

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. ¹⁷⁷ OF 2013

B E T W E E N:

ESSO CAYMAN LIMITED

PLAINTIFF

v.

ADVANCED ROAD CONSTRUCTION & PAVING LTD (“ARCP”)

DEFENDANT



WRIT OF SUMMONS



TO:

The Defendant
c/o Advanced Fund Administration (Cayman) Ltd
Cayman Corporate Centre
27 Hospital Road
P.O. Box 1748, George Town
Grand Cayman
Cayman Islands

AND:

The Defendant
Unit 7 Paddington Place
P.O. Box 10749
Grand Cayman, KY1-1007
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 the Court Office, P.O. Box 495 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 27th day of May 2013

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. By a Deed of Assignment made on 31st July 2011, Esso Standard Oil S.A. Ltd assigned and transferred to the Plaintiff (together hereinafter referred to as “Esso”) all of its undertakings in the Cayman Islands, including all freehold, leasehold and other interests in land and all interests under contracts.
2. The Plaintiffs are and were at all material times in the business of, *inter alia*, bulk petroleum distribution.
3. The Defendant was at all material times an ordinary resident Cayman Islands company and a customer of the Plaintiff in that they purchased bulk petroleum products from the Plaintiff.
4. On or about 9th January 2011 the Defendant entered into a contract with the Plaintiff for the sale and delivery of petroleum products (“the Agreement”).
5. Clause 3 of the Agreement specifies that its term was for 1 year commencing on 1st January 2013 to renew automatically for a 12 month period until 31st December 2013 and on the same terms specified in writing in the Agreement.
6. It was a term of the Agreement that Esso issue the Defendant an invoice for petroleum products supplied on each delivery.

7. On 10th October, 9th November and 26th November 2012 Esso issued the Defendant with three invoices (“the **Invoices**”):

(i) Invoice No. **30023114** (10th October 2012)
2,000 Imperial Gallons of Diesel Fuel at CI\$5.26
Total payable: **CI\$ 10,520**

(ii) Invoice No. **30023189** (9th November 2012)
2,000 Imperial Gallons of Diesel Fuel at CI\$5.26;
Total payable: **CI\$ 10,520**

(ii) Invoice No. **30023278** (26th November 2012)
2,000 Imperial Gallons of Diesel Fuel at CI\$5.16
Total payable: **CI\$ 10,320**

8. It was a further term of the Agreement that the Defendant would pay Esso for all invoiced petroleum products within 30 days.

9. On 4th December 2012 and in part satisfaction of invoice 30023114, Esso received a payment from the Defendant of CI\$ 6,838.

10. On 18th December 2012 Melesia Adderley, an employee of Esso, wrote to the Defendant requesting payment of CI\$24,522 which represented payments not yet received pursuant to the Invoices (“the **Outstanding Amount**”).


11. By email dated 19th December 2012 Mr Kenneth Lloyd wrote to Ms Adderley acknowledging the request, he did not dispute the amount claimed and indicated payment would be made on or before Friday, 21st December 2012.

12. On 20th March 2013 again Esso wrote to the Defendant requesting payment of the Outstanding Amount.
13. In breach of the Agreement the Defendant has failed to pay Esso the Outstanding Amount.
14. The Plaintiffs have suffered loss and damage by virtue of the Defendant's breach of the Agreement.
15. Further it is a term of the Agreement that Esso is entitled to apply interest in accordance with the prevailing rate of interest applied by commercial banks in the Cayman Islands on overdraft facilities from the date when such payment is due. Interest shall accrue from day to day.
16. It is averred that the prevailing rate of interest applied by commercial banks in the Cayman Islands on overdraft facilities is 5.5% per annum ("the **Prevailing Rate**").
17. The Plaintiffs seek interest on the Outstanding Amount at the Prevailing Rate of interest from the date upon which the Outstanding Amount was due; namely, 27th December 2012 or 151 days. The interest due at the date of issue of this Writ amounts to CI\$ 558.70 ("the **Agreement Interest**").
18. The Defendant is indebted to the Plaintiff in the sum of CI\$25,080.70, representing the Outstanding Amount and the Agreement Interest.
19. Further the Plaintiffs seek interest pursuant to Section 34 of The Judicature Law (as amended), on the sum of CI\$25,080.70 at the rate of 5% per annum prescribed by the Judgment Debts (Rates if Interest) Rules 2008 from the date of issue herein until Judgment or payment in full. Interest due will accrue upon the sum of CI\$25,080.70 at a daily rate of CI\$3.44 per day.

AND THE PLAINTIFF CLAIMS:

- (1) Damages for breach of contract;
- (2) Interest on the said damages pursuant to section 34 of the Judicature Law (as Amended); and
- (3) Costs

DATED THIS 27th day of May 2013



PRIESTLEYS

This Writ of Summons is issued by Priestleys Attorneys-at-Law for the Plaintiff herein whose address for service is Units 11 & 12 Galleria Plaza, 638 West Bay Road, P.O. Box 30310, Grand Cayman, KY1-1202

**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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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.

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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 []
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Service of the Writ is acknowledged accordingly

(Signed) _____

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.

PRIESTLEYS
ATTORNEYS-AT-LAW
UNITS 11 & 12, GALLERIA PLAZA
638 West Bay Road
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

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

This acknowledgment of service is issued by Priestleys Attorneys-at-Law for the Plaintiff herein whose address for service is Units 11 & 12 Galleria Plaza, 638 West Bay Road, P.O. Box 30310, Grand Cayman, KY1-1202