

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 86 OF 2021

BETWEEN:



GREGG ARNOLD
CATHERINE HOUTS

PLAINTIFFS

and

SUSHELLA ANNON T/A FIRST CLASS CONSTRUCTION

DEFENDANT

WRIT OF SUMMONS

TO: **SUSHELLA ANNON T/A FIRST CLASS CONSTRUCTION**, 38 Grackle Road,
PO Box 877, George Town, Grand Cayman KY1-1103, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of P.O Box 30069, Grand Cayman, Cayman Islands, KY1-1201 in respect of the claims 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 Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any 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 27th day of May 2021

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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STATEMENT OF CLAIM

The Parties

1. The Plaintiffs are both individuals who are, and were at the material time, resident in the Cayman Islands.
2. The Defendant is an individual trading as First Class Construction under trade and business licence number 62000.

The Agreement

3. By way of a written agreement, dated 24 February 2020, the Plaintiffs and the Defendant entered into a Contractor Agreement (the "**Agreement**") for the Defendant to build a residential home at Block 22E, Parcel 310, Grand Harbour, Cayman Islands (the "**Property**").
4. The Agreement contained the following express terms *inter alia*:
 - (i) The Plaintiffs were to pay the Defendant the fixed sum of CI\$1,160,983.40 (the "**Contract Price**") for the carrying out and completion of what was specified to be the "Contract Works" (broadly speaking, the construction of the Property);
 - (ii) Any additional works (the "**Additional Works**") required outside of the Contract Works would incur an additional cost.

- (iii) The Plaintiffs were to pay CI\$232,196.00 towards the Contract Price prior to the Defendant commencing the Contract Works;
 - (iv) The balance of the Contract Price was to be paid in five separate installments to be received by the Defendant within five days after delivery of the corresponding invoice, with the exception of the last installment which was to be paid three months after completion of the Contract Works (see 4(vi));
 - (v) The Defendant provided a warranty for all elements of the installation of the materials and labour, apart from such items purchased directly by the Plaintiffs, for a period of three months after completion (the “**Warranty Period**”).
 - (vi) The last installment was 5% of the Contract Price (the “**Retention Sum**”) which was to be retained by the Plaintiffs for the duration of the Warranty Period.
5. The following implied terms were also incorporated into the Agreement:
- (i) That time was of the essence;
 - (ii) Alternatively, that the Agreement would be completed within a reasonable timeframe;
 - (iii) That the Defendant would keep the Plaintiffs reasonably informed as to progress of the Contract Works and any Additional Works;
 - (iv) That the Contract Works and any Additional Works would be carried out with reasonable care and skill;
 - (v) That the Defendant would allocate sufficient resources to the fulfillment of the Agreement; and
 - (vi) That sums advanced by the Plaintiffs towards the Contract Price and/or any Additional Works would be paid, as required, to subcontractors engaged by the Defendant to fulfill the Defendant’s obligations.
6. Construction on the property was commenced by the Defendant on or around 1 March 2020. The contract progressed broadly as intended and the Plaintiffs paid to the Defendant all installments save for the Retention Sum.
7. The Plaintiffs communication with the Defendant was primarily through phone calls, WhatsApp and/or email or via the Defendant’s employee and Site Manager, Mr. Stephen Small (“**Mr. Small**”).

Breach of the Agreement

8. On or before 1 March 2021, in breach of the Agreement, all works on the Property in accordance with the Agreement had ceased. Whilst the Defendant’s equipment remained at the Property, no steps were being taken by the Defendant to fulfill her duties under the Agreement.

9. The Defendants sought to contact the Defendant and Mr. Small by phone, email and WhatsApp to request that the terms of the Agreement were fulfilled. The Defendant provided multiple assurances to the Plaintiffs that the Contract Works and any Additional Works would be completed expeditiously.
10. The last communication received directly from the Defendant was by way of email dated 21 January 2021 in which the Defendant sent the Plaintiffs a schedule indicated an expected completion date of 22-27 February 2021. That was the last correspondence from the Defendant. Subsequent to that date, all attempts at communication were ignored. On or around 26 February 2021 Mr. Small also ceased all contact with the Plaintiffs.
11. The Plaintiffs instructed attorneys to write to the Defendant by way of letter dated 2 March 2021. This correspondence demanded that the Defendant resume contact with the Plaintiffs and set out how the Contract Works would be concluded and the Agreement fulfilled. This correspondence was served personally on the Defendant. No response was received.
12. On or around 5 March 2021, the Defendant's employees began to clear the Property and by 8 March 2021 had removed all tools and belongings. On 5 March 2021 the Plaintiffs were informed by one of the Defendant's employees that they had been instructed to attend a different construction site under the Defendant's control.
13. The Plaintiffs instructed attorneys to write to the Defendant again. By way of letter dated 8 March 2020 and served personally on the Defendant, the Plaintiffs notified the Defendant of specific breaches of the Agreement and put the Defendant on notice that the Agreement may be terminated if the breaches were not remedied expeditiously. The Plaintiffs offered to meet with the Defendant. No response was received to this correspondence.
14. By 15 March 2021 it was apparent that the Defendant had elected not to complete the Agreement and had directed her employees and subcontractors that the Property be vacated and no further works were to take place. This was a repudiatory breach of the Agreement which, together with the breaches set out at paragraph 15, below, form the Defendant's "**Breaches**" of the Agreement.
15. The Defendant had, by 15 March 2021, also committed the following breaches of the Agreement:
 - (i) Failed to complete the Contract Works;
 - (ii) Failed to allocate sufficient resources to the Contract Works;

- (iii) Breached the time is of the essence agreement, or alternatively, failed to carry out the Contract Works and Additional Works within a reasonable timeframe;
 - (iv) Failed to provide a warranty for all elements of the installation of the materials and labour;
 - (v) Failed to pay subcontractors, despite having received funds from the Plaintiffs for such expenses;
 - (vi) Failed to keep the Plaintiffs updated on the Contract Works and Additional Works;
 - (vii) Failed to carry out the Contract Works and the Additional Works with reasonable care and skill;
16. By way of letter dated 15 March 2021 and served personally on the Defendant, the Plaintiffs accepted the Defendant's repudiatory breach and terminated the Agreement, reserving all rights to recover any loss and damage.

Loss and Damage

17. The Plaintiffs have suffered loss and damage as a result of the Defendant's Breaches of the Agreement. The Plaintiffs, at their own expense, had to source and pay for alternative contractors to complete the Contract Works.
18. The additional contractor expenses as at the date of this Statement of Claim are CI\$224,501.63 or in excess of that sum. This represents a loss to the Plaintiffs of CI\$208,457.88 (the sum spent less the Retention Sum of CI\$58,049.17).
19. The Contract Works have yet to be completed and the Plaintiffs are still having to pay alternative contractors to complete the works. This represents an ongoing loss to the Plaintiffs in a sum to be determined.
20. The Plaintiffs have suffered, or are likely to suffer, loss and damage as a result of the Defendant's failure to provide the agreed Warranty. The Plaintiffs have paid, or will have to pay, for any remedial works for which they would otherwise have been indemnified by the warranty.
21. The Property should have been completed by the end of December 2020. As a result of the Breaches, the Plaintiffs were unable to occupy the Property until 26 April 2021. The Plaintiffs therefore had to pay additional rent in the sum of CI\$14,400 from the end of December which was a loss to the Plaintiffs caused by the Defendant's Breaches.

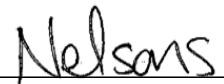
Costs and Interest

22. The Plaintiffs claim their legal costs in pursuing the Defendants for their damage and loss.
23. The Plaintiffs are entitled to interest on any loss and damages at a rate of 2 3/8% per annum calculated pursuant to the Judicature Law (2019 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time.

THE PLAINTIFFS THEREFORE CLAIM:

- (1) CI\$208,457.88 in damages and/or compensation for expenses paid to contractors;
- (2) CI\$14,400 in damages and/or compensation for additional rental costs;
- (3) Damages and/or compensation to be assessed
- (4) Interest in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (5) Such further and other relief as this Honourable Court may seem just;
- (6) Costs

DATED at Grand Cayman this 27th day of May 2021



Nelsons
Attorneys for the Plaintiff

TO: The Clerk of the Grand Court

AND TO: The Defendant

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelsons., Attorneys-at-Law, for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

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BETWEEN:

GREGG ARNOLD
CATHERINE HOUTS

PLAINTIFFS

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SUSHELLA ANNON T/A FIRST CLASS CONSTRUCTION

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

Attorney for the Defendant

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

Nelsons
Attorneys at Law
PO Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
Attn: A Carver
Ref: 7815-44

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 495, 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.