

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 476 OF 2004

BETWEEN:

GEORGE HOOKER AND FE HOOKER

PLAINTIFFS

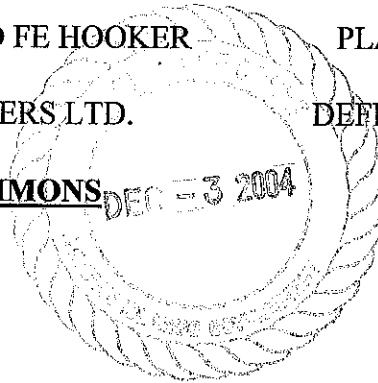
AND:

KIRKCONNELL BROTHERS LTD.

DEFENDANT



WRIT OF SUMMONS DEC - 3 2004



To: Kirkconnell Brothers Ltd.
Eastern Avenue
George Town, Grand Cayman
Cayman Islands, B.W.I.

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 495GT, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 3rd day of December, 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 issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. At all material times the Defendant was carrying on business of a department store and was also into the business of selling swimming pool shells. The Plaintiff was at all material times a customer of the Defendant.
2. By written Agreement on 13th November, 2002 the Plaintiffs purchased a St. Thomas model swimming pool shell from the Defendant for the price of C\$13,793.00.
3. On 6th March, 2004, the Plaintiffs noticed that the water in the swimming pool was decreasing. Upon further inspection, the Plaintiffs saw two huge cracks in the bottom of the swimming pool shell which was causing the water to escape from the pool.
4. The Plaintiffs duly notified the Defendant of the problem and the Defendant removed the swimming pool shell from the hole and started to repair it.
5. The Defendant refused and/or failed to complete the repair to the pool and left the pool outside of the whole on property belonging to the Plaintiff's neighbours.
6. The absence of the pole leaving a big hole in the yard of the Plaintiff has caused the value of Plaintiff's property to depreciate.
7. It was an implied term of the contract that the swimming pool shell was of satisfactory quality and that it was reasonably fit for its purpose.
8. In breach of the said implied term the swimming pool was not fit for its purpose in that the bottom cracked and leaked out all the water.

By reason of the matters aforesaid, the Plaintiffs have suffered loss and damage.

Particulars of Damage

Purchase price of the swimming pool shell	CIS13,793.00
Cost of installing pool and decking	6,200.00
Depreciation of value of house due to absence of swimming pool	<u>25,000.00</u>
	<u>CIS44,993.00</u>

The Plaintiffs claim interest pursuant to the Judicature Law

AND THE PLAINTIFF CLAIMS:

1. Damages
2. Pre and Post Judgment Interest
3. Costs
4. Such further and other relief as this Court may deem just.

Dated this 3rd day of December, 2004



Facey-Clarke & Associates
Attorneys-at-Law for the Plaintiffs

To: The Clerk of Court

And to: Appleby Spurling Hunter
Attorneys for the Defendant

This Writ was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiffs herein whose address for service is that of the said Attorneys-at-law, Unit 119, Elizabethan Square, George Town, Grand Cayman

Acknowledgement of service of writ of summons (0.12, r.3)

**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 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.

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CAUSE NO. 476 OF 2004

BETWEEN: GEORGE HOOKER AND FE HOOKER PLAINTIFFS
AND: KIRKCONNELL BROTHERS LTD. 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.
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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 ☐ no
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Service of the Writ is acknowledged accordingly

Date:

(Signed).....

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.

Facey-Clarke & Associates
P.O. Box 2545GT
Ground Floor, Unit 119, Elizabethan Square
Grand Cayman, Cayman Islands, B.W.I.
Tel: 946-8111 / Fax: 946-8141

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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