

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

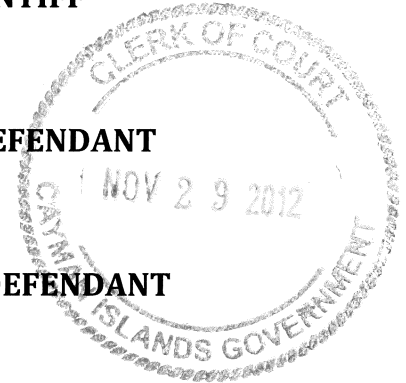
CAUSE NO. *G0475* OF 2012

**BETWEEN REX RANKINE PLAINTIFF**

**AND MARIO RANKIN 1<sup>st</sup> DEFENDANT**

**AND JOHANN R MOXAM 2<sup>nd</sup> DEFENDANT**

**AND MATERIAL IMPORTS LTD. 3<sup>rd</sup> DEFENDANT**



**TO: Mario Rankin**  
Prospect, George Town, Grand Cayman

**TO: Johann R. Moxam**  
North Ch. St, George Town, Grand Cayman

**TO: Material Imports Ltd.**  
Corporate Plaza 1<sup>st</sup> Floor, 24 Howard St., George Town  
Grand Cayman



**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 Acknowledge of Service stating therein whether you intend to contest these proceedings.

If you fail to supply the claim or to return the 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                    day of                    2012.

NOTE - This Writ may be served later 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 Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The 3<sup>rd</sup> Defendant is a company incorporated in Cayman Islands initially with an authorized share capital of USD50,000.00 divided into 50,000 ordinary shares 50,000 of USD1.00 each and carries on business among other things as a provider of aggregate and various other materials for land development.
2. The Plaintiff was the promoter and sole incorporating member and director of the Defendant Company.
3. In January 2008-2009 the Plaintiff applied for and received a Trade License on behalf the Defendant Company.
4. The Plaintiff at the material times was a director and shareholder of the Defendant Company
5. The Plaintiff by resolutions passed on the 30<sup>th</sup> day of April 2009 appointed the 1<sup>st</sup> Defendant as a Director of the Defendant Company and issued 40 shares to him.
6. At all material times the authorized share capital was issued to the shareholders in the manner set out below:
  - Rex A Rankine                      20%              20 shares
  - Philip Rankin                      40%              40 shares
  - Mario Rankin                      40%              40 shares
7. By letter dated May 27, 2009 the Plaintiff tendered his resignation as the sole Director and Secretary of the Defendant Company while still maintaining his shareholdings in the Defendant Company.
8. By virtue of the said resolutions passed on the 30<sup>th</sup> day of April 2009 the Plaintiff resigned as a Director of the Defendant Company.
9. The Plaintiff in an attempt to keep abreast of the status of the Defendant Company requested from the 1<sup>st</sup> Defendant an update on the current shareholdings.
10. The Plaintiff, not having subsequently received a response, conducted a search at the Registrar of Companies which search reflected that as of the 19<sup>th</sup> day of December 2011 the 2<sup>nd</sup> Defendant was allotted 10 shares and the 1<sup>st</sup> Defendant was allotted a further 5 shares.
11. The Plaintiff learnt that these shares were allotted pursuant to a written resolution of the Directors of the Defendant Company passed as of the 10<sup>th</sup> day of November 2009.
12. In the said resolution passed on the 10<sup>th</sup> day of November 2009 it was further resolved to cancel share certificate numbers 1 and 2 in the name of the Plaintiff for 1 and 19 shares respectively totaling 20 shares.
13. It was further resolved to reissue the 20 shares in the terms set out below:
  - Issue Certificate number 5 to Johann R. Moxam : 10 shares

- Issue Certificate number 6 to Mario Rankin :5 shares
- Issue Certificate number 7 to Philip Rankin :5 shares

14. In issuing the shares to 2<sup>nd</sup> Defendant a Director of the Defendant Company acted illegally and ultra vires:

**Particulars of Illegality and Ultra Vires acts**

- a. The 1<sup>st</sup> and 3<sup>rd</sup> Defendant cancelled shares that were duly issued to the Plaintiff and were not surrendered.
- b. At no time did the Plaintiff surrender or have any intention to surrender or desire to surrender his shares.
- c. At no time did the Plaintiff desire to have his share certificates cancelled.
- d. The Defendants illegally and fraudulently cancelled share certificate numbers 1 and 2 in the name of the Plaintiff for 1 and 19 shares respectively totaling 20 shares.
- e. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants acted in breach of Article 29 of the Articles of Association by cancelling the share certificate illegally modified the rights of the Plaintiff attached to the shares and acted outside of its powers.
- f. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants sold 10% of the Defendant Company to the 2<sup>nd</sup> Defendant of the sum of CI\$150,000.00

15. The 1<sup>st</sup> Defendant as a director of the Defendant Company owed the Plaintiff a fiduciary duty, including a duty to act in good faith and in the best interest of the Defendant Company.

16. The Defendants in exercising its fiduciary duty in issuing the shares to the 2<sup>nd</sup> Defendant acted in bad faith in breach of its fiduciary duties:

**Particulars of Bad Faith**

- a. The Defendants in a letter dated October 17, 2009 willfully and with an intent to deceive told the 2<sup>nd</sup> Defendant inter alia that they were the sole shareholders while knowing that the Plaintiff was a shareholder.
- b. The Defendant Company refused and or failed to provide information to the Plaintiff despite requests for information about the said transaction.
- c. The Plaintiff was not given any prior notice of the purported transfer of shares from the Plaintiff to the remaining shareholders and the 3<sup>rd</sup> Defendant.
- d. At the time of passing of the resolutions Plaintiff was unrepresented.
- e. The 1<sup>st</sup> and 3<sup>rd</sup> Defendant allocated shares to the 2<sup>nd</sup> Defendant and the other shareholders thereby illegally causing the shareholding and voting power of the Plaintiff to be taken away.

- f. The 1<sup>st</sup> and 3<sup>rd</sup> Defendant received the sum of CI\$150,000.00 for the illegal transfer of shares and used same for themselves to the exclusion of the Plaintiff.

17. As a result of the matters set out above the Plaintiff has suffered loss and damage.

**AND the Plaintiff claims:**

1. Damages
2. An Order requiring the Defendants to account to the Plaintiff by paying for and submitting to an independent audit of their books and records and to furnish the Plaintiff herein with all documentation and source documents relating to the transactions so accounted in respect of:
  - a. The declaration of all and any dividends made from the date of incorporation between and the date hereof and the payment of any such dividends.
  - b. All payments including, but not limited to any distribution in kind made by or on behalf of the 2<sup>nd</sup> Defendant to each shareholder and each director from the date of incorporation to date during to date whether made by the 3<sup>rd</sup> Defendant or on its behalf and whether out of any bank account .
3. The Defendants are ordered and directed to furnish the documentation referred to above and account as aforesaid within 30 days of the order of the Honourable Court in terms, whereupon the Defendants who have received dividends, payments or distribution of whatever nature are ordered to effect payment or restoration of one-fifth of dividends, payments or distribution of whatever nature paid to the Applicants herein forthwith.
4. IN the alternative disgorgement of all profits.
5. A Declaration that the Plaintiff is legally entitled to 20% of the shares in the Defendant Company.
6. A Declaration that the allotment of ordinary shares to the 2<sup>nd</sup> Defendant and all other allotments effected on the 10<sup>th</sup> day of November 2009 were illegal and ultra vires and are accordingly void and ought to be cancelled.
7. A Declaration that the allotment of ordinary shares to the 2<sup>nd</sup> Defendant and all other allotments effected on the 10<sup>th</sup> day of November 2009 were made in breach of the fiduciary powers of the Directors of the Defendant Company and are accordingly void and ought to be cancelled.
8. A Declaration that the transaction entered into between the Defendant Company and 2<sup>nd</sup> Defendant which caused the Defendant Company to register 2<sup>nd</sup> Defendant as a shareholder be set aside.
9. An Order directing that the Register of Members of the Defendant Company be rectified by striking out the name of the 2<sup>nd</sup> Defendant as the holder of shares of the said Defendant Company numbered 5; and

10. An Order directing that the Directors rectify the remaining shareholding by returning them to its pre-November 9, 2012 state.
11. Notice of such rectification may be ordered to be given to the Registrar of Companies or that such other order may be made as the Court shall deem fit.
12. An order directing the Defendants, the Defendant Company and its members to pay to the Plaintiff all sums to which the Plaintiff became entitled during the period from when the shares were invalidly transferred to date hereof

**AND THE PLAINTIFF ALSO CLAIMS:**

1. Damages
2. Interest
3. Cost



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**H. Phillip. Ebanks**  
**Attorney-at-Law**

This Writ of Summons was filed by Hanson P. Ebanks, Attorney at Law, whose address for service is whose address for service is A4 Queen's Court, West Bay Road, Grand Cayman, KY1-1202, Cayman Islands.

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

1. The accompanying form of Acknowledgement of Service should be completed by an Attorney on behalf of the Defendant or by Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO 495G, 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 not endorsed 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 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.

**See overleaf for notes for guidance**

**Please complete overleaf**

## Notes of 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 14 days for acknowledging service, a writ served on the Defendant personally is treated as having 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 form 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 step in the proceedings without an Attorney 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. The Defendant acting in person may obtain help in completing the form at the Court Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO.            OF 2012**

**BETWEEN            REX RANKINE            PLAINTIFF**

**AND                    MARIO RANKIN            1<sup>st</sup> DEFENDANT**

**AND                    JOHANN R MOXAM            2<sup>nd</sup> DEFENDANT**

**AND                    MATERIAL IMPORTS LTD.            3<sup>rd</sup> DEFENDANT**

**ACKNOWLEDGEMENT OF SERVICE**  
**OF WRIT OF SUMMONS**

1. State the full name of the Defendant's by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings.

\_\_\_\_\_ **Yes**

\_\_\_\_\_ **No**

3. If the claim against the Defendant is for a debt or liquidation 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.

\_\_\_\_\_ **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.

Hanson P. Ebanks  
Attorney-at-Law  
A4 Queen's Court, West Bay Road  
Grand Cayman, KY1-1202, 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]