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**Writ of Summons (O.6, r.1)**

IN THE GRAND COURT OF THE CAYMAN ISLAND  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

220  
CAUSE NO. OF 2001

BETWEEN HARWOOD EXCAVATING LTD. PLAINTIFF  
AND: MR. WAYNE DACOSTA DEFENDANT

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: DEFENDANTS Mr. & Mrs. Wayne DaCosta c/o Samson Jackson Murray, Ground Floor, Sigma Building, GT., Cayman Islands.

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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

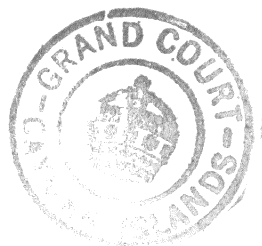
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 24 day of 7 2001.

NOTE - This Writ may not be served later than 4 calendar 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 carried on business as a Backhoe and Trucking Service and the Defendant was the owner of a parcel of land, namely registration section Sound South, Block 15D Parcel 103 ("the property").

2. The Defendant required a loan from his bank in order to build a dwelling house on the property and discussed the same with a representative of Unit Construction Ltd., a Mr. Gordon McLaughlin. The Defendant informed Mr. McLaughlin he was considering employing Unit Construction Ltd. to build the dwelling house. He never instructed Unit Construction Ltd. to build the dwelling house. Before the dwelling house could be build the land had to be cleared and filled. The Defendant informed Mr. McLaughlin that he required an estimate of the amount of fill that would be required for the property and if Mr. McLaughlin could provide such an estimate. Mr. McLaughlin arranged with a representative of the Plaintiff's company, Mr. Harwood Jackson, to carry out some preliminary soundings to the edge of the property using a backhoe. The machine could not get to the center of the property and so no soundings were carried out in that area. There was a considerable amount of peat and tree stumps on the land, which made it inaccessible on foot. Thus Mr. Harwood Jackson provided an estimate to Mr. McLaughlin of the amount of fill that might be required at a time when the condition of the land was substantially different to when it had been raised. By a letter dated 25 September 1998 ("the letter") Mr. McLaughlin provided an estimate of the cost for filling of the property. The written estimate was provided to the Defendant to assist him to obtain a mortgage. The mortgagee could assess how much money it was prepared to loan to the Defendant by way of a charge on the property.

3. Two alternatives were provided in the letter, which provided, inter alia:

"Alternative 2

a) To excavate & remove from the site peat & tree stumps as above but including the pool & deck area	\$4,000.00
b) To backfill and spread "Caymn rock" to the approximate level of the road. 860 tons (690 cu.yds) @ \$22.00/to	\$18,920.00
Total	\$22,920.00

The quantities of rock required are a best estimate and may vary. If you have any questions please call or fax."

4. The Defendant had obtained approval from the Central Planning Authority for the construction of a house on the property. Mr. McLaughlin did assist the Defendant by providing him with structural drawings but did not charge him for any services that his company provided.

5. The Defendant later obtained approval for the development and notified Mr. McLaughlin that he wanted to proceed with it. He asked Mr. McLaughlin if he could contact a company who would carry out the excavation and filling of the site. Mr.

McLaughlin had earlier provided an estimate for the cost that his company would charge for completing the development. The Defendant did not accept that offer. Since Mr. McLaughlin had earlier contacted Mr. Harwood Jackson of the Plaintiff's company who in turn had provided the above-mentioned estimates for the amount of fill required, Mr. Jackson agreed to carry out the work for the Defendant. After the site had been demucked and the Plaintiff had started the work it was better able to assess the amount of fill required. Mr. Harwood Jackson verbally notified the Defendant of the estimate for the amount of fill that would be required. The estimate was that about 2,000 tonnes of fill would be required for the property. The Defendant agreed that that amount of fill should be used.

6. Before the Plaintiff could start working on the property the weather conditions deteriorated as a result of Hurricane Mitch. That resulted in the property being waterlogged and being submerged under about two (2) feet of water.

7. When the work finally commenced, the Plaintiff discovered that on excavating some of the land that some areas were deeper than expected.

8. About two to three days into the job Mr. Jackson discussed the work and services with the Defendant. The Defendant specifically asked the Plaintiff how much fill would be required for the property and was again advised by the Plaintiff's representative in the presence of the Defendant's wife that about 2,000 tonnes would be required. During that conversation the Plaintiff's representative advised that the price of the fill would be \$21.00 per tonne and \$1.00 for spreading. Hence the total price of \$22.00 per tonne. The Defendant verbally instructed the Plaintiff to continue to fill the site.

9. The Defendant further advised the Plaintiff that he wanted about two thirds of the soil to be taken to property that he owned in Savannah. The Plaintiff did as he was instructed and delivered ten (10) trucks full of topsoil to the land in Savannah. Contrary to the advice of the Plaintiff that some of the topsoil of the property could be used to fill the foundation, the Defendant requested that more fill be purchased in order to fill the foundation. The Plaintiff followed the instructions of the Defendant.

10. The Defendant had informed Mr. Jackson that as a result of the position of the property in relation to the road and the surrounding land and the fact that water collected in that location following heavy rainfall, especially the heavy rainfall following Hurricane Mitch, that he wanted the foundation of the dwelling house to be three (3) feet above the road.

11. Pursuant to the oral agreement between the Plaintiff and the Defendant, the Defendant carried out the work, and delivered the fill as aforesaid to the Defendant's property. At all times the Plaintiff understood that he was working for and had a separate contract with the Defendant. A reasonable charge for such work was \$49,609.40. The only payment received by Mr. McLaughlin was for goods ordered which was a metal decking for the upper floor slab.

12. The Defendant has failed to pay to the Plaintiff the said sum of \$49,609.40 and there is due and owing to the Plaintiff the said sum of \$13,344.70.

13. And the Plaintiff claims

- (i) The said sum of \$13,344.70.
- (ii) Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (iii) Costs

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**BROOKS & BROOKS**

THIS WRIT was issued by Clyde H. Allen whose address for service is Brooks & Brooks, Attorneys-At-Law, PO Box 1355, Grand Cayman, British West Indies

IN THE GRAND COURT OF THE CAYMAN ISLAND  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. <sup>220</sup> OF 2001

BETWEEN HARWOOD EXCAVATING LTD. PLAINTIFF  
AND: MR. WAYNE DACOSTA 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes       no

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3. If the claim against the Defendant is for a debt or a 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

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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service: (please see overleaf)

*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.*

C. H. Allen  
Brooks & Brooks  
Attorneys-At-Law  
PO Box 1355 GT  
Grand Cayman  
Cayman Islands  
BWI

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

[Empty box for defendant's attorney indorsement]