

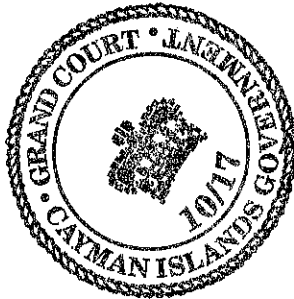
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE No. 11 of 2018

BETWEEN:

CLEAN GAS LTD.

AND:



APEC CONSULTING ENGINEERS LTD.

Plaintiff

Defendant

WRIT OF SUMMONS

TO: APEC Consulting Engineers Ltd.
PO Box 10118
c/o H&J Corporate Services (Cayman) Ltd.
2nd Floor, Willow House
Cricket Square
Grand Cayman
Cayman Islands



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of c/o Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands 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 GT, 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 15th day of January, 2018

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.

STATEMENT OF CLAIM

1. The Plaintiff is, and was at all material times, a resident Cayman Islands company. The Plaintiff is in the business of supplying residential and commercial propane gas services in the Cayman Islands.
2. The Defendant is, and was at all material times, a resident Cayman Islands company. The Defendant is a Cayman Islands-based civil and structural engineering consultancy firm.
3. On or about 23 December 2015, the Plaintiff entered into a Lease Agreement with Majiec Ltd. ("**Majiec**") in respect of the land at Block 19A, Parcels 40 and 65 of the West Bay Beach South Registration Section of Grand Cayman (the "**Property**"). On or about 9 September 2016, the Plaintiff engaged L.P.G. Ventures, Inc. to design its propane gas facility (the "**Plant**").
4. On or about 25 November 2016, the Plaintiff engaged Design (Cayman) Ltd. ("**DCL**") to assist with the coordination of its construction drawings and its application for planning permission.
5. In or around July 2016, DCL, as the Plaintiff's agent and on the Plaintiff's behalf, engaged the Defendant to conduct a subsoils investigation of the Property. The Defendant duly conducted a subsoils investigation of the Property on 27 July 2016, and delivered a report to DCL titled '*Summary of Subsoils Investigation at Block 19A Parcels 40 & 65, Sparky Drive, Grand Cayman*' (the "**Report**") on 18 August 2016.
6. As noted in the Report, DCL provided the Defendant with a full set of drawings for the Plant, and sought the Defendant's recommendations as to the appropriate foundations for the building and propane tank enclosures which were to be constructed on the Property. In section 4 of the Report, the Defendant made two alternative recommendations for the appropriate foundations for constructing the Plant on the Property. In section 4.1.2, the Defendant recommended removing the soft silty marl and peat from within the footprint of the building down to the native marl formation and replacing it with engineered rockfill. The Defendant went on in section 4.1.2 to refer to replacing the weak subsoil layers with rockfill, and compacting the rockfill with a 10-ton vibratory roller. The Defendant concluded that the settlement upon the application of the building load was a maximum of one inch and that lightly reinforced concrete slabs supported on grade could be used with this foundation option. Similarly, in section 4.2 of the Report, the Defendant stated that the demuck and fill solution would also be appropriate for the tanks and enclosure. Additionally, in section 3.0 of the Report, the Defendant set out a summary of the subsoils it encountered in the seven trial pits it excavated on the Property. In respect of Trial Pits 4 to 6, the Defendant reported that there was a layer of marl with traces of peat which extended from 4 feet below ground level to 6 feet below ground level, and that the '*layer of marl with peat overlaid the native marl formation*'.

7. In reliance on the Report and the representations and recommendations therein, the Plaintiff proceeded to finalise the plans for the Plant, including the foundations for the building and the propane tank enclosures. The Plaintiff, its designers and quantity surveyors relied on the Defendant's recommendations in respect of the appropriate foundations to prepare a Bill of Quantities in respect of the Plant and ultimately to determine the cost of constructing the Plant.
8. Having determined the cost of constructing the Plant, the Plaintiff decided to purchase the Property from Majiec and duly entered into a Contract for Sale with Majiec on or about 27 June 2017.
9. On or about 8 July 2017, the Plaintiff started clearing the Property and on or about 10 July 2017 the Plaintiff started excavation works in the northwest corner of the Property. Upon commencing the excavation, the Plaintiff almost immediately discovered a major issue with the subsoils: at a depth of approximately 18 inches, the excavator hit a silt layer with the consistency of a milkshake.
10. Mr David Champoux of the Defendant attended at the Property at approximately 9:00am on 10 July 2017 and was present when the Plaintiff's contractor dug a test pit in an attempt to locate the native marl. The contractor eventually hit the bedrock at a depth of 17 feet, but did not find any native marl to work with at any depth. The contractor then dug two further test pits on the Property, but did not locate any native marl in any of the three pits.
11. As a result of the excavation work, the Plaintiff realised that despite the Defendant's recommendations in the Report, it would not be possible to build the foundations for the Plant on '*shallow strip / pad footings supported on compacted engineered rockfill*' and that it would in fact be necessary to re-engineer the Plant with pile foundations. The Plaintiff had, by that stage, invested in excess of C\$200,000 in the project and had entered into the contract to purchase the Property from Majiec. The Plaintiff therefore had no choice but to continue constructing the Plant on the Property, despite the significant additional costs involved with pile foundations.
12. The additional costs which the Plaintiff has incurred (and will incur in the future) as a result of having to re-engineer the site with pile foundations are a direct consequence of the Defendant's negligence in preparing the Report.

Particulars

13. In section 4.1.2 of the Report, the Defendant recommended removing the soft silty marl and peat from within the footprint of the building down to the native marl formation and replacing it with engineered rockfill. There was in fact no native marl under the footprint of the building – the silt layer extended all the way to the bedrock at an average depth of 17 feet.
14. Also in section 4.1.2 of the Report, the Defendant referred to replacing the weak subsoil layers with rockfill, and compacting the rockfill with a 10-ton vibratory roller. That process could not, however, be carried out on the Property, due to liquefaction – any rockfill would,

in time, push outwards horizontally into the silt layer and cause the buildings and tank structures to settle into the ground. This could have had potentially catastrophic consequences for the Plaintiff, given the nature of the Plant and the propane gas which will be stored in the tanks.

15. In the Report, the Defendant concluded that the settlement upon the application of the building load was a maximum of one inch and that lightly reinforced concrete slabs supported on grade could be used with the demuck and fill foundation option. Given the true nature of the subsoil (which the Defendant was specifically engaged to investigate), the demuck and fill type of foundation was in fact never a viable option for the Property.
16. In section 4.2 of the Report, the Defendant stated that the demuck and fill solution would also be appropriate for the tanks and enclosure. Given the true nature of the subsoil, this was not in fact a solution for the Property, particularly in respect of a tank enclosure which is estimated to weigh over 8 million pounds.
17. Additionally, in section 3.0 of the Report, the Defendant set out a summary of the subsoils it encountered in the seven trial pits it excavated on the Property. In respect of Trial Pits 4 to 6 (as defined in the Report), the Defendant reported that there was a layer of marl with traces of peat which extended from 4 feet below ground level to 6 feet below ground level, and that the '*layer of marl with peat overlaid the native marl formation*'. In fact, contrary to the Report, the layer of marl with peat in these areas in fact overlaid a silt layer, which extended all the way to the bedrock – at a depth of 16 to 30 feet (as confirmed by the piles which the Plaintiff ultimately had to drive in this location). The Plaintiff did not encounter native marl anywhere in the area of Trial Pits 4 to 6.
18. Had the Defendant advised the Plaintiff in August 2016 that constructing the Plant on the Property would require pile foundations, the Plaintiff would have either: (a) located an alternative property which would not require pile foundations; or (b) sought to negotiate a purchase price for the Property with Majiec which reflected the additional costs of constructing the Plant on it (i.e. a reduced purchase price to off-set the cost of the piles).
19. In consequence of the matters aforesaid, the Plaintiff has suffered loss and damage.

Particulars

20. The Plaintiff's quantity surveyors, JEC Property Consultants Ltd. ("JEC"), have prepared a revised Bill of Quantities which sets out the additional construction costs which the Plaintiff has incurred to date as a result of the Defendant's negligence and the need to re-engineer the Plant with foundations on pilings. As set out in the Summary on the final page of the Bill of Quantities, the original contract price for constructing the Plant was CI\$764,968.80 and that sum has increased to CI\$1,091,960.38 as a result of the Defendant's negligence – an increase of CI\$326,991.59.
21. That increase has, however, been partially off-set by the fact that the Plaintiff has been forced to build the Plant in phases as a direct result of the increased construction costs. The Plaintiff originally intended to build the foundation pads for all 10 tanks at once, and to initially install 3 tanks. As a result of the additional costs of installing the pilings, the Plaintiff has been forced to delay the construction of the foundation pads for 5 tanks until a

later date. JEC have prepared a second Bill of Quantities, which estimates that the additional costs associated with the second phase of constructing foundation pads will be CI\$28,437.25.

22. The Plaintiff's total claim for damages arising from the Defendant's negligence is therefore in the sum of CI\$355,428.84.

AND THE PLAINTIFF CLAIMS: -

- (1) Damages;
- (2) Interest pursuant to Section 34 of the Judicature Law (2017 Revision);
- (3) Costs; and
- (4) Such other relief as the Court deems fit.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of CI\$355,428.84 together with the sum of CI\$2,277.14 paid as the fee on the issue hereof and CI\$500.00 in fixed costs (pursuant to Order 62, rule 7 of the Grand Court Rules) – a total of CI\$358,205.98 - further proceedings will be stayed. The money must be paid to the Plaintiff or its Attorneys.

Dated this 15th day of January, 2018



OGIER
Attorneys for the Plaintiff

**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 495GT, 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, 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 of 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE No. ____ of 2018

BETWEEN:

CLEAN GAS LTD.

Plaintiff

AND:

APEC CONSULTING ENGINEERS 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 of Summons 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 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 of Summons is acknowledged accordingly.

Attorney for the 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 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.

Ogier
Attorneys-at-Law
89 Nexus Way
Camana Bay
Grand Cayman KY1-9009
Cayman Islands

(Ref: 420979.00010/WRJ)

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