

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. CIV 407 of 2011

BETWEEN:



CONSTRUCTION AND SUPPLY LIMITED

Plaintiff

AND:

JUDITH OYOG

Defendant

WRIT OF SUMMONS



TO: Judith Oyog

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 12 day of October 2011.

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 Defendant was at all material times an individual owning a property at Registration Section CBW, Block 96E Parcel 19, (hereinafter 'the property').
3. All negotiations and discussions between the Plaintiff company and the Defendant 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 or around November 2009 the plaintiff prepared a quotation to perform work to the property and on the 12 November the parties signed a written contract (the "initial contract") wherein the plaintiff in consideration for the sum of KYD\$36,502 agreed to perform the following work to the property:
 - (a) Construction of a septic tank
 - (b) Construction of a cistern
 - (c) Construction of a foundation wall and concrete floor slab for a dwelling house of 1609 sq. feet.
5. The plaintiff was paid the sum of KYD\$33,750 as an advance fee on 26 October 2009 and thereafter commenced work in December 2009.
6. On the 21st January 2011 the parties entered into a further written contract (the "final contract") for the total sum of KYD\$175,530 in which the plaintiff agreed in consideration for the said sum to construct a dwelling house of 1609 sq. feet on the property. A full copy of the contract is annexed to this statement of claim.
7. The terms of the contract as are relevant to this claim are as follows:
 - (a) The construction of the property was to be carried out in accordance with the floor plans and materials list.
 - (b) The defendant can authorize amendments or alterations to the work described by the plans and specifications by amending the contract but any increase in cost caused by the amendment shall be borne by the owner and all requests for amendments or alterations must be in writing and signed by the Owner (defendant).
 - (c) That payments were to be made in 4 stages with the final payment of \$29,449 due upon completion of all works as per the contract.
8. The work agreed to be performed pursuant to the initial contract was included in the final contract and the final contract price included the sum of \$33,750 for the work as per the initial contract.

9. The defendant caused to be paid to the plaintiff the following sums on the following dates;

26/10/09	\$33,750
27/5/10	\$42,649
23/7/10	\$29,216
9/11/10	\$29,216
10/12/10	<u>\$11,250</u>
Total	\$146,081

10. On or around August 2010, the defendant signed a written request for change (the 'extra work') of the house lay out for the following work:

- (a) Remove 2 windows from the living room and enclose the opening.
- (b) Remove one window from the kitchen and enclose the opening.
- (c) Relocate the linen locker in the passageway to the wall at the end of the passage.
- (d) Remove clothes locker in upstairs east bed room, remove south wall, install flooring and ceiling in the attic space, extend the bedroom into the attic space.
- (e) Remove clothes closet in west upstairs bed room, remove south wall, install flooring and ceiling, extend the bed room into the attic space.
- (f) Install flooring and ceiling in the north Attic space of east upstairs bedroom to make a clothes closet.
- (g) Install flooring and ceiling in Attic space of west upstairs bedroom to make a clothes closet.

11. The extent of the extra work was detailed on plans attached to the written request for change and these are annexed to this statement of claim.

12. In accordance with the terms of the contract the plaintiff charged additional monies for the extra work and values the work at \$6,000.

13. The plaintiff obtained a certificate of occupancy for the property on or around March 2011 and the defendant moved into occupation of the property at that time.

14. As of March 2011 the sum of \$35,449 was due and payable to the plaintiff by the defendant. The said sum is broken down as C\$6,000 for extras on the contract and \$29,449 for the balance due on the final contract.

15. In breach of the contracts made 21 January 2010 and on or around August 2010 the defendant has failed or refused to pay the said sum of \$35,449 despite requests for payment of same. By failing to make the payments requested the defendant repudiated the contract and the plaintiff claims damages.

16. Subsequent to substantial completion of the project a number of minor and/or latent defects were discovered and although the plaintiff resolved a number of these, a number remain outstanding and the plaintiff agrees to a quantum meruit reduction in the sum due and owing from the defendant to remedy these defects as follows:

a.	Porch Railing – not completed	\$1,200
b.	Front steps – not completed	\$75
c.	Master bath toilet bowl – agreed by our client to exchange	\$150
d.	Bathroom #2 bath wall tiles – agreed to tile and not complete	\$700
e.	Handicap ramp – agreed to replace first section, not completed	\$75
f.	Corner cabinet – agreed to replace, not completed.	<u>\$600</u>
	Total	\$2,800

17. And the Plaintiff seeks damages on foot of the breach of contract of the Defendant and interest.

Particulars of Loss

1.	Monies due and owing for contract signed 21 January 2010	\$29,499
2.	Monies due and owing for variation of contract August 2010	<u>CI\$6,000</u>
3.	Total	CI\$35,499
4.	Less reduction for defects	<u>(2,800)</u>
5.	Total net claim	32,699

STATEMENT REGARDING INTEREST

- a) The rate of interest is 2 3/8 % per annum pursuant to the Judgment Debt (Rates of Interest) Rules and the Judicature Law as amended.
- b) The date from which interest accrues is the 31 March 2011 being the date upon which all monies were due and owing.
- c) The amount of interest owing as of the date of issue of this Writ is \$409.13.
- d) The amount of interest accruing each day following the issue of this Writ is CI\$2.12.

AND THE PLAINTIFF claims:

- 1. CI\$32,699.
- 2. Interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- 3. Costs

Dated this 12 day of October 2011



Samson & McGrath
Attorneys-at-Law for the Plaintiff

INDORSEMENT

The principle amount claimed in respect of the debt is CI\$32,699 plus interest of CI\$409.13 as of the date of filing. The amount of the filing fees to commence proceedings is CI\$200 plus ad valorem fees of CI\$226.99. 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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

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.

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)".

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.

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.

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.

Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

A Defendant acting in person may obtain help in completing the form at the Courts Office.

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CIVIL DIVISION

CAUSE NO. CIV of 2011

BETWEEN:

CONSTRUCTION AND SUPPLY LIMITED

Plaintiff

AND:

JUDITH OYOG

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.

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

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 judgment entered by the Plaintiff (tick box)
 yes no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

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.

Samson & McGrath
Attorneys at Law
5th 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.

[Empty box for defendant's attorney indorsement]