

IN THE GRAND COURT OF THE CAYMAN ISLANDS

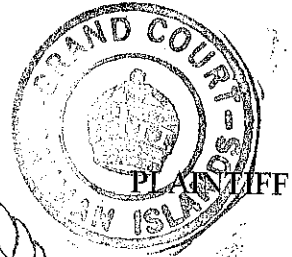
CAUSE NO: 318 OF 1997

BETWEEN:

THE PROPRIETORS, STRATA PLAN NO. 138

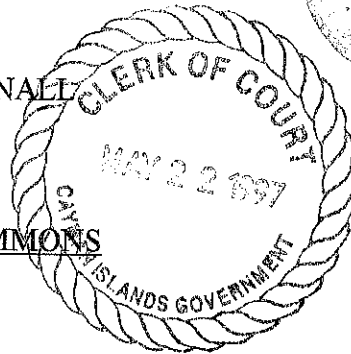
AND:

ALEX YARNALL



PLAINTIFF

DEFENDANT



WRIT OF SUMMONS

TO: Alex Yarnall

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 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 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

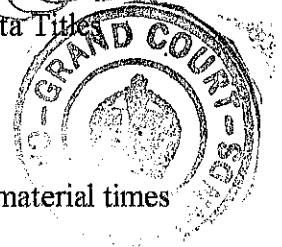
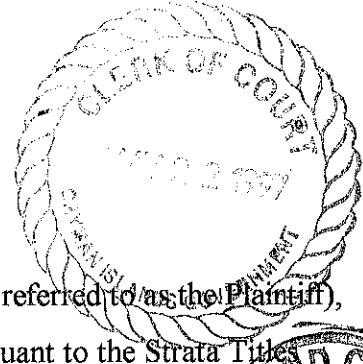
Issued this ^{22nd} day of ^{May} 1997

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.

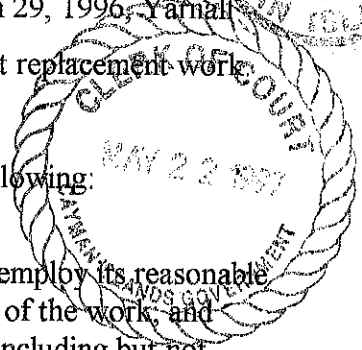
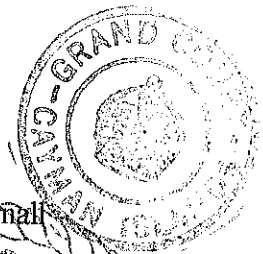
STATEMENT OF CLAIM



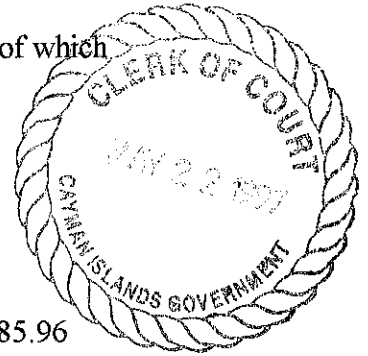
1. The Plaintiff, "Proprietors, Strata Plan No. 138" (hereinafter referred to as the Plaintiff), was at all material times a corporation in good standing pursuant to the Strata Titles Registration Law (1996 Revision) and its predecessors.
2. The Defendant, Alex Yarnall (hereinafter referred to as "Yarnall") was at all material times a proprietor or a purchaser of unit 6 of Strata Plan No. 138.
3. The Executive Committee of the Plaintiff is a duly constituted board authorized by virtue of the Strata Titles Registration Law (1996 Revision) and the Bye Laws of the Plaintiff to conduct matters on behalf of the Plaintiff.
4. In or about March of 1996, the Executive Committee of the Plaintiff made inquires respecting the replacement of various doors and windows of units in the Strata Plan No. 138. As a result of such inquires, general estimates were obtained for a number of units whose proprietors expressed an interest in having doors and windows replaced.
5. Yarnall attended at the Extraordinary General Meeting of March 18, 1996 at which a general review of aspects of the replacement work was discussed such including:
 - a. the cost of the work as completed was at a recommendation stage;
 - b. additional costs involving staff and security were anticipated;
 - c. that the precise types of renovations would be up to the individual unit owners; and
 - d. that new prices and options were to be delivered later and thereafter communicated to the unit owners.
6. By way of document dated March 29, 1996, Yarnall expressly and impliedly authorized the replacement work to be commenced. Such document expressly stated that the cost

of the work was an estimate. Further, in the document dated March 29, 1996, Yarnall expressly agreed to indemnify the Plaintiff of all cost involved in that replacement work.

7. Yarnall at all material times knew or ought to have known of the following:
 - a. that the cost of the work was an estimate;
 - b. that the executive committee or its delegates would have to employ its reasonable discretion and judgment with respect to a number of aspects of the work, and
 - c. certain costs relating to the works had not been ascertained including but not limited to the costs of hiring security and an assistant to permit supervision of the works.
8. Further and in the alternative, there existed an express or implied agency relationship between the Plaintiff and the Yarnall, as agent and principal respectively, and the Plaintiff pleads and relies upon the common law doctrines of agency and indemnification.
9. Further and in the alternative, the Plaintiff was authorized to contract for the said work or act as agent for Yarnall pursuant to the Bye Laws of the Plaintiff, particularly clause 41 (E), (F) and (G) of the Bye Laws.
10. The Plaintiff by way of correspondence dated August 15, 1996, provided the Defendant with an updated cost estimate of the work to be done totalling US\$33,545.00.
11. Based upon this express or implied authority as agent, the Plaintiff, reasonably and in good faith, arranged and paid for the replacement work to be completed. Accordingly, the Plaintiff is entitled to indemnification for all costs and expenses that it reasonably and in good faith incurred in having the work done to the Defendant's unit.
12. Following the receipt of the correspondence dated August 15, 1996, and following the completion of the work done in good faith, the Defendant announced that he would not pay for the full cost of the work. The work to the Defendant's unit commenced on or about September 23, 1996 and finished on or about October 10, 1996



13. The total cost of the work to the Plaintiffs unit was \$US37,513.92, of which \$US4,909.92 was for extras done at the request of the Defendant
14. The Defendant has paid the sum of \$US25,727.96.
15. The Defendant, therefore, owes to the Plaintiff the sum of \$US11,785.96
16. The Plaintiff relies upon the above said provisions of the Bye Laws of the Strata Corporation and The Strata Titles Registration Law (1996 Revision) or others as may be advised.
17. The Plaintiff claims Interest upon the said damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 1996 at the rate as prescribed of 7 3/8% or at such other rate as may be prescribed or as this Honourable Court deems just from the date of its making payment for the said work.



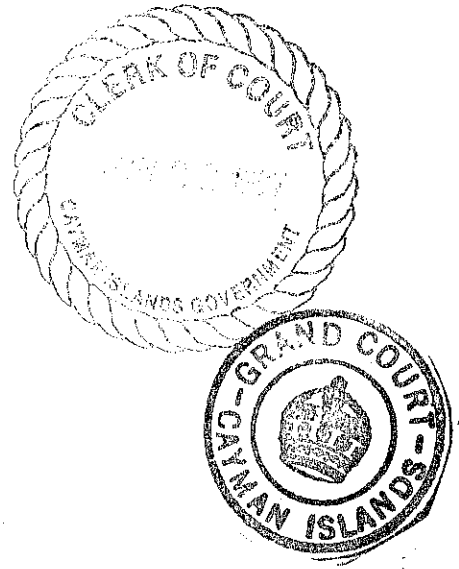
AND THE PLAINTIFF claims:

1. For Breach of Contract or Breach of an obligation to indemnify the sum of \$US11,785.96
2. The Plaintiff claims Interest upon the said damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 1996 at the rate as prescribed of 7 3/8% or at such other rate as may be prescribed or as this Honourable Court deems just from the date of its making payment for the said work.
3. Costs

- Such further and other relief as counsel may request and that this Honourable Court may deem just.

Dated: May 22, 1997

Collins Broadhurst & Furniss
COLLINS BROADHURST & FURNISS
Attorneys-at-Law for the Plaintiff



This Writ of Summons was issued by Collins Broadhurst & Furniss whose address for service is Collins Broadhurst & Furniss, Attorney-at-Law, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 495, G.T. Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 not endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). the defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 within 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for fourteen 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.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ³¹⁸~~517~~ OF 1997

Between:

THE PROPRIETORS, STRATA PLAN NO. 138

Plaintiff

-and-

ALEX YARNALL

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. 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 is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick 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 judgement entered by the Plaintiff (*tick box*)

Yes []

Service of the Writ is acknowledged accordingly

(signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

Please see overleaf.....

Notes on address for service

Attorney: where 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 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.

**COLLINS, BROADHURST & FURNISS
ATTORNEYS-AT-LAW
P.O. BOX 2503 ELIZABETHAN SQUARE
GEORGE TOWN, GRAND CAYMAN
BRITISH WEST INDIES**

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

