

IN THE GRAND COURT OF THE CAYMAN ISLANDS

G0157

CAUSE NO: OF 2016

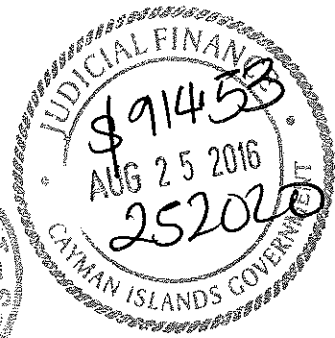
BETWEEN: ANDROGROUP ELEVATOR LTD. PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO. 83 (known as "THE GENESIS BUILDING") DEFENDANTS

WRIT OF SUMMONS



TO: The Proprietors of Strata Plan no. 83 % Bould Consulting Limited Floor 4, Genesis Building Genesis Close PO Box 1489 Grand Cayman KY1-1110



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 125 Owen Roberts Drive, Unit G15, Breezy Castle, PO Box 10040, Grand Cayman KY1-1001 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, George Town, Grand Cayman KY1-1106, 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: 25 August 2016.

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.

THIS WRIT OF SUMMONS is issued by Campbells, the Plaintiff, whose address for service is Floor 4 Willow House, Cricket Square, George Town, Grand Cayman (Ref: AJW/KAH/aw/13886-25274))

BETWEEN: ANDROGROUP ELEVATOR LTD. PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO. 83 DEFENDANTS

STATEMENT OF CLAIM

- 1 The Plaintiff ("AGEL") is a Cayman Islands limited company carrying on the business of, amongst other things, elevator repair and maintenance from premises at 125 Owen Roberts Drive, Unit G15, Breezy Castle, Grand Cayman.
- 2 The Defendant (the "Strata") is a strata corporation which owns and operates the land and buildings on Genesis Close, George Town, Grand Cayman known as the "Genesis Building" and registered as Block and Parcel no. OPY 45.
- 3 The Strata's managing agent is BCQS Property Management Limited ("BCQS").
- 4 By an offer in writing dated 19 May 2015, addressed to Mr. Michael Baulk of BCQS for and on behalf of the Strata, AGEL offered to replace the piston of the #2 Elevator at the Genesis Building (the "Works"), in order to bring it back into service (the "Offer").
- 5 The following were express terms of the Offer:

Notes:

[Cathodic] Protection would be required if the hole will not allow for the installation of the 10" PVC liner. If this situation were to arise the cost would be an additional cost.

On occasion, the existing hole may be collapsed or may collapse during the process. If the existing hole collapses and we are unable to install the cylinder we will work with you to find the best solution possible, some alternatives would be to drill into the existing hole to make clear space for a new cylinder or, if allowed, install telescopic cylinder with new power unit.

Any additional costs for situations such as the above described will be discussed with you beforehand, but ultimately would be the responsibility of the customer.

Items included: Hydraulic Oil, pit steel, buffer stands & springs, and PVC sleeve for piston

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Installation time: 2-3 Weeks including inspection

Schedule: Est. Delivery: 8 weeks from approval.

Work to be covered by others:

- *Environmental costs including pump truck if environmental conditions warrant*
- *Drilling if the hole does not compensate the PVC protection*
- *Time and material will be charged out as communicated if there are unknown issues that arise from cylinder and or the ground issues.*
- *Androgrouop Elevator Ltd. Will not be responsible for concrete, rocks and or sand in the existing hole*
- *[Cathodic] Protection will be an additional cost and will only be required if the hole will not allow for the installation of the 10" PVC liner.*

Total price with Material and Labor: Thirty Five Thousand Seven Hundred Dollars CI (\$35,700.00 CI)

Standard

Contract

Terms

...

Cancellation: *Sales cannot be cancelled once a proposal has been accepted in writing either by means of a letter of intent, purchase order, or other similar document and received by our office.*

Electric power: *3-phase power is required prior to or starting on site.*

Overtime: *Unless otherwise stated, it is understood that the work will be performed during regular working hours. If overtime is requested, an additional charge shall be added to the contract price.*

Payment Delay: *We reserve the right to discontinue our work in progress at any time until overdue payments are settled. Outstanding payment shall bear interest at 1.5% per month. You also agree to pay, in addition to any defaulted amount plus interest, all legal fees, collection agency fees and other related expenses in connection with the settlements of overdue claims.*

Project Delay: If materials are released from the factory in accordance with the original schedule, but the project experiences delays beyond our control, then we can, at our discretion, hold the goods overseas (to reduce costs) and issue a partial interim claim prior to its arrival. If full completion of a project is materially delayed through no fault of ours, you shall leave outstanding only an amount of payment equal to the value as estimated by us of the uncompleted portion. Delays or accelerations to the construction schedule beyond our control that impacts the elevator works can be subject to extra charges.

- 6 The Offer was accepted by an email from Mr. Bauk for and on behalf of the Strata dated 8 June 2015 (the "Contract").
- 7 The Works required the following procedures to be carried out in sequence:
 - 7.1 Measurement of the cylinder to be replaced by a hoistway survey (pre-Contract, carried out on 9 May 2015)
 - 7.2 Pull up the defective piston in order to verify that it can be extracted from the pit or hole at the bottom of the elevator shaft (the "Hole"). At this stage, the piston was replaced to enable the continued operation of the elevator.
 - 7.3 Order the new piston and PVC sleeve assembly and wait for delivery.
 - 7.4 Install the PVC sleeve into the Hole. At this stage, the defective piston is removed and discarded.
 - 7.5 Install the new pit steel.
 - 7.6 Insert the new piston into the PVC sleeve and align it properly.
 - 7.7 Reconnect and refill the hydraulic system.
 - 7.8 Concrete in the pit steel and around the PVC sleeve.
 - 7.9 Commission, clean up and inspection by Government inspectors.

8 Apart from the pre-Contract measurement phase (stage 7.1), the Works commenced on 20 June 2015.

9 Delays and difficulties were encountered from the outset, due to the fact that the Hole was in poor condition and full of debris and rock, reaching to a depth of some 45 feet below ground. Delays were encountered whilst:

9.1 Pulling up the defective piston (stage 7.2), proved more time consuming than expected, because it was concreted in place at the bottom of the hole, 45 feet below ground level, whereas usual industry practice is to use sand to hold the base of the piston in place; this had been expected to take 54 manhours over 4 days, but in fact could not be completed until 87 manhours had been expended over 48 days.

9.2 Installing the new PVC sleeve into the Hole (stage 7.4).

(a) Whilst attempting to install the new 10" diameter PVC Sleeve, an obstruction was encountered in the Hole at around 30ft down.

(b) It became apparent that the contractor which had installed the elevator had installed a PVC sleeve up to 15ft from the bottom of the Hole (i.e. the top of the original PVC Sleeve was 30ft from the top of the Hole) which could not have been seen or known to exist at the time the Offer was provided.

(c) As set out in Paragraph (a) above, the old sleeve was concreted in place. It could not be reused, and was obstructing the hole thus preventing the new PVC Sleeve from being inserted. It had to be removed along with any concrete holding it in place before the new piston could be installed.

(d) Additionally, there was a general accumulation of concrete, rock and debris in the hole around the old sleeve, all of which had to be drilled out and removed in order to install the new PVC sleeve. Accordingly a

process which had been expected to take 54 manhours over 4 days took 700 manhours over 33 days.

- 9.3 Installing the new pit steel and inserting the new piston (stages 7.5 and 7.6). For the reasons set out in Paragraph 9.2 above, it was more difficult to install the new pit steel than anticipated. A process which had been expected to take 72 manhours over 5 days in fact took 118 hours over 14 days.
- 9.4 Items 9.1 to 9.3 above constitute "Additional Period 1."
- 9.5 Delay was also encountered whilst re-connecting and re-filling the hydraulics.
- 10 Whilst each of the matters set out in Paragraphs 9.1 to 9.3 above was outside the scope of the Works and, as described in the Notes forming part of the Contract, the cost of which would be the responsibility of the Strata only the matters set out in Paragraph 9.2 above are included in the Plaintiff's claim.
- 11 It was an implied term of the Contract that the Strata would pay a reasonable sum for additional work outside the scope of the Works, and for which it was responsible.

PARTICULARS

AGEL claims CI\$73,054.19 in respect of Additional Period 1, full particulars of which are annexed to this pleading as Appendix 1.

- 12 Further, by an email dated 20 November 2015, Mr. Baulk, for and on behalf of the Strata, instructed AGEL to repair an elevator door opening mechanism which had been left in an state of disrepair by a prior contractor (the "Door Opener Repair"), which AGEL accepted by its conduct in carrying out the repair.
- 13 During the course of the Door Opener Repair, it was ascertained that the PVC sleeve and piston assembly had shifted during operation since the installation had been completed and inspected, and the required running tolerances had been impaired. Accordingly, further work, was completed to bring the mechanism back to specification.

- 14 The work described in Paragraphs 12 to 13 above constitute "Additional Period 2."
- 15 The Door Opener Repair was a separate engagement from the Contract and the Works. It was an implied term of the Door Opener Repair engagement that AGEL would be paid a reasonable sum for the goods and services required to complete it.

PARTICULARS

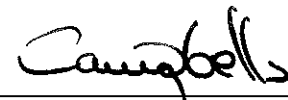
AGEL claims CI\$8,399.05 in respect of Additional Period 2, full particulars of which are annexed to this pleading as Appendix 2.

- 16 In breach of contract, the Strata has failed and/or refused to pay the sums claimed in relation to Additional Periods 1 and 2, whereby AGL has suffered loss and damage in the sum of CI\$81,453.24
- 17 Further, AGEL seeks and is entitled to claim interest at the contractual rate of 1.5% per month alternatively pursuant to section 34 of the Judicature Law (2013 Revision) at such rate and from such date as this honourable Court thinks fit.

AND THE PLAINTIFF CLAIMS

- (1) CI\$81,453.24 alternatively damages in like amount alternatively *quantum meruit*
- (2) Interest on the said sums at the contractual rate of 1.5% per month alternatively pursuant to section 34 of the Judicature Law (2013 Revision) at such rate and from such date as this honourable Court thinks fit.
- (3) Costs
- (4) Such further or other relief as this honourable court thinks fit.

Dated 25 August 2016
Filed: 25 August 2016



CAMPBELLS
Attorneys for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Campbells, the Plaintiff, whose address for service is Floor 4 Willow House, Cricket Square, George Town, Grand Cayman (Ref: AJW/KAH/aw/13886-25274)

APPENDIX 1

For the period of the Hole Drilling to fit the PVC Sleeve from 28th September to 31st October, 2015

	<u>Hours</u>	<u>Weighted Avg Rate</u>	<u>Extended</u>
Regular Time Hours	273.5	\$ 80.37	\$ 21,982.21
Less Originally Estimated Time for Fitting the PVC Sleeve	-54	\$ 81.59	\$ (4,405.96)
Overtime Hours	325.5	\$ 120.56	\$ 39,242.46
Double Time Hours	101	\$ 160.75	\$ 16,235.49
			\$ 73,054.19

APPENDIX 2

For the period for fixing the Door Operators and additional hole related issues from 20th - 23rd November, 2015

	<u>Hours</u>	<u>Weighted Avg Rate</u>	<u>Extended</u>
Regular Time Hours	36	\$ 80.37	\$ 2,893.45
Overtime Hours	15	\$ 120.56	\$ 1,808.41
Double Time Hours	23	\$ 160.75	\$ 3,697.19
			\$ 8,399.05

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.

Campbells
Floor 4 Willow House, Cricket Square
PO Box 884
George Town
Grand Cayman KY1-1103
Cayman Islands
(Ref: AJW/KAH/aw/14833-22902)

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]

**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.