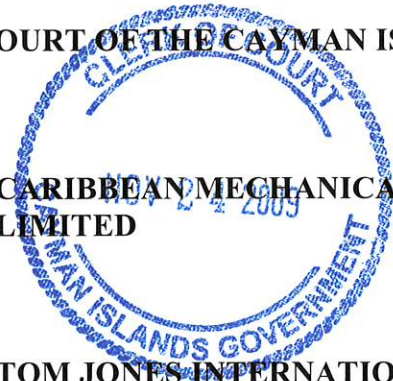


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 588 OF 2009

BETWEEN: CARIBBEAN MECHANICAL (HIGH SCHOOLS 2008)
LIMITED
PLAINTIFF

AND: TOM JONES INTERNATIONAL LIMITED
DEFENDANT



WRIT OF SUMMONS

To: Tom Jones International Limited
c/o Corpserve Limited
PO Box 2503
40 Linwood Street
Shedden Road
George Town
Grand Cayman KY1-1104

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of PO Box 1981, The Charles Building, Eastern Avenue George Town, Grand Cayman KY1-1104 in respect of the claim set out in 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, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgement within the time stated, or if you return the Acknowledgement, 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 24th day of November 2009

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 of Acknowledgment for Service are given with accompanying form.

THIS WRIT was issued by Campbells, Attorneys-At-Law for the Plaintiff whose address for service is P.O. Box 884, 4th Floor, Scotia Centre, Albert Panton Street, George Town, Grand Cayman KY1-1103 (AJW/KAH/sam /16504)

BETWEEN: CARIBBEAN MECHANICAL (HIGH SCHOOLS 2008) LIMITED

PLAINTIFF

AND: TOM JONES INTERNATIONAL LIMITED

DEFENDANT

ACKNOWLEDGEMENT 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 [] N/A

Service of the Writ of Summons is acknowledged accordingly.

(Signed)

..... [Attorneys for the Defendant]

Address for service: (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 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 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.

Campbells
Attorneys-at-Law
P.O. Box 885
4th Floor Scotia Centre
George Town
Grand Cayman KY1-1103

Ref: AJW/KAH/sam/16504

Endorsement 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 his 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.

4. The following were, amongst others, express terms of Main Contract 1:

ARTICLE 5 PAYMENTS

§5.1 PROGRESS PAYMENTS

§5.1 Based upon Applications for Payment submitted to the Quantity Surveyor by the [Defendant] and Certificates for payment having been authorized by the Architect, in accordance with the provisions of Article 9 hereof, [CIG] shall make progress payments on account of the Contract sum to the [Defendant] as provided below and elsewhere in the Contract Documents

§5.1.2 The period covered by each Application for Payment shall be on calendar month ending on the last day of the month.

§5.1.3 Provided that an Application for Payment is received by the Quantity Surveyor not later than ten (10) days prior the date established each month, [CIG] shall make payment to the [Defendant] not later than the thirty (30) days after the Architect authorizes the Application for Payment...

§5.1.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainllge of ten percent (10%) up to a maximum of five percent (5%) of the Contract Sum. Pending final determination of cost to [CIG] of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-1997;
- .2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by [CIG], suitably stored off the site at a location agreed upon in writing), less retainage of ten percnet (10%) up to a maximum of five percent (5%) of the Contract Sum;
- .3** Subtract the aggregate of previous payments made by [CIG]; and
- .4** Subtract amounts, if any, for which the Architect has withheld or nullified.

5. By a sub-contract dated 7th May 2008 ("Sub-Contract 1"), the Plaintiff agreed with the Defendant to carry out certain mechanical, electrical plumbing and building services incorporated in the Clifton Hunter Project. Sub-Contract 1 was

on the American Institute of Architect's standard form of agreement between contractor and subcontractor (Document A401 – 2007) as amended by the parties.

6. The following were, amongst others, express terms of Sub-Contract 1:

ARTICLE 11 PROGRESS PAYMENTS

§11.1 Based upon Applications for Payment submitted to the [Defendant] by the [Plaintiff], corresponding to applications for payment submitted by the [Defendant] to the Architect, and certificates for payment issued by the Architect, the [Defendant] shall make progress payments on account of the Subcontract sum to the [Plaintiff] as provided below and elsewhere in the Subcontract Documents.

§11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§11.3 Provided an application for payment is received by the [Defendant] not later than the last day of a month, the [Defendant] shall include the [Plaintiff]'s Work covered by that application in the next application for payment which the [Defendant] is entitled to submit to the Architect. The [Defendant] shall pay the [Plaintiff] each progress payment no later than seven working days after the [Defendant] receives payment from the [CIG]. If... the [Defendant] does not receive payment for any cause which is not the fault of the Plaintiff, the [Defendant] shall pay the [Plaintiff], on demand, a progress payment computed as provided in Section 11.7, 11.8 and 11.9.

§11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the [Plaintiff's] Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the [Defendant] on account of the Work of the [Plaintiff]. Pending final determination of cost to the [Defendant] of changes in the Work that have been properly authorized by the [Defendant], amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted~

§11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the [Plaintiff] for subsequent incorporation in the [Plaintiff's] Work or, if approved by the [Defendant], suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the [Defendant's] application for payment;

§11.7.3 Subtract the aggregate of previous payments made by the [Defendant]; and

§11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the [Plaintiff] for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the [Plaintiff].

§11.8 Upon the partial or entire disapproval by the [Defendant] of the [Plaintiff's] application for payment, the [Defendant] shall provide written notice to the [Plaintiff]. When the basis for the disapproval has been remedied, the [Plaintiff] shall be paid the amounts withheld.

§11.9 [irrelevant]

7. On 21st September 2009, the Plaintiff made an application for a progress payment under Article 11 of Subcontract 1 in respect of the calendar month ending 30th September 2009 (“the Clifton Hunter September Subcontract Application”).
8. On 26th September 2009, the Defendant made an application for a progress payment to CIG under Article 5 of Main Contract 1 (“the Clifton Hunter September Application”), which application included items corresponding to the Clifton Hunter September Subcontract Application, in accordance with Article 11.3 of Subcontract 1.
9. On a date unknown in late September or early October 2009, the Architect certified that the sum of CI\$1,081,964.87 was due in respect of items incorporated in the Clifton Hunter September Application which corresponded to items included in the Clifton Hunter September Subcontract Application were due and payable by CIG to the Defendant (“the Clifton Hunter Certificate”).
10. On 3rd November 2009, CIG paid the Defendant the amount certified in the Clifton Hunter Certificate.
11. Accordingly, pursuant to Article 11.3 of Subcontract 1, the Defendant became liable to pay to the Plaintiff the sum of CI\$1,081,966.55 on or before 14th November 2009 (“the Clifton Hunter September Progress Payment”).

12. Wrongfully, and in breach of Article 11.3 of Subcontract 1, the Defendant has failed to pay the Clifton Hunter September Progress Payment or any part thereof. Accordingly, the sum of CI\$1,081,966.55 remains due and owing to the Plaintiff.

The John Gray Project

13. By a contract dated 1st May 2008 (“Main Contract 2”), the Defendant agreed to carry out the following project, namely “Construction of the New John Gray High School Campus Central George Town Block 15B Parcel 50” (“The John Gray Project”) for CIG. Main Contract 1 was on the American Institute of Architect’s standard form of agreement between owner and contractor where the basis of payment is a stipulated sum (Document A101 – 1997) as amended by the parties.
14. The following were, amongst others, express terms of Main Contract 2:

ARTICLE 5 PAYMENTS

§5.1 PROGRESS PAYMENTS

- §5.1** Based upon Applications for Payment submitted to the Quantity Surveyor by the [Defendant] and Certificates for payment having been authorized by the Architect, in accordance with the provisions of Article 9 hereof, [CIG] shall make progress payments on account of the Contract sum to the [Defendant] as provided below and elsewhere in the Contract Documents
- §5.1.2** The period covered by each Application for Payment shall be on calendar month ending on the last day of the month.
- §5.1.3** Provided that an Application for Payment is received by the Quantity Surveyor not later than ten (10) days prior the date established each month, [CIG] shall make payment to the [Defendant] not later than the thirty (30) days after the Architect authorizes the Application for Payment...
- §5.1.3** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainllge of ten percent (10%) up to a maximum of five percent (5%) of the Contract Sum. Pending final determination of cost to [CIG] of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-1997;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by [CIG], suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%) up to a maximum of five percent (5%) of the Contract Sum;
 - .3 Subtract the aggregate of previous payments made by [CIG]; and
 - .4 Subtract amounts, if any, for which the Architect has withheld or nullified.
15. By a sub-contract dated 7th May 2008 (“Sub-Contract 2”), the Plaintiff agreed with the Defendant to carry out certain mechanical, electrical plumbing and building services incorporated in the John Gray Project. Sub-Contract 2 was on the American Institute of Architect’s standard form of agreement between contractor and subcontractor (Document A401 – 2007) as amended by the parties.
16. The following were, amongst others, express terms of Sub-Contract 2:

ARTICLE 11 PROGRESS PAYMENTS

- §11.1** Based upon Applications for Payment submitted to the [Defendant] by the [Plaintiff], corresponding to applications for payment submitted by the [Defendant] to the Architect, and certificates for payment issued by the Architect, the [Defendant] shall make progress payments on account of the Subcontract sum to the [Plaintiff] as provided below and elsewhere in the Subcontract Documents.
- §11.2** The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:
- §11.3** Provided an application for payment is received by the [Defendant] not later than the last day of a month, the [Defendant] shall include the [Plaintiff]'s Work covered by that application in the next application for payment which the [Defendant] is entitled to submit to the Architect. The [Defendant] shall pay the [Plaintiff] each progress payment no later than seven working days after the [Defendant] receives payment from [CIG]. If... the [Defendant] does not receive payment for any cause which is not the fault of the Plaintiff, the [Defendant] shall pay the [Plaintiff], on demand, a progress payment computed as provided in Section 11.7, 11.8 and 11.9.
- §11.7** Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.
- §11.7.1** Take that portion of the Subcontract Sum properly allocable to completed

Work as determined by multiplying the percentage completion of each portion of the [Plaintiff's] Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the [Defendant] on account of the Work of the [Plaintiff]. Pending final determination of cost to the [Defendant] of changes in the Work that have been properly authorized by the [Defendant], amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted~

§11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the [Plaintiff] for subsequent incorporation in the [Plaintiff's] Work or, if approved by the [Defendant], suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the [Defendant's] application for payment;

§11.7.3 Subtract the aggregate of previous payments made by the [Defendant]; and

§11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the [Plaintiff] for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the [Plaintiff].

§11.8 Upon the partial or entire disapproval by the [Defendant] of the [Plaintiff's] application for payment, the [Defendant] shall provide written notice to the [Plaintiff]. When the basis for the disapproval has been remedied, the [Plaintiff] shall be paid the amounts withheld.

§11.9 [irrelevant]

17. On 25th September 2009, the Plaintiff made an application for a progress payment under Article 11 of Subcontract 2 in respect of the calendar month ending 30th September 2009 (“the John Gray September Subcontract Application”).
18. On 26th September 2009, the Defendant made an application for a progress payment to CIG under Article 5 of Main Contract 2 (“the John Gray September Application”), which application included items corresponding to the Clifton Hunter September Subcontract Application, in accordance with Article 11.3 of Subcontract 1.
19. On 9th October 2009, the Architect certified that the sum of CIG\$1,161,256.29 was due in respect of items incorporated in the John Gray September Application

which corresponded to items included in the John Gray September Subcontract Application were due and payable by CIG to the Defendant (“the John Gray Certificate”).

20. On 12th November 2009, CIG paid the Defendant the amount certified in the John Gray Certificate.
21. Accordingly, pursuant to Article 11.3 of Subcontract 1, the Defendant became liable to pay the Plaintiff the sum of CI\$1,161,256.29 on or before 23rd November 2009 (“the John Gray September Progress Payment”).
22. Wrongfully, and in breach of Article 11.3 of Subcontract 1, the Defendant has failed to pay the John Gray September Progress Payment or any part thereof. Accordingly, the sum of CI\$1,161,256.29 remains due and owing to the Plaintiff.

Alternative basis of claim

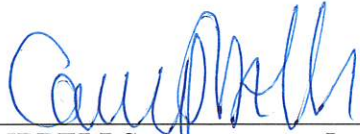
23. If, contrary to the Plaintiff’s primary case, the Defendant has not received payment of its September progress payments, the Plaintiff is entitled to be paid progress payments calculated in accordance with Clause 11.3 of the subcontracts, progress payments on demand calculated in accordance with Clauses 11.7 of the a progress payment, as the cause of any non-payment of TJI by CIG is not the fault of the Plaintiff.
24. In the circumstances, on the true construction of Clause 11 of the subcontracts, as the Architect has certified the September Progress Payments in accordance with the provisions of Clause 5.1.6 of the main contracts (which correspond to Clause 11.7 of the subcontracts), the Defendant is liable to pay those payments to the Plaintiff on demand, which the Plaintiff made, at the latest, by 5th November 2009 (email A. Roffey to P. Schreiner) alternatively by 10th November 2009 and 18th November 2009 (when statutory demands in respect of the September Progress Payments were served) alternatively, the Plaintiff makes demand by issue of this writ.

25. Further, the Plaintiff claims and is entitled to interest on the sums claimed in this action, at such rate from such date and on such amounts as this honourable Court thinks fit, calculated in accordance with the Judgment Debts (Rates of Interest) Rules (2008 Revision) and s. 34(1) of the Judicature Law (2007 Revision).

AND THE PLAINTIFF CLAIMS:

- (1) CI\$2,243,222.84 alternatively damages
- (2) Interest pursuant to s.34(1) of the Judicature Law (2007 Revision) to be assessed.
- (3) Such further or other relief as this honourable court thinks fit.
- (4) Costs.

Dated 24th November 2009
Filed 24th November 2009



CAMPBELLS, Attorneys-at-Law for the Plaintiff