



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 44 OF 2017

BETWEEN:

**CAYMAN CONTEMPORARY CONSTRUCTION LTD.**

PLAINTIFF



AND:

**CAROLYN KIRKHAM AKA CAROLYN WHITNEY T/A SANDON  
FEAT GALLERY AKA SANDON FEAT**

DEFENDANT

AMENDED WRIT OF SUMMONS

TO: Carolyn Kirkham, trading as Sandon Feat Gallery, 72 North Church Street,  
P.O. Box 256, Grand Cayman, KY1-1702 Cayman Islands

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 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 9 day of March 2017.

*Re-Issued this 24<sup>th</sup> day of May 2018*

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 or Acknowledgment of Service are given with the accompanying form.

### AMENDED STATEMENT OF CLAIM

1. On 18 June 2015 the Plaintiff issued a price estimate to outfit certain building space at 72 North Church Street (the **Project**) for use as an art gallery by the Defendant.
2. On 9 July 2015, the Plaintiff was awarded the work at a fixed price of CI \$42,072.00 (the **Contract Sum**).
3. On 16 July 2015 the Defendant presented to the Plaintiff an agreement with respect to the Project (the **Agreement**). The Plaintiff signed the Agreement on 18 July 2015 and asked the Defendant to countersign the agreement. The Defendant did not countersign the Agreement but did instruct the Plaintiff to proceed with the Project. A copy of the Agreement is attached hereto as "Schedule A".
4. Pursuant to Article 4 of the Agreement, the Defendant agreed to pay the Contract Sum in three instalments as follows:
  - a. 20% at mobilization (commencement) of the Project,
  - b. 40% at the half-way point of the Project, and
  - c. 40% on completion of the Project.
5. The first instalment of the Contract Sum was CI \$8,000 and this amount was paid by the Defendant on 21 July 2015.
6. The second and third installments of the Contract Sum have not yet been paid to the Defendant.
7. On 4 November 2015 the Defendant announced at a meeting with the Plaintiff that, due to financial difficulties, the Defendant could not afford to pay the full Contract Sum and that it would pay only one-half (approximately) of the Contract Sum. The Plaintiff did not and could not agree to amend the Agreement so that the Contract Sum was reduced by that amount because the Work had progressed

to a point where labour and materials had already surpassed 50% of the cost of the Project. Instead, the Plaintiff undertook to present a revised scope of works as a suggested way forward so that the Project could be completed at a reduced price. The Plaintiff also offered to accept payments from the Defendant over a period of time the Defendant sought tenants for the new commercial units, but the Defendant rejected this suggestion and insisted that the contract fee be reduced by half.

8. ~~On 28 November 2015~~ The Defendant's refusal to pay the full contract price amounts to a repudiatory breach of the Agreement. If, which is not accepted, this does not amount to repudiatory breach, it was a termination in accordance with clause 16.3. ~~the Defendant terminated the Agreement but did not pay at that time, and still has not paid, the amounts owing to the Plaintiff pursuant to the Agreement.~~
9. On 30 November 2015 the Plaintiff asked the Defendant to cite the clause of the Agreement pursuant to which the Defendant was basing its right to terminate. The Defendant replied stating that there was no contract because, although the Agreement had been signed by the Plaintiff, it had not been countersigned by the Defendant.
10. On 4 December 2015 the Plaintiff sent its final invoice to the Defendant. The amount of the final invoice was CI \$24,703 plus contractual interest pursuant to Article 4.2 of the Agreement, being "1% over Cayman National Bank prime lending rate" from 15 December 2015. The Defendant has not paid this final invoice. The final invoice, including interest accrued to 28 February 2017 is attached hereto as "Schedule B".

**AND THE PLAINTIFF claims:**

- (1) CI \$24,703, being the outstanding amount (excluding interest) due under the Agreement;
- (2) Interest pursuant to Article 4.2 of the Agreement, being "1% over Cayman National Bank prime lending rate" from 15 December 2015;

(3) Damages;

(4) Costs of this action; and

(4) Any other remedies or awards that the Court deems fit.



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Anna Cummings, Attorney-at-Law, on behalf of the Plaintiff

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**ACKNOWLEDGMENT OF SERVICE OF  
AMENDED WRIT AND STATEMENT OF CLAIM**

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.

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

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

yes                       no

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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

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Service of the Writ is acknowledged accordingly.

(Signed).....

**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.

Anna Cummings, as attorney for Cayman Contemporary Construction Ltd.  
c/o Priestleys, 878 West Bay Road, Caribbean Plaza, PO Box 30310, Grand  
Cayman KY1-1202

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