

IN THE GRAND COURT OF THE CAYMAN ISLANDS

226 256
CAUSE NO. 256 OF 2007

BETWEEN: **BYRON BARNETT T/a** **PLAINTIFF**
 TROPICAL CONSTRUCTION

AND: **EXECUTIVE COMMITTEE** **DEFENDANT**
 THE MOORINGS STRATA #351



WRIT OF SUMMONS



TO: ~~Executive Committee~~
The Moorings
Strata #351
#104 The Moorings

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 14th day of June 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 monies due and owing caused by the Defendant's breach of contract made between the Plaintiff and the Defendant, their servants or agents in writing and/or orally in or around October 2004 for the erection, construction and building of roofing at 'The Moorings', Phase 1, Grand Cayman, Cayman Islands. And the Plaintiff claims interest thereon.

STATEMENT OF CLAIM

1. The plaintiff was at all material times a building and construction company based in the Cayman Islands.
2. In or around October 2004 the plaintiff company was approached by the defendant to quote for work to a development known as 'The Moorings Block 24E, Parcel 591, Prospect.'
3. The Plaintiff was asked to quote for labour and materials to fit and construct roofing to 4 apartments, 101,102,103 and 104 of the complex.
4. The contract price was agreed at CI\$52,000 the contract stipulated that the work was for 'check/replace roof – covering/roof plywood/replace fastening as needed' and an initial deposit of CI\$10,000 was made.
5. The plaintiff began construction in November 2004 and constructed a standing seam roof and completed the job through the plaintiff and a sub-contractor instructed by the Plaintiff.
6. Upon completion of the work it was apparent after inspection that the sub-contractor had not fitted the clips with the appropriate spacing between them and this was remedied by the sub-contractor in or around July 2005. No delay was caused to the project by this re-fitting.
7. After the final inspection in October 2005 at that meeting the plaintiff believed that all work had been completed satisfactorily.

8. A further payment of CI\$10,000 was paid on a date unknown. After payment of CI\$20,000, to date no further payment has been made.
9. By way of letter from JEC limited dated 18th November 2005 the Defendant purported to terminate the contract and instruct another contractor to complete the work.
10. The plaintiff agreed by way of letter dated February 3rd 2006 to have a third party roofing company inspect the roof and fix any defects to the roof that were revealed and agreed between the parties at a reasonable price and subtract this from the remaining contract price.
11. To date no response has been received to this offer and the balance of money due on foot of the contract is still owing.

Schedule of Particulars of Loss

Contract Price	\$52,000
Less Payments received	<u>\$20,000</u>
Balance Outstanding	<u>\$32,000</u>

AND the plaintiff claims:

- [1] Pre-judgment interest calculated in accordance with the Judicature Law (2004 Revision) and the Judgment of Debt (Rate of Interest) Rules from 31st October 2005 to the date of commencement of proceedings, namely 12th June 2007.
- [2] Pre and post judgment interest in accordance with the Judicature Law (2004 Revision) and the Judgment of Debt (Rate of Interest) Rules as amended from time to time.
- [3] Costs
- [4] Such further and other relief as this Court may deem just.

Dated this 14th day of June 2007

Filed this 14th day of June 2007

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 3rd 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.

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 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:

[Empty box for Defendant's Attorney indorsement]