

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 879 OF 2000

BETWEEN: (1) LYNN M. BODDEN
(2) ROBINSON CRUSOE LANDING LTD.
(3) CEDAR POINT LTD.

Plaintiffs

AND: (1) WOODTECH LTD.
(2) SEAN WOOD
(3) CURTIS WOOD
(4) MERRILL WOOD
(5) PAULINE WOOD

Defendants

WRIT OF SUMMONS

TO: (1) WOODTECH LTD.
Suite 106, Crighton Building
George Town, Grand Cayman

(2) SEAN WOOD
George Town
Grand Cayman

(3) CURTIS WOOD
George Town
Grand Cayman

(4) MERRILL WOOD
George Town
Grand Cayman

(5) PAULINE WOOD
George Town
Grand Cayman



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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, PO Box 496, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

ISSUED this day of , 2000.

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 Acknowledge of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiffs were at all material times persons/entities resident in the Cayman Islands, and had entered into different agreements with the First Defendant, as represented by the Second Defendant, to build personal residences in the Cayman Islands.
2. At all material times the First Defendant was a company that held it itself out as being skilled, experienced and competent in the construction of residential dwellings.
3. At all material times, the Second Defendant held himself out as being skilled, competent and experienced in the matters carried out by the First Defendant.
4. At all material times, it is believed that the Second, Third and Fourth Defendants were directors of the First Defendant and the Fourth Defendant was the Secretary of the First Defendant.

FIRST PLAINTIFF

5. By a written contract dated the 9th August 1999 the First Plaintiff entered into an agreement with the First Defendant whereby the First Defendant would construct a dwelling house at Block 27C, Parcel 1, Lot #N5 Sunrise Landing at a total cost to the First Plaintiff of CI\$275,000.00 ("the Agreement").
6. The following were *inter alia* express terms of the contract:
 - a) that the First Defendant would construct the dwelling house in accordance with the drawings and specifications agreed and approved by the First Plaintiff;
 - b) the First Defendant would carry out and complete the construction of the dwelling house as shown upon the drawings and specifications to the reasonable satisfaction of the First Plaintiff;

- c) the First Defendant would take such steps and comply with all the requirements of the laws of the Cayman Islands, and obtain such permissions as are necessary under the laws of the Cayman Islands;
- d) the First Defendant would constantly keep upon the construction site a competent person in charge and any instructions given to him by the First Plaintiff were to be deemed to have been issued to the First Defendant;
- e) the quality and quantity of the construction was to be deemed to be that which was shown upon the contract drawings; and
- f) the date for completion of the construction was 25th January 2000 ("the Completion Date").

7. An Addendum was added to the Agreement dated 15th January 2000 whereby *inter alia*:

- a) the Completion Date was moved to the 31st March 2000;
- b) the First Defendant would pay to the First Plaintiff 1% of the total completion price for each week the First Defendant was behind schedule; and
- c) the First Defendant would pay to the First Plaintiff the interest being accrued on the First Plaintiff's mortgage for each month that the First Defendant was behind schedule.

8. By an Amendment to the Addendum dated 4th May 2000 it was expressly agreed:

- a) that on or before the 15th day of May 2000 the dwelling will be constructed to equal value or higher pursuant to quantity surveyors reports;
- b) that the Second Defendant would complete the bid form and return the same to the First Plaintiff by 8th May 2000;

- c) the Completion Date was extended to 1st July 2000;
 - d) if the work was not completed by the 1st July 2000, the Second Defendant was required to pay 1% of the total completion price which was CI\$275,000.00 for each and every week it was behind schedule until completion; and
 - e) the Second Defendant would contact the First Plaintiff on a weekly basis to update her on the progress on the completion of the dwelling.
9. It was an implied term of the Agreement that the Defendants would carry out the construction using all reasonable skill and care to be expected of a company and persons skilled, experienced and competent in the construction of dwellings.
 10. Alternatively the Defendants were aware that the First Plaintiff was relying on the Defendants skill and expertise and therefore they owed a duty of skill and care to the First Plaintiff to exercise such skill and care.
 11. At all material times the Defendants were aware that the First Plaintiff had to pay rent until she could live in the dwelling and that she had taken out a mortgage to finance the construction and was thus incurring an interest expense.
 12. The First Defendant made the following payments:

August 11, 1999	CI\$ 68,750.00 (the "Initial Deposit")
September, 1999	41,250.00
December 1999	36,684.00
 13. The First Defendant is in breach of the terms of the agreement.

PARTICULARS OF BREACH

- a) did not complete the construction of the dwelling by the Completion Date of 1st July 2000
 - b) did not construct the dwelling to the specifications and drawings and as agreed with the First Plaintiff
 - c) did not constantly keep upon the construction site a competent person in charge
 - d) did not adhere to the laws and regulations of the Cayman Islands
 - e) submitted different drawings to the authorities.
14. And/or in the alternative, the First Defendant has negligently failed to carry out the construction or alternatively failed to carry out the construction using the requisite degree of professional skill, care and competence.

PARTICULARS OF NEGLIGENT WORK

- i) 50% of the walls facing the sea are not plum and straight
- ii) Electrical lines missing
- iii) Slab not filed over the garage
- iv) Plumbing pipes not aligned
- v) Plumbing was never inspected by the Building Control Unit
- vi) The roof was built over the window openings
- vii) Roof not aligned and rafters built over roof
- viii) Roof truss not used as originally contracted
- ix) Roof rafters were poorly constructed

- x) Window sizes not standard and had to be filled and resized
- xi) Cement cracking
- xii) Roof over garage is not structurally sound. Need steel beam in order to support the garage.
- xiii) A number of hurricane straps were missing. Needed to install 12x14 inch plywood gussets and 95 butterfly straps
- xiv) The roof unable to pass Planning's inspection
- xv) Use of inferior materials throughout
- xvi) Poor finalising and construction

The First Plaintiff will rely on various reports prepared.

15. As a result of the First Defendant's breach of the Agreement and the failure to carry out the works in a competent and satisfactory manner the First Plaintiff has incurred loss and expenses in making corrective works so as to meet the standards and requirements of the laws of the Cayman Islands and to complete the construction.

PARTICULARS OF LOSS

Additional rent paid due to late completion	16,000.00
Reimbursement of corrective works	15,000.00
Payment of BCQS invoice	4,585.00
Initial deposit to purchase material	68,750.00
Unspecified amounts for interest accrued on mortgage	

SECOND PLAINTIFF

16. By a written contract dated the 5th October 1998 the Second Plaintiff entered into an agreement with the First Defendant whereby the First Defendant would construct a dwelling house at Block 53A, Parcel 82, at a total cost to the First Plaintiff of US\$199,000.00 ("the Agreement").

17. The Second Plaintiff repeats and relies on paragraphs 6 a), b) c) and e) hereof.
18. Completion Date was scheduled for the 5th March 1999.
19. The Second Plaintiff paid a total of US\$179,100.00 to the First Defendant.
20. The First Defendant is in breach of the terms of the Agreement.

PARTICULARS OF BREACH

- a) did not complete the construction of the dwelling by the completion date of 5th March 1999
 - b) did not construct the dwelling to the drawings and specifications and as agreed with the Second Plaintiff
 - c) did not comply with the laws and regulations of the Cayman Islands
21. And/or in the alternative, the First Defendant has negligently failed to carry out the construction or alternatively failed to carry out the construction using the requisite degree of professional skill, care and competence.

PARTICULARS OF NEGLIGENT WORK

- i) failure to construct interior support roofs
- ii) use of inferior material throughout
- iii) poor finalising and construction
- iv) poor and faulty electrical work

The Second Plaintiff will rely on various reports prepared.

22. As a result of the First Defendant's breach and the failure to carry out the works in a competent and satisfactory manner, the Second Plaintiff has incurred considerable loss and expense and is unable to receive a Certificate of Occupancy.

PARTICULARS OF LOSS

Corrective work to date to be quantified

Unspecified amount to complete according to Planning specifications.

Loss of income

Loss of interest

THIRD PLAINTIFF

23. A written contract dated the 20th October 1999 the Third Plaintiff entered into an agreement with the First Defendant whereby the First Defendant would construct a dwelling house at Block 102A, Parcel 95, Cayman Brac at a total cost to the Third Plaintiff of CI\$225,749.00 ("the Agreement")
24. The Third Plaintiff repeats and relies on paragraphs 6 a), b), c) and e) hereof.
25. Completion was scheduled for the 1st April 2000.
26. By an Addendum added to the contract dated 15th January 2000, *inter alia*, the Completion Date was moved to 1st May 2000.
27. The First Defendant was in breach of the express terms of the contract, in particular;
- a) a competent person in charge was not constantly present on the construction site;
 - b) did not construct the dwelling to the specifications agreed with the Third Plaintiff

The Third Plaintiff will rely on various reports prepared.

28. As a result, the Third Plaintiff terminated the contract on the 6th March 2000.
29. The Third Plaintiff has incurred loss and damage due to the First Defendant's breach.

PARTICULARS

Cost of hiring new contractors and to carry out completion of construction

AND THE FIRST PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:

1. General Damages in the amount of CI\$104,335.00.
2. Unspecified damages for corrective works (not yet completed).

AND THE SECOND PLAINTIFF CLAIMS AGAINST THE DEFENDANTS

1. Loss of income.
2. Unspecified damages for corrective works and to meet Planning specifications (completed and in progress).

AND THE THIRD PLAINTIFF CLAIMS AGAINST THE DEFENDANTS

1. Unspecified damages (in progress).

AND THE PLAINTIFFS CLAIM JOINTLY AGAINST THE DEFENDANTS JOINTLY

1. Interest on the amount found to be due to them or to either of them at the rate of the agreements or alternatively interest at the rate of 8% pursuant to the Judicature Law (1995 Revision) and The Judgment Debts (Rates of Interest) Rules (2000).
2. Such orders as are necessary to secure payment of the debts found due, including if deemed necessary, such restraining or inhibitive orders.

3. Costs.

DATED this 29 day of November 2000

Quin + Hampson
QUIN & HAMPSON
Attorneys-at-Law for the Plaintiffs

THIS WRIT was issued by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiffs herein whose address for service and correspondence is that of their Attorneys-at-Law, 3rd Floor, Harbour Centre, PO Box 1348, George Town, Grand Cayman, Cayman Islands, BWI.

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

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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Plaintiffs

AND: (1) WOODTECH LTD.
(2) SEAN WOOD
(3) CURTIS WOOD
(4) MERRILL WOOD
(5) PAULINE WOOD

Defendants

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.

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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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