

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 606 OF 2009

BETWEEN:

TOM JONES INTERNATIONAL LTD

Plaintiff

-AND-

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS as the
Representative of the CAYMAN ISLANDS GOVERNMENT (THE
MINISTRY OF EDUCATION TRAINING & EMPLOYMENT)

Defendant

WRIT OF SUMMONS

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 495GT, George Town, Grand Cayman, 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 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 30th 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 for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated in the Cayman Islands whose registered office is c/o CorpServe Ltd, 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman. The Plaintiff carries on business as a general contractor in the construction industry.
2. The Defendant is the Ministry of Education Training and Employment of the Cayman Islands Government. These proceedings are brought against the Attorney General who is the representative of the Cayman Islands Government for the purpose of legal proceedings pursuant to the Crown Proceedings Law (1997 Revision).
3. On or about the 1st of May 2008 the Plaintiff and the Defendant entered into two agreements for the Plaintiff to construct the Clifton Hunter High School and John Gray High School (hereinafter the "Agreements").
4. Pursuant to the Agreements the Plaintiff was to receive payments in accordance with a certification procedure. The relevant provisions of the Agreements are as follows:

“§9.4 CERTIFICATE FOR PAYMENT

§9.4.1 The Quantity Surveyor will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Architect a Certificate for Payment, with a copy to the Contractor, for such amount as the Quantity Surveyor determines is properly due, or notify the Contractor, Architect and Owner in writing of the Quantity Surveyor's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§9.4.2 The Architect will, within seven days after receipt of the Certificate for Payment, either authorize the Certificate for Payment to the Owner, and send a copy to the Contractor, for such amount as the Quantity Surveyor determines is properly due, or notify the Contractor, Quantity Surveyor and Owner in writing of the Architect's reasons for withholding authorization in whole or in part as provided in Section 9.5.1.

§9.4.3 The issuance of a Certificate for Payment will constitute a representation by the Quantity Surveyor to the Owner and Architect, based on the Quantity Surveyor's measurements and observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Quantity Surveyor's knowledge, information and belief, the quantity of the Work is

in accordance with the requirements of the Contract Documents. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

§9.4.4 The authorization of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observation at the sites and the data comprising the Application for Payment, that to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent test and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the authorization of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum."

"§9.6 PROGRESS PAYMENTS

§9.6.1 After the Architect has authorized a Certificate for Payment, the Owner shall make payment within thirty days in the manner provided in the Contract Documents, and shall so notify the Architect."

5. On the 20th of October, Certificate 17a for works at the Clifton Hunter High School was certified by the Quantity Surveyor and the Architect in the amount of CI\$ 833,575.89. On the same day, Certificate 15a for works at the John Gray High School was certified by the Quantity Surveyor and the Architect in the amount of CI\$ 2,114,242.65.
6. Pursuant to the terms of the Agreements, the Defendant was required to pay the above sums no later than the 19th of November 2009. In breach of its obligations the Defendant has refused or otherwise failed to do so.
7. The Plaintiff seeks the immediate payment of CI\$ 833,575.89 and CI\$ 2,114,242.65 along with interest thereon calculated from the 19th of November 2009 until paid in full in accordance with Judicature Law (1995 Revision).

AND THE PLAINTIFF CLAIMS

- (1) CDS 2,947,818.54;
- (2) Interest;
- (3) Costs.

Dated this 30th day of November 2009

BROADHURST

Broadhurst LLC.

Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Broadhurst LLC., Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, B.W.I

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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Plaintiff

-AND-

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS as the
Representative of the CAYMAN ISLANDS GOVERNMENT (THE
MINISTRY OF EDUCATION TRAINING & EMPLOYMENT)

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 []

Service of the Writ is acknowledged accordingly

(Signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

Please 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 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.

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

BROADHURST LLC.
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1104

Endorsement 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 endorsement]