

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 628 OF 1997

BETWEEN: **THE FEDERAL DIRECTORATE OF SUPPLY
AND PROCUREMENT** (a body incorporated
under the laws of the Federal Republic of Yugoslavia)

Plaintiff

AND: **THE BANK OF NEW YORK**

Defendant

WRIT OF SUMMONS

TO: **THE BANK OF NEW YORK**
c/o Bank of Butterfield International (Cayman) Ltd.
P.O. Box 705, Butterfield House, 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 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 18th day of August, 1997



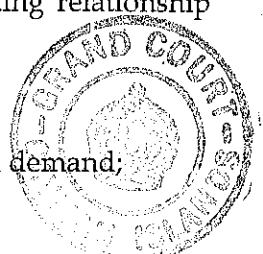
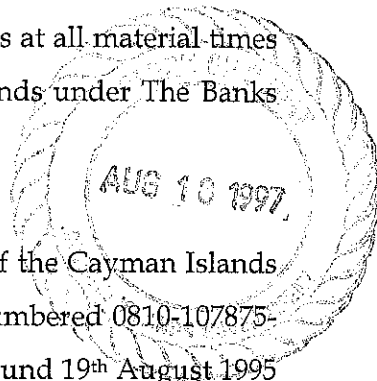
NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

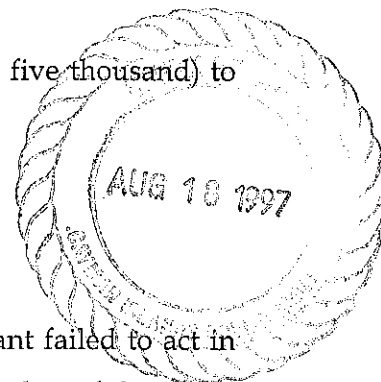
STATEMENT OF CLAIM

1. The Plaintiff is and has at all material times been a company incorporated in and under the laws of the Federal Republic of Yugoslavia.
2. The Defendant is and has at all material times been a bank carrying on business, *inter alia*, through its branch in the Cayman Islands. The Defendant is and has at all material times been licensed to transact banking business within the Cayman Islands under The Banks and Trust Companies Law (1995 Revision).
3. From on or around 28th October 1993 the Plaintiff was a customer of the Cayman Islands Branch of the Defendant, having an interest bearing call account numbered 0810-107875-500 which account number was changed by the Defendant on or around 19th August 1995 to account number 1078758400 ("the Account").
4. There were express alternatively implied terms of the contractual banking relationship existing between the Plaintiff and the Defendant that:-
 - (a) sums standing to the credit of the Account should be repayable on demand;
 - (b) the Defendant would not take any steps in relation to the Account which would disable it from complying with its obligation under (a) above.
5. The obligation to make repayment pleaded in paragraph 4(a) above, was an obligation (subject to payment of appropriate charges) to make repayment at a place of the Plaintiff's choice, alternatively at the branch of the Defendant bank in the Cayman Islands at which the Account was maintained by the Bank.
6. By two payment orders in writing each dated 26th May 1997 and numbered FF/1-97 and US/4-97, the Plaintiff required the Defendant to make the following payments from the Account:-

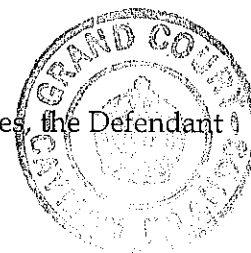


- (a) FF 1,654,000 (French Francs one million six hundred fifty four thousand) to Agrinvest International; and
- (b) US\$1,805,000 (United States Dollars one million eight hundred five thousand) to Copperas Limited.

(hereinafter together referred to as "the Payments").



- 7. In breach of its contractual duty as hereinbefore pleaded, the Defendant failed to act in accordance with the Plaintiff's instructions to make the Payments or either of them and continues to refuse to do so.
- 8. Further or alternatively, on or about 19th and 23rd June 1997, the Defendant transferred US\$2,126,532.43 and US\$5,909.25 respectively from the Account into an interest bearing blocked account at the Bank of New York, 48 Wall Street, New York, New York 10286, U.S.A. (hereinafter referred to as "the Transfers").
- 9. The Plaintiff did not authorise or consent to the Transfers. In the premises, the Defendant had no authority to make the Transfers.
- 10. It is the Plaintiff's contention that the Transfers do not affect the Defendant's contractual obligation to make payments from the Account in accordance with the Plaintiff's instructions.
- 11. If contrary to the Plaintiff's primary case as pleaded in paragraph 10 above, the Transfers have restricted the Defendant's ability to comply with the Plaintiff's payment instructions, the Transfers constitute a breach of the implied term of the banking contract between the parties pleaded in paragraph 4(b) above.
- 12. By reason of the breach pleaded in paragraph 11 above, the Plaintiff has suffered loss and damage in the amount of the sums transferred pursuant to the Transfers.



AND THE PLAINTIFF CLAIMS:

- (1) A Declaration that the Defendant's failure to act in accordance with the Plaintiff's payment instructions constituted a breach of the banking contract between the Plaintiff and the Defendant.
- (2) An Order that the Defendant do forthwith pay to or in accordance with the Plaintiff's instructions the balance standing to the credit of the Account prior to the Transfers.
- (3) In the alternative to paragraphs (1) and (2) above, a Declaration that the Defendant has wrongfully debited the Account with the amount of US\$2,132,441.68 and an Order for payment of the said sum by the Defendant to the Plaintiff.
- (4) Damages for breach of contract.
- (5) Such further and other relief as may be necessary or just.
- (6) Interest.
- (7) Costs.

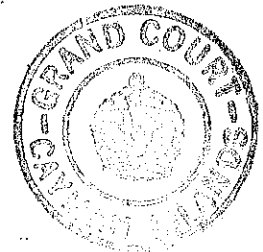


Quin & Hampson

QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The Defendant
The Bank of New York
c/o Bank of Butterfield International (Cayman) Ltd.
P.O. Box 705, Butterfield House, George Town, Grand Cayman



Settled by: Richard Hacker

THIS WRIT OF SUMMONS was issued by Quin & Hampson, Attorneys-at-Law for the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman, B.W.I.

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 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 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 installments 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 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 authroised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.

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Plaintiff

AND: THE BANK OF NEW YORK

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 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 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.

Quin & Hampson
Attorneys-at-Law
Harbour Centre, Third Floor
P.O. Box 1348
George Town,
GRAND CAYMAN

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]