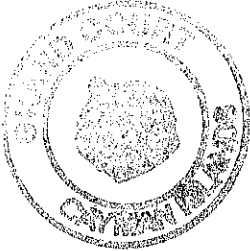


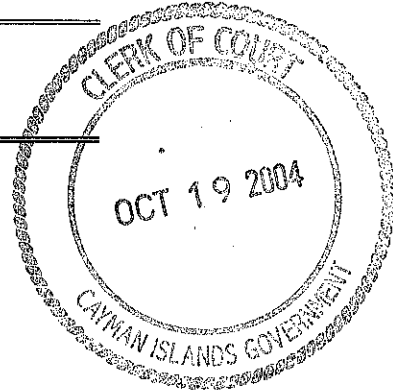
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO ⁴¹⁹ OF 2004

BETWEEN: FRANK BASILE PLAINTIFF
AND: TENNYSON McFARLANE DEFENDANT
(trading as McFarlane & Sons Construction) ✓



WRIT OF SUMMONS



TO: Tennyson McFarlane
(trading as McFarlane & sons Construction)
420 Java Lane
P.O. Box 63
East End
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 Fourteen days [14] 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, 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 19th day of October, 2004

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 re-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 the owner of property in Breakers, Grand Cayman registered as Block 48 Parcel 18.
2. The Defendant now or at all material times carries on the business as general contractors and builders and held himself out to the Plaintiff as such.
3. In or around February, 1997 the Plaintiff entered into a contract with the Defendant for the construction of a dock at the Plaintiff's property. The said agreement was made partly orally and partly in writing. To the extent that the contract was in writing, it was contained in a document submitted by the Defendant to the Plaintiff dated 10 February 1997.
4. The Defendant proposed in the said document that the dock would be erected at a cost of CI\$40,000.00 inclusive of materials and labour.
5. It was agreed between the Plaintiff and the Defendant that the dock would be constructed in accordance with a plan and drawings prepared by Mr Arnold Berry, architect, of Island Drafting and Engineering Ltd.
6. It was an implied term of the contract that the Defendant, in the construction of the dock, would exercise all the skill, care and diligence expected of an experienced general contractor and builder and that the dock, when completed, would be fit for the purpose for which it was intended, in particular, that it would be of such structural integrity as to withstand the effects of wave action.
7. The Defendant constructed the dock and was paid the contract price of CI\$40,000.00 in full.

8. In or around October, 1998, after a period of heightened wave action, the Plaintiff discovered that the dock was ripped from its position and deposited some 75 feet away. The dock had therefore been destroyed and rendered useless to the Plaintiff.
9. The destruction of the dock was caused by breaches by the Defendant of the express and implied terms of the contact.

Particulars of Breach

The Defendant

- (a) failed to construct the dock in accordance with the plans prepared by the architect;
- (b) failed to erect reinforced concrete footings for the dock which should have been placed into the ocean floor and which would have provided sufficient support for the dock to have withstood the heavy wave action;
- (c) failed to exercise all the skill, care and diligence expected of an experienced general contractor and builder as was required in the circumstances;
- (d) failed to ensure that the dock was fit for the purpose it was intended and that it would be able to withstand wave action.

The Plaintiff will plead additional particulars when experts reports become available.

10. As a consequence of these premises the Plaintiff has suffered loss and damage.

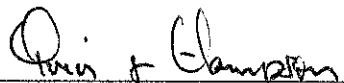
Particulars

The full replacement cost of the dock	TBA
The cost of structural redesign and detailing of a new dock	TBA
Loss of the dock	TBA

AND THE PLAINTIFF CLAIMS:

1. Damages;
2. Interest pursuant to section 34 of the Judicature Law (1995 Revision) at such rates and for such period as to this Honourable Court seems just.
3. Costs.
4. Such further or other relief as this Honourable Court deems just.

Dated the ^{1th} day of October 2004



QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And To: Tennyson McFarlane
(trading as McFarlane & sons Construction)
420 Java Lane
P.O. Box 63
East End
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.

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.

BETWEEN: FRANK BASILE PLAINTIFF
AND: TENNYSON McFARLANE DEFENDANT
(trading as McFarlane & Sons Construction)

ACKNOWLEDGMENT OF SERVICE

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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN

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