

PLAINT

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC 19 of 2018

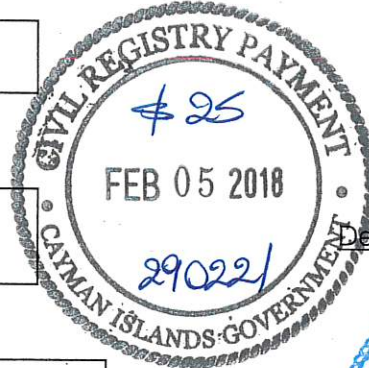


BETWEEN:

Tasha M. Lemay

AND:

Joseph Powell

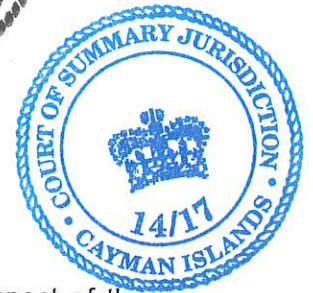


Plaintiff

Defendant

To the Defendant

Joseph Powell
PO Box 1976
Grand Cayman, KY1-1505
Cayman Islands



THIS PLAINT has been issued against your by the above – named Plaintiff in respect of the claim set out on the next page.

Within 14 days after service of this Complaint on you, counting the day of service you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 5th day of February, 2018

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

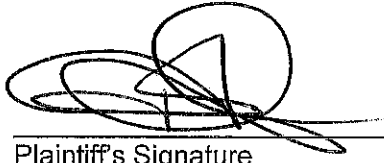
1. The Plaintiff and Defendant agreed in November 2015 for the Defendant to supply and install two air condition units: one 3.5 Ton unit and one 2.5 Ton unit both of which would be 16 Seer efficient ("the Units") along with all required duct work required for a properly functioning air conditioning system;
2. The Units were to be installed by the Defendant at Lot 20 in Little Savannah Gardens, Lower Valley (the "Property").
3. On the 5th of November 2015, the Defendant provided the Plaintiff with an invoice (the "Invoice") via email for the supply and installation of the Units.
4. On the 14th of December 2015, the Defendant commenced the installation process of air condition duct work at the Property and was paid a deposit of CI\$6,500 on the 16th of December 2015, as per the Invoice.
5. On the 24th of October 2016, the Plaintiff emailed the Defendant and told him that the Property was now ready for the Units to be installed. The Defendant responded via email on the 24th of October 2016 and confirmed that the Units would be installed that same day and requested balance of payment. The Plaintiff responded and advised the Defendant that once all works were completed and the Units proved to be in working order then the balance would be paid immediately.
6. On the 2nd of November 2016, 29th of November 2016 and 13th of January 2017 the Plaintiff sent follow up emails to enquire about the status of the work to be completed, to which the Plaintiff received no answer from the Defendant.
7. The Plaintiff reached out to the Defendant repeatedly during the month of February and March 2017 via phone calls and whatsapp messages to which the Plaintiff received no response.
8. On 13 April 2017, the Plaintiff managed to get the Defendant on the phone and reminded the Defendant that it was well past the agreed date of when installation should have occurred. The Plaintiff also reminded the Defendant that he had originally promised to install the said units on 24 October 2016 and that his failure to do so was causing a lot of issues with Scotiabank (mortgage lender), and delaying the finalization of the Plaintiff's home. The Defendant acknowledged that it was past due and promised to finalize installation by 20 April 2017.
9. The Plaintiff also advised the Defendant that the Plaintiff had two independent AC Technicians go to evaluate and inspect the work that had been started who discovered that the Defendant, in breach of contract, did not provide/install 16 seer air handler units in the attic as was agreed but instead installed 13 seer units. The Defendant then went on to tell the Plaintiff that it did not matter what seer air handler was installed in the attic that the Defendant would be installing 16 seer condensing units outside which would work just fine. After consulting with several AC Technicians (including the technicians who went out to the Property) and/or contractors they have confirmed that whilst it can work it will not be as efficient as a 16 seer air handler would; this is not what we agreed nor is this satisfactory. The lack of efficiency would increase the Plaintiff's electricity bill.
10. The Plaintiff went out to the Property on Monday, 17 April 2017 to check what work had been done and saw no further progress. The Plaintiff then messaged the Defendant via whatsapp and told the Defendant that the Plaintiff was at the Property and asked the

Defendant to confirm what work was completed and to remind the Defendant of the 20 April 2017 deadline to which the Plaintiff received no response. On Tuesday, 18 April 2017 the Defendant sent the Plaintiff a voice note via Whatsapp to confirm that the Defendant "thought" that he would be going to the Property at 2pm on the same day. The Plaintiff then sent the Defendant a further message advising the Defendant that it was in his best interest to complete the work to avoid any problems. Later that evening the Plaintiff went by the Property again and messaged to tell the Defendant that the Plaintiff was there and asked the Defendant to confirm what work had been done, to which the Plaintiff received no response. The Plaintiff went to the Property on the 20 April 2017 and saw that no work was done as promised.

11. After several ignored emails, phone calls and Whatsapp messages along with the Defendant's failure to meet the agreed deadline of 20 April 2017, a final warning letter was drafted and sent via email as well as registered mail. A final deadline of 27 April 2017 was given and the Plaintiff also advised the Defendant that noncompliance to the agreement would result in a Plaintiff being filed in the Summary Court of the Cayman Islands against the Defendant.
12. The Plaintiff sent several messages to the Defendant during the months of May and June 2017 to which the Plaintiff also received no response. Despite the threat of this final letter the Defendant continued to avoid the Plaintiff's calls and ignore messages. On the 19th of September 2017 the Defendant called the Plaintiff to advise that the Defendant was receiving a shipment that week which contained the items to complete the Plaintiff's home. The Defendant also confirmed that once received the Defendant would have the Plaintiff's home completed by the following week. The Plaintiff then sent an email to the Defendant shortly thereafter confirming the same conversation.
13. The Plaintiff sent a follow up message on the 29th September 2017 and was told that the Defendant would be attending to the Plaintiff's home the following morning. The Defendant still made no effort to go out to the Plaintiff's home. The Plaintiff sent follow up messages on 7th and 10th of October 2017 which have gone unanswered.
14. The Plaintiff received email communication from Frank Hall Homes which advised that due to the delay by the Defendant that Frank Hall Homes would be charging the Plaintiff an additional sum. The Plaintiff reached out to the Defendant continuously and advised the Defendant of Frank Hall Homes' intention which made no impact on the Defendant to complete the job as agreed.
15. The Plaintiff had no other choice but to source another AC Technician to complete the work started by the Defendant in order to finalize the Property.

AND the Plaintiff claims:

- 1 The sum of \$6,500;
- 2 Damages;
- 3 Interest in the sum of \$193.40 calculated at the prescribed rate of 2.38% from October 2016 to date.
- 4 Costs to be assessed.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.

Plaintiff's Signature

Plaintiff's address for service:
190 Elgin Avenue, George Town, Grand Cayman, Cayman Islands KY1-9001

Acknowledgment of Service

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC _____ of 2018

Between:

Tasha M. Lemay

Plaintiff

AND:

Joseph Powell

Defendant

ACKNOWLEDGMENT OF SERVICE

1 State Defendant's name and address -

Joseph Powell
PO Box 1976
Grand Cayman KY1-1505
Cayman Islands

2 State whether the Defendant intends to contest the action.

Yes

No

3 If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4 If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this _____ day of _____, 2018

See Overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed)

Defendant's Signature

REMINDER - This form must be taken or sent to the Court Office, PO Box 495GT, George Town, Grand Cayman within 14 days of receipt otherwise a default judgment may be entered against you.