



**SUMMARY COURT AT GEORGE TOWN
DIVISION**

CAUSE NO. SC OF 2022

BETWEEN:

IVAN JOHN SUTLIC

Plaintiff

AND:

TOMMY SOFIELD

Defendant

PLAINT

To the Defendant:

**Tommy Sofield
c/o Cayman Structural Group LTD
207 Sparky Drive, Suite 6 K-Land Building
George Town
Grand Cayman
Cayman Islands**

THIS PLAINT 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 **Plaint** 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 Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgment of Service form

containing full particulars of your defense, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 22nd day of March 2022



PRIESTLEYS

Attorneys for the Plaintiff

See overleaf for particulars of the Plaintiff's claim.

PARTICULARS OF CLAIM

1. The Plaintiff is a resident of the Cayman Islands and since 18 July 2017 has been the registered proprietor of the property known as 108 Roxborough Street which is registered as parcel 623 of block 24E of the Spotts Registration section of Grand Cayman (“Property”).
2. The Defendant is an individual residing in the Cayman Islands who was, immediately prior to 18 July 2017, the registered proprietor of the Property.
3. On 27 April 2017 the Plaintiff and the Defendant (together the “Parties”) entered into a contract under which the Defendant agreed to sell and the Defendant agreed to purchase the Property (“Purchase Agreement”).
4. At the time of entering into the Purchase Agreement, it was expressly acknowledged by both Parties, that the boundary wall on the north-east corner of the Property had been constructed by the Defendant such that it encroached on the neighbouring land (“Encroachment”). The Plaintiff was induced to enter into the Purchase Agreement on the basis of an assurance given by the Defendant that an Indemnity would be granted in relation to the Encroachment.
5. On 16 June 2017, prior to completion of the sale and purchase of the Property, the Defendant, as the “Indemnitor”, and the Plaintiff, as the “Indemnitee”, entered into a Deed of Indemnity (“Deed of Indemnity”) the relevant terms of which include:
 - 5.1. *Clause 2: The Indemnitor irrevocably agrees, to the maximum extent permitted by applicable law, to indemnify and save harmless the Indemnitee from and against:*

all judgments, orders, penalties or fines awarded or imposed in, or an amount paid in relation, to any demand or legal proceeding, pending or completed, that arises or has arisen out of any conduct or matter associated with the Encroachment (“Proceeding”), which the Indemnitor is or may be liable; and

after the disposition of a Proceeding, the expenses (“Expenses”), including costs, charges and expenses, including legal and other fees actually and reasonably incurred by the Indemnitee in respect of that Proceeding.
 - 5.2. *Clause 3: To the maximum extent permitted by law, Expenses actually and reasonably incurred by the Indemnitee in connection with any Proceedings including all reasonable legal expenses incurred and any retainer required, shall be paid by the Indemnitor in advance of the final disposition of such Proceeding as and when either a request for a payment of the expenses is received from the Indemnitee or the expense becomes due and payable, whichever is earlier;*

- 5.3. *Clause 4: The Indemnatee shall notify the Indemnitor in writing of any Proceeding against him for which indemnification will or could be sought under the Deed;*
- 5.4. *Clause 5: If any claim arising from any right to indemnification conferred by the Indemnitor pursuant to the Deed is not paid in full by the Indemnitor within 30 days after a written claim has been received by the Indemnatee, the Indemnatee may, at any time thereafter, bring suit against the Indemnitor to recover the unpaid amount of the claim as a debt and, if successful in whole or in part, the Indemnatee will be entitled to be paid also the expense of prosecuting such claim.*
6. By letter dated 7 December 2018 (“7 December Letter”), attorneys for the registered proprietor of the neighbouring property (“Silver Thatch”) wrote to the Plaintiff demanding the removal and remediation of the Encroachment. Notice of this letter was provided to the Defendant by letter dated 9 January 2019, in accordance with Clause 4 of the Deed of Indemnity. No response was received.
7. On 2 July 2019, a Writ of Summons was issued by Silver Thatch (“Silver Thatch Writ”) in the Grand Court of the Cayman Islands under cause no. 105 of 2019 against the Plaintiff seeking, *inter alia*, removal and remediation of the Encroachment. Notice of the Silver Thatch Writ was provided to the Defendant by letter dated 10 July 2019, in accordance with Clause 4 of the Deed of Indemnity. No response was received.
8. The Silver Thatch Writ was resolved by way of a Consent Order dated 24 January 2020. By letter to the Defendant dated 28 January 2020, the Plaintiff made a written demand for payment in the sum of CI\$50,723.67 (“Indemnity Sum”) in accordance with the Deed of Indemnity as follows:
 - 8.1. Remedial works to rectify encroachment onto the Property CI\$27,889.12;
 - 8.2. Legal fees paid to Silver Thatch CI\$7,223.00;
 - 8.3. Current Legal Fees incurred CI\$14,741.55; and
 - 8.4. Professional fees incurred CI\$870.00.
9. The Defendant failed to make payment upon written demand and on 27 April 2020 the Plaintiff issued a Writ of Summons (“Writ”) in the Grand Court of the Cayman Islands under cause no. 78 of 2020 claiming the monies due under the Deed of Indemnity.
10. The Defendant failed to respond to the Writ and Default Judgment was entered on 15 July 2020.
11. The Plaintiff sought to enforce the Default Judgment initially by way of Examination of Judgment Debtor, however this was unsuccessful as the Defendant failed to attend

Court as ordered. Subsequently, a Charging Order was obtained against a piece of land owned by the Defendant.

12. During the course of the proceedings of the Writ, the Plaintiff was granted several orders for costs (“Cost Orders”), however there was a delta between the cost ordered to be paid under the Cost Orders and the total costs incurred by the Plaintiff in enforcing the Deed of Indemnity in the sum of CI\$15,168.87.
13. Pursuant to clauses 2 and 3 of the Deed of Indemnity, as set out paragraph 5 above, the Defendant agreed to pay to the Plaintiff “*Expenses actually and reasonably incurred by the Indemnatee in connection with any Proceeding including all reasonable legal expenses incurred and any retainer paid*”. The Plaintiff has incurred legal costs in connection with the court proceedings which fall outside the ambit of the Cost orders awarded in this matter.
14. On 29 January 2022, the Plaintiff wrote to the Defendant making a formal demand for payment of the sum of CI\$15,168.87 (“Demand Letter”), being the costs incurred by the Plaintiff, up to the date of the letter, which are not the subject of costs awards by the Court but which remain recoverable from the Defendant under the terms of the Deed of Indemnity.
15. The Defendant has failed to pay the sum due under the Demand Letter, in full or at all, and the Plaintiff claims the sum of US\$15,168.87 against the Defendant in accordance with clauses 2 and 3 of the Deed of Indemnity.
16. The Plaintiff also claims costs pursuant to clause 2 of the Deed of Indemnity as specified in paragraph 5.1 above.
17. Further, the Plaintiff claims interest pursuant to s.34 of the Judicature Act (2017 Revision) and the Judgment Debt (Rates of Interest) Rules 2012 and claims interest on the debt as follows:
 - 17.1. Pre-judgment simple interest on the debt, from the date the Plaintiff’s cause of action arose to the date of judgment or payment in full if sooner;
 - 17.2. Post-judgment simple interest upon the principle amount of the judgment with effect from the date of service of the judgment until the date of payment in full.

AND the Plaintiff Claims:

1. The sum of US\$15,168.87.
2. The Plaintiff’s costs of this action as pleaded in paragraph 16 above

This Plaintiff was filed by Priestleys, Attorneys-at-Law, whose address for service is P.O. Box 30310, Second Floor, Caribbean Plaza, 878 West Bay Road, Grand Cayman, Cayman Islands, KY1-1202.

3. Interest pursuant to s.34 Judicature Act (2017 Revision) as more specifically pleaded in paragraph 17 above.

4. Such further and other relief as the Court may deem just.



PRIESTLEYS

Attorneys for the Plaintiff

IN THE SUMMARY COURT AT GEORGE TOWN
CIVIL DIVISION

CAUSE NO. SC OF 2022

BETWEEN:

IVAN JOHN SUTLIC

Plaintiff

AND:

TOMMY SOFIELD

Defendant

ACKNOWLEDGMENT OF SERVICE

1. State Defendant's name and address-

2. State whether the Defendant intends to contest the action.

Yes No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this ____ day of _____, 2022

Please see overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed).

Defendant's Signature

REMINDER – This form must be taken or sent to the Court Office, P.O. Box 495GT, George Town, Grand Cayman, Cayman Islands within 14 days of receipt otherwise a default judgment may be entered against you.