

IN THE GRAND COURT OF THE CAYMAN ISLANDS

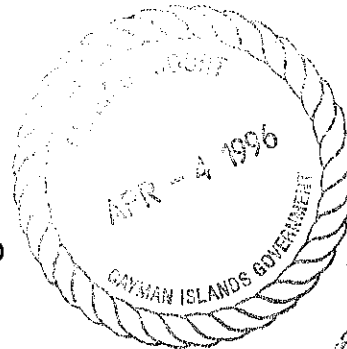
CAUSE NO. 179 of 1996

BETWEEN: STEVEN LOHR (1)

DIANA GASOFF (2)

AND:

COASTAL BUILDERS LIMITED



PLAINTIFFS

DEFENDANTS

WRIT OF SUMMONS

TO: Coastal Builders Limited of George Town,
PO Box 1465GT, Grand Cayman,
Cayman Islands, British West Indies.

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 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 495GT, 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 of Service 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 4th day of April 1996.

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.

The Plaintiffs' claim is for:-

- (1) US\$572,509.90, being the moneys paid by the Plaintiffs to the Defendant pursuant to an entire contract, being a building contract made in writing between the Plaintiffs and the Defendant on 28th March 1995, repudiated by the Defendant on or about 18th December 1995 by its ceasing all works thereunder and abandoning the site thereof before completing or substantially completing the contractual works;
- (2) Alternatively, US\$295,516.90, being the increased cost to the Plaintiffs resulting from the aforesaid breach or repudiation by the Defendant of the said building contract; and
- (3) US\$18,500, being consequential loss and damage sustained by the Plaintiffs;
- (3) an Injunction to restrain the Defendant, whether by its servants or workmen or agents or howsoever otherwise from doing any of the following acts, that is to say, entering upon the Plaintiffs' land at Cayman Kai, being Lot 33 - 17, Parcel 4 and interfering or intermeddling with the Plaintiffs or their servants or workmen or agents engaged in erecting and completing a house and garage now in the course of erection and removing any plant, equipment or materials from the Plaintiffs' land and from the said house and garage; and
- (4) interest on any sum or sums awarded to them pursuant to Section 34 of the Judicature Law (1995 Revision) at the rate of 8 3/8 per cent per annum for such period or periods as to the Court shall seem just.

If, within the time limited for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$594,872.45 (inclusive of interest and fixed costs) further proceedings will be stayed. The money must be paid to the Plaintiffs or their Attorneys.

Ian Boxall & Co
IAN BOXALL & CO.

This Writ was issued by Ian Boxall & Co., Attorneys at Law, whose address for service is The CIBC Financial Center, PO Box 1234, George Town, Grand Cayman, Cayman Islands, British West Indies.

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CAUSE NO. 179 of 1996

BETWEEN: STEVEN LOHR (1)

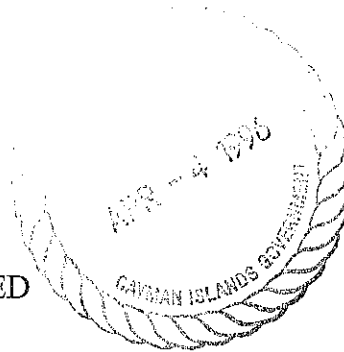
DIANA GASSOFF (2)

PLAINTIFFS

AND:

COASTAL BUILDERS LIMITED

DEFENDANTS



STATEMENT OF CLAIM

1. The Defendant is a building contractor.
2. By a contract in writing dated 28th March 1995 made between the Plaintiffs and the Defendant, the Defendant agreed, subject to the terms therein appearing, to build a house and garage for the Plaintiffs for the inclusive sum of US\$726,993.
3. The said contract was an entire contract and the Defendant was not entitled to payment thereunder unless and until the said house and garage were completed. Notwithstanding the aforesaid, between 28th March 1995 and 18th December 1995 the Plaintiffs paid to the Defendant on account sums amounting in all to US\$572,509.90.
4. It was an express term of the said contract that the Defendant would complete all the contractual works by 1st January 1996; alternatively, it was an implied term of the contract that the Defendant would complete all the contractual works within a reasonable time. The Plaintiffs say that a reasonable date for the completion of all the contractual works was 1st January 1996.
5. The following were express terms of the said contract, namely that:-
 - (1) the works were to be carried out in accordance with structural plans prepared by Apec Engineering Consultants Limited of George Town, Grand Cayman; and

- (2) the works were to be carried out in accordance with architectural drawings prepared by the Plaintiffs' architect.

6. There were implied terms of the contract as follows:-

- (1) that the goods supplied and the materials employed under the contract would be of merchantable quality and/or reasonably fit for the purpose for which they were being acquired;
- (2) that the Defendant would carry out the work with reasonable care and skill and to a high professional standard; and
- (3) that the Defendant would employ competent sub-contractors and ensure that the work carried out by any sub-contractor employed by the Defendant was carried out in accordance with the terms of the contract and executed with reasonable care and skill and despatch.

7. Further or in the alternative, the Defendant owed a duty of care to the Plaintiffs in carrying out the works.

8. In breach of contract the Defendant before the house and garage were completed, namely on or about 18th December 1995, abandoned the work and has never completed the same.

9. Moreover, the Defendant, negligently and in breach of its contractual duty:-

- (1) failed to carry out the works in accordance with the aforesaid structural plans;
- (2) failed to carry out the works in accordance with the aforesaid architectural plans;
- (3) employed unsuitable or inferior materials;
- (4) carried out defective work; and
- (5) employed incompetent sub-contractors who carried out defective work using inferior or unsuitable materials; alternatively, failed adequately or at all to supervise the sub-contractors employed and thereby ensure that all

sub-contract works were executed with reasonable care and skill and despatch.

PARTICULARS

Preliminary reports dealing with structural defects, departures from the structural plans and architectural drawings, inferior or unsuitable goods or materials and defective works have been prepared by Apec Engineering Consultants Limited and by Mr. Alastair Patterson, Chartered Quantity Surveyor, of Grand Cayman and provided to the Defendant. Further investigation and structural testing remain to be carried out before the full extent of defects in materials and work can be ascertained and the full costs of remedial works established. The Plaintiffs will give full particulars of all defects and remedial costs by way of a Scott Schedule following Discovery herein.

10. By reason of the Defendant's breach or repudiation of the contract, the Plaintiffs were compelled to employ another contractor to remedy the said defective works and to complete the house and garage at greatly increased cost and have been deprived of the use of the land and the house and garage from 1st January 1996, when the Defendant ought to have completed the works, which deprivation is continuing, whereby the Plaintiffs have been put to great inconvenience and expense and have suffered loss and damage, all of which are continuing.

PARTICULARS OF LOSS AND DAMAGE

- (1) The cost to the Plaintiffs of remedying all defective works and of completing the house and garage left unfinished by the Defendant is estimated at the date hereof to be not less than US\$1,022,509.90; the estimated cost will increase if a planned load-bearing test indicates that the upper floor-slab of the house is structurally defective.
- (2) The increased cost, that is, the difference between the said sum of US\$1,022,509.90 and the sum of US\$726,993 for which the Defendant agreed to build the house and garage, is US\$295,516.90.
- (3) The value to the Plaintiffs of the use of the land and house and garage is US\$2,000 per month, being equivalent to the rent which the Plaintiffs pay for the use and occupation of land and a house and garage in Cayman Kai; the total of such rent paid by the Plaintiffs from 1st January 1996 to the date hereof is US\$8,000, and that expense is continuing.

- (4) The Plaintiffs have incurred the expense of telephone and facsimile communications and the cost of airfares and the associated expenses of travel between Missouri in the United States and Grand Cayman arising from the necessity for consultations with their professional advisors and negotiations for a new contractor; the total of such costs and expenses to the date hereof is US\$5,500, and those costs and expenses are continuing.
- (5) The Plaintiffs have paid shipping charges, Customs duty and storage charges in respect of materials imported to the Cayman Islands which charges and duty were the Defendant's liability under the contract; the total of all such charges and duty is US\$5,000.
11. Further, the Plaintiffs are in law entitled to possession of goods and materials already built into the house and garage and are entitled to plant and materials not removed from the site by the Defendant prior to its repudiation of the contract. Following the Defendant's repudiation of the contract, the sub-contractor responsible for the installation of the air-conditioning system in the house, on a date unknown to the Plaintiffs, removed air-conditioning plant which had been installed in the attic area. The Plaintiffs believe that other plant and materials on site have been removed by the Defendant and that such removals will continue unless the Defendant, by its servants, workmen, agents or howsoever otherwise, is restrained therefrom by an order of the Court.
12. In addition, the Plaintiffs are entitled to and claim interest pursuant to Section 34 of the Judicature Law (1995 Revision) on any sums awarded to them for such periods and at such rate as to the Court may seem just.

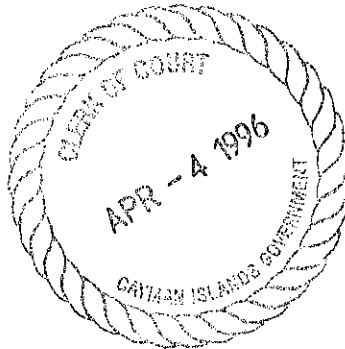
AND the Plaintiffs CLAIM:-

1. Under paragraph 3 hereof, US\$572,509.90, being monies paid to the Defendant under an entire contract abandoned by the Defendant as aforesaid in paragraph 8 hereof;
2. Under paragraph 10 hereof, the sum of US\$314,016.90;
3. Alternatively, damages for breach of contract and/or for negligence;
4. Under paragraph 11 hereof, an Injunction to restrain the Defendant by its servants or workmen or agents or howsoever otherwise from doing any of the following acts, namely entering upon the Plaintiffs' land at Cayman Kai, known as Lot 33 -

17, Parcel 4, and interfering or intermeddling with the Plaintiffs or their servants or workmen or agents engaged in erecting and completing a house and garage now in the course of erection and removing any plant, equipment or materials from the Plaintiffs' land or house or garage;

5. Under paragraph 12 hereof, Interest pursuant to Section 34 of the Judicature Law (1995 Revision), at the rate of 8 3/8 per cent per annum from the date hereof until judgment herein or sooner payment; alternatively, from such date or dates as to the Court may seem just until judgment herein or sooner payment.

Ian Boxall & Co
Ian Boxall & Co.



This Statement of Claim was filed by Ian Boxall & Co., Attorneys at Law, for and on behalf of the Plaintiffs whose address for service is Third Floor, The CIBC Financial Center, PO Box 1234, George Town, Grand Cayman, Cayman Islands, British West Indies.

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 DIANA GASSOFF (2)

PLAINTIFFS

AND: COASTAL BUILDERS LIMITED

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 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 or otherwise participate in 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.**

yes

no

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.

Ian Boxall & Co (Ref: 00562-0001-WJH) PO Box 1234 George Town Grand Cayman Tel: 949-9876 Fax: 949-9877

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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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, PO 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 endorsed 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 instalments or otherwise.

See over for notes for guidance

Notes for Guidance

1. Each Defendant (if there are more than one) is required to completed 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 of 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.