

IN THE GRAND COURT OF THE CAYMAN ISLANDS

433  
CAUSE No. of 2003

BETWEEN:

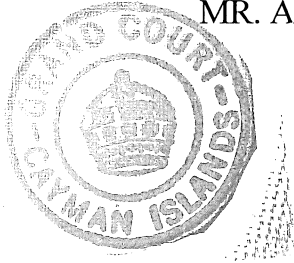
MCALPINE (CAYMAN) LIMITED

Plaintiff

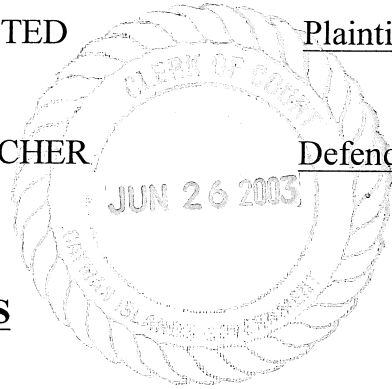
AND:

MR. AND MRS. JEFFREY BOUCHER

Defendants



**WRIT OF SUMMONS**



TO: Mr. and Mrs. Jeffrey Boucher, PO Box 2299GT, 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 495 GT, 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 26<sup>th</sup> day of June, 2003

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.

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## STATEMENT OF CLAIM

1. By an agreement (“the Agreement”) made between the Plaintiff and the Defendants on 6<sup>th</sup> July 2000 the Plaintiff agreed for reward to construct a residence (“the Boucher residence”) for the Defendants on land in Webster Estates, South Sound, Grand Cayman identified in the Land Register as Block 15B Parcel 231.
2. It was an express term of the Agreement that the Defendants would pay to the Plaintiff all sums certified in a Certificate for Payment issued by OBM Ltd., the architects appointed under the Agreement (“the Architect”), as due to the Plaintiff.
3. It was a further express term of the Agreement that when the Agreement had been fully performed by the Plaintiff and the Architect had issued a final Certificate for Payment, the Defendants would pay to the Plaintiffs the final payment so certified not later than 30 days after the issue of the final Certificate for Payment.
4. The Boucher residence was substantially completed by 9<sup>th</sup> November 2000.
5. All latent defects in the Boucher residence were remedied by the Plaintiff to the express satisfaction of the Defendants by 6<sup>th</sup> December 2002.
6. On 25<sup>th</sup> February 2003, the Architect issued a final Certificate for Payment in the sum of CI\$18,903.63 (“the final payment”).
7. As at 25<sup>th</sup> February 2003, payments made by the Defendants to the Plaintiff pursuant to the Certificate for Payment issued by the Architect on 9<sup>th</sup> November 2000 together with an agreed credit of CI\$930 had reduced the final payment due to the Plaintiff to CI\$11,673.71.
8. Payment of the said sum of CI\$11,673.71 was due not later than 27<sup>th</sup> March 2003.
9. On 25<sup>th</sup> May 2003 the Defendants paid the Plaintiff the sum of CI\$6,423.71, leaving the sum of CI\$5,250 due and owing from the Defendants to the Plaintiff.
10. Despite demand, the Defendants have failed or refused to pay to the Plaintiff the said sum of CI\$5,250.
11. Further the Plaintiff is entitled to and claims interest on the sum of CI\$11,673.71 from 27<sup>th</sup> March 2003 until 25<sup>th</sup> May 2003 and on the sum of CI\$5,250 from 26<sup>th</sup> May 2003 until 26<sup>th</sup> June 2003 and continuing thereafter pursuant to Section 34 of the Judicature Law (1995 Revision) as set out below or at such rate and for such periods as the Court may determine.

Particulars of Interest

- (1) Pre-Judgment Interest at the rate of 4.5% per annum on the sum of CI\$11,673.71 (being CI\$1.439 *per diem*) for 60 days, being CI\$86.35;
- (2) Pre-Judgment Interest at the rate of 4.5% per annum on the sum of CI\$5,250 (being CI\$0.647 *per diem*) for 32 days, being CI\$20.71; and continuing at rate of CI\$0.647 *per diem* from 27<sup>th</sup> June 2003 until judgment herein or sooner payment in full;
- (3) Post-Judgment Interest at the rate of 4.5% per annum or at the then-prevailing on the judgment sum until payment in full.

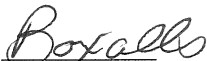
AND THE PLAINTIFF CLAIMS:

- (1) CI\$5,250;
- (2) Interest as aforesaid;
- (3) CI\$150.00, being prescribed Court fees for issue of this Writ; and
- (4) Costs.

GCR Order 6 rule 2(b) Indorsement:

If within the time for returning the Acknowledgment of Service, the Defendant pays the amount set out below, further proceedings will be stayed. The money must be paid to Boxalls. The total amount required to be paid for the proceedings to be stayed is **CI\$5,757.06** and is made up as follows:

1. CI\$5,250, being the debt owed to the Plaintiff
2. CI\$107.06, being the interest claimed to 26<sup>th</sup> June 2003
3. CI\$150.00, being prescribed Court fees; and
4. CI\$250.00, being Fixed Costs.

  
Boxalls

This Writ and Statement of Claim was issued by Boxalls, Attorneys for the Plaintiff, whose address for service is that of its said attorneys, namely: 3<sup>rd</sup> Floor, Queensgate House, South Church Street, PO Box 1234GT, George Town, Grand Cayman, Cayman Islands (Reference: 0057-0032/WJH).

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CAUSE NO. OF 2003

BETWEEN:

MCALPINE (CAYMAN) LIMITED

Plaintiff

- and -

MR. AND MRS. JEFFREY BOUCHER

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.

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

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

yes

no

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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*).

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yes

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**Service of the Writ of Summons is acknowledged accordingly.**

**Attorney for the Defendant**

**Address for service:**

**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 principal office.

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

Boxalls  
Attorneys-at-Law  
PO Box 1234GT  
George Town  
Grand Cayman, Cayman Islands  
British West Indies  
(Reference: WJH/0057-0032)

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

**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.*

*Please complete overleaf.*

## 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 of 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.