

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *467* OF 1999

BETWEEN: RITA WHITTAKER

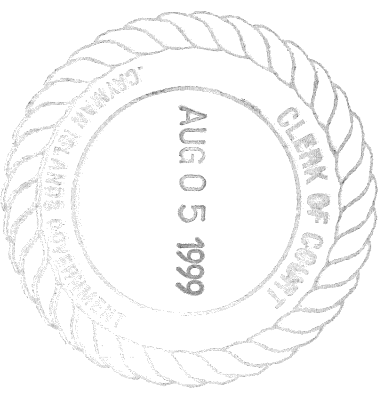
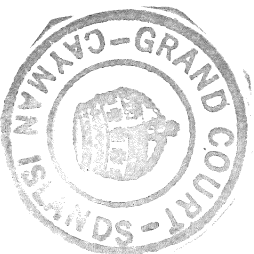
PLAINTIFF

AND: DENTON SMALL
(Trading as Small Construction)

DEFENDANT

WRIT OF SUMMONS

TO: Denton Small
(Trading as Small Construction)
P.O. Box 1138 GT,
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 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the stated time, or if you return the Acknowledgement stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued this *5th* day of August, 1999.

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times the owner of land at Block 38C Parcel 98 which she was and is developing for the construction of houses. The Plaintiff is not however, a professional builder or engineer.
2. For the purposes of enabling utilities to be available for the proposed houses the Plaintiff found it necessary to arrange for the laying of, amongst other things, under-ground pipe work ("the pipe-work") to convey mains of water from the mains supply to the location of the proposed houses.
3. On or around the 24th February, 1999 the Plaintiff and the Defendant attended on the Plaintiff's land being the site of the proposed houses. The Plaintiff asked the Defendant whether he was able to carry out the work required for the laying of the water pipes. The Defendant confirmed that he could. The Plaintiff then provided to the Defendant a rough sketch showing the approximate lay out of the proposed houses on the site and the approximate position in which the pipe should be laid. The Plaintiff advised the Defendant that before laying any of the pipe work he should confirm with the Cayman Islands Water Authority ("the Water Authority") the exact specification for the pipe work that would be required to ensure the approval of the Water Authority and thus allow the pipe work to be connected to the main water supply.
4. On the basis of the above and in reliance of the Defendant's skill and expertise in the area of construction and, in particular the area of the laying and the installing of water pipes the Plaintiff requested that the Defendant provide an estimate for the work involved in laying the aforementioned pipe work. In an estimate dated 24th February, 1999 the Defendant confirmed that

"This is the breakdown for the work to be done on the pipe layout in the Sub-Divided area with 6 meters box and lock-off valued, plus 3 main junctions points for lock-off when servicing.

500 ft. of trench 2 ft. deep by 1½ ft. wide. Rental of jack-hammer and back-hoe to clear area, also supplying sand and crush-rock to bedded pipe and to cover back pipe area. With equipment rental, material and labour the cost will amount to C\$12,500.00". [Sic]

5. It was agreed between the Plaintiff and Defendant that the Defendant would carry out this work and that the Plaintiff would pay to him an advance payment of C\$7,000.00 to enable him to start the work. It was subsequently agreed between the Plaintiff and the Defendant that the total cost of the proposed work would be reduced to C\$11,500.00.
6. On or around 6th March, 1999 the Plaintiff paid the sum of C\$7,000.00 to the Defendant by way of a cheque dated the same day.
7. The following terms were either expressly or impliedly incorporated into the contract between the Plaintiff and Defendant:-
 - (i) That the Defendant had the requisite skill to lay the pipe work properly.
 - (ii) That the Defendant would exercise reasonable care and skill when laying the pipe work.
 - (iii) That the Defendant was aware or would appraise himself of the "Cayman Islands Water Authority Guidelines for constructing potable water mains" ("the Guidelines") before starting to lay the pipe work and would comply with and follow the Guidelines so that the pipe work would be acceptable to the Water Authority.
8. On or around 6th March, 1999 the Defendant commenced the work required for the laying of the pipe work. When the Defendant had arranged for the pipes to be laid in trenches that he had dug for that purpose the Plaintiff informed him that he should not cover pipe work with any material until they had been inspected and approved by the Water Authority. On 9th April, 1999 the Water Authority indicated that, having informally inspected the pipe work, they had found that it was not in compliance with the Guidelines

because, inter alia, the wrong pipes had been laid and the trench in which they had been laid was not of a suitable depth. As a consequence, the Water Authority stated that the proposed houses could not have access to the mains water supply through the pipe work.

9. Without consulting with the Plaintiff, the Defendant removed the pipe work that he had laid. Furthermore, without consulting the Plaintiff, the Defendant took steps increase the depth of the trenches in which the pipe work had been paid. To do this the Defendant needed to have access to the said trenches to be able to use the appropriate machinery for that purpose. In order to manoeuvre that machinery into position to carry out that work that was necessary for the machinery to cross the trenches. As a result the Defendant arrange for the trenches to be filled so that this could take place. The filling of the trenches took place using material bought and supplied by the Plaintiff.

10. By 29th April, 1999 the Defendant had failed to install suitable pipe work that would be acceptable to the Water Authority. The Plaintiff therefore asked the Water Authority to provide an estimate for the amount they would charge to install the pipe work themselves. They provided this on 29th April, 1999 and quoted a figure of C1\$12,500.00 for the work.

11. As a result of the Defendant's breach of contract and continued failure to ensure that pipe work was installed to the satisfaction of the Water Authority the Plaintiff treated such breach as repudiatory and instructed the Water Authority to re-lay the pipe work.

12. In the circumstances and as a result of the Defendant's breach of contract the Plaintiff has suffered loss and damage, particulars of which are set out below:-

PARTICULARS

1. Advance payment paid to the Defendant C\$7,000.00.
2. Cost of material to fill the trenches C1\$1,350.00.

3. The difference of C1\$1,000.00 between the agreed cost of the works to be provided by the Defendant (C1\$11,500.00) and the cost of the works as carried out by the Water Authority (C1\$12,500.00).

12. The Plaintiff also claim interest on all such sums as may be awarded to her pursuant to Section 34 of the Judicature Law (1995) Revision at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

1. The said sums of C1\$7,000.00, C1\$1,350.00 and C1\$1,000.00.
2. Interest on the above sums pursuant to Section 34 of the Judicature Law (1995 Revision) at such rate and for such period as the Court thinks fit.

DATED this 5th day of August, 1999.



BRUCE CAMPBELL & CO.
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The Defendant
Denton Small
(Trading as Small Construction)
P.O. Box 1138 GT,
Grand Cayman.

THIS WRIT OF SUMMONS was filed by Messrs. Bruce Campbell & Co. Attorneys-at-Law for the Plaintiff whose address for service and correspondence is Fourth Floor, Bank of Nova Scotia Building, P. O. Box 884, George Town, Grand Cayman.

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 495, 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

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 his 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.

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BETWEEN:

RITA WHITTAKER

PLAINTIFF

AND:

DENTON SMALL
(Trading as Small Construction)

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 the Defendants whereby they 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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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.

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

Messrs. Bruce Campbell & Co.
Attorneys-at-Law
Fourth Floor,
Bank of Nova Scotia Building,
P.O. Box 884,
George Town,
GRAND CAYMAN

Indorsement 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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