

IN THE GRAND COURT OF THE CAYMAN ISLANDS

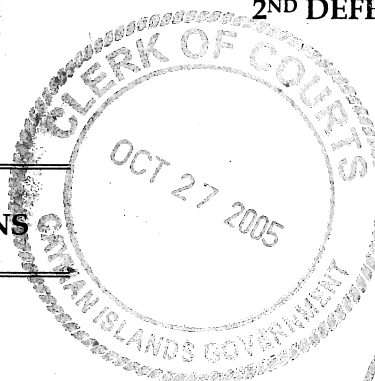
CAUSE NO. <sup>495</sup> OF 2005

BETWEEN THE PROPRIETORS OF STRATA PLAN 368 PLAINTIFF

A N D PARADISE CONSTRUCTION CO. LTD 1<sup>ST</sup> DEFENDANT  
A N D LIAM CALLAGHAN 2<sup>ND</sup> DEFENDANT

WRIT OF SUMMONS

To: Mr. Liam Callaghan  
Paradise Construction Co. Ltd.  
PO Box 11530 APO  
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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 27<sup>th</sup> day of October 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 Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times, the Proprietor of Strata Plan No.368.
2. The Defendant is and was at all material times a construction company, carrying on business at Paradise Construction Co Ltd., PO Box 11530 APO, George Town, Grand Cayman.
3. By a contract made on or about 16<sup>th</sup> October 2004, the Defendant agreed to undertake remedial and repair works to the Strata 368 to bring it up to pre hurricane standard. The total cost of work was agreed at CI\$262,186.
4. Pursuant to this contract, on 16<sup>th</sup> December 2004, a deposit of CI\$15,000 was paid to the Defendant. In accordance with the agreement, two further payments were made of CI\$7,000 on 25<sup>th</sup> January 2005 and CI\$10,000 on 3<sup>rd</sup> February 2005.
5. On 16<sup>th</sup> February 2005, the Defendant issued an invoice to the Plaintiff for works completed to the value of CI\$61,900.
6. The aforementioned invoice required payment for structural upgrading to internal roof frameworks valued at CI\$24,500.
7. In satisfaction of this invoice, the Defendant was paid CI\$32,000 between 16<sup>th</sup> December 2004 and 3<sup>rd</sup> February 2005. The remaining CI\$29,900 was paid to the Defendant on or about the 2<sup>nd</sup> March 2005.
8. The contract of 16<sup>th</sup> October 2004, hereinafter referred to as "the first contract", was superseded by a new contract made on or about 16<sup>th</sup> February 2005 "the second contract".

9. It was an express term of the second contract that, inter alia:
- i. Remedial and repair works would be carried out to Strata Plan 368 to restore the property to its pre hurricane standard.
  - ii. The Defendant would undertake structural remedial works as per the recommendations of the Cayman Engineering and Surveys Reports SS205/1 to 8 detailing works to restore the structural integrity to the roof framing;
  - iii. The Defendant would replace and paint lost and damaged eave soffits;
  - iv. The Defendant would replace 8,480 square feet of shingles;
  - v. The Defendant would submit to the Plaintiff a schedule of works detailing all necessary internal works; and
  - vi. The Defendant would, at such time as the Plaintiff approved the schedule of works, undertake the aforesaid internal works.
10. It was an implied term of the first and second contracts that:
- vii. The Defendant would exercise all the skill, care and diligence expected of an experienced general contractor and builder; and
  - viii. The Defendant would at all times act in good faith in fulfilling his contractual obligations.

11. Pursuant to the second contract, the Defendant required a deposit of CI\$91,469 reflecting 25% of the total value of the contract and CI\$29,900 for works alleged to have been completed. On the 2<sup>nd</sup> March 2005, the Plaintiff paid the Defendant CI\$120,000.
12. Pursuant to the second contract, the Defendant, on 27<sup>th</sup> April 2005, submitted to the Plaintiff the aforementioned schedule of works. On a date unknown the schedule was approved by the Plaintiff.
13. On 1<sup>st</sup> June 2005, a Liam Callaghan, a Director of the Defendant met with a representative of BCQS Ltd, a project management company employed by the Plaintiff to manage the building works carried on by the Defendant. At that meeting, it was wrongly represented by Liam Callaghan that the structural remedial works as per the recommendations of the Cayman Engineering and Surveys Reports SS205/1 to 8 detailing works to restore the structural integrity to the roof framing had been completed.
14. By letter dated 17<sup>th</sup> June 2005, the Defendant issued an invoice purporting to represent all works completed between 16<sup>th</sup> October 2004 and 17<sup>th</sup> June 2005. The value of the works purported to have been completed under the contract were said to be CI\$140,820. The Defendant also issued a detailed document entitled "Costed Items Caribbean Court Internal" which purported to show the internal works completed and their value.
15. The Defendant, claimed, inter alia, to have completed the following works:
  - i. Structural upgrading to internal roof frameworks from the first and second contracts at a cost of CI\$44,800;
  - ii. Internal works pursuant to the schedule at a cost of CI\$43,250;

- iii. Repair to eaves soffits and eaves boards to the entire complex at a cost of CI\$6,200;
  - iv. Painting of the eve soffits and eaves boards to the entire complex at a cost of CI\$6,400; and
  - v. Payment for roof shingles at a cost of CI\$10,150.
16. On 17<sup>th</sup> June 2005, the Defendant used the Plaintiff's monies held on account to satisfy the aforesaid invoice. On 17<sup>th</sup> June 2005, the balance on the Plaintiff's account was and remains CI\$11,180.
17. On or about 25<sup>th</sup> June 2005, the Plaintiff commissioned a survey of the works carried out by the Defendant. The surveyors concluded that inter alia:
- i. There had been no structural upgrading to the internal roof frameworks;
  - ii. CI\$21,823 worth of the alleged CI\$43,250 of internal works had been completed;
  - iii. The soffits had not been replaced up to pre hurricane standard or at all; and
  - iv. The roof shingles had not been replaced.
18. Further a report commissioned by the Plaintiff concluded that by completing the roofing of the units without completing the structural upgrading to the internal roof frame works, the cost of completing the aforesaid internal roof frameworks had risen by CI\$26,547.
19. In the premises, the Defendant is in breach of the aforesaid terms of the first and second contract.

20. By reasons of the aforesaid matters the Plaintiff has suffered loss.

**PARTICULARS**

1.	Payment made for structural upgrading to internal roof frameworks:	CI\$44,800
2.	Additional cost of upgrading internal roof frameworks:	CI\$26,547
3.	Payment made for internal works not completed:	CI\$ 21,435
4.	Payment for roof shingles:	CI\$10,150
5.	Payment for repair to eaves soffits and eaves boards:	CI\$6,200
6.	Payment for Painting to eaves soffits and eaves boards:	CI\$6,400
7.	Outstanding balance on Account:	<u>CI\$11,180</u>
		CI\$126,712


21. Further, the Plaintiff is entitled to and claims interest pursuant to s34(1) of the Judicature Law (1995 Revision) at the prescribed rate and for such periods as the Court thinks fit.

**AND The Plaintiff claims:**

1. Damages;

2. The aforesaid interest pursuant to paragraph 15 hereof; and
3. Costs.

DATED this <sup>27<sup>th</sup></sup> day of October 2005



**QUIN & HAMPSON**  
**Attorneys-at-Law for the Plaintiff**

To: The Clerk of the Court  
George Town  
Grand Cayman

And To: Mr. Liam Callaghan  
Paradise Construction Co. Ltd.  
PO Box 11530 APO  
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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>495</sup> OF 2005

BETWEEN THE PROPRIETORS OF STRATA PLAN 368 PLAINTIFF

A N D PARADISE CONSTRUCTION CO. LTD 1ST DEFENDANT
A N D LIAM CALLAGHAN 2ND 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.

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.*