

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 71 OF 2017

BETWEEN:

CAYMAN CONTEMPORARY CONSTRUCTION LTD.

PLAINTIFF

AND:
MAY 24 2018

MARKET STREET GROUP LIMITED trading as MIZU & THE
WATERFRONT DINER

DEFENDANT



AMENDED WRIT OF SUMMONS

TO: MARKET STREET GROUP LIMITED trading as MIZU & THE
WATERFRONT DINER, c/o Maricorp Services Ltd., P.O. Box 2075, #31
The Strand, 46 Canal Point Drive, Grand Cayman, 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 21 day of April 2017.

Re-Issued this 21st 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.

THIS AMENDED WRIT and STATEMENT OF CLAIM was issued by Anna Cummings, attorney at law,
whose address for service is c/o Prestileys at P.O. Box 30310, 878 West Bay Road, Caribbean Plaza, Grand
Cayman, KY1-1007.

AMENDED STATEMENT OF CLAIM

1. On 24 October 2012 the Plaintiff issued a price estimate on a competitive-bid basis to outfit commercial space at 10 Market Street, Camana Bay for use as two restaurants with a shared kitchen between them (the **Project**).
2. On 27 October 2012 the Plaintiff was awarded the work at a fixed price of CI \$198,621.00 (the **Contract Sum**). A copy of the construction contract is attached as "**Schedule A**" (the "**Contract**").
3. The Defendant elected not to use the Plaintiff as a general contractor but rather to act as its own general contractor. The Defendant also hired its own architect for the Project.
4. From the outset there was significant pressure to have the Project completed as quickly as possible so that the restaurants could open during the tourist high season. The Project was completed in January 2013, with plenty of tourist high season remaining in the year.
5. Pursuant to the Contract a payment of CI \$75,014.40 was due to the Plaintiff upon substantial completion of the Project. Substantial completion was reached in late January 2013, but the Defendant did not make, and has not yet, made the payment.
6. Approximately in early May 2013 the Defendant notified the Plaintiff that some of the floor tiles in the kitchen area had lifted, and the Defendant alleged that the Plaintiff was at fault. The Defendant, without authority to do so, retained the amount of CI 75,014.40 which was owed to the Plaintiff (the "**Outstanding Amount**").
7. In the original quote for the Project, the Plaintiff had included a cost for plywood protection on the floor so that the installation of heavy kitchen equipment would not damage the new flooring. The Defendant, however, instructed the Plaintiff to remove this item from the Project quote.

8. Later in the Project the Defendant, in its capacity as general contractor, allowed the M.E.P.F.G. subcontractors (who were hired directly by the Defendant) to work in this intentionally unprotected floor area with ladders and other heavy construction equipment.
9. The Defendant:
 - (a) elected not to lay down plywood floor protection prior to installing the heavy kitchen fixtures on the newly laid floor tiles, and
 - (b) proceeded to run industrial-grade pallet jacks over the newly laid floor tiles without allowing the thinset adhesive on the tiles sufficient time to cure completely.
10. With respect to the flooring itself, the Defendant chose a smaller format tile (being 8 inches by 8 inches). This smaller format tile has a larger concentrated load, meaning that each tile has less perimeter area to hold any weight.
11. As the Defendant chose to act as general contractor and to select the architect, the Defendant alone is liable for the design and materials decisions (such as those referred to in paragraphs 8 through 11 above).
12. The passage of time is the truest test of the quality and dependability of the floor assembly. The flooring was installed in February 2013 and it has now experienced over four years of operation. Other than the raised tiles in the kitchen area (which cover approximately 1/3 of the premises), the flooring in the other 2/3 of the premises suffered no raised tiles or other malfunction. The Plaintiff therefore asserts that the floor assembly failure in the kitchen area was due to the Defendant's decisions and actions as set out above in paragraphs 8 through 11).
13. Due to the Defendant's refusal to pay the Outstanding Amount, the Plaintiff issued a letter before action on 13 May 2014 requesting payment of the unpaid portion of the Contract Sum, being CI \$75,014.40.

14. On 3 June 2014 the Defendant replied to the letter before action and alleged that the Plaintiff (i) had breached the Contract by installing incorrect underlayment beneath the tiles, and (ii) was negligent in its installation of the tiles.

15. With respect to the underlayment used beneath the tiles, the procurement of it was mandated by Dart for the purpose of ensuring that all the tenants situated above the Defendant's restaurants would not be disturbed by restaurant noise. Furthermore, ~~The~~ the Defendant's allegation that the Plaintiff used the wrong thickness of underlayment is false because (i) the said underlayment worked perfectly well for all other tiled areas in the restaurants (save the kitchen area), and (ii) the Plaintiff followed the manufacturer's recommendation and conducted extensive research with a number of experts on the subject of tile underlayments in relation to tiles, all of whom confirmed that there ~~were~~ are no industry standards as to thickness of underlayment, save to follow manufacturer's recommendations.

15. _____

16. The Defendant's allegation that the Plaintiff was negligent in its installation of the tiles is also false because the installation methods were uniform throughout, and none of the tiles in the premises did not failed (save the kitchen area which, contrary to the Plaintiff's bid recommendation, the Defendant chose to neither protect with plywood nor allow to set prior to loading them those tiles with pallet jacks and heavy kitchen equipment).

17. As the Plaintiff's materials and its installation methods were uniform throughout the premises, and ~~but~~ as the lifted tiles occurred only in the mis-treated kitchen area which, as mentioned above was not, it follows that managed correctly by the Defendant as general contractor, the lifting of certain those tiles was caused by the Defendant, and not the Plaintiff.

17. _____

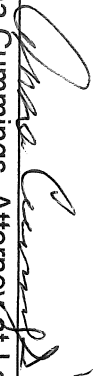
18. In summary, the Defendant's decisions to:

a. remove the suggested floor protection from the scope of work;

- b. omit the installation of plywood flooring protection when it arranged for the installation of the kitchen equipment;
 - c. allow its subcontractors to run heavy equipment over the kitchen floor tiles before the thinset adhesive was completely cured; and
 - d. take on the responsibilities of general contractor for the Project
- places on the Defendant alone the responsibility for the lifting of certain floor tiles in the kitchen area; and the Defendant therefore has no reason or authority to withhold the Outstanding Amount from the Plaintiff.
19. As the Plaintiff has complied with its obligations under the Contract, it is entitled to the Outstanding Payment in full with interest thereon from 31 January 2013 to and including such date as the Court may determine.

AND THE PLAINTIFF claims:

- (1) CI \$75,014.40 due under the Contract;
- (2) interest thereon;
- (3) reimbursement for its costs in obtaining evidence to negate the Defendant's allegation of incorrect underlayment and negligent work, which costs amount to CI \$8,569.55;
- (4) damages;
- (5) costs of this action; and
- (5b) any other remedies or awards that the Court deems fit.



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

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DINER**

DEFENDANT

**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.

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 judgment entered by the Plaintiff (tick box)

yes no

Service of the Writ is acknowledged accordingly.

(Signed).....