

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 132 OF 2005

BETWEEN: BEACH BAY HEIGHTS LTD.

PLAINTIFF

AND: FINLEY JOSEPHS T/A PETRO-TECH ENGINEERING
AND INDUSTRIAL SERVICES LTD.

DEFENDANT

WRIT OF SUMMONS

TO: FINLEY JOSEPHS T/A PETRO-TECH ENGINEERING AND INDUSTRIAL
SERVICES LTD., P.O. BOX 11231 APO, GRAND CAYMAN, CAYMAN ISLANDS

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 495G, George Town, Grand Cayman, 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 22nd day of March 2005.

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 acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff Beach Bay Heights Ltd. is a company formed, registered and existing under the Laws of the Cayman Islands, has its registered office at P.O. Box 1371GT, Grand Cayman, Cayman Islands and carries on the business of real estate development.
2. The Defendant, Finley Josephs, is an individual residing on the Island of Grand Cayman with a P.O. Box of 11231APO and was, at all material times, trading as Petro-Tech Engineering and Industrial Services Ltd. describing himself as its Principal Engineer. The Defendant carried on the business of designing and installing underground water systems.

The Contract

3. On 09 October 2002, the Plaintiff and the Defendant entered into an agreement whereby, in consideration of the payment, or promise of payment, of the sum of CI \$ 97,956.00 (hereinafter the "Contract Price"), the Defendant agreed to do the following (hereinafter the "Underground Water System") at the Plaintiff's planned subdivision of 87 lots at Registration Section Lower Valley, Block 32D, Parcel 91 (hereinafter the "Site"):
 - (1) Site investigation;
 - (2) the design of and obtaining the approval of the Water Authority of the Cayman Islands for the water main design;
 - (3) trenching and pipe installation;
 - (4) pressure testing; and
 - (5) final approval.

The Underground Water System included the installation of the water main, all valves and all service connections. The water main installation included the construction of 5234 linear feet of 4 inch diameter PVC pipe and 288 linear feet of 2 inch diameter PVC pipe for the residential service connections.

4. The soil condition at the Site was primarily rock. In the event that cavities might occur which required additional material to fill than the material available from the trenching operation, the filling work was to be invoiced and paid for on a materials and labour plus 15% basis.
5. The agreement of 09 October 2002 was varied, on or about 08 March 2004, to vary the following:
 - (1) the piping for the water main installation, to total 5526 linear feet, as follows:
 - (a) 271 linear feet of 6 inch diameter PVC pipe;
 - (b) 1950 linear feet of 3 inch diameter PVC pipe;
 - (c) 3017 linear feet of 4 inch diameter PVC pipe; and

- (d) 288 linear feet of 1 inch diameter PVC pipe;
 - (3) the period for completion of the Underground Water System was to be twelve (12) weeks from the start of the work on the System; and
 - (4) to make express the implied term that the Defendant would not remove, or permit to be removed, any material from the Site.
6. The agreement of 09 October 2002 was further varied, on or about 12 March 2004, to provide that the Contract Price was payable as follows:
- (1) Initial payment of CI \$ 14,693.00 payable four weeks before work at the Site began;
 - (2) Second payment of CI \$ 14,693.00 payable when materials first arrive at the Site;
 - (3) 10% retention of CI \$ 9,795.60 until final approval of the Underground Water System by the Cayman Islands Water Authority; and
 - (4) the remaining sum of CI \$ 58,774.40 would be paid based on weekly progress reports as to the progress of the trenching, backfilling and pressure testing.
7. The agreement of 09 October 2002, as varied by the variations referred to above, will be called hereinafter the "Contract".

Payments Made by the Plaintiff

8. The Defendant commenced trenching on 29 April 2004. Pursuant to the Contract, the Underground Water System ought to have been completed by 22 July 2004.
9. Prior to the commencement of the trenching on 29 April 2004, the Defendant received two payments totaling CI \$ 29,386.80. The first for CI \$ 14,693.40 was paid on 06 April 2004 and the second payment of CI \$ 14,693.40, pursuant to invoice # 305, was paid on 23 April 2004. The second payment the Plaintiff's payment for materials which had arrived at the Site and were to be incorporated into the Underground Water System.
10. After the commencement of the trenching on 29 April 2004, the Defendant received the following payments:
- (1) Invoice # 315- \$ 5,460.00 Paid 13 May 2004
 - (2) Invoice # 318- \$ 2,275.00 Paid 14 May 2004
 - (3) Invoice # 319- \$ 4,199.00 Paid 24 May 2004
 - (4) Invoice # 330- \$ 5,453.50 Paid 04 June 2004
 - (5) Invoice # 334- \$ 7,010.00 Paid 18 June 2004
 - (6) Invoice # 341- \$ 9,559.50 Paid 30 July 2004
 - (7) Invoice # 342- \$ 6,375.00 Paid 05 August 2004
 - (8) Invoice # 344- \$ 2,301.00 Paid 19 August 2004
 - (9) Invoice # 347- \$ 8,450.00 Paid 03 September 2004

11. In all, the Plaintiff paid the Defendant the sum of CI \$ 80,469.80.

The Defendant's Delay-June and July of 2004

12. One of the Plaintiff's clients bought lots designated as 17 through 25 at the Site and, on 28 June 2004, the Plaintiff and Defendant agreed that backfilling (following trenching and trench clearing and pipe placement) of the area of these lots would be completed by 30 June 2004. The Defendant was aware that the aforementioned client was buying for the purpose of building a house on each of the lots and reselling the house at a profit. The Defendant did not meet the deadline of 30 June 2004 nor subsequent deadlines of 02 July 2004 and 06 July 2004.
13. On 08 July 2004, the Plaintiff sent a letter to the Defendant outlining and complaining of the delay and imposing another deadline of 12 July 2004 for completion of the work not only with respect to lots 17 to 25, aforementioned, but for the whole Site.
14. On 28 July 2004, the Defendant undertook and agreed to finish the Underground Water System in the estimated time period of four weeks, that is, by 25 August 2004.

The Defendant's Delay-August 2004

15. In its progress report (#7) of 04 August 2004, the Defendant indicated that it had:
- completed 2732 linear feet of trenching (cutting of the trench using the t755 trencher)
 - cleared 2450 linear feet of trench (clearing of all debris prior to pipe bedding and placement)
 - backfilled 2300 linear feet (backfill once the pipe has been placed in the trench); and
 - completed 0 linear feet of pressure testing (pressure testing the network).
16. On 13 August 2004, the Defendant submitted its progress report (# 8) to the Plaintiff. That progress report indicated that no work had been done since the date of the last progress report (#7) submitted on 04 August 2004 and yet the First Defendant, in its invoice # 344, also dated 13 August 2004, was making claim to a progress payment of CI \$ 2,301.00.
17. As a result of the matters aforementioned, the Plaintiff, on 13 August 2004, requested from the Defendant, by 16 August 2004, a schedule for completion of the Underground Water System. The Defendant did not provide a schedule by 16 August 2004.
18. On 16 August 2004, the Plaintiff sent a letter to the Defendant stating the following:
- (1) persons who had purchased lots from the Plaintiff were demanding access to their lots; their inability to gain access may result in breach by the Plaintiff of its contracts with such purchasers; and

- (2) if the Defendant did not complete the Underground Water System by 25 August 2004, the Plaintiff would be forced to give the work to another contractor.
19. On 17 August 2004, the Defendant promised to complete the Underground Water System in a timely manner for the approximate net total of CI \$ 26,567.00, assuming the payment of the CI \$ 2,301.00 billed in invoice # 344.
20. On 19 August 2004, the Plaintiff paid invoice # 344.

The Defendant's Delay-September and October 2004

21. On 02 September 2004, the Defendant submitted its progress report # 9 which indicated that, since its progress report # 7, dated 04 August 2004, no further backfilling nor pressure testing had occurred. Of the 5,526 linear feet to be backfilled and pressure tested pursuant to the Contract, the Defendant had backfilled and pressure tested only 2,300 linear feet and none since its progress report #7 dated 04 August 2004.
22. After progress report # 9 dated 02 September 2004 and after its invoice # 347 also dated 02 September 2004 (paid on 03 September 2004) no further progress reports were received from the Defendant.

The Defendant's Delay-November and December 2004

23. On 24 November 2004, the Plaintiff sent a letter to the Defendant stating that it was six months past the expected completion date of the Underground Water System and requesting a final schedule of completion by 25 November 2004. The Defendant did not comply with the aforementioned request.
24. On 17 December 2004, the Plaintiff sent a letter to the Defendant:
- (1) stating that it had come to the Plaintiff's attention that the Defendant did not have each stage of its work inspected, as required by the Water Authority of the Cayman Islands; the Defendant was requested to get the inspections done as soon as possible; and
 - (2) requesting a final completion schedule by 18 December 2004.

The Defendant's Delay-January and February 2005

25. The Defendant did not provide a final completion schedule by 18 December 2004.
26. On 28 January 2005, the Plaintiff sent a letter to the Defendant requesting the time frame for completion and the approval of the Water Authority of the Cayman Islands. The Defendant did not reply to the letter.

27. On 01 February 2005, the Defendant promised that it would be at the site on 07 February 2005 and would complete the Underground Water System, including final approval from the Water Authority of the Cayman Islands by 10 March 2005.

The Defendant Abandoned the Work and Repudiated the Contract

28. The Defendant did not turn up at the Site on 07 February 2005. In breach of the Contract and its promises made on 01 February 2005, the Defendant abandoned the work and repudiated the Contract on 07 February 2005.

29. As a result of the aforementioned, the Plaintiff retained Equipment Ltd. to start the completion of the Underground Water System and may have to retain others, as well as Equipment Ltd. in order to complete the Underground Water System. The Plaintiff estimates at this time that, as a result of the Defendant's breach of contract and repudiation, the Plaintiff will have to pay at least CI \$ 60,000.00 to redo part of the Defendant's work, complete the System and obtain the necessary approvals from the Water Authority of the Cayman Islands.

The Defendant's Further Breach of Contract and Conversion

30. Despite the express term of the Contract referred to at subparagraph 6(4) above that the Defendant would not remove, or permit to be removed, any material from the Site, the Defendant, in breach of the express term, removed from the Site and converted to its own use soil of an estimated value of CI \$ 10,000.00 and pipes and valves, for which the Plaintiff had paid CI \$ 14,693.40 (see paragraph 9 above) of an estimated value of CI \$ 5,000.00. In addition, the Defendant is returning to the Site from time to time and, surreptitiously or otherwise, continuing to convert the Plaintiff's property to his own use.

The Defendant Passing-Off

31. The Defendant passed himself off as a limited liability company formed, registered and existing under the Companies Law. The Plaintiff, in reliance on this, awarded the Defendant the Contract when the Defendant knew that he was not competent to complete the Underground Water System. The Plaintiff has suffered the damages aforementioned as a result.

The Plaintiff's Claim

32. Therefore, the Plaintiff claims from the Defendant:

- (1) the sum of CI \$ 75,000.00 referred to in paragraphs 29, 30 and 31 above resulting from the Defendant's breach of contract and repudiation, conversion and passing-off;
- (2) an interim and interlocutory injunction to prohibit the Defendant from taking materials off the Site and thus converting the Plaintiff's property to his own use;
- (3) pre and post judgment interest in accordance with the Judicature Law;
- (4) its costs on a full indemnity basis; and
- (5) such other and further orders and relief as to this Honourable Court may seem just.

THIS WRIT was issued by C.S. Gill & Co, Attorneys-at-Law for the Plaintiff, whose address for service is 4th Floor, Genesis Building, 13 Genesis Close, P.O. Box 945GT, George Town, Grand Cayman, Cayman Islands.

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.

BETWEEN: **BEACH BAY HEIGHTS LTD.**

PLAINTIFF

AND: **FINLEY JOSEPHS T/A PETRO-TECH ENGINEERING
AND INDUSTRIAL SERVICES LTD.**

DEFENDANT

ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING 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.

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

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

yes

no

Service of the Originating Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

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.

Please complete overleaf

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

C.S. GILL & CO.
P.O. BOX 945GT, GRAND
CAYMAN, CAYMAN ISLANDS,
4TH FLOOR, GENESIS BUILDING,
GENESIS CLOSE, GEORGE
TOWN
949-8599 TELEPHONE
949-7071 FAX
(PAUL SIMON)

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

