



SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC _____ OF 20__

BETWEEN:

CELICIA O. POWERY

Plaintiff

AND:

Alan Bush Construction Co Ltd.

Defendant

PLAINT

Alan Bush Construction Co. Ltd.

PO Box 30509
10 Plumbago Way
Batabano Rd., West Bay
Grand Cayman KY1-1203
Cayman Islands

THIS PLAINT 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 service of this **Plaint** on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands, 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 *27* day of *June 20 22*

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

(Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him)

- 1 On 20th of February 2017, the Plaintiff entered into a written agreement with the Defendant, for the construction of a residential dwelling at Block 4C Parcel 429. Condition 1 point iii of said contract stipulates: *Contractor shall at his own and proper cost find out provide good, proper and sufficient materials of all types for the building of Works except for items listed in v Contractor shall provide qualified labor to carry out Works in an efficient and workmanlike manner.* Condition 2, point i Completion Date states: *The Contractor shall proceed diligently and expeditiously with the Works and shall be held responsible for delays arising out of his failure to do so. Provisions such as time extensions to be made for Strikes, Lockouts, Natural Disaster, War and Outbreaks of Hostilities or lack of items to be supplied by owner and agreed in writing.* ii. *Completion of Construction is to be 4 ½ months from the date of the mobilization payment.*
- 2 The building permit was granted 25 May 2017 and the construction mobilization payment was released to the Defendant on June 29, 2017. Under the terms of the agreement, construction was to have been completed 4 ½ months after the mobilization payment, in this instance mid-December 2017. However, the Certificate of Occupancy was only issued on 09 June 2018, approximately 6 months after the contractual deadline, as a result of failure by the defendant to complete the stated works in a diligent and expeditious manner, per the terms of the agreement. During this period of delay, debit interest in the amount of C1\$6,616.36 accrued on the construction loan.
- 3 In addition, to the written agreement, a verbal statement was made by the Defendant to the Plaintiff that, the air conditioning portion of the work would have been subcontracted to Parson's Airconditioning Service, and plumbing services to MJS Plumbing Ltd, both of which were satisfactory, being that they were well established, reputable companies whose services I had used in the past. The Defendant without prior notice or agreement procured the services of an air conditioning provider outside of that which had been verbally agree upon; consequently, an air conditioning system of inferior quality and energy efficiency, to that which Parson's Airconditioning Services would have supplied, was installed to my house.
- 4 Further, at the time of the final payment being made by the Plaintiff to the Defendant, the downspouts for the rain gutters had not yet, been installed. The Defendant stated, that the final payment was required, to enable this portion of work to be completed however the Defendant did not return to complete this work, or make any further contact with the Plaintiff regarding this matter. Consequently, in Sept 2019 the Plaintiff engaged the services of a different contractor for the completion of this portion of work. The out-of-pocket cost to the Plaintiff was C1\$500.00.
- 5 A few days after moving into the house, the Plaintiff found that their new clothes dryer machine did not function properly. As it was a new appliance, the Plaintiff contacted the Defendant and he arranged for the sub-contracted electrician to return to diagnose and fix the issue, which the Plaintiff asserted was caused by the electrical system for the house. The electrician determined, that the electrical system for the house was in good working order

and the reason for the malfunction was within the appliance itself. The electrician indicated based on his experience, it was not unheard of for new appliances to have a manufacturing fault. The appliance had been purchased from several months prior, when construction of the house should have been completed, therefore the warranty on the appliance had expired while construction dragged on. The Plaintiff arranged for an appliance service technician to perform a diagnostic examination of the appliance, explaining that the electrician had already performed the necessary checks on the electrical system for the house. The technician examined the appliance and found no issues therefore he proceeded to examine the electrical panel box and found that the relative electrical fuse had blown thus causing the issue to occur; the faulty fuse was replaced by the appliance technician and the clothes dryer functioned properly thereafter. The out of pocket cost to the Plaintiff for this work was, CI\$195.00.

- 6 Approximately, three weeks after the incident with the dryer, the Plaintiff attempted to use the exterior electrical outlets but they were not functioning. An independent electrician was contacted and his inspection revealed that the outlets were 'blown' and had to be replaced; it was discovered that the area around one of the outlets had not been sealed properly and a sizeable gap could have allowed moisture into the component. The electrician indicated, that moisture may have caused the outlet to 'burn out' which then caused other exterior outlets to not function. The repair cost borne by the Plaintiff was CI\$150.00.
- 7 Soon after moving in the Plaintiff discovered the garage door was very noisy upon opening and subsequently had it serviced as out of pocket expense of CI\$98.00.
- 8 A number of other issues were subsequently discovered such as, construction debris and garbage that had been left behind in the attic of the house; clean-up and disposal at cost to the Plaintiff was CI\$100.00.
- 9 The discolouration on the eaves of the house exterior that had been explained as 'dirt' by the Defendant before the Plaintiff moved into the new property was actually mildew, likely due to the quality of the paint that had been used by the Defendant. The Plaintiff eventually hired painters to clean and repaint the eaves. The Plaintiff engaged the same company to repair cracks that had formed in the concrete walls and repaint the relative areas. The company was used to re-caulk the crown molding because, shortly after moving into the property, the caulking cracked and separated from the ceiling. The company was also engaged to re-caulk the exterior of the windows as a few windows leaked whenever it rained. Cost to Plaintiff CI\$2,208.00
- 10 Additionally, most of the windows to the house the Defendant dismissed the Plaintiff's concerns that the windows were not installed correctly and instead claimed the windows worked in accordance with their design.
- 11 The installation of tiles throughout the house floors and bathroom walls are all of substandard workmanship hence do not represent fair value for money and breaches the terms of the contract for quality workmanship.
- 12 The Defendant breached the terms of the contract, with regards to the timeline and quality of workmanship. The Plaintiff endured financial hardships while paying an extra six months interest on the construction loan, loss of savings in remediating various issues and emotional

distress brought on by these events therefore the defendant should be made to reimburse the Plaintiff for the maximum allowable by the court.

- 13 A letter was sent by the Plaintiff to the Defendant in an attempt to settle the matter out of court however the Defendant claims that completion of construction was delayed by six months because the sub-contracted plumber delayed the installation of a tub in the master bathroom. This is not a logical or factual explanation and the written reports prepared by Boulder Consulting, will evidence the delays occurred early in the construction process.
- 14 The Defendant claims that the Plaintiff was reimbursed for mortgage loan interest that had accrued during the extended construction period however this statement is inaccurate. The Defendant may have confused the Plaintiff's claim for reimbursement of mortgage loan interest with a reimbursement that was made to the Plaintiff for construction insurance that had to be extended because of the delayed project.
- 15 The Defendant also states that the Plaintiff's claims against workmanship defects fall outside the reasonable time frame for claims of workmanship defects however during the construction process the defects were verbally raised to the Defendant who claimed the defects lied within the tiles themselves. At that time, the Defendant made a feeble and unacceptable attempt at remediating some of the issues raised by the Plaintiff.

AND the Plaintiff claims:

- (1) The sum of \$20,000.00
- (2) Interest in the sum of \$5.27 calculated at the prescribed rate from the date.
- (3) Interest to continue until this matter is settled.
- (4) Fixed costs of , alternatively costs to be assessed.



Plaintiff's Signature

Plaintiff's address for service

31 Crystal Valley Crescent, West Bay
 P.O. Box 484
 Grand Cayman KY1-1302
 Cayman Islands

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC ____ OF 20__

BETWEEN:

Celicia Powery

Plaintiff

AND:

Alan Bush Construction Ltd

Defendant

ACKNOWLEDGEMENT OF SERVICE

1 State Defendant's name and address -

Alan Bush Construction Co. Ltd
PO Box 30509
10 Plumbago Way
Batabano Rd., West Bay
Grand Cayman KY1-1203
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 , 20

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)

- 1
- 2.
- 3

COUNTERCLAIM

- 4.

AND the Defendant claims:

- (5) 1.

Defendant's Signature

REMINDER - This form must be taken or sent to the Court Office, PO Box 495, Grand Cayman KY1-1106 Cayman Islands within 14 days of receipt otherwise a default Judgment may be entered against you.