

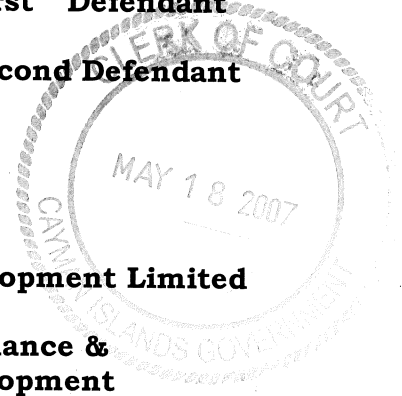
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 209 OF 2007

**BETWEEN: ROY CAMPBELL & SONS CONSTRUCTION** Plaintiff

**AND: DON EBANKS** First Defendant

**AND South Reef Development Limited** Second Defendant



**WRIT OF SUMMONS**

**TO: Don Ebanks  
Port Folio of Finance  
& Economic Development  
Monetary Authority Building  
Elizabethan Square**

**TO: South Reef Development Limited  
C/O Don Ebanks  
Port Folio of Finance &  
Economic Development  
Elizabethan Square**

**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 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 GT, 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 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 judgement may be entered against you forthwith without further notice.***

Issued this 17<sup>th</sup> day of May 2007

**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.

**INDORSEMENT**

The Plaintiff's claim is for loss and damages caused by the Defendants on foot of the Defendants breach of contracts made between the Plaintiff and the Defendants, their servants or agents in writing and/or orally between January 2006 and August 2006 and for monies due and owing on foot on the same contracts made between the Plaintiff and the Defendants, their servants or agents in writing and/or orally between January 2006 and August 2006 for the erection, construction and building of homes at 'The Plantation' South Sound, Grand Cayman, Cayman Islands. And the plaintiff claims return of goods namely a Site hut unlawfully held by the Defendant and caused by the Defendants trespass to goods on or about the 22<sup>nd</sup> August 2006 and continuing. And the Plaintiff claims interest thereon.

Samson d McGrath

**Samson and McGrath  
Attorneys-at-Law for the Plaintiff**

This Writ of Summons is filed by Samson & McGrath, Attorney's at Law for and on behalf of the Plaintiff whose address for service is 3<sup>rd</sup> Floor Genesis Building, Genesis Close, George Town, Grand Cayman, Cayman Islands ,P.O. Box 446 GT.



completed by another builder who had been ejected from the site prior to the arrival of the Plaintiff on site by the Defendant. At all times discussions were with Mr Matthew White of NCB who was acting as far as the Plaintiff's were concerned with the authority of the Defendants.

3. The Plaintiff initially quoted on a time and materials basis to complete Units 1,3,9,11,17 and 19. The plaintiff was authorized to do the work verbally by NCB and commenced work in or around the beginning of February 2007.
4. This work was completed to the satisfaction of the Defendants and the Plaintiff was paid the sum of CI\$52,650.24 for this work by the Defendants. \$14,180.22 remains outstanding for this work and no reason for non-payment has been given to the Plaintiff.
5. In or around the same time the Plaintiff was asked to quote for construction of pilelisters on Units 2,4,6,8,14,16,18 and 20. The Plaintiff and Defendants agreed on a price of \$11,900.23 per unit and this work was duly completed. On the 2<sup>nd</sup> June 2006 the Plaintiff was paid 75% of the monies owed on this contract, totaling \$71,401.38 leaving a retention of 25% or \$23,800.46. This was then paid after approval of the work in July 2006.
6. On or about February 2006 the Plaintiff provided a quote to construct Units 10 and 12 of the site. The quotation was in writing and provided for a total charge of \$415,221.48. This quotation was accepted and work commenced on the 10<sup>th</sup> March 2006. The Plaintiff was paid an advance of \$166,088.70 and the balance less a 5% retention was due to be paid in four installments as progress payments of \$62,283.19 with the retention of \$20,761.07 paid 6 months after completion. All sums owed on this agreement were paid except the 5% retention. This sum remains outstanding and no explanation for non-payment has been given.
7. The Plaintiff was further instructed to undertake work on Units 5, 7, 13 and 15 of the complex. The Plaintiff completed the Skin Construction for these units at an agreed price of \$168,052.52. This was accepted and partial payment of this sum was made by way of cheque from NCB Project Management Ltd dated 23<sup>rd</sup>

June 2006. This cheque was for \$200,000 and included payments for other agreed items.

8. The Plaintiff was instructed then to quote to finish Units 5,7,13 and 15. The total cost of these Units was agreed between the Plaintiff and Defendants at \$564,877.40. This was due to be paid as five installments of \$107,326.71 with a retention of 5% or \$5,648.77 per payment paid 6 months after completion subject to satisfactory completion. The first payment of CI\$107,326.71 was duly made on the 16<sup>th</sup> August 2006.
9. During the second phase of the work, the Defendants on the 22<sup>nd</sup> day of August 2006 informed the Plaintiff by letter from the First Named Defendant that the contract for work was to be terminated with immediate effect.
10. The Plaintiff submitted a bill for work completed as part of the second stage of this work to Units 5,7,13 & 15 for CI\$63,141.40. To date this money has not been received.
11. The remainder of the contract for the completion of works to Units 5, 7, 13 & 15 was to the value of CI\$388,760.52, being the full value of the contract of \$564,877.40 less the value of the work completed, being \$176,116.88. The Plaintiff claims that the contract was breached by the termination by the Defendants and claims for loss of profits on this contract. The Plaintiff will say that profits on the contract would have stood at approximately 20% of the gross value of the contract.
12. The Plaintiff had to immediately and without notice leave the site. The Plaintiff had approximately 19 men on site at the time and these employees had no alternative employment in the short term due to the termination. The plaintiff was also not in a position to have been quoting for on working upon alternative jobs as they believed that they were due to be on site on this project for some time.
13. In order to allow the Plaintiff to purchase materials for the site, the Plaintiff opened an account at Cox Lumber for the purchase and goods and equipment.

These goods were solely for the use on the Defendants project. The Plaintiff obtained goods to the value of \$62,065.17 which has not been recovered from the Defendants. The Plaintiff is unable to satisfy this debt at present and has received a demand letter for the sum of CI\$74,671.42 as at the 10<sup>th</sup> May from Attorneys for Cox Lumber.

14. The Plaintiff was not permitted on site and could only remove his tools and equipment a number of days later.
15. To date the Plaintiff's site hut has not been returned. This hut is the Plaintiff's place of business when on site and was custom built for the Plaintiff. Since that date the Plaintiff has had to hire a portable cabin to conduct it's business and has suffered expense in doing so. The Plaintiff has also had to purchase an alternative site hut.
16. Furthermore due to the Plaintiff being removed from the project the Plaintiff lost profits from the remainder of the contract. The remainder of the contract totaling CI\$258,838.73
17. The special damages claimed by the plaintiff are set out in the schedule of past and future expenses and losses served with this Statement of Claim
18. Furthermore the plaintiff claims interest pursuant to the Judicature Act (1995 Revision) on the amount found to be due to the plaintiff at such rate and for such period as the court thinks fit.

#### Schedule of Particulars of Loss

Retention from 1 <sup>st</sup> payment on Units 5,7,13 & 15	\$ 5,648.77
Work completed Units 5, 7, 13 & 15	\$63,141.40
Materials from Cox Lumber	\$74,671.42
Units 1,3,9,11,17 & 19 Labour & materials	\$14,180.22
Units 10 & 12 retention	\$20,761.07
Cost of replacement Site Office	\$4,079.40
Loss of profit on contract for completion of Units 5,7,13 & 15 (20% of \$388,760.52)	\$77,752.10

**AND the plaintiff claims:**

- [1] Interest to be assessed pursuant to the Judicature Act (1995 Revision)
- [2] That the Defendant do deliver up possession of the Site Hut left at the Plantation, South Sound.
- [3] Costs

Dated this 17<sup>th</sup> day of May 2007

Filed this    day of May 2007

Samson d McGrath

**Samson and McGrath**  
**Attorneys-at-Law for the Plaintiff**

This Statement of Claim is filed by Samson & McGrath, Attorney's at Law for and on behalf of the Plaintiff whose address for service is 3<sup>rd</sup> Floor Genesis Building, Genesis Close, George Town, Grand Cayman, Cayman Islands, P.O. Box 446 GT.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS.**

1. The accompanying form of *Acknowledgement 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 Acknowledgement 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 endorsed 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 judgement is served on the Defendant.

If the defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgement 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 judgement 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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 Acknowledgement 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 a ( )" 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 209 OF 2007

**BETWEEN: ROY CAMPBELL & SONS CONSTRUCTION**                      **Plaintiff**  
**AND: DON EBANKS**    **First Defendant**  
**AND South Reef Development Limited**                      **Second Defendant**

**ACKNOWLEDGEMENT 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.**

**Delay may result in judgement being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.**

**If any information required is omitted Or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.**

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

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2. State whether the Defendant intends to contest the proceedings (tick the 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 judgement entered by the Plaintiff (tick box).

yes

no

Service of the Writ is acknowledged accordingly

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(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 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 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. Samson & McGrath  
Attorneys-at -Law  
Third Floor, Genesis Buildings  
Genesis Close  
PO Box 446 GT  
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:*