

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. GC 14 OF 2019

BETWEEN:

LUXURY CAYMAN VILLAS LIMITED

Plaintiff

AND:

MAURICE WELLESLEY VAN DER BOL

Defendant



WRIT OF SUMMONS



TO: Maurice Wellesley Van der Bol
591 South Church Street
George Town
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 495 Grand Cayman KY1-1106, Cayman Islands, 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 25th day of January 2019

NOTE – This Writ may not be served later than 4 calendar 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.

PARTICULARS OF CLAIM

1. The Plaintiff is and was at all material times a company registered in the Cayman Islands and the owner of a property Block 48C Parcel 16, Tranquility Cove located at 1264 Bodden Town Road (the "**Property**").
2. The Defendant is an individual who was at all material times operating as a sole trading builder.

(together the "**Parties**").

The Contract

3. By oral contract made between the Parties and confirmed by email dated 15 March 2016, the Plaintiff and the Defendant agreed that the Defendant would construct a dock and gazebo at the Property (the "**Works**") in consideration of payment of a fixed price of CI\$72,400 (the "**Contract**").
4. The Works required a Coastal Work Licence (the "**Licence**") from the Department of the Environment. As the Defendant was aware the Licence remained valid (the "**Licence Period**") until January 2017.
5. The following were express terms of the Contract:
 - i. A 25% deposit of CI\$18,100 was "*required for ordering/securing material*";
 - ii. A further 25% being CI\$18,100 was "*due on commencement of construction*";
 - iii. A further 25% being CI\$18,100 was "*due after the concrete pour*"; and
 - iv. A final 25% being CI\$18,100 was "*due on completion*".
6. Further to the above, it was an implied term of the Contract that:
 - i. that the Works would be performed within a reasonable time; and
 - ii. that the Works would be completed prior to the expiration of the Licence Period;

7. Subsequently to entering into the Contract it was expressly agreed between the Parties that:
 - i. Works should commence on 20 September 2016, August 2017 and September 2017 and finally, in November 2017 the Plaintiff agreed to final extension for completion of the Works commence on 1 April 2018 and to be completed within a six week period.
 - ii. that Works should be completed prior to the expiration of the Licence Period and that the Defendant should obtain an extension if necessary.

Breach of Contract

8. In accordance with the express terms of the Contract on 30 March 2016 the Plaintiff paid the deposit of CI\$18,100 to the Defendant. In breach of the express term of the contract the Defendant failed to ensure that this money was used for ordering/securing materials necessary to complete the Works.
9. On 17 October 2017, at a meeting with the Plaintiff and the architect Robert Towel, the Defendant made the following statements to the Plaintiff;
 - i. that the payments from the Plaintiff to the Defendant had not been used to secure or purchase materials required for the Works;
 - ii. that there were no funds remaining from the total amounts of CI\$36,200 paid by the Plaintiff;
 - iii. that the Defendant was unable to commence the Works due to lack of funds to pay for labour.
10. The Licence expired on 28 February 2018. In full knowledge of the expiry date of this Licence and in breach of Contract the Defendant failed to keep the Licence current, thereby causing loss to the Plaintiff in the sum of the Licence fee of CI\$12,540.
11. Accordingly, in breach of the express and implied terms of the Contract:
 - i. having agreed to commence the Works on the 22 September 2016, August 2017, September 2017 and finally on 1 April 2018 the Defendant on each occasion failed to commence the Works on the relevant date;

- ii. the Defendant failed to commence or complete the Works within a reasonable period of time or at all;
- iii. the Defendant failed to commence or complete the Works prior to the expiration of the Licence Period; and
- iv. notwithstanding the failure to commence works the Defendant failed to apply for or obtain an extension of the Licence Period.

12. The Defendant's breaches of Contract amounted to a repudiation of the Contract which was accepted by the Plaintiff in writing on 11th May 2018.

Misrepresentation

13. On 16 September 2016 in reliance on certain representations made by the Defendant, the Plaintiff paid a further CI\$18,100 to the Defendant. These included:

- i. an express representation that the Works would commence on 22 September 2016;
- ii. an implied representation that the Defendant had purchased/secured materials required for the Works, in accordance with the express terms of the contract as set out at paragraph 5; and
- iii. an implied representation that the Works would be completed in accordance with the Contract.

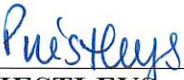
(collectively, the "**Representations**").

14. It is averred that the Representations were false and misleading and that the Defendant knew that the same were false and/or misleading, or he was reckless, not caring whether the same were true or false and/or misleading and knowing that the Plaintiff made the further payment of CI\$18,100 pursuant to the Contract in reliance thereon, in that:

- i. the Defendant had not purchased/secured materials required for the Works on or by the 16 September 2016 or at all;
- ii. the Defendant failed to commence works on the 22 September 2016;
- iii. the Defendant failed to complete the Works in accordance with the Contract or at all.

AND the Plaintiff Claims:

1. The sum of CI\$48,740 for breach of contract
2. Damages for fraud and/or misrepresentation
3. Interest
4. Costs; and
5. Further or other relief.



PRIESTLEYS
Attorneys for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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 installments or otherwise.

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 fourteen (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 steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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:

LUXURY CAYMAN VILLAS LIMITED

Plaintiff

AND:

MAURICE WELLESLEY VAN DER BOL

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 [] No []

Service of the Writ is acknowledged accordingly

(Signed) _____

Address for service:

Please see 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 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.

PRIESTLEYS
ATTORNEYS-AT-LAW
SECOND FLOOR, CARIBBEAN PLAZA
878 WEST BAY ROAD
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

Endorsement 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 endorsement]