

\$7,500

Particulars of Trespass to Goods and Illegal, irregular and excessive Distress

35. On the 27th May 2010 the Defendant purported to exercise a right to distrain for arrears of rent due from the Plaintiff and levied distress upon the Plaintiff's goods.
36. The Defendant purported to exercise this right in the following manner:
- (a) By illegally entering the premises by force.
 - (b) By wrongfully entering the premises and distraining property, machinery and plant which were affixed to the property and which were and are the tenant's fixtures and therefore privileged from seizure by distress.
 - (c) The Defendant failed or omitted to serve a notice of distress.
 - (d) The Defendant wrongfully distrained goods of an excessive and unreasonable quantity. The goods distrained by the Defendant had a value of not less than \$30,000.
 - (e) The Defendant wrongfully distrained tools, books and equipment necessary for the Plaintiff's business.
 - (f) The Defendant was guilty of trespass.
 - (g) The Defendant illegally distrained by entering the premises by force.

Particulars of Loss and Damage

37. The Plaintiff has lost possession of the goods, tools and equipment listed at paragraphs 28 and 30 and the Plaintiff seeks either immediate return of these goods or damages in the alternative.
38. The Plaintiff has been unable to complete on-going projects and has suffered delay due to the trespass and illegal distress of the Defendant. The Plaintiff will provide full particulars of loss once the costs and losses are known.

Unjust Enrichment

39. In anticipation of peaceful enjoyment of the premises for a period not to be less than 12 months, the Plaintiff carried out various remedial and improvement work to the property to make it suitable for the purposes of the rental agreement.
40. The Plaintiff carried out the following work at the following cost:
- (a) Re-wiring the building to bring it up to government code for electrical work; \$1,400.
 - (b) Removing rotted trees from the grounds of the property, grading and filling part of the property grounds; \$800.
 - (c) Excavating and pouring 4 reinforced concrete pads on the grounds to support a temporary shed; \$2,000.
 - (d) Building tool shed and paving entry to rear door.; \$300
 - (e) Placing 3 locks to front door; \$180.
 - (f) Replacing termite ridden frame to front door; \$120.
 - (g) Repair kitchen counter and installation of sink; \$300.
41. The Defendant, in breaching the contract obtained the benefit of the work and improvements to the premises and was unjustly enriched.
42. The total value of the work completed by the Plaintiff and to which the Defendant has been unjustly enriched is \$5,100. The Plaintiff seeks damages in the sum of \$5,100 for the unjust enrichment of the Defendant.

STATEMENT REGARDING INTEREST

1.

a)The Plaintiff seeks pre and post judgment interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.

b)The interest rate as per the Judgment Debt (Rates of Interest) Rules is 5% per annum.

AND THE PLAINTIFF claims:

1. Damages for trespass to property, breach of covenant for quiet enjoyment of a leasehold property including aggravated damages and damages for unjust enrichment of the Defendant.
2. Damages for illegal, irregular and excessive distraint of goods, and unlawful interference with goods.
3. Exemplary damages.
4. An injunction to return the goods unlawfully distrained by the Defendant to the Plaintiff.
5. Interest in accordance with the Judicature Law (2007 Revision)
6. Costs
7. Such further and other relief as this Court may deem just.

Dated this ^{30th} day of July 2010

Samson & McGrath

Samson & McGrath

Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Samson & McGrath, Attorneys-at-Law for the Plaintiff, whose address for service is 3rd Floor Genesis Building, Genesis Close, PO Box 446, Grand Cayman KY1 – 1106, Cayman Islands

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CAUSE NO. OF 2010

BETWEEN:

R & H ENGINEERING & ARCHITECTURE LIMITED

PLAINTIFF

AND

EDGAR WEBB

DEFENDANT

**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. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

1. State the name of the Defendant by whom or on whose behalf the service of this Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick the 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

no

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 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 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
5th FLOOR GENESIS BUILDING
GENESIS CLOSE
PO BOX 446
GRAND CAYMAN KY1 - 1106
CAYMAN ISLANDS

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