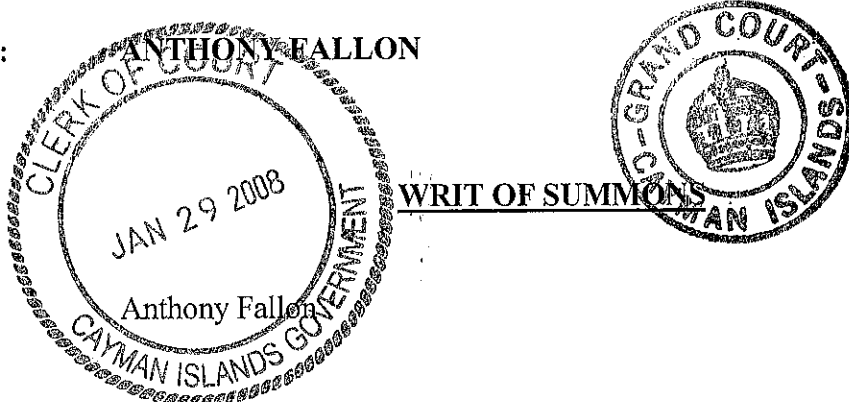


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁶⁰⁰⁵⁰ OF 2008

BETWEEN: CHRISTOPHER PHILLIPS & CHARMAINE PHILLIPS PLAINTIFFS

AND: ANTHONY FALLON DEFENDANT



TO:

Anthony Fallon

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs 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, P.O. Box 495, George Town, Grand Cayman B.W.I., 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 29th day of January, 2008

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

Background

1. For the period from 24 April 1986 until 10 August 2006, Christopher Phillips and Charmaine Phillips (“the Plaintiffs”) were the owners and directors of Le Habitat Ltd (“the Company”).
2. The Company was incorporated on 23 April 1986. The Company was incorporated as a Cayman Islands company pursuant to *The Companies Law (as amended) (CI)*.
3. The nature of the company’s business is that of construction and internal outfitting of properties.
4. In or about 1996, the company employed Mr. Anthony Fallon (“the Defendant”) as an engineer.
5. On 10 August 2006, the Plaintiffs transferred their respective holdings in the company to the Defendant. The total share issue was 100 shares. This number of shares was transferred to the Defendant.

The Agreement

6. On 15 August 2006, the parties entered into a Conditional Purchase Agreement for the transfer of the plaintiff’s interests in the company to the Defendant over a 10 year period (“the Agreement”).
7. At the eventual trial of this claim, the Plaintiffs will rely on each and every clause of the Agreement for their full legal meaning and effect.
8. Pursuant to clause 1.4 of the Agreement, the Defendant was offered and agreed to accept various items of plant and equipment, *inter alia*:

Particulars

The equipment includes:

- 8.1 *2005 Toyota tundra pick-up truck;*
 - 8.2 *2005 GMC flatbed/dump truck;*
 - 8.3 *1995 Ford box truck;*
 - 8.4 *Scaffolding;*
 - 8.5 *Concrete jacks;*
 - 8.6 *All hand tools, vibrators, compactors, mitre saws, table saws;*
 - 8.7 *Hydraulic rebar tools and cutters;*
 - 8.8 *Pool parts inventory;*
 - 8.9 *Laser levels, transit, tripods;*
 - 8.10 *Office furniture, conference table, filing cabinet, shelving, sofa and chairs;*
 - 8.11 *Computers, printers, fax, photocopier;*
 - 8.12 *40 foot site trailer, 28 foot site trailer and storage sheds;*
 - 8.13 *Miscellaneous inventory – doors, cabinets, etc. except CGI doors for Viscaya Unit “A”; and*
 - 8.14 *Formwork, shuttering etc.”*
9. Pursuant to clause 3 of the Agreement, the Defendant was offered and agreed to accept, various rights, *inter alia*:

Particulars

- 9.1.1 *"Clause 3.1: The successor will have the right to trade as Le Habitat Ltd ...;*
- 9.1.2 *Clause 3.2: The successor will have the right (as Le Habitat Ltd) to assume the local distributorship of Wellborn Cabinetry;*
- 9.1.3 *Clause 3.3: The successor will have all the courtesies, credit lines and other business tools afforded Le Habitat Ltd by its suppliers both local and foreign;*
- 9.1.4 *Clause 3.4: The successor will have full use of Le Habitat Ltd pool building side of the business."*

10. Pursuant to clause 6.1 of the Agreement, the Defendant was offered and agreed to accept various payments, *inter alia*:

Particulars

"New projects currently under negotiations are to be to the account of the successor:

- 10.1 *Mark Lewis – Rum Point residence;*
- 10.2 *Dolphin Discovery Cayman Ltd;*
- 10.3 *Landlock Ltd – villas;*
- 10.4 *Nigel Clifford – Pease Bay residence;*
- 10.5 *William McTaggart – remedial works to basement;*
- 10.6 *Chris McTaggart – duplex;*
- 10.7 *Conor O’Dea - residence;*
- 10.8 *Architects for owner of Papagallo House;*
- 10.9 *Jason Alison – Beach Bay residence; and*
- 10.10 *All mobilizations and subsequent drawdown associated with these projects are to the account of the successor/Le Habitat Ltd."*

11. Pursuant to clause 9.1(e) of the Agreement, the Defendant was offered and agreed to accept, a payment from the company's insurer, *inter alia*:

Particulars

"Le Habitat Ltd/founder had repaired the successor's unit at Sawgrass at our cost following Hurricane Ivan. The first payment from Dyoll Insurance, as part of their settlement, will be to the account of the successor ... "

12. In consideration of clause 5.1 of the Agreement, the Defendant agreed to account for the profits of certain jobs that were in progress, to the plaintiff's, *inter alia*:

Particulars

"All jobs in progress are to be completed by the successor while the profits of said works are to the account of the founders. All jobs listed below will have an accounting performed as of 31 July 2006 and sufficient funds for their completion left in the account of Le Habitat Ltd or adjusted to include further draws due on contract:

- 12.1 *Guy Harvey Studio – owner, Atlee Bodden (Fit out for G.H.S. is separate to this agreement, and is to the account of the successor);*
 12.2 *Barry Kaufman - Pedro; and*
 12.3 *Anthony Travers- Cayman Club".*

13. In consideration of the terms in the Agreement, the Defendant agreed pursuant to clause 9.1 of the Agreement, to pay to the Plaintiffs, *inter alia*:

Particulars

"The cost of acquiring Le Habitat Ltd shall be as follows:

13.1 *Clause 9.1.(a): CI\$4,500 per month for the first sixty (60) months, beginning 1 November 2006 plus strata costs for Red Gate Warehouses 17 and 18 and courtesies contained in subsection 7.0 above."*

14. In consideration of the terms in the Agreement, the Defendant agreed pursuant to clause 9.1(e) of the Agreement, to pay to the Plaintiffs certain monies received from the Dyoll Insurance, *inter alia*:

Particulars

"Le Habitat/"Le Habitat Ltd/founder had repaired the successor's unit at Sawgrass at our cost following Hurricane Ivan. The first payment from Dyoll Insurance, as part of their settlement, will be to the account of the successor, with all subsequent payments made to the founders."

15. The parties agreed that pursuant to clause 5.2 of the Agreement that the project known as Sawgrass Phase 4 ("Sawgrass"), was to be completed at cost, by 30 September 2006. Clause 5.2 of the Agreement stated:

Particulars

15.1 *"Sawgrass Phase 4 is to be completed at cost. The projected completion date is 30 September 2006. Monies for completion of this project are to be paid in by the founders. Should the units fail to sell in the projected completion period, the founders reserve the right to not finish all units until such time as they are sold and only seek C.O. for those units sold. The successor, whose name also appears on the Land Title, is to transfer same to the founders as per previous agreement."*

- 15.2 Sawgrass was funded thus:

15.2.1 Plaintiffs paid in prior to leaving Cayman	CI\$ 440,000.00
15.2.2 Plaintiffs paid in post to leaving Cayman	CI\$ 349,700.00
15.2.3 Miscellaneous	CI\$ 667.59

15.2.3 Defendant paid as part performance	<u>CI\$ 176,300.00</u>
	<u>CI\$ 966,667.59</u>

16. The total cost of Sawgrass is CI\$966,667.59. This amount will be deducted from the Plaintiffs overall claim.

Breaches of the Agreement

17. The Defendant has failed to meet the following obligations he has to the Plaintiffs pursuant to the following clauses of the Agreement:

Particulars

- 17.1 Pursuant to clause 5.1 of the Agreement, the Defendant has accounted to the Plaintiffs, but has failed to pay to the Plaintiffs, the profits for the jobs below:

17.1.1 Guy Harvey Studio;

17.1.2 Barry Kaufman;

17.1.3 Anthony Travers.

17.1.4 Total claimed CI\$708,000.00

- 17.2 The Defendant has admitted to the Plaintiffs in correspondence that the above figures are correct and will rely on such an admission at any future trial of this matter.

Further Particulars

Facsimile from the Defendant to the Plaintiff dated 10 October 2007.

- 17.3 The Defendant has wrongly claimed overheads for the Sawgrass job for the period from August 2006 to December 2006 (inclusive). Such work was to be completed

at costs and not with any overheads. The overheads for Sawgrass amount to CI\$18,005.11.

Particulars

Facsimile from the Defendant to the Plaintiff dated 10 October 2007.

17.4 Pursuant to clause 9.1(a) of the Agreement, the Defendant has failed to pay CI\$4,500.00 per month which allows him the use of the Red Gate warehouse, for the following months (and continuing) at the rate of CI\$4,500.00 per month:

17.4.1 March 2007;

17.4.2 April 2007;

17.4.3 August 2007;

17.4.4 September 2007;

17.4.5 October 2007;

17.4.6 November 2007;

17.4.7 December 2007; and

17.4.8 January 2008.

17.4.9 Total claimed – 8 months by CI\$4,500 per month equates to CI\$36,000.00.

17.4.10 The Defendant has admitted in correspondence that the months that are pleaded at sub-paragraphs 17.3.1 – 17.3.5 (inclusive) above, are owed to the Plaintiffs. The Plaintiffs will rely on such an admission, insofar as those months pleaded at 17.3.1 – 17.3.5 (inclusive) above at any future trial of this matter.

Particulars

Facsimile from the Defendant to the Plaintiff dated 10 October 2007.

- 17.5 Pursuant to clause 9.1(e) of the Agreement, the Defendant has failed to pay to the Plaintiffs, the sum of CI\$5,000.00 due from Dyoll Insurance for a claim in relation to Hurricane Ivan.
- 17.6 The Defendant charged CI\$40,000.00 of his own salary to the jobs referred to at paragraphs 12 and 15 respectively of this Statement of Claim. There was no provision in the Agreement for such a charge to be made.
18. On or about 3 December 2007, a Notice of Default was sent to the legal representatives of the Defendant. The notice detailed the breaches of the Agreement.

First Arrangement

19. For the avoidance of any doubt the Arrangements referred to in the subsequent paragraphs of this Statement of Claim do not relate to the Agreement entered on 15 August 2006.
20. In or about 22 February 2007 an oral arrangement was made between the Plaintiffs and the Defendant, for the Defendant to collect lease payments totaling CI\$12,318.42 ("lease payments"). The lease payments were due from Ms Susan Thompson ("Ms Thompson") and are owed to the Plaintiffs. On receipt of the final lease payment the Defendant was to apply the total of the lease payments to the Plaintiffs' Sawgrass account.
21. The Defendant has breached the Arrangement as he failed to apply the lease payments to the Plaintiffs' Sawgrass account.
22. The Defendant has admitted that he owes to the Plaintiffs the lease payment amount. The Plaintiff will rely on this admission at any subsequent trial of this matter.

Particulars

Facsimile from the Defendant to the Plaintiff dated 10 October 2007.

Second Arrangement

23. In or about August 2006 an oral arrangement was made between the Plaintiffs and the Defendant, for the Defendant to collect the outstanding monies after costs due for certain Hurricane Ivan works and remit the proceeds to the Plaintiffs ("Second Arrangement") as follows:

Particulars

	<i>Job</i>	<i>Received</i>	<i>Spent</i>
23.1	Stephen Gunby -	CI\$15,204.50	CI\$ 2,209.25
23.2	Mark Lewis;	CI\$ 7,999.95	CI\$NIL
23.3	Martin Laidlaw; and	CI\$ 2,329.00	CI\$ 1,568.74
23.4	Gene Banks.	<u>CI\$ 3,320.30</u>	<u>CI\$ 1,219.86</u>
23.5	Total	<u>CI\$28,853.75</u>	<u>CI\$ 4,997.85</u>
23.6	Difference between received and spent		<u>CI\$23,855.90</u>

24. The Defendant was to receive each respective sum and deduct the sum that had been spent on each respective job. The difference, being CI\$23,855.90, was then to be remitted to the Plaintiffs.
25. The Defendant has breached the Second Arrangement in that he has failed to remit to the Plaintiffs the amount referred of CI\$23,855.90.
26. Despite repeated requests by the Plaintiffs for the money to be remitted by the Defendant to the Plaintiffs, the Defendant has failed to do so.
27. Despite his obligations pursuant to the Agreement and the First and Second Arrangements, respectively, and the numerous requests made by the Plaintiffs for each respective payment, the Defendant has breached the Agreement and the First and Second Arrangements, respectively, in that he has failed and/or neglected to pay to the Plaintiffs the amounts as detailed in the following paragraphs of which the Plaintiffs claim.

AND THE PLAINTIFF CLAIMS:

A. **DAMAGES OF:**

27.1	Breach of clause 5.1 Of the Agreement (para 17.1 SoC)	CIS 708,000.00
27.2	Unnecessary overheads (para 17.3 SoC)	CIS 18,005.11
27.3	Breach of clause 9.1(a) – of the Agreement (para 17.4 SoC) and continuing at CI\$4,500 per month	CIS 36,000.00
27.4	Breach of clause 9.1(e) – of the Agreement (para 17.5 SoC)	CIS 5,000.00
27.5	Incorrect charging of salary (para 17.6 SoC)	CIS 40,000.00
27.6	Plaintiffs input into Sawgrass (para 15.2.1 and 15.2.2 SoC)	<u>CIS 789,700.00</u>
27.7	Sub-total claimed for the Agreement	<u>CIS1,596,705.11</u>
27.8	LESS cost of Sawgrass (para 16 SoC)	<u>CIS 966,667.59</u>
27.9	Total claimed for the Agreement	CIS630,037.52
27.10	Total claimed for the First Arrangement	CIS 12,318.42
27.11	Total claimed for the Second Arrangement	<u>CIS 23,855.90</u>
27.12	TOTAL CLAIM	<u>CIS666,211.84</u>

B. **INTEREST:**

28. The Plaintiffs also claim statutory interest pursuant to the Grand Court Rules (as amended) and at the present rate of 2% (or at a rate as ordered by the Grand Court) until all monies are paid.

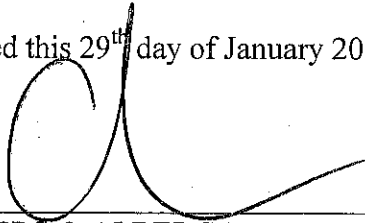
C. MISCELLANEOUS:

29. Any other Orders this Honourable Court deems fit.

30. Costs.

If within the time for returning the Acknowledgement of Service the Defendant pays the total amount claimed of CI\$666,211.84 (including costs in the sum of CI\$15,000.00 or costs to be assessed or taxed) further proceedings will be stayed. The money must be paid to the Plaintiffs and/or his Attorneys-at-Law.

Dated this 29th day of January 2008



MYERS & ALBERGA
Attorneys-at-Law for the Plaintiffs

TO: The Clerk of Court

AND TO: The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ~~60250~~ OF 2008

BETWEEN: CHRISTOPHER PHILLIPS & CHARMAINE PHILLIPS PLAINTIFFS

AND: ANTHONY FALLON 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.

Myers & Alberga
Attorneys-at-Law
P.O. Box 472
Harbour Place, Second Floor, N Wing
103 S Church Street
Grand Cayman – KY1-1106

Ref: MLA/CMD/cy/P0318-008

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

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 495GT, 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

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.