



ND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2024

BETWEEN:

ENCOMPASS LTD

PLAINTIFF

AND:

GENESIS CONSTRUCTION CO LTD

DEFENDANT

WRIT OF SUMMONS

TO: Genesis Construction Co Ltd.,
P. O. Box 2192
39 Hickory Lane Prospect,
KY1-1105
Grand Cayman

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 day of January 2024.

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.

STATEMENT OF CLAIM

1. At all material times the Plaintiff was and is a company carrying on business in the Cayman Islands as a general contractor.
2. At all material times the Defendant was and is a company also carrying on business in the Cayman Islands as a general contractor.

Structural Agreement

3. By an agreement (**the Structural Agreement**) dated 11th of July 2023 the parties entered into written agreement that the defendant would perform works and provide services as identified and as required by the plaintiff for the provision of structural and exterior finish works, including materials, to a project known as the Silver Thatch Residence with those works and services identified in contract documents annexed to the Agreement (**the Works**).
4. The following were express terms of the Agreement.
 - 4.1 That the plaintiff would pay the sum of CI\$434,946 to the defendant for the satisfactory performance of the Works.
 - 4.2 The defendant shall perform and complete the works in a good and workmanlike manner to the satisfaction and acceptance of the plaintiff (Article 2(a)).
 - 4.3 The defendant acknowledged that time was of the essence with respect to the defendants' performance of the obligations under the Agreement (Article 3(a)).
 - 4.4 That should the defendant fail to execute and complete the works in accordance with the contract or fails to perform any requirement set out in the contract, then the plaintiff can notify the defendant of such default and specify in a notice the action to be taken to remedy the default and the date by which default shall be corrected (Article 5(a)).

- 4.5 That if default occurs and is not corrected by the date set in the default notice, the plaintiff may terminate the Agreement and finish the remaining works under the Agreement and deduct the costs from the unpaid contract price and the defendant pay damages for any loss sustained (Article 5(b)).
 - 4.6 That the defendant had to establish and implement safety measures, policies and standards conforming to those required by the Plaintiff (Article 10).
 - 4.7 That upon request the defendant would furnish a certificate that showed the plaintiff as an additional insured on workman's compensation, employee liability and general insurance policies taken out by the defendant covering risk associated with the works.
5. In breach of the terms of the agreement, the defendant failed to execute and complete the works in accordance with the contract and/or failed to perform the requirement set out in the contract.

Particulars of Breach

- 5.1 failure to comply with Article 10 by having employees in improper shoes and without eye protection during demolition and using improper and unsafe bracing methods.
- 5.2 Failing to ensure sufficient manpower is being used to maintain the project schedule.
- 5.3 Poor workmanship in building the structural walls of the utility room to an incorrect height and the utility room windows deviated from dimensions and specifications.
- 5.4 Poor workmanship in the utility room where the slab was not level and had poor grading.
- 5.5 Poor workmanship with the rough-ins for windows executed in sizes that do not align with the specifications indicated in the project drawings.
- 5.6 The formwork placement for the CB7 beam and its connection to column C1 was executed incorrectly, failing to meet the specified requirements.
- 5.7 failing to complete work in a timely manner resulting in delays to the completion of the project.
- 5.8 Failing to account for materials claimed as being purchased under the contract.

- 5.9 Submitting claims for payment for work that was not completed and/or in sums that did not agree with the schedule of values in the contract.
- 5.10 Failing to provide proof of insurance as required in article 6 of the Structural Agreement.
6. In response to the above breaches, the plaintiff wrote to the defendant by letter dated 25th September 2023 notifying the defendant of the issues set out in paragraph 5 and specifying the action to be taken to remedy the issues and the date by which default should be corrected in accordance with Article 5(a) of the Structural Agreement. The date for remedying the issues was 14 days from receipt of the letter.
7. The defendant failed to remedy the issues within 14 days of receipt of the notice and pursuant to their right under Article 5 (b) of the Structural Agreement, the plaintiff terminated the Structural Agreement.

Particulars of Loss and Damage for breach of Structural Agreement

8. Upon review of the work carried out it was assessed that the defendant had carried out work to a value of CI\$70,260 under the Structural Agreement and had been paid the sum of CI\$111,644 leaving a balance owing to the plaintiff from the defendant of CI\$41,384.
9. As a result of the poor workmanship of the defendant, the plaintiff incurred costs in the sum of CI\$32,161.03 rectifying the defective steelworks and formworks.
10. The total loss to the plaintiff for the defendant's breach of contract is CI\$73,545.03.

The Electrical Agreement

11. By an agreement (the **Electrical Agreement**) dated the 24th of July 2023 the parties entered into written agreement that the defendant would perform works and provide services as identified and as required by the plaintiff for the provision of electrical works, including materials, to a project known as the Silver Thatch Residence with those works and services identified in contract documents annexed to the Agreement (the Works).

12. The following were express terms of the Agreement;
 - 12.1 That the plaintiff would pay the sum of CI\$147,440 to the defendant for the satisfactory performance of the Works.
 - 12.2 The defendant shall perform and complete the works in a good and workmanlike manner to the satisfaction and acceptance of the plaintiff (Article 2(a)).
 - 12.3 The defendant acknowledged that time was of the essence with respect to the defendants' performance of the obligations under the Agreement (Article 3(a)).
 - 12.4 That should the defendant fail to execute and complete the works in accordance with the contract or fails to perform any requirement set out in the contract, then the plaintiff can notify the defendant of such default and specify in a notice the action to be taken to remedy the default and the date by which default shall be corrected (Article 5(a)).
 - 12.5 That if default occurs and is not corrected by the date set in the default notice, the plaintiff may terminate the Agreement and finish the remaining works under the Agreement and deduct the costs from the unpaid contract price and the defendant pay damages for any loss sustained (Article 5(b)).
 - 12.6 That the defendant had to establish and implement safety measures, policies and standards conforming to those required by the Plaintiff (Article 10).
 - 12.7 That upon request the defendant would furnish a certificate that showed the plaintiff as an additional insured on workman's compensation, employee liability and general insurance policies taken out by the defendant covering risk associated with the works.
13. In breach of the terms of the agreement, the defendant failed to execute and complete the works in accordance with the contract and/or failed to perform the requirement set out in the contract.

Particulars of Breach

- 13.1 Failing to ensure sufficient manpower was being used to maintain the project schedule.
 - 13.2 Failing to complete work in a timely manner generally, resulting in delays to the completion of the project.
 - 13.3 Failing to provide proof of use of the contract deposit on equipment required for the works upon request.
 - 13.4 Failing to provide proof of insurance as required in article 6 of the Electrical Agreement.
14. In response to the above breaches, the plaintiff wrote to the defendant by letter dated the 25th of September 2023 notifying the defendant of the issues set out in paragraph 13 and specifying the action to be taken to remedy the issues and the date by which default should be corrected in accordance with Article 5(a) of the Electrical Agreement. The date for remedying the issues was 14 days from receipt of the letter.
15. The defendant failed to remedy the issues within 14 days of receipt of the notice and pursuant to their right under Article 5 (b) of the Electrical Agreement, the plaintiff terminated the Electrical Agreement.

Particulars of Loss and Damage for breach of Electrical Agreement

16. Upon review of the work carried out it was assessed that the defendant had carried out work to a value of CI\$10,000 under the Electrical Agreement and had been paid the sum of CI\$44,232 leaving a balance owing to the plaintiff from the defendant of CI\$34,232.

STATEMENT REGARDING INTEREST

17. The Plaintiff seeks pre- and post-judgment interest from the date that the said sum became due at the rate of 2 3/8% per annum on the sum due and owing until payment and in accordance with the provisions of the Judicature Act (2017 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.

18. Interest is claimed from the 10th of October 2023, which is the date that the plaintiff terminated the contracts.

19. The amount of interest owing at the date of issue of this Writ is \$651.93.

20. The amount of interest accruing each day following the issue of this Writ is \$7.01.

And the Plaintiff claims:

- Payment of the sum of \$107,777.03 and such further arrears as may in future accrue.
- Interest
- Costs
- Further or other relief

If, within the time of returning the Acknowledgment of Service, the Defendant pays the total amount claimed of \$107,777.03 (together with interest and costs), further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



KSG

Attorneys-at-Law for the Plaintiff

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 installments 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2024

BETWEEN:

ENCOMPASS LTD

PLAINTIFF

AND:

GENESIS CONSTRUCTION CO LTD

DEFENDANT

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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

THIS Writ and Statement of Claim was issued by KSG Attorneys-at-Law, 3rd Floor One Capital Place, Shedden Road, George Town. P.O. Box 2255 KY1-1107, Cayman Islands. (JK/03560)

Service of the Writ is acknowledged accordingly.

(Signed).....

Please complete overleaf.

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.

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

KSG
Attorneys at Law
4 th Floor Harbour Centre
42 North Church Street
PO Box 2255 KY1-1107
George Town
Grand Cayman

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

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