

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁵⁴⁶ OF 2001

**BETWEEN: CAYMAN REPAIRS, APPLICANCES & AIR
CONDITIONING CO. LTD.**

PLAINTIFF

**AND: ELIZABETH SCOTT trading as
OLSON CONSTRUCTION**

FIRST DEFENDANT

**AND: THE ESTATE OF HARRY ANDREW OLSON,
the Deceased trading as OLSON CONSTRUCTION**

SECOND DEFENDANT

WRIT OF SUMMONS

TO: Elizabeth Scott
The Estate of Harry Andrew Olson

THIS WRIT OF SUMMONS has been issued against you by the abovenamed 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 B.W.I., 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 6 day of September, 2001.

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. The Plaintiff is and was at all material times carrying on the business of supplying and installing materials for air-conditioning systems in the Cayman Islands.
2. At all material times Mr. Olson, deceased, who died on the 18th June 2001 and the First Defendant traded as Olson Construction and carried on the business of a building contractor in the Cayman Islands.
3. By an agreement in writing contained in letters from the Plaintiff to Olson Construction dated the 24th May 1999 and from Olson Construction to the Plaintiff dated the 18th June 1999 it was agreed between the Plaintiff and Olson Construction that the Plaintiff be appointed to perform the necessary air-conditioning works including supplying and installing the air-conditioning system for a project known as the "Butterfield House Renovation" ("the Project"), excluding the Computer Room. Olson Construction agreed *inter alia* with the Plaintiff the following:
 - (1) The Plaintiff will supply materials and labor for the demolition, existing mechanical fixtures and install new A/C systems with EMS as per plans for the sum of C\$407,899.00.
 - (2) The Plaintiff was to furnish material and labor complete in accordance with its specifications.
 - (3) Payment to be made in accordance with the following:
 - (a) 50% down
 - (b) 25% upon installation of air handler and roughing in of ducting and piping and
 - (c) the balance of 25% due upon completion.
 - (4) If the balance is not paid at completion, Olson Construction to be liable for the balance plus interest computed on a daily basis until paid.
4. The terms of the Agreement were varied, verbally, and the Plaintiff and Olson Construction

further agreed the following:

- (1) the Plaintiff was to supply and install an air-conditioning unit in the "Computer Room" for an additional sum of CI\$11,965.00.
 - (2) that payments were to be made pursuant to Draw Requests from the Plaintiff to Olson Construction.
5. During the course of the work performed by the Plaintiff, variations were approved by Olson Construction and as a result these variations increased the agreed amount to the sum of CI\$430,125.00 ("the Contract Price").
 6. Pursuant to the Agreement, the Plaintiff duly performed the works and upon the Defendant receiving Draw Requests from the Plaintiff, the following payments were made:

18 th August 1999	CI\$ 52,541.00
10 th September 1999	6,523.30
8 th October 1999	200,156.40
17 th November 1999	41,524.20
17 th December 1999	33,508.00
9 th February 2000	33,963.00
9 th May 2000	<u>11,000.00</u>
TOTAL	CI\$379,215.90

7. By letter dated the 25th May 2000 from the Plaintiff to Olson Construction, a further Draw Request was sent to Olson Construction for the sum of CI\$23,000.00 (which included an outstanding Draw Request of CI\$11,000.00).
8. On the 15th June 2000 a meeting was held at the offices of OBM Limited ("OBM"), the Architects of the Project, to discuss the current status of the works of the air-conditioning system and the amounts due by Olson Construction.
9. At the meeting of the 15th June 2000, OBM presented a list of outstanding works as of 31st May 2000 to be completed by the Plaintiff along with a summary of the payments received

by the Plaintiff pursuant to the Agreement. Olson Construction also presented a list of outstanding items relating to the works to be completed by the Plaintiff.

10. At the end of the meeting of the 15th June 2000, the following matters were determined and agreed:
 - (1) That the payments received by the Plaintiff in the sum of C\$379,124.90 accurately reflected the current status of the works completed as indicated in its letter dated the 25th May 2000.
 - (2) That Olson Construction is to make full payment upon completion of the Project.
 - (3) OBM confirmed that it would certify the appropriate monies claimed for by the Plaintiff upon completion of the outstanding works.
 - (3) Olson Construction was to incorporate any additional outstanding items to the OBM list and issue it to the Plaintiff by the 16th June 2000.
 - (4) The Plaintiff would respond to Olson's Construction's list of outstanding items by the 16th June 2000 and complete the outstanding items within two weeks, i.e. by the 29th June 2000.
 - (5) The Plaintiff to confirm promptly in writing any items on the Olson Construction list it deemed unable to comply with or unreasonable.
11. By letter dated the 16th June 2001, the Plaintiff wrote to Olson Construction and specified the items it was unable to complete within the 2-week period, namely, by the 29th June 2001.
12. By letter dated the 21st June 2000, the Defendant notified the Plaintiff to attend the Project site on the 22nd June 2000 at 9:00 a.m. and to complete certain works. The Plaintiff sent a reply to the Defendant on the same day i.e. the 21st June 2000 reminding Olson Construction of the agreement as set out at paragraphs 10 (4) and (5) hereof that the Plaintiff had until the 29th June 2000 to complete certain items.

13. By letter dated the 22nd June 2000 Olson Construction wrongfully repudiated the Agreement and as a result the Plaintiff suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

Contract Price	CI\$430,125.00
Less Amounts Received:	<u>379,215.90</u>
Amount owed:	CI\$ 50,909.10

14. Alternatively, the Plaintiff claims damages in the sum of CI\$23,000.00 representing the amounts due by the Plaintiff for works completed, inclusive of labour and materials.
15. Further, the Plaintiff claims interest pursuant to section 34 of the Judicature Law (1995 Revision) at the statutory rate of 8% per annum of the amount found due to the Plaintiff.

AND THE PLAINTIFF claims:

1. the sum of CI\$50,909.10 or
2. alternatively, damages in the sum of CI\$23,000.00
3. Interest as pleaded on the amount found due to the Plaintiff from the 22nd June 2000 to the date hereof and further interest at the same rate from the date hereof to judgment or sooner.
4. Such further and other relief as this Honourable Court deems just in the circumstances.
5. Costs.

If within the time for returning the Acknowledgment of Service the Defendant pays the total amount claimed of CI\$58,900.25 (including interest in the sum of 4,932.05 and costs in the sum of CI\$3,059.10) further proceedings will be stayed. The money must be paid to the Plaintiff and/or its Attorneys-at-Law.

Dated this 6th day of September 2001.



MYERS & ALBERGA

Attorneys-at-Law for and on behalf of
the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendants

THIS WRIT and STATEMENT OF CLAIM was issued and filed by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose address for services is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I.

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FIRST DEFENDANT

AND: THE ESTATE OF HARRY ANDREW OLSON,
the Deceased trading as OLSON CONSTRUCTION

SECOND 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

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.

MYERS & ALBERGA
One Regis Place, 2nd Floor
P. O. Box 472
George Town
Grand Cayman, B.W.I.

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]

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 instalments 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 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.