

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0146 OF 2009

BETWEEN:

PATRICK COVER AND NANALIE COVER

PLAINTIFFS

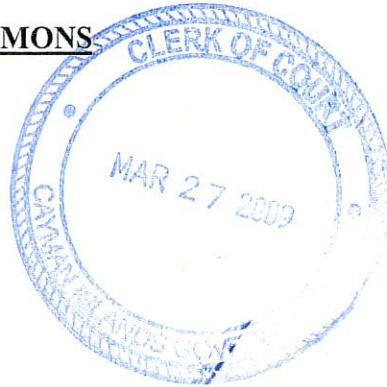
AND:

ERROL REID

DEFENDANT



WRIT OF SUMMONS



TO:

ERROL REID
c/o James Kennedy
Samson & McGrath
Genesis Building
5th Floor, Genesis Close
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, P.O. Box 495G, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 26th day of March 2009.

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 Plaintiffs, Patrick and Nanalie Cover (collectively, the "Covers") reside in the Cayman Islands.
2. The Defendant, Errol Reid, is a general construction contractor carrying on business in the Cayman Islands.

The Contract, Financing and Commencement of Construction

3. The Covers are the registered owners of Savannah Block 27C Parcel 718 (the "Lot").
4. By a written agreement dated 6 May 2008 drafted by the Defendant, the Covers retained the Defendant to build a five (5) bedroom home with utility quarters over a garage, a pool, a generator, a dock and fencing on the Lot according to specified plans and two addenda (the "Construction") for the fixed price of CI\$700,000 (the "Contract"). The Contract estimated that construction would be completed by the end of February 2009.
5. On the basis of the Contract, the Covers obtained financing for the construction of their new home with a financial institution. The financial institution retained DDL Studio Ltd. ("DDL") to act as its quantity surveyors for the purpose of monitoring the Construction and approving the advancement of tranches of funds to the Covers to finance the Construction.
6. The Defendant commenced construction and has received two tranches of funds to finance the Construction from the Covers totalling CI\$158,282.10. In addition, the Defendant has received CI\$4,348 for steel for the project.

Deficiencies in the Work of the Defendant

7. The Defendant breached the contract by failing to adequately supervise his subcontractors and to devote sufficient time and attention to the Construction resulting in numerous and costly deficiencies in his work.
8. The Covers began noting deficiencies in the Defendant's work as early as June 2008. The Covers raised these deficiencies with the Defendant. DDL has provided the Covers with a more detailed list of deficiencies in the Defendant's work. The deficiencies noted by DDL include:
 - 8.1. The majority of the cores within the concrete block walls were not poured full with concrete; those that were poured were filled with an inferior mix.
 - 8.2. The main electrical feed was piped through the foundation incorrectly and not in conformity with the current planning code. In order to repair this deficiency, the Covers will need to install a junction box to run the power back from the generator's location to the panel box and then run the power back to the generator.
 - 8.3. The electrical points were installed flush with the block wall and did not make allowance for the fact that the interior walls were to be dry lined with sheetrock and the exterior walls lined with foam.
 - 8.4. The kitchen wall did not make provision for the draft vent from the stove that was to run through the truss floor to the exterior wall.
 - 8.5. The three reinforced concrete columns adjacent to the front door were not aligned correctly. The Covers were required to install a 12 inch support beam to ensure

that 8 inches of the beam sat on all three columns as required by the building code.

- 8.6. The majority of the interior and exterior concrete block walls and support columns were not constructed perpendicular to the ground requiring extensive rendering to repair to the extent possible.
- 8.7. The walls were not tied together with steel at the corner locations. The Covers were required to jack hammer out various sections of the walls to tie steel to provide sufficient support.
- 8.8. The rear porch columns were not constructed pursuant to the plans and did not have sufficient reinforcement to tie into the support.
- 8.9. A number of electrical points were omitted altogether.
- 8.10. A number of electrical pipes that should have run through the foundation were not installed. The Covers were required to run these electrical pipes from above the first floor downwards to repair this deficiency.
- 8.11. The temporary power supply was not connected.
- 8.12. The window in the guest bedroom was not positioned according to plan.
- 8.13. The plumbing ventilation pipe in the kitchen was incorrectly installed.
- 8.14. The ground floor slab was generally not level and there was visible water settlement after periods of rain. The Covers are required to have extensive levelling work done when the floors are tiled.
- 8.15. The foundation was constructed without an overflow pipe for the excess water arising from the air conditioning system. The Covers are required to install a pump to deal with this excess water in the result.

- 8.16. The plumbing lines to the pump house were placed incorrectly. The Covers were required to jackhammer the through the foundation to place additional pipes to the pump house.
 - 8.17. The door openings to the rear of the garage and to the downstairs bathroom have been constructed to incorrect sizes.
 - 8.18. The boat dock has been constructed in the wrong position. (Collectively, the “Deficiencies”).
9. The Defendant also failed to purchase certain construction materials from certain suppliers stipulated in the Contract. Specifically, the Defendant was required under the Contract to purchase certain truss flooring and truss roofing material from Cox Lumber. The Covers were concerned that these materials be of a certain quality and had negotiated a price for the supply of these materials with Cox Lumber. Inexplicably, instead of complying with the Contract, the Defendant purchased inferior truss flooring and roofing materials in Miami from the funds advanced by the Covers.

Delays in the Work of the Defendant

10. The Defendant’s failure to properly supervise and to attend at the job site as and when required also resulting in delays in the Construction. Specifically, the Defendant left the job site for 3 weeks in July 2008 and told his subcontractors not to do any work on the Construction while he was away.

Failure to Pay Subcontractors

11. The Defendant failed to pay his subcontractors despite receiving funds from the Covers to pay them and advising the Covers that he had done so. The Covers received numerous requests from the subcontractors asking them for payment directly including

Dew's Air Conditioning which went so far as to submit an invoice to the Covers for CI\$2,000 which they indicated the Defendant had not paid despite receiving funds from the Covers to satisfy this invoice. The Defendant's first draw on the construction financing falsely indicated Dew's Air Conditioning had been paid by him.

Termination of the Contract

12. Ultimately, the Covers decided that the Defendant's numerous breaches of the Contract required them to replace the Defendant with a more reliable contractor. On 14 October 2008, the Covers met with the Defendant and advised him that they were terminating the Contract with which course of action the Defendant agreed. The Defendant further agreed orally that he was not entitled to any further amounts from the Covers.
13. The Covers asked the Defendant to release the building materials which were still being held by customs to them as the Covers had paid US\$6,457.75 for them. The Defendant refused.
14. During a subsequent phone conversation later that day, the Defendant advised that he would provide the Covers with the plans and the red card for the Construction on 16 October 2008.
15. On 15 October 2008, the Defendant removed all of his materials from the Lot including the scaffolding and his signage.
16. The Defendant has subsequently refused to provide the Covers with the red card and to return the plans as agreed.

Damages

17. The Defendants have received an estimate from DDL that the cost of remedying the Deficiencies will be approximately CI\$34,700.

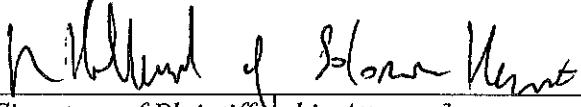
18. The Defendants have retained a new contractor to complete the Construction. The new contractor was not prepared to complete the Construction at the original price established in the Contract. The increased cost of completing the Construction (in addition to cost of remedying the Deficiencies) is CI\$125,000.
19. The Deficiencies and the Defendant's delays as well as the time required to retain a new contractor have resulted in a delay to the completion of the Construction. The Construction is now scheduled to complete at the end of September 2009 (a delay of 7 months).
20. The Defendants currently own both halves of a duplex. Nanalie Cover's mother resides in one-half of the Duplex and the Covers reside in the other half. The Covers and Nanalie Cover's mother will move into the new home when it is completed and the Covers will rent out the entire duplex. The duplex can be rented for CI\$5,000 per month.
21. The Covers have been deprived of 7 months rental income or CI\$35,000 as a result of these delays.
22. Finally, the Covers must also pay additionally financing charges as a result of the delays in construction which are not currently ascertainable.

AND THE PLAINTIFFS claim against the Defendant:

1. CI\$34,700 to remedy the Deficiencies;
2. CI\$35,000 for lost rental income on their duplex;
3. CI\$125,000 for the increased cost of the Construction;

4. A currently unascertained amount in increased financing charges as a result of the delays caused by the Defendant's breaches of the Contract which amount will be provided when available;
5. An injunction requiring the Defendant to release the final set of plans and the materials held in Customs to the Covers;
6. A declaration that the Contract has been validly terminated;
7. Pre and post judgment interest in accordance with the *Judicature Law (2004 Revision)*;
8. Costs; and
9. Such further and other relief as this Honourable Court may allow.

If, within the time for returning the Acknowledgment of Service, the Defendants pay the total amount claimed of CI\$200,000 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



[Signature of Plaintiff or his Attorney]

THIS WRIT was issued by **SOLOMON HARRIS** of 3rd Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiffs whose address for service is that of its said Attorneys-at-law.

**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 acting in person.
2. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.
3. 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 acknowledgment 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.

4. 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

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 authorized 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 I 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.

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BETWEEN:

PATRICK COVER AND NANALIE COVER

PLAINTIFFS

AND:

ERROL REID

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) _____

[DEFENDANT]

Address for service: P.O. Box 1990, George Town, Grand Cayman

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.

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

Solomon Harris
Attorneys-at-law
3rd Floor, First Caribbean House
P.O. Box 1990
Grand Cayman
Cayman Islands, KY1-1104

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