

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 308 2010

BETWEEN:

FALMOUTH INVESTMENTS LTD

PLAINTIFF

AND



HURSLTONE HOLDINGS LTD

DEFENDANT

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WRIT OF SUMMONS

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**TO:** C/o Bodden Corporate Services Ltd  
802 Grand Pavilion Commercial Centre  
West Bay Road  
P.O Box 10335 APO  
Grand Cayman  
Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, Falmouth Investments Ltd of Campbell Corporate Services Limited, 4<sup>th</sup> Floor Scotiabank Building, P.O Box 268, George Town, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands 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 Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 6<sup>th</sup> day of September 2010.

**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 that date of original issuance unless renewed by order of the Court

**IMPORTANT**

Directions for the Acknowledgement of service are given with the accompanying form.

**BETWEEN:**

**FALMOUTH INVESTMENTS LTD**

**PLAINTIFF**

**AND:**

**HURSLTONE HOLDINGS LTD**

**DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff, Falmouth Investments Limited, is a duly incorporated Cayman company with a registered office located at Campbell Corporate Services Limited, 4<sup>th</sup> Floor Scotiabank Building, P.O Box 268, George Town, Grand Cayman.
2. The Defendant is a duly incorporated Cayman company with a registered office located at Bodden Corporate Services Ltd, 802 Grand Pavilion Commercial Centre, West Bay Road, P.O Box 10335 APO, Grand Cayman
3. The Plaintiff was at all material times the owner and title holder of properties known as Registration Section George Town Commercial, Block OPY, Parcel 110 ("the Premises") comprising a number of units known as A, B, C and D.

**Unit B**

4. On or about 1<sup>st</sup> April 2008 the Defendant, represented by Ms Harriet Lott, director and the Plaintiff, made between them a lease agreement, whereby the Plaintiff let to the Defendant Unit B for a term of 4 years and 11 months beginning on 1<sup>st</sup> April 2008 at a rent of US\$ 101,155.00.
5. The Defendant, pursuant to the Unit B lease agreement, entered into possession of Unit B on or around 1<sup>st</sup> April 2008
6. On or about 1<sup>st</sup> December 2009 a variation of the lease on Unit B was agreed between the Plaintiff and Defendant. The varied term of the Lease was for a period of 18 months at a rent of US\$ 95,591.48 for the first year.
7. Under the material terms and conditions of the Unit B lease, the Defendant covenanted with the Plaintiff as follows:-
  - (i) The Defendant would pay the yearly rent of US\$ 95,591.48, monthly in advance equal payments on the 1<sup>st</sup> day of each month;

- (ii) The Defendant would commence payment of rent on 1<sup>st</sup> December 2009;
  - (iii) In the event the Defendant should fail to pay the Rent when it was due, within 14 days or the due date, whether formally demanded or not, interest at a rate of 3% per annum above the US dollar rate prescribed by the Judgment Debts (Rates of Interest) Rules 2003, compounded daily would be deemed to be Rent due and payable to the Plaintiff.
8. Since 1<sup>st</sup> January 2010, in breach of the Lease and the terms, conditions and covenants hereinbefore set out the Defendant has:-
  - (i) neglected, defaulted and failed, at any time or at all, to pay the Plaintiff rent due since the 1<sup>st</sup> January 2010;
  - (ii) neglected and failed within a reasonable time or at all to remedy the breach of the covenants and conditions by paying the rent arrears together with interest thereon to the Plaintiff;
9. On or about 1<sup>st</sup> March 2010 the Defendant vacated the said Premises and purported to forfeit the Lease yielding up vacant possession to the Plaintiff. The surrendering of the Lease agreement and an acknowledgement of the amount of outstanding rent was evidenced by a letter signed by the director of Hurlstone Holdings.
10. Despite demands for payment being made by the Plaintiff, to date the Defendant has failed to pay all or any of the monthly advance equal rental payments due and owing under the Unit B lease agreement between 1<sup>st</sup> January 2010 and 1<sup>st</sup> March 2010 in the total sum of US\$ 16,774.88 together with interest thereon at 3% per annum above the US dollar rate prescribed by the Judgment Debts (Rates of Interest) Rules 2003, compounded daily and continuing at a daily rate and now due and owing under the said terms of the lease.

#### **Unit D**

1. On or about 1<sup>st</sup> March 2007 the Defendant, and the Plaintiff, made between them a lease agreement, whereby the Plaintiff let to the Defendant Unit D for a term of 3 years beginning on 1st March 2007 at a rent of US\$100,000.00 per annum.
2. The Defendant, pursuant to the Unit D lease agreement, entered into possession the said Unit on or around 1<sup>st</sup> March 2007
3. Under the material terms and conditions of the Unit D lease, the Defendant covenanted with the Plaintiff as follows:-
  - (i) The Defendant would pay the yearly rent of US\$ 100,000.00, monthly in advance equal payments on the 1<sup>st</sup> day of each month;
  - (ii) The Defendant would commence payment of rent on 1<sup>st</sup> March 2007;
  - (iii) In the event the Defendant should fail to pay the Rent when it was due, within 14 days or the due date, whether formally demanded or not, interest at a rate of 3% per annum above the US dollar rate prescribed by the Judgment Debts (Rates of Interest) Rules 1995, compounded daily would be deemed to be Rent due and payable to the Plaintiff.
11. Since 1<sup>st</sup> January 2010, in breach of the Lease and the terms, conditions and covenants hereinbefore set out the Defendant has:-

- (iii) neglected, defaulted and failed, at any time or at all, to pay the Plaintiff rent due since the 1<sup>st</sup> January 2010;
  - (iv) neglected and failed within a reasonable time or at all to remedy the breach of the covenants and conditions by paying the rent arrears together with interest thereon to the Plaintiff;
12. On or about 1<sup>st</sup> March 2010 the Defendant vacated the said Premises and purported to forfeit the Lease yielding up vacant possession to the Plaintiff. The surrendering of the Lease agreement and an acknowledgement of the amount of outstanding rent was evidenced by a letter signed by the director of Hurlstone Holdings
13. Despite demands for payment being made by the Plaintiff, to date the Defendant has failed to pay all or any of the monthly advance equal rental payments due and owing under the Unit D lease agreement between 1<sup>st</sup> January 2010 and 1<sup>st</sup> March 2010 in the total sum of US\$ 18,333.34 together with interest thereon at 3% per annum above the US dollar rate prescribed by the Judgment Debts (Rates of Interest) Rules 1995, compounded daily and continuing at a daily rate and now due and owing under the said terms of the lease.

**AND THE PLAINTIFF THEREFORE CLAIMS FROM THE DEFENDANT**

- (a) Rent arrears for unit B in the sum of US\$ 16,774.88;
- (b) Rent arrears for unit D in the sum of US\$ 18,333.34;
- (c) Contractual interest on the aforementioned rent arrears due on unit B from 1<sup>st</sup> January 2010 to date of trial pursuant to the terms of the Lease as described in paragraph 4.25 therein, such interest compounded daily, or at such other rate as this Honourable Court directs;
- (d) Contractual interest on the aforementioned rent arrears due on unit D from 1<sup>st</sup> January 2010 to date of trial pursuant to the terms of the Lease as described in paragraph 4.25 therein, such interest compounded daily, or at such other rate as this Honourable Court Directs
- (e) Post-judgment interest;
- (f) The costs of this action; and
- (g) Such further and other relief as to this Honourable may seem just.

**DATED** at Grand Cayman this 6<sup>th</sup> day of September 2010

Nelson & Co  
Nelson & Co.  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:**

Hurlstone Holdings Ltd.  
C/o Bodden Corporate Services Ltd  
802 Grand Pavilion Commercial Centre

West Bay Road  
P.O Box 10335 APO  
Grand Cayman  
Cayman Islands

BETWEEN:

FALMOUTH INVESTMENTS LTD

PLAINTIFF

AND:

HURSLTONE HOLDINGS 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 intend to contest the proceedings (tick appropriate box)

Yes

No

3. If the claim against the Defendants 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 Plaintiffs (tick box)

Yes

No

Service of the Writ is acknowledged accordingly

Signed .....

Attorney for

Address for service:

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

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
CAYMAN ISLANDS

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]

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**

### 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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.