

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 762 OF 2001

**BETWEEN:** CEDAR POINT LTD. Plaintiff

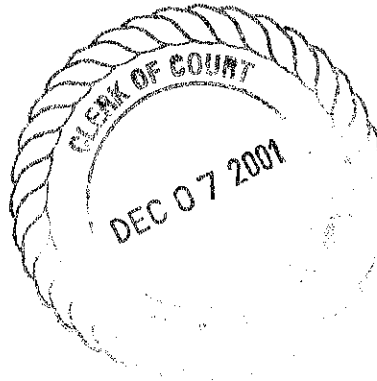
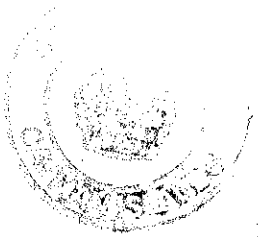
**AND:** (1) WOODTECH LTD.  
(2) SEAN WOOD  
(3) MERRILL WOOD Defendants

WRIT OF SUMMONS

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

(2) SEAN WOOD  
George Town  
Grand Cayman

(3) MERRILL WOOD  
George Town  
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, 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 13<sup>th</sup> 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 Acknowledge of Service are given with the accompanying form.

### STATEMENT OF CLAIM

1. The Plaintiff was at all material times a Company registered 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, the Second Defendant was the only registered member and director of the First Defendant.
5. At all material times the Third Defendant was an employee of the First Defendant and held himself out as being skilled, competent and experienced in the matters carried out by the First Defendant.
6. By a written contract dated the 20<sup>th</sup> October 1999 the 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 ("the Dwelling"), at a total cost to the Plaintiff of US\$225,749.00 ("the Agreement").
7. The following were *inter alia* express terms of the contract:
  - a) that the First Defendant would construct the Dwelling in accordance with the drawings and specifications agreed and approved by the Plaintiff in the Agreement;
  - b) the First Defendant would carry out and complete the construction of the Dwelling as shown upon the Quotation and Contract Drawings to the reasonable satisfaction of the 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 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 1<sup>st</sup> April 2000 ("the Completion Date").
  - g) It was an express term of the Agreement that payments would be made in the following pursuant to the Payment Schedule set out in the Agreement as follows:
 

(1)	On signing of the contract pursuant to appendix 2-A to the contract	10%
(2)	On commencement of foundations	15%
(3)	On commencement of works pursuant to appendix 2-C to the contract	18%
(4)	On commencement of works pursuant to appendix 2-D to the contract	15%
(5)	On commencement of roof pursuant to appendix 2-E to the contract	18%
(6)	On commencement of finishes	10%
(7)	On completion of project	14%
8. By an Addendum added to the contract dated 15<sup>th</sup> January 2000, *inter alia*, the Completion Date was moved to 1<sup>st</sup> May 2000.
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 Plaintiff was relying on the Defendants' skill and expertise and therefore they owed a duty of skill and care to the Plaintiff to exercise such skill and care.
  11. The Plaintiff paid a total of US\$46,000 to the First Defendant
  12. At all material times the Defendants were aware that the shareholder of the Plaintiff was going to live in the Dwelling.
  13. It is claimed that the First Defendant was a sham and being used to defraud the Plaintiff.
  14. The First Defendant was in breach of the terms of the Agreement;
    - 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 Plaintiff will rely on various reports prepared.
15. 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) use of inferior material throughout
- ii) poor standards of construction

The Plaintiff will rely on various reports prepared.

16. As a result of breaches of the Agreement the Plaintiff terminated the contract on the 6th March 2000.
17. The Plaintiff has incurred loss and damage

PARTICULARS

Corrective works	CIS 12,057.41
Rental of alternative accommodation	CIS 9,600.00

DECEIT

18. At all material times the Second and Third Defendants represented to the Plaintiff that the Dwelling was being completed pursuant to the Agreement.
19. The Defendants made these representations knowing them to be false, or not believing them to be true, or with reckless dishonesty, not caring whether they were true or false.
20. The Plaintiff relying on these representations, paid to the First Defendant US\$46,000.00.
21. BCQS Limited confirmed that the construction had not been completed in accordance with the Agreement.
22. It was confirmed in these reports that substantial remedial work had to be carried out.
23. By reasons of the matters aforesaid, the Plaintiff has suffered loss and damages

PARTICULARS OF LOSS

Corrective works	CIS 12,057.41
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Rental of alternative accommodation

CI\$ 9,600.00

**AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:**

1. Damages CI\$ 21,657.41
2. Interest at the rate of 8% pursuant to the Judicature Law (1995 Revision) on the sum of CI\$21,657.41 from the 6<sup>th</sup> March 2000 until the 31<sup>st</sup> May 2001 amounting to CI\$2,022.15.
3. Interest at the rate of 6¼% per annum pursuant to the Section 34 of the Judicature Law (1995 Revision) from the 1<sup>st</sup> day of June, 2001, amounting to CI\$226.22 as at 31<sup>st</sup> July 2001 and then continuing until the date of judgment or sooner payment at the rate of CI\$3.71 per day.
4. Such orders as are necessary to secure payment of the debts found due, including if deemed necessary, such restraining or inhibitive orders.
5. Costs.

DATED this 13<sup>th</sup> day of September 2001

  
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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>762</sup> OF 2000

BETWEEN: CEDAR POINT LTD. Plaintiff

AND: (1) WOODTECH LTD.  
(2) SEAN WOOD  
(3) MERRILL 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:  
*overleaf*

*Please complete*

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.

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