



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CIVIL DIVISION**

**Cause No.            of 2022**

**BETWEEN:**

**(1) MAGDALENE PAPADOPOULOS  
(2) ANOOSHIRVAN REZAEI**

**PLAINTIFFS**

**AND**

**(1) WENDEL CONSTRUCTION LIMITED  
(2) WENDEL GENE WENDEL**

**DEFENDANTS**

**WRIT OF SUMMONS**

TO:    (1) Wendel Construction Limited  
      #2 Caterpillar Lane  
      Block 19E, Parcel 79  
      PO Box 11175  
      George Town  
      Grand Cayman  
      Cayman Islands

-and-

(2) Wendel Gene Wendel  
      #61 Ranch Road  
      Newlands  
      Block 28C, Parcel 615  
      Grand Cayman  
      Cayman Islands

**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, 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 8<sup>th</sup> day of December 2022

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 (also known respectively as "Maggie" and "Andy") are the registered owners of land situate at registration district West Bay, Block 17A, Parcel 37. At the material times the said land was an undeveloped parcel of land and following construction it is now better known as #101 Crystal Drive, Crystal Harbour, West Bay, Grand Cayman.
2. The first Defendant is a construction and or general contracting company registered in the Cayman Islands.
3. The second Defendant is a director of the first Defendant company and is sued in his capacity as a director and or in his personal capacity.
4. The Plaintiffs sought to have a residential property constructed upon the said land. They entered into negotiations with the Defendants for that construction work. Agreement was reached and the first Defendant company was engaged to carry out the construction work at a total price of CI\$1,850,000.
5. The said agreement was evidenced by written agreements originally dated 9<sup>th</sup> June 2019 and later revised and dated 20<sup>th</sup> September 2019. The Plaintiffs will rely upon the terms of the said written agreements for their full meaning and effect.

It was further an implied term of agreement that the Defendants would hold the Plaintiffs funds on trust for the Plaintiffs pending the completion of works to which those funds related and or in escrow not to be intermingled with any other funds.

6. The said total price was payable in accordance with a 'draw schedule' agreed as an addendum to the original agreement. The said draw schedule was erroneously dated 13<sup>th</sup> August 2010 but was in fact agreed upon and signed on 13<sup>th</sup> August 2019.
7. In reliance upon the agreement the Plaintiffs secured financing for the construction work by way of a loan facility from the Bank of Butterfield (the 'lending bank') entered into on 27<sup>th</sup> June 2019. The Plaintiffs were charged interest on the loan facility at the rates set out below and the said interest accrued on a daily basis.
8. In accordance with the draw schedule the Plaintiffs paid by way of release of funds from their lending bank the sum of CI\$439,375 on 15<sup>th</sup> August 2019 and the construction work commenced soon thereafter.
9. On 12<sup>th</sup> March 2020 the Defendants certified that work had been completed in accordance with the requirements of the first draw under the draw schedule and sought payment of the second draw amount in the sum of CI\$439,375.
10. That second draw was duly paid by way of release of funds from the lending bank on 12<sup>th</sup> March 2020 in the sum of CI\$439,375.
11. Notwithstanding that second draw payment the Plaintiffs assert that no construction work took place between 12<sup>th</sup> March 2020 and 28<sup>th</sup> March 2020 when construction work was suspended. No further construction work was undertaken by the first Defendant.
12. The Plaintiffs instructed attorneys and on 24<sup>th</sup> June 2020 gave 14 days' notice to terminate the contract and made a demand for repayment of the second draw sum.
13. Despite numerous demands for repayment (for the avoidance of doubt prior to and including the letter of 24<sup>th</sup> June 2020 and subsequent thereto) the Defendants or either of them have failed to repay the sum of CI\$439,375.
14. In breach of the terms of agreement and or the implied term as aforesaid and or wrongfully and or in breach of trust the Defendants or either of them,
  - a. Failed to complete the works for which the said second draw sums were paid
  - b. Failed to hold the said funds for the benefit of the Plaintiffs
  - c. Failed to hold the said funds in an escrow account
  - d. Failed to hold or to preserve those funds in any case separate from other funds
  - e. Failed to account to the Plaintiffs as to the whereabouts of those funds or their use
  - f. Misappropriated those funds
  - g. Failed to act in a *bona fide* manner relation to the Plaintiffs funds



- b. As against the second Defendant as a director of the first Defendant company and by reason of his fiduciary and other obligations as an officer of the company and or
  - c. As against the second Defendant in his personal capacity by reason of,
    - i. His name and signature appearing on the said written agreements evidencing an intention to be bound personally in his own capacity (as distinct from his capacity as a director of the first Defendant) and or
    - ii. His admissions by the communications referred to above sent from his personal email account and or
    - iii. His failure to act *bona fides* in relation to the said funds belonging to the Plaintiffs and or funds under the control of the first Defendant.
17. In the circumstances the Plaintiffs are entitled to and claim forthwith the liquidated sum of CI\$439,375 and in the alternative damages and in the further alternative the admitted sum of CI\$283,352 (without prejudice to their claims to the return of the entire second draw sum).
18. The Plaintiffs are further entitled to and claim interest,
- a. From 12<sup>th</sup> March 2020 (the date when the said second draw funds were paid) to date and continuing until judgment or sooner payment at the rates of interest charged to the Plaintiffs by the lending bank as follows:
    - i. 12<sup>th</sup> March 2020 to 22<sup>nd</sup> March 2020 at 4.75% per annum over 11 days at CI\$628.98
    - ii. 23<sup>rd</sup> March 2020 to 20<sup>th</sup> March 2022 at 3.75% per annum over 728 days at CI\$32,861.92
    - iii. 21<sup>st</sup> March 2022 to 26<sup>th</sup> April 2022 at 4.00% per annum over 36 days at CI\$1,733.40 (the lending bank changed to ScotiaBank on 26<sup>th</sup> April 2022)
    - iv. 26<sup>th</sup> April 2022 to date at the following rates (for the avoidance of doubt variable rates were charged by the lending bank and the rates adopted here are the lowest prevailing rate for each period of time):
      - a. To 1<sup>st</sup> May 2022 at 4.00% per annum over 5 days at CI\$240.75
      - b. From 1<sup>st</sup> May 2022 to 31<sup>st</sup> July 2022 at 5.00% over 92 days at CI\$5,537.48

c. From 1<sup>st</sup> August 2022 to date at 5.99% over 130 days at CI\$9,374.30.

Totalling CI\$50,376.83 to date and continuing at the daily rate of CI\$72.11.

b. Alternatively on the same bases as above but from 8<sup>th</sup> July 2020 (14 days after the date of demand on 24<sup>th</sup> June 2020)

c. In the further alternative pursuant to section 34 of the Judicature Act (2021 Revision) at the prescribed rate of 2 3/8<sup>ths</sup>% commencing from 12<sup>th</sup> March 2020 to date in the sum of CI\$28,647.18 and continuing to accrue on a daily basis until judgment or sooner payment at the daily rate of CI\$28.59, or

d. At such rate and for such period as the Honourable Court shall deem fit.

19. The Plaintiffs are contractually entitled to and claim their reasonable attorney's fees and costs expended in the enforcement of their rights to date and continuing until judgment or sooner payment pursuant to section 13 of the said written agreements of the said written agreements and alternatively pursuant to the Grand Court Rules.

**AND THE PLAINTIFFS claim as against the first and or second Defendants:**

- (a) The sum of CI\$439,375 as aforesaid, alternatively damages
- (b) In the further alternative the admitted sum of CI\$283,352 as aforesaid
- (c) Interest as aforesaid continuing until judgment or sooner payment
- (d) Costs as aforesaid

McGrath Tonner

**McGrath Tonner**  
Attorneys-at-Law to the Plaintiff

To: The Clerk of the Court

And to: The Defendants

**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**

**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 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.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CIVIL DIVISION**

**Cause No.                      of 2022**

**BETWEEN:**

- (1)     **MAGDALENE PAPADOPOULOS**
- (2)     **ANOOSHIRVAN REZAEI**

PLAINTIFFS

**AND**

- (1)     **WENDEL CONSTRUCTION LIMITED**
- (2)     **WENDEL GENE WENDEL**

DEFENDANTS

**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.

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1.     State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2.     State whether the Defendant intends to contest the proceedings (tick appropriate box)

   yes                                          no

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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

**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.

McGrath Tonner  
5<sup>th</sup> Floor, Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman  
Cayman Islands  
Ref. PJ 15548-001

Indorsement 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 indorsement]