

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 348 OF 2010

BETWEEN:

KIRKCONNELL ENTERPRISES LTD

PLAINTIFF

AND:

BPD GROUP LTD

DEFENDANT



WRIT OF SUMMONS

TO: BPD Group Ltd, c/o Campbell Corporate Services, PO Box 268, Grand Cayman KY1-1104, 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, PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands 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 20th day September of 2010.

STATEMENT OF CLAIM


1. The Plaintiff is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, Turner & Roulstone, PO Box 2636, Grand Cayman, KY1-1102, Cayman Islands.
2. The Defendant is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Defendant's registered office is PO Box 268, Grand Cayman KY1-1204, Cayman Islands.
3. In 2007, the Defendant ordered windows and doors from Kirkconnell Brothers Ltd ("KBL") which were supplied by KBL to the Defendant for its Renaissance development. The Defendant failed or neglected to make payment for the goods supplied by KBL.
4. On 6 September 2010, KBL assigned the debt due from the Defendant to Kirkconnell Enterprises Ltd, the Plaintiff. On 8 September 2010 the Plaintiff gave to the Defendant notice of the assignment and made demand for the sums due within 3 working days. The Defendant has failed to make payment for the sums due.
5. On or about 23 January 2009, the Defendant entered into a credit agreement with the Plaintiff ("the Credit Agreement"). The terms of the Credit Agreement included, inter alia the following:

"5. Interest shall accrue on any unpaid billed sum or sums following 30 days from the statement date. Interest shall be calculated commencing 30 days after invoice date at the simple rate of 2% per month (calculated on a daily basis).

6. The Company shall pay on an indemnity basis all legal costs and disbursements incurred by KEL resulting from or following a default of the Company on payment of any one or more bills."

AND THE PLAINTIFF claims:

- a) C1\$191,427.19 being the principal sum due to 17 September 2010;
- b) Pre and post judgment interest from 8 October 2010 at the rate of 24% per annum in accordance with the terms of the Credit Agreement;
- c) Alternatively, pre and post judgment interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- d) Costs on an indemnity basis in accordance with the terms of the Credit Agreement;
- e) Alternatively, costs on an indemnity basis or standard basis in accordance with the Grand Court Rules; and
- f) Such further and other relief as this Court sees fit.


Turner & Roulstone
Attorney-at-Law for the Plaintiff

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.

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$191,427.19. The amount of the filing fees to commence the proceeding is CI\$200 plus ad valorem fees of CI\$1,357.13. If, within the time for returning the acknowledgment of service, the Defendant pay the Plaintiff or its attorneys-at-law the total amount claimed in principal and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the Plaintiff or to its attorneys-at-law.

INDORSEMENT REGARDING INTEREST

1. The contractual term upon which interest is claimed is as set out in paragraph 4 above;
2. The prescribed rate of interest is 24% per annum;
3. The date from which interest is payable is 8 October, 2010;
4. The amount of interest that will accrue each day is CI\$125.87.

THIS WRIT was issued by Turner & Roulstone, Attorneys-at-law for the Plaintiff whose address for service is Strathvale House, 90 North Church Street, PO Box 2636, Grand Cayman KY1-1102, 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, PO 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 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 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 Questions 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 and 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 not 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.

BETWEEN:

KIRKCONNELL ENTERPRISES LTD

PLAINTIFF

AND:

BPD GROUP 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 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 or otherwise participate in 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 consent the proceedings, state if the Defendants intends to apply for a stay of execution against any judgement entered by the Plaintiff (*tick box*)

yes

no

Service of the Writ is acknowledged accordingly

Attorney for Defendant

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

Turner & Roulstone
Strathvale House
90 North Church Street
PO Box 2636
Grand Cayman KY1-1102
CAYMAN ISLANDS

Ref: RL/as/0064-0011

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

