



**GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: OF 2023**

**BETWEEN: CARMEN E. MARTINEZ VELEZ Plaintiff**

**AND: J&R CONSTRUCTION LTD Defendant**

**WRIT OF SUMMONS**

**TO: J&R Construction Ltd.  
P. O. Box 30729  
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 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 *25<sup>th</sup>* day of *September* 2023.

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.



- skill and attention. It shall be solely responsible for all construction methods, techniques, sequences and procedures for coordinating all portions of the Work.
- c. The Contractor shall provide and pay for all labour, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work.
  - d. The Contractor shall at all time employ persons who are skilled in, and competent to undertake those tasks that are assigned to it.
  - e. All Work will be of good quality, free from faults and defects and in conformity with the Plans and Specifications. In the event there are any discrepancies in the Plans and Specifications, the Contractor shall arrange for the correction of such discrepancies and shall notify the Owner upon completion of the Work performed to eliminate them. All Work not so conforming to these standards shall be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall make no deviation from the Plans and Specifications, except as provided in the last sentence of this Paragraph (e), unless requested by the Owner to do so. The Owner shall cause any work done by the Contractor to conform strictly to the Plans and Specifications unless the Contractor receives a written authorisation from the Owner setting forth, in detail, what changes are to be made. Such minor deviations may be made by the Contractor from the Plans and Specifications as are normal in the construction industry and non-violative of any rules and regulations of the CPA.
  - f. The Contractor shall secure and pay for all licenses necessary for the proper execution and completion of the Work.
  - g. The Contractor shall provide all notices to comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. The Contractor shall also comply with any conditions, covenants and restrictions which may be

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applicable to the construction of the Dwelling House and any rules and regulations of the CPA, or any committee thereof.

- h. The Contractor shall correct any defects in workmanship and/or materials performed or supplied by the Contractor on the Work or which fails to comply with the Plans and Specifications, whether observed on or after completion and whether or not fabricated, installed or completed, within seven (7) working days after notification of such discrepancies and defects by the Owner. The Contractor shall bear all costs of correcting such rejected Work, except where such rejection is as a direct result of the materials supplied by the Owner.
- i. It is understood and agreed that all labour and materials furnished by the Contractor shall be deemed to be included within the contract price stated herein, even though said labour and materials are not specifically required or demanded by this Agreement or the Plans and Specifications, and the same shall, nevertheless, be deemed to be included within the scope of labour and materials properly and necessarily required for the performance of the Work, except that any labour and/or materials furnished hereunder that are authorised by the Owner in writing, together with a definite statement in said authorization that said labour and/or materials are an "extra", shall be paid for in addition to the contract price at the time the "extra" is requested by the Owner. Any additional labour and/or materials required in order to comply with any requirements of the CPA, or the covenants, conditions and restrictions affecting the Dwelling House shall under no circumstances be deemed to be an "extra." The Owner may, at any time during the progress of the Work, order in writing deviations, additions or omissions, and the same shall not void this Agreement, but the value thereof as agreed upon in such written authorisation shall be added, or deducted from the contract price hereof and paid at the time the requested change is made by the Owner. Any such deviation, addition or omission shall be filed with the CPA by the Contractor, and the Contractor shall not be required to comply with said deviation, addition or omission until the CPA shall approve the same. In the event a deletion is made which would provide a refund to

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the Owner, said refund shall be given to the Owner at the time the last payment is made pursuant to the payment schedule.

- j. The Contractor agrees to clean up the premises and remove from the premises, from time to time, all waste material and debris of every description which may accumulate in the Dwelling House or about the premises as a result of the Work. The site must be left in a clean, acceptable manner.
- k. The Owner agrees to provide in a timely manner all materials required by the Contractor to complete the Dwelling House. The Contractor shall not be liable for any costs resulting from the Owners inability to supply these materials as and when needed, or for any for any delays which may result from the materials being unsuitable for the Work to be done.

5. Clause 3 of the said agreement sets out the Defendant's duties to the Plaintiff as follows: -

- a. The Contract Price shall be paid to the Contractor in four (4) stages in accordance with the Payment schedule appearing below: The commencement and completion date of and for each of the five (4) stages shall be determined by the Contractor and the Owner at the end of each stage, and the date inserted in the relevant section of the Agreement and initialed by both the Contractor and the Owner.

(1) Stage 1 – shall include ground floor slab, structural framework, plumbing and electrical installations, sanitary drainage and preliminary site management.

CI\$ 280,068.82 (CI\$ 50,000.00 for mobilization fees) shall be paid by the Owner to the Contractor on the receipt by the Owner of the financing from the bank selected by the Owner as start-up funds, the receipt of which is hereby acknowledged which sum shall be used by the Contractor to complete the works covered under this Stage 1.

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(2) Stage 2 - shall include concrete walls, roof trusses, standing seam, windows and external doors.

CI\$ 273,174.32 shall be paid by the Owner to the Contractor, which sum shall be used by the Contractor to complete the works covered under this Stage 2.

(3) Stage 3 – shall include roof trusses, spray foam, exterior foam, exterior finish texture, interior floor tile, electrical and plumbing installations, air conditioning and specialist installation.

CI\$ 217,570.75 shall be paid by the Owner to the Contractor, which sum shall be used by the Contractor to complete the works covered under this Stage 3.

(4) 101,184.75 Stage 4 – shall include exterior finish, walls, windows and doors, interior frame, electrical, plumbing, pool and air conditioning, specialist installation, preliminary site management.

CI\$ shall be paid by the Owner to the Contractor, which sum shall be used by the Contractor to complete the works covered under this Stage 4.

(5a) A list of certain materials, equipment and fixtures to be selected by the Owner and performed on the Work is provided for in Schedule A attached hereto.

(6) Unless otherwise provided for herein, the Owner shall be entitled to withhold an amount of 5% of the contract price (the “**Retention**”). This Retention shall be released to the Contractor at the end of a three-week period (the “**Maintenance Period**”) commencing on the Completion Date, notwithstanding that the Owner has taken beneficial occupation of the Works as reasonably allowed to him by the Contractor.

b. All payments are due within five (5) business days of presentation of written notification to the Owner by the Contractor that the required Work necessary for a given drawdown has been completed.

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- c. The Contractor agrees to complete the Dwelling House in a lien-free condition for the Owner. Any payment made hereunder, prior to total completion of the Work, shall not be construed as evidence of acceptance of any part of the Work, nor a waiver of any claim by the Owner arising out of faulty workmanship, or materials, or for failure of the Contractor to comply strictly with the Plans and Specifications.
- d. Notwithstanding the foregoing Payment Schedule, the Owner may withhold any payment which may be necessary in the Owner's reasonable discretion to protect the Owner from loss because of:
  - I. Defective work not remedied;
  - II. Third-party claims filed, or reasonable evidence indicating a probable filing of such claims;
  - III. Failure of the Contractor to make payments promptly to subcontractors or for labour, materials, or equipment;
  - IV. Reasonable doubt that the Work can be completed for the unpaid balance of the contracted sum;
  - V. Reasonable indication that the Work will not be completed within the contract time; or
  - VI. Unsatisfactory division of the Work by the Contractor.
- c. Final payment by the Owner shall not constitute a waiver of any claims by the Owner hereunder, including, without limitation, claims for unsettled liens, faulty or defective work, failure of the Work to comply with the requirements of the Plans and Specifications, any guarantee required hereunder, or any other requirements hereunder.

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6. It was also an expressed term of the said agreement that the Defendant would carry out the scope of the work diligently without negligence and observe a duty of care in carrying out the construction process of building the Dwelling House. At the hearing of this action the Plaintiff will refer to and rely of the said terms of the agreement.
7. The Defendant and or agents and or its director expressly promised the Plaintiff that the Dwelling House would be completed within 8 months from January 2021, of which the Defendant failed to do and as a consequence thereof caused the Plaintiff to suffer loss of having to extend a leased on leased premises.
8. After the Dwelling House was constructed by the Defendant in breach of the said agreement the Plaintiff discovered the negligent work done by the Defendant as follows: -
  - a. Water coming through the electric sockets in the Dwelling House;
  - b. The front door was installed backwards allowing water to enter the Dwelling House during rain;
  - c. Painting the Dwelling House, a colour other than that selected by the Plaintiff;
  - d. Installing the wrong size windows in the dwelling House;
  - e. Cracked concrete drive way at a charge of CI\$ 30,000.00 causing damage to the Dwelling House;
  - f. Using sheet rock on the outside walls instead of cement board that allow water to enter in the Dwelling House causing damage;
9. The Plaintiff Dwelling House is so negligently and poorly constructed that Planning has refused an occupancy Certificate.
10. The Plaintiff met with the Defendant several times, during the project expressing her dissatisfaction with the Defendant's quality of work and

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missed deadlines and delays as a result of the negligence and shoddy work of which the Defendant failed to address.

11. As the Dwelling House was not constructed in compliance with the required Building Code of the Cayman Islands the Plaintiff was forced to hire another contractor to remedy the Defendant's negligent work.
12. The Defendant also received the sum of CI \$30,311.09 from the Plaintiff to purchase materials for the Dwelling House of which he failed to do, keeping the said sum of CI \$30,311.09 as his own. The sum of CI \$30,311.09 received by the Defendant from the Plaintiff was separate from the other payments made to him
13. The Defendant by doing such negligent work is liable to the Plaintiff causing her to seek medical treatment, suffer inconvenience, trouble and considerable expense and thereby suffered loss and damages.

Particulars of loss and Damage.

- a. The non-use of the Dwelling House from October 2022 to December 2022 resulting in extra rent payment of CI \$5,000.00
- b. Payment to another contractor including materials to rectify the Defendants negligent work CI \$37,800.75.
- c. The sum of CI \$30,311.09 paid to the Defendant for materials that were not bought.

And the Plaintiff therefore claims:

1. The Sum of CI \$5,000.00
2. The Sum of CI \$37,800.75
3. The Sum of CI \$30,311.09
4. Damages
5. Interest on damages and for such period as the Court shall deem proper.
6. Costs
7. Such further or other Relief as the Court deem proper.

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Dated this <sup>th</sup> 25 day of September 2023

  
A. Steve McField & Associates  
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court  
And to: The Defendant  
J&R Construction Ltd  
P.O. Box 12013  
George Town  
Grand Cayman

**THIS STATEMENT OF CLAIMS** was filed by **A. STEVE MCFIELD & ASSOCIATES**, Attorneys-at-Law for and on behalf of the Plaintiff whose address for service is that of their said Attorneys P.O. Box 680 GT, Grand Cayman, Cayman Islands.

**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 495G, 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**

**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 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

CAUSE NO: OF 2023

BETWEEN: CARMEN E. MARTINEZ VELEZ Plaintiff

AND: J&R CONSTRUCTION LTD 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

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.

A. Steve McField & Associates  
Unit A10 Amerigo House,  
Elizabethan Square,  
P. O. Box 68, George Town,  
Grand Cayman ,KY1-1107

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