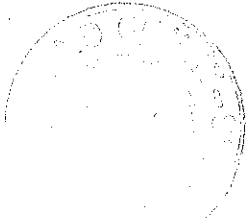


**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

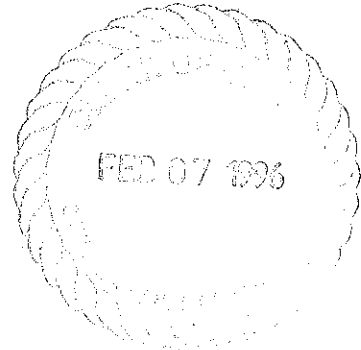
**CAUSE NO. 54 OF 1996**

**BETWEEN: ANDRO ELECTRIC CO. LTD. Plaintiff**

**AND: McALPINE LTD. Defendant**



**WRIT OF SUMMONS**



**TO: McALPINE LTD.  
P.O. Box 711  
Grand Cayman, B.W.I.**

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 7th day of February, 1996

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 ("Andro") is an independently owned company incorporated in the Cayman Islands which has its registered office in George Town, Grand Cayman and which carries on the business of Electrical Contracting in the Cayman Islands.
2. The Defendant ("McAlpine" or "the Contractor") is a Cayman Islands company which also has its registered office in George Town, Grand Cayman and is associated with Sir Robert McAlpine Ltd. a large international company whose Head Office is in Hemel Hempstead, Hertfordshire U.K., and carries on the business of Building and Civil Engineering Contracting in the Cayman Islands. At all material times Mr. Henry Propper, acted as the servant and/or agent of the Defendant McAlpine Ltd. in its operations in the Cayman Islands which are carried on autonomously from its principal place of business in the Industrial Park area of George Town, Grand Cayman.

### The Main Contract.

3. During 1988 the Defendant entered into negotiations for a contract (the "Main Contract") to build the condominium development called "The Great House" for another Cayman Islands corporation called G. H. Ltd ("GHL" or "the Owner" or "the Employer") which carries on the business of Developer in the Cayman Islands.
4. The Main Contract between McAlpine Ltd. and G. H. Ltd. was the Standard Form of Building Contract, (Private Edition with Quantities) 1983 jointly published by The Cayman Islands Society of Architects, Surveyors & Engineers and The Cayman Contractors Association.(the CASE form) which is a modified version of the Joint Contracts Tribunal 1963 Standard Form.
5. The Plaintiff has not seen the signed Main Contract but after Discovery will refer to the Main Contract between the Defendant and the Employer at the trial of this action for its full terms and legal effect insofar as any of its provisions may be relevant to the Plaintiff's claim herein.
6. The Main Contract commencement date was 5<sup>th</sup> September 1988 and the completion date was to have been 15<sup>th</sup> December 1989 but when it was realized given the scope of the work that the building could not be practically completed by 15<sup>th</sup> December 1989 the Defendant and the Employer agreed that the date for completion would be changed to 26<sup>th</sup> February 1990.
7. The Main Contract was signed on 11<sup>th</sup> November 1988 some ten weeks after the possession of the Site had been given to the Defendant and after construction had begun thereon.
8. Under Clause 22. of the Main Contract it was provided that if the Defendant failed to complete the construction of the building by the 26<sup>th</sup> February 1990 or within any extended time and if the Architect certified in writing that in his opinion such construction ought reasonably to have been so completed then the Defendant should pay

to or allow to the Employer a sum calculated at the rate of CI\$ 5,000 per week for the period during which the building remained incomplete.

9. During the period that the Defendant was conducting negotiations with the Employer it asked the Plaintiff to produce a cost estimate or "analysis" for the Electrical Sub-contract works for the proposed building on the basis of drawings and specifications furnished by the Defendant to the Plaintiff and which were dated 22<sup>nd</sup> March 1988.

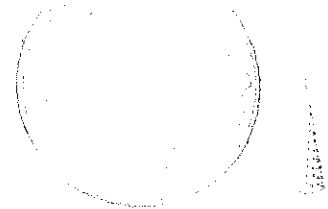
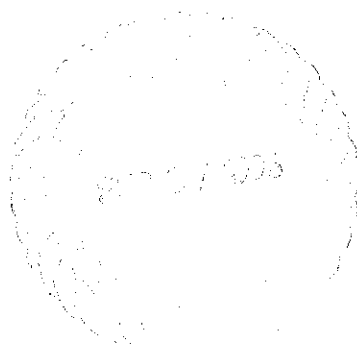
10. By letter dated 20<sup>th</sup> July 1988 the Plaintiff submitted to the Defendant a cost analysis in writing in the sum of CI\$ 372,761.64 but made it clear that as the design was not complete it had only made reasonable provisions for standard installations. The Plaintiff will refer to the letter of 20<sup>th</sup> July 1988 and the enclosure thereto showing how the price of CI\$ 372,761.64 had been arrived at.

11. By letter dated 29<sup>th</sup> August 1988 the Plaintiff, as it was requested to do by the Defendant, submitted a formal tender for the Electrical Works which was based upon revised drawings dated 8<sup>th</sup> August 1988 and upon the Defendant's programme also dated August 1988 which indicated and confirmed that the proposed Contract Period was to begin in Week 3 of the Main Contract period and end in Week 63 (inclusive) with five additional weeks for clean down and deficiencies - a total period of 66 weeks or 15 ¼ calendar months.

12. The tendered sum was CI\$ 359,755.74. and the tender also contained qualifications regarding Lighting Fixtures which were still to be selected. The Plaintiff will refer to the said letter dated 29<sup>th</sup> August 1988 at the trial of this action for it's full terms and legal effect.

13. Subsequent to the said Tender and after discussions with the Defendant, the Plaintiff by letter dated 16<sup>th</sup> September 1988 submitted a revised quotation of CI\$ 348,936.00 for the reasons stated in the said letter to which the Plaintiff will refer at the Trial of this action for it's full terms and legal effect.

14. The Plaintiff made some preliminary site visits in the month of October 1988 but the actual Electrical Works started from 7<sup>th</sup> November 1988 and the formal written agreement between the Plaintiff and the Defendant for the said Electrical Works was signed on the 17<sup>th</sup> November 1988.



**The Agreement between the Plaintiff and the Defendant.**

15. The Agreement between the Plaintiff and the Defendant (the "Agreement") consisted of a "Sub-Contract Order" dated 17th November 1988 which was signed by both the Plaintiff and the Defendant and "Conditions of Order" which were attached thereto.

16. The said Agreement provided inter alia:-

a) "No work is to be carried out on a Daywork basis unless previously ordered in Writing."

b) All-in Daywork rate for Labour is CI\$ 25.00 per hour."

c) The Plaintiff shall be deemed to have notice of all of the provisions of the Main Contract. The provisions of the Main Contract shall mean the Form of Agreement, Conditions of Contract, the Conditions of Particular Applications, the Specifications, the Drawings, and such addenda and other documents as may be specifically noted in the list of Contract Documents as set out in the said Form of Agreement.

d) The Plaintiff shall execute and complete the Sub-contract works subject to and in accordance with the defendant's Order in all respects to the satisfaction of the Defendant and of the Architect and in conformity with all the Defendant's directions and requirements, including all the Defendant's rules for the regulation of the Main Contract Works.

e) The Plaintiff shall observe, perform and comply with all the provisions of the Main Contract on the Defendant's part to be observed, performed and complied with so far as they relate and apply to the Sub-contract (*the Agreement*) works (or any portion of the same) and are not repugnant to or inconsistent with the express provisions of this Order as if all the same were severally set out herein.

f) The Plaintiff shall indemnify and save harmless the Defendant against and from:-

i) Any breach, non-observance or non-performance by the Plaintiff, its servants or agents of the said provisions of the Main Contract or any of them; and

ii) Any act or omission of the Plaintiff, its servants or agents which involves the Defendant in any liability to the Employer under the Main Contract; and

iii) Any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Plaintiff, its servants or agents (including any wrongful use of scaffolding referred to in clause 16 of these conditions or other property belonging to or provided by the Defendant); and

iv) Any loss or damage resulting from any claim under any statute in force for the time being by an employee of the Plaintiff in respect of personal injury arising out of or in the course of his employment.

17. It was an implied term of the Agreement that the Defendant would do whatever was necessary in order to enable the Plaintiff to perform its obligations under the said Agreement.

18. It was an implied term of the Agreement that the Defendant would administer the project in an efficient and proper manner.

19. It was an implied term of the Agreement that the Defendant would not delay and/or prevent the Plaintiff from performing its obligation in accordance with terms of the said Agreement.

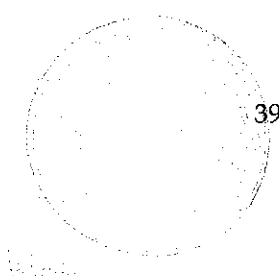
20. The Plaintiff will refer to the said Agreement at the trial of this action for its full terms and legal effect.

21. By virtue of the provisions of the Agreement between the Plaintiff and the Defendant the Plaintiff is entitled to claim against the Defendant (with the exception of the provisions of the Arbitration Clause) all of the remedies that the Defendant is entitled to claim against the Employer under the terms of the Main Contract.

**Summary of the Events subsequent to the Agreement.**

22. The Defendant issued its final construction programme on 23<sup>rd</sup> January 1989. The weeks in which the operations were scheduled to begin and end, as shown in the said construction programme (where week 1 begins on 5<sup>th</sup> September 1988), were the following:

<u>No.</u>	<u>OPERATION</u>	<u>PLANNED WEEK OF BEGINNING</u>	<u>PLANNED WEEK OF COMPLETION</u>
1.	Establish site including clearing, setting out and temporary services.	1	5
2.	Compacted fill to grade over building areas.	3 ½	11
3.	Excavate grade beams and foundation bases, including pits and cistern.	4 ½	22
4.	Foundation and ground floor slab, including cistern 382 CV - 20 CV/WK.	6	27
5.	Superstructure - ground to second floor, including second floor slab.	10	32
6.	Superstructure - second floor to third floor, including third floor slab.	15	36
7.	Superstructure - third floor to roof level, including fourth floor slab.	20	39



<u>No.</u>	<u>OPERATION</u>	<u>PLANNED WEEK OF BEGINNING</u>	<u>PLANNED WEEK OF COMPLETION</u>
8.	Superstructure - metal roof frame and ply sheathing.	31	38
9.	False chimneys.	33	40
10.	Standing metal seamed roofing, including flashings and copings.	38	47
11.	Garage buildings and "I" units - first floor to roof.	23	44
12.	Wood roof framing and sheathing to garage building.	34	41
13.	Staircase and elevator towers and gazebos.	25	36
14.	Elevated access walkways.	29	41
15.	Roof trellis and lattice screens.	44	52
16.	Metal framing and vinyl lattice screens.	45	55
17.	Balustrading to balconies, elevated walk. ways and staircase.	46	60
18.	External sand/cement render/stucco finish, including features.	25	53
19.	Internal rendering to walls where applicable.	37	51
20.	External "trowel-on" finish.	44	58
21.	Decorative glass block walling.	47	59
22.	Stud and gypsum wallboard in partitioning.	30	64
23.	Stud and gypsum wallboard in ceilings, including prefabricated domes.	36	64
24.	Timber surfaces and first fix joinery.	28	48
25.	Fit and fix doors and window frames.	39	59

<u>No.</u>	<u>OPERATION</u>	<u>PLANNED WEEK OF BEGINNING</u>	<u>PLANNED WEEK OF COMPLETION</u>
26.	Window sliding glass screens, including glazing.	45	59
27.	Hang doors and fix hardware.	45	61
28.	Miscellaneous mill work, including decorative columns and T & G ceiling.	36	64
29.	Kitchen cabinets, counters and fittings, including equipment.	43	66
30.	Marble, ceramic tile floor and wall finishes.	39	70
31.	Sanitary fixtures and fittings, including bathtubs.	36 49	42 70
32.	Painting and decorations.	51	74
33.	Carpet and vinyl floor finishes.	57	74
34.	Signs and signboards.	65	75
35.	Plumbing installation, including drainage.	5	60
36.	Electrical installations.	5	73
37.	Air conditioning installations.	32	73
38.	Elevator installations (hydraulic).	31 58	44 70
39.	Pool and foundation, including plunge pools "T" units.	36 54	47 65
40.	Beach scour/retaining wall.	14 59	28 60
41.	Concrete footpaths.	51	63
42.	Entrance walls etc.	56	68
43.	Tennis court.	63	74
44.	Kerbs and asphalt paving to carparks.	58	72
45.	Landscaping.	64	77
46.	Clean up and deficiencies.	71	79

23. Soon after commencement, the Main Contract works fell behind schedule. The reasons for the delays and disruptions to the Main Contract Works are documented in the Defendant's own Points of Claim which were prepared for the Main Contract Arbitration by the Defendant's Attorneys, signed and dated 20<sup>th</sup> May 1994. These reasons are contained in paragraphs 58 to 147 inclusive of the said Points of Claim and the Plaintiff will rely on the matters contained in these said paragraphs which are set out below in order to show that the Defendant did not allege, and has never alleged, that any of the delays and disruptions to the Main Contract Works were caused by the Plaintiff or in any way attributable to the Plaintiff.

"58. McAlpine took possession of the site on 5th September, 1988 and began to carry out operation 1 (establish site including clearing, setting out and temporary services).

59. McAlpine was unable to carry on with the construction of the building during week 2, from 12th to 19th September, 1988, because of Hurricane Gilbert. The parties agreed, at the time, that this interruption would not affect the completion date provided for in the conditions.

60. McAlpine was unable to begin operation 3 (excavate, grade-beams and foundation bases, including pits and cistern) as scheduled, i.e. mid-week 4, on the main building because it was advised by the architect that the foundation design would be changed. Bending schedules had already been prepared by the contractor on the basis of the information which was then available.

61. As a result of that advice, the following work was delayed:

- (a) Preparation of new bending schedules.
- (b) Excavation for main building.
- (c) Cutting and bending the reinforcing steel.
- (d) Erecting shuttering, placing reinforcing steel and pouring foundations.

62. McAlpine received the revised foundation drawing for the north and south areas of the main building, CS 237, revision 3, on 9th October, 1988 - a Sunday - and the revised foundation drawing for the centre area thereof, CS 248, on 22nd March, 1989.

63. Due to the revised foundation design, the architect instructed McAlpine, on 14th October, 1988 - a Friday - to suspend physical operations on the site, with certain exceptions, for a period of two (2) weeks, i.e. during weeks 7 and 8.

64. McAlpine agreed to reallocate its labour and staff resources for a period of up to two (2) weeks "at no financial cost to" GHL.

65. The interruption in the construction of the building actually lasted for a period of three (3) weeks, i.e. weeks 7, 8 and 9.

66. Meanwhile, McAlpine had received sufficient information on the garages, including the cistern, and began work on the latter on 28th September, 1988, the date of the planned start of the excavation activity for the main building.

67. When work resumed on 7th November, 1988, the progress of operation 3 had been delayed by an expected four (4) weeks and three (3) days, resulting in an expected time overrun on the project of five (5) weeks and two and one-half (2 1/2) days. The causes of these expected delays were the advice from the architect that the foundation of the main building would be re-designed, the receipt of drawing CS 237A, which provided for the revised design of the foundations of the north and south areas of the main building and the suspension of most of the construction work, especially the critical operations, for an actual period of three (3) weeks.

68. McAlpine had planned, after completing operation 2 (compacted fill to grade over building areas) in any given area, to excavate for the drainage runs which cross the grade beams and to begin drainage work before excavating to the grade beams. That was the logical sequence of work.

69. McAlpine had, at the relevant time, drawings showing the line of the drain runs. These drawings, however, did not show any invert elevations and the plumbing drawings had not been approved by BCU.

70. McAlpine received a number of revised plumbing drawings on 12th December, 1988 which, for the first time, showed invert levels, albeit only with respect to the north area of the main building. They contained an error concerning invert elevations. The plumbing drawings were not approved by BCU until the end of the Christmas holiday. Thus, work on the drains could only commence on 5th January, 1989, i.e. week 18.

71. The progress of operations 3 (excavate grade beams and foundation bases, including pits and cistern) and 4 (foundation and ground floor slab, including cistern) had been further delayed, between 8th November, 1988 and 5th January, 1989, by an expected thirty-three (33) working days, for a cumulative delay in operations 3 and 4, at that point, of eleven (11) weeks and one (1) day, and, as a result, the further time overrun on the project was expected to be thirty three (33) working days as well, for an expected cumulative time overrun of twelve (12) weeks and one-half (1/2) day. The causes of the further expected delays were the late receipt of the drainage invert levels and of the drainage drawings duly approved by BCU.

72. McAlpine only received the invert levels for the south area of the main building on 6th March, 1989 and, as a result, the progress of operations 3 and 4 was further delayed, between 5th January and 6th March, 1989, by an expected twenty-five and one-half (25 1/2) working days, for a cumulative expected delay of sixteen (16) weeks and one and one-half (1 1/2) days. This additional expected delay did not, however, add to the expected time overrun of the project.

73. On 18th March, 1989, McAlpine was instructed by the architect to build up the central area of the main building by adding 3" blinding concrete with mesh reinforcement and a 3" concrete slab (CVI 16). (*the defendant's Confirmation to the Architect and any affected sub-contractor of a Verbal Instruction by the Architect to the defendant*). That area of the main building had remained "on hold" until the receipt of that instruction.

74. McAlpine was instructed by the architect, on 18th March, 1989 as well, to alter the size of footings F4 and F6 (CVI 17). The excavation for the original footings had already been done at that time. These instructions were superseded by drawing CS 248.

75. McAlpine only received the foundation drawing for the centre area of the main building, drawing CS 248, on 22nd March, 1989.

76. McAlpine received, between 6th and 29th March, 1989, a number of new or revised drawings, including, on that last date, plumbing drawing P 415/1 which changed the details previously given in drawing P 409 with respect to the under slab drainage relating to unit A8 in the south area of the main building.

77. The progress of operation 3 (excavate grade beams and foundation bases, including pits and cistern) and 4 (foundations and ground floor slab, including cistern) was further delayed, between 7th and 29th March, 1989, by an expected three and one-half (3 1/2) working days for a cumulative expected delay of seventeen (17) weeks in the progress of these operations. This additional expected delay did not, however, add to the total time overrun on the project. The cause of the above expected delay was the late receipt of plumbing drawing P 415/1.

78. The drawings issued between week 1 and week 39 were, generally speaking, inaccurate, inadequate and badly coordinated, which made it difficult for McAlpine to accommodate and deal with late drawing issues, clarification details, error and conflict notifications, coordination and distribution of revised information and variations.

79. Operation 3 was completed during week 37 and operation 4 was completed at the end of week 39.

80. As a result of the impact of the delays in the progress of operations 3 and 4 on that of the project, work on operation 5 (superstructure - ground to second floor, including second floor slab) began towards the end of week 22, i.e. twelve (12) weeks and three (3) days later than programmed.

81. A variation issued on 18th March, 1989 with respect to the second floor slab (CVI 15) resulted in three (3) days of additional work which was carried out on 18th, 19th and 20th March, 1989. The first two of these days were a Saturday and a Sunday.

82. Another variation relating to the second floor slab (CVI 48) was issued on 19th May, 1989. It required certain work to be rebuilt and added an expected one (1) day of delay to operation 5.

83. A third variation relating to the second floor slab (CVI 57) resulted from a conflict between reinforcing steel and plumbing and caused cut out and alteration whilst work was in progress, thus requiring additional work which took three (3) days. Two (2) of these days were a Saturday and a Sunday and the variation added yet another working day of expected delay to the progress of operation 5.

84. A fourth variation to the second floor slab (CVI 66) may not have caused further delay. It contributed, however, to the disruption of the progress of operation 5.

85. The above variations resulted in a further expected delay of three (3) working days in the progress of operation 5, for a cumulative expected delay, up to 18th June, 1989, of sixteen (16) weeks and one (1) day, and in a further expected time overrun of two (2) working days on the project, for a cumulative expected time overrun of twelve (12) weeks and two and one-half (2 1/2) days thereon up to that date.

86. As a result of the impact of the delays in the progress of operations 3, 4 and 5 on that of the project, work on operation 6 (superstructure - second floor to third floor, including third floor slab) only began towards the end of week 28, i.e. thirteen (13) weeks and four (4) days later than programmed.

87. A discrepancy in the drawings resulted in McAlpine being instructed by Joe Essman, of Cankat Essman, Inc., consulting engineers, the structural advisors to Apec, to alter the formwork necessary to pour beam RB-1 in apartment A17, a second floor unit in the main building. That alteration work took one (1) day.

88. The architect issued a variation (CVI 42) with respect to the formwork and reinforcement of a roof beam in apartment G16, another second floor unit in the main building, which was already detailed and fixed. It took one half (1/2) day to carry out the work described in that variation, although this did not result in any delay to operation 6 or in any further expected delay to the project.

89. The plumbing and electrical services of apartment C19, a third floor unit in the main building, were redesigned to meet the requirements of the purchaser thereof, thus necessitating that the rough in details for casting the services in the third floor slab be redrawn. The slab for apartment C19 was scheduled to be cast on 20th June, 1989. McAlpine was instructed, on 14th June, 1989, not to do so until all modifications had been completed by the architect. The required information reached McAlpine on 21st June, 1989, which resulted in the slab of apartment C19 being poured on 28th June, 1989, eight (8) calendar days, or six (6) working days, later than scheduled.

90. On 14th June, 1989, the soffit formwork was available for the marking out for conduit runs and plumbing pipes for apartment E20, a third floor unit in the main building. The drawings were not, however, adequate for that purpose and McAlpine so advised the architect. The contractor received the drawings showing the layout of electrical rough in for that apartment on 13th July, 1989. One of these drawings was subsequently revised and, as such, received by McAlpine on 19th July, 1989. This information was five (5) weeks, or twenty-five (25) working days, late.

91. The architect also made structural changes to the balcony of apartment E20 in late July, 1989. These changes did not, however, delay the progress of operation 6 or of the project.

92. The soffit formwork for apartment F21, a third floor unit in the main building, was available to receive the services rough in for casting into the slab on 14th July, 1989. McAlpine requested the details for the electrical rough in work on 5th July, 1989: the final details were only issued by the architect on 27th July, 1989, although McAlpine had received some information on 23rd July, 1989. The electrical rough in for apartment F21 actually began on 25th July, 1989 and was completed on 28th July, 1989. The final formwork and reinforcing steel was completed for the first pour on 2nd August, 1989. The slab was cast on 2nd and 4th August, 1989. The result was a delay of six (6) working days in the progress of operation 6.

93. The soffit formwork was in place to receive the services rough in for casting into the slab of apartment E22, a third floor unit in the main building, on 9th July, 1989. The work began on 10th July, 1989. The architect instructed McAlpine, on 12th July, 1989, to interrupt the work until the issue of revised services drawings showing changes made by the purchaser of the unit. The architect issued the necessary drawings on 28th July, 1989 and, as a result, McAlpine was prevented from doing any work on this slab between 13th and 31st July, 1989, a period of twelve (12) working days.

94. McAlpine had planned to use its formwork, in part, in the following sequence:

(a) From apartment H18, a third floor unit in the main building, to apartment F13, a second floor unit.

(b) From apartment C19, a third floor unit in the main building, to apartment C11, a second floor unit.

(c) From apartment E20, a third floor unit in the main building, to apartment G10, a second floor unit.

95. The finite "as planned" soffit propping and formwork, however, caused the second floor slabs of apartments C11 and G10 to be delayed, awaiting the striking of soffit formwork in the third floor slab" of apartments C19 and E20

96. The above resulted in additional work in the carrying out of operations 5 and 6.

97. As a result of the above events:

(a) Operation 5 was only completed during week 45, or thirteen (13) weeks later than scheduled.

(b) Operation 6 was only completed during week 52, or sixteen (16) weeks later than scheduled.

The progress of the project was further delayed by an expected twenty-five (25) working days up to 18th September, 1989, for a cumulative expected time overrun, on that date, of eighty-seven and one-half (87 1/2) working days, or seventeen (17) weeks and two and one-half (2 1/2) days.

98. The construction programme called for operation 7 (superstructure - third floor to roof level, including fourth floor slab) to begin during week 20 and to end during week 39. Work only commenced on it at the beginning of week 38.

99. The contract drawings called for a mezzanine in apartment F21, a third floor unit in the main building, only. The employer decided to add a loft to apartment E22, a third floor unit as well, in order to accommodate the wishes of the purchaser thereof and the architect issued the necessary drawing on 1st September, 1989, which McAlpine received on 6th September, 1989. No planning approval had been given, at that point, for that loft.

100. The architect instructed McAlpine to proceed to place orders for materials and with the construction of the above loft on 19th September, 1989 (CVI 118). There were, at that point, a number of conflicts and preliminary details which still

needed clarification on the part of the architect and, as a result, the fourth floor slab of apartment E22 was only poured on 23rd November, 1989.

101. The construction of the above slab resulted in additional work and in an expected delay of twenty (20) working days in the progress of operation 7. The additional expected time overrun on the project resulting therefrom was two (2) working days, for a cumulative expected time overrun on the project, on 26th November, 1989, of eighty-nine and one-half (89 1/2) working days or seventeen (17) weeks and four and one-half (4 1/2) days.

102. McAlpine had planned to begin operation 8 (superstructure metal roof frame and ply sheathing) at the beginning of week 31. It could only be commenced in the middle of week 45 on the main building, or fourteen and one half (14 1/2) weeks late. Work had started earlier on the "T" units.

103. The planned sequence of that operation in the main building called for work proceeding from north to south, which was consistent with the actual sequence of construction of the third floor structural work.

104. The roof and window structures of apartments H18 (north) and H24 (south), two third floor units in the main building, were revised on 7th June, 1989 and the main roof steel work, excluding the four (4) main dormers, was complete on 19th September, 1989.

105. A variation was issued on 27th September, 1989 (CVI 138) with respect to the recessed side panels below the dormers and another variation, which called for an increased roofing slope outside the dormer windows, was issued on 31st October, 1989 (CVI 174). The work on these variations lasted a total of approximately four (4) days.

106. A variation was issued on 18th November, 1989 (CVI 197) with respect to the main east and west barrel dormers in the central area of the main building (apartment F21) and to the west barrel dormers in apartments A9 and A17, two second floor units in the main building.

107. The variations referred to in the preceding paragraph led to major problems of drawing conflicts and of design and fabrication, which led, in turn, to another variation (CVI 228), issued on 14th December, 1989, relating to the structural steel frame work of the west barrel dormers. That work was carried out from 15th to 20th December, 1989.

108. McAlpine could not construct the central east and west barrel dormers until another variation was issued on 10th January, 1990 (CVI 237). The work was carried out between that date and 1st February, 1990 and took seventeen (17) days.

109. A variation was issued on 19th September, 1989 (CVI 113) requiring additional structural steel bearing members. Steel work to the roof structure of apartments A17, G16, H18, C19 and C23, the first two units being on the second floor and the last three on the third floor of the main building, was complete when that variation was issued and steel work to the roof structure of apartments A9, G10 (two second floor units) and H24 (a third floor unit) was in progress and was completed on 25th September, 1989. The completed work had to be changed in order to carry out that variation.

110. The erection of structural steel work was further delayed by numerous other changes and additions during construction (CVIs 113, 116, 118 and 178), by a change in the schedule for the erection thereof from May, June and July, 1989 to August, September and October, 1989 and by the carrying out of these changes whilst fitting the sheathing plywood, resulting in four (4) days of additional work.

111. The architect directed the addition of new shallow dormer windows to the grand salons of apartments G10 and G16, two second floor units in the main building, on 3rd September, 1990. This last instruction (CVI 617) was carried out by McAlpine twenty-one (21) weeks after completion of the metal roof frame and seven (7) weeks after the roof sheeting was 95% completed. These variations caused disruption and delay to the fitting out works of apartments G10 and G16 due to the opening up of the roof covering and the taking down of part of the ceiling of the grand salons therein. That work was practically complete by 18th October, 1990. The structural steel, sheathing and felt were complete by 21st September, 1990 with respect to unit G16 and by 25th September, 1990 with respect to unit G10. The sheet metal roofing over these two apartments was replaced and completed by 10th October, 1990 with respect to unit G16 and by 19th October, 1990 with respect to unit G10.

112. The variations represented by CVIs 113, 116, 118, 138, 174, 178, 197, 228 and 237 and the other events set out in paragraphs 102 to 110 herein resulted in an expected delay of forty-seven (47) working days in the progress of operation 8 up to 17th January, 1990, for a cumulative expected delay of thirty-one (31) weeks and one and one-half (1 1/2) days, and in an expected time overrun to the project of sixty-eight and one-half (68 1/2) working days, for an expected cumulative time overrun, up to that point, of thirty-one (31) weeks and three (3) days.

113. McAlpine began requesting, on 20th January, 1989, that the architect make a decision on the colour of the roof sheeting by 28th February, 1989 and, despite numerous subsequent requests, it was only advised of the choice made by the employer on 25th August, 1989.

114. The lack of metal cladding to the roofs and the consequent inability, on the part of the contractor, to permanently waterproof the main building severely hindered progress in the internal finishes and service installations of the apartments.

115. The first delivery of roof panels took place on 17th October, 1989. Operation 10 (standing metal seamed roofing, including flashings and copings), which was scheduled to commence during week 38, thus only began on 19th October, 1989, i.e. during week 59, twenty-one and one-half (21 1/2) weeks late.

116. The expected time overrun on operation 10 was forty-seven (47) working days up to 17th January, 1990, for an expected cumulative delay, on that date, of thirty-three (33) weeks and four (4) days, due to the delays in operation 8. The delay in commencing operation 10 did not itself add to the time overrun on the project.

117. The first sub-contractor for operation 10, D & D Metals Inc., abandoned work on 17th January, 1990, when that operation was forty-eight percent (48%) complete.

118. Work on operation 10 started again on 5th March, 1990, or thirty-three (33) working days later.

119. That interruption resulted in a further expected delay to operation 10, up to 5th March, 1990, of eleven (11) working days. This delay did not, however, add to the time overrun on the project.

120. The architect instructed McAlpine, on 7th February, 1990, to substitute expanded metal lathing over bituminous felt sand/cement render and paint finish for the sheet metal shown on the approved shop drawings for all Palladian window barrel dormers facie details (CVI 279).

121. The architect instructed McAlpine, on 5th April, 1990, to relocate and re-route roof penetrations due to modifications in the original drawings (CVI 375). This variation resulted in additional work and in a further expected delay of thirteen (13) working days in the progress of operation 10 and, thus, adversely affected the progress of operations 22 (stud and gypsum wallboard in partitioning) and 23 (stud and gypsum wallboard in ceilings, including prefabricated domes).

122. CVIs 279 and 375 and other additional work resulted in an expected additional delay of seven (7) working days in the progress of operation 10, up to 9th April, 1990, for an expected cumulative delay, on this operation at that point, of one hundred and eighty-seven (187) working days or thirtyseven (37) weeks and two (2) days. It did not, however, adversely affect the progress of the project .

123. CVI 375 and additional work also resulted in an expected delay of seven (7) working days in the progress of operation 23.

124. Operation 22 began during week 34, four (4) weeks later than scheduled. It was briefly interrupted during weeks 42 and 43 and the early part of week 44. It only began in earnest in the main building, however, during week 47, seventeen (17) weeks later than scheduled.

125. Operation 23 began during week 66, thirty (30) weeks later than scheduled, except for apartment E14 studding which had begun prior thereto but had not been completed.

126. The architect issued, between 25th July, 1989 and 6th June, 1990, i.e. after work had begun on operation 22, ninety-two (92) instructions which required additional work in the normal course of operations 22 and 23 or which caused completed work to be altered, thus increasing the time required to complete these operations. Twenty-nine (29) such instructions were issued to accommodate the wishes of purchasers of various apartments.

127. The above instructions resulted in a further expected delay in the progress of operation 22 of two and one-half (2 1/2) working days, for a cumulative expected delay in the progress of that operation of thirty (30) weeks and one (1) day up to 6th June, 1990. The result was an expected additional time overrun of four (4) working days in the project up to that point, for a cumulative expected time overrun of one hundred and sixty-two (162) working days, or thirty-two (32) weeks and two (2) days.

128. There were numerous conflicts in the information given by the architect to McAlpine relating to the ductwork, lighting fixtures and studding of apartments C3, D4, D5, C6, B7, C11, B12, C15 and A17 which resulted in operation 23 being delayed until the conflicts were resolved and work could be carried out.

129. The architect issued five (5) major instructions relating to operation 23 in the A, B, C and G-type apartments and to apartments D4 and D5 in January, 1990 (CVIs 262, 263, 275, 276 and 278).

130. The architect also issued four (4) major variations, in February and March, 1990, resulting from conflicts between information supplied to McAlpine in connection with the carrying out of operation 23 in apartments C19, A17 and C15 and the structure (CVIs 280 and 288, 285 and 328), which resulted in additional work.

131. There were also conflicts in connection with the services relating to operation 23: they resulted in the issue of six (6) variations (CVIs 301, 306, 323, 342, 345 and 369) which caused additional work to be done.

132. The architect issued, during the course of the work on operation 23 up to 30th July, 1990, ninety-one (91) instructions which required additional work during the normal course of that operation or which caused completed work to be altered, thereby increasing the time required to complete that operation. Thirty-eight (38) of these instructions were issued to accommodate the wishes of purchasers of various apartments.

133. The events set out in paragraphs 128 to 132 above resulted in an additional expected delay of fifty-nine (59) working days to the progress of operation 23 up to 30th July, 1990 for an expected cumulative delay in that operation of one hundred and eighty-one (181) working days or thirty-six (36) weeks and one (1) day up to that point. The result was an additional expected time overrun on the project of twenty-two (22) working days up to 30th July, 1990, for a cumulative expected time overrun, at that point, of one hundred and eighty-four (184) working days or thirty-six (36) weeks and four (4) days.

134. The architect issued, during the course of the work on operation 36 (electrical installations), three hundred and forty-seven (347) instructions relating thereto which required additional work or which caused completed work to be altered, thus substantially increasing the time necessary to complete that operation.

135. The progress of operation 36 was also delayed by the delays in the progress of the work on, inter alia, operations 3, 4, 5, 6, 7, 8, 10, 22, 23, 29, 30 and 32.

136. As a result of the events set out in paragraphs 134 and 135, operation 36 was only completed during week 136, although oddments of work continued subsequently thereto.

137. The project was also delayed by the late nomination of the supplier of the kitchen and vanity cabinets and, later, of kitchen worktop counters and vanities. Moreover, McAlpine began to request, on 10th February, 1989, that the architect make a decision on the colour and finish of the kitchen cabinets, vanity and counter tops by 15th February, 1989 and, despite numerous subsequent requests to that effect, it was only advised of the choice of colours made by GHL on 17th March, 1990. The lack of kitchen cabinets, counters and worktops later caused further delays to the plumbing and electrical fitting out of the apartments and led to a number of variations at the time of the customisation of the units.

138. GHL made a conscious decision, prior to 5th September, 1988, to allow the purchasers of the apartments in The Great House, or at least some of them, to customise their units by making changes to the structure, layout, internal and

external appearance, fittings, services, floors, walls, ceilings, doors, windows, hardware, sanitary fixtures, equipment, carpentry, cabinetry, finishes and other aspects of various units ("the owners' changes") during the course of the construction of the building ("the customisation programme").

139. The decision by GHL to embark upon the customisation programme was bound to result in the impossibility for the contractor to complete the building by any set date unless owners' changes were communicated to the architect and, through him, to the contractor during the early stages of construction.

140. On 20th September, 1988, McAlpine advised GHL that all owners' changes to internal layouts, fittings and services would have to be advised no later than 15th November, 1988 and that colour, tile and wall covering selection would have to be made no later than 15th May, 1989. McAlpine specifically requested GHL to ensure that absolutely no exception be made to the above dates in order to avoid "lengthy delays".

141. McAlpine later extended the deadline for advice of owners' changes in layouts, fittings and services to 9th January, 1989.

142. Despite the fact that GHL and the architect knew full well that owners' changes advised beyond the above dates would result in the impossibility, on the part of the contractor, to complete the building on or before 26th February, 1990, GHL took a conscious business decision to continue to accept and accommodate such changes beyond the above dates and acted upon that decision, thus making it absolutely impossible for McAlpine to complete the building by the date set in the contract, even if there had been no other delay causing events.

143. The architect should have extended the time for practical completion of the building as a result of the above business decision and of the owners' changes which were accepted after the dates set out in paragraphs 140 and 141 hereof. He did not do so and that failure was totally unreasonable. It follows that, for that reason alone, and without taking into consideration the events set out in paragraphs 60 to 137 above, the time to practically complete the building became "at large" and McAlpine, by early 1989, was no longer contractually bound to do so by 26th February, 1990.

144. Moreover, a multiplicity of variations reflecting owners' changes with respect to any operation issued whilst that operation was in progress, and especially those which called for, or resulted in, work already done to be done over, was bound to result in a substantial disruption of the progress of any such operation and of all other operations linked to it and, therefore, in a substantially increased cost of construction and in corresponding losses, expenses and/or damages to McAlpine and to its sub-contractors over and above the value of each such variation.

145. Notwithstanding the above, the architect failed to extend the time to complete the construction of the building and to certify that McAlpine and its sub-contractors had been involved in loss and/or expense which they could not recover under any clause in the conditions other than clauses 11 and 24 thereof, until after the building was practically complete. Such a failure was totally unreasonable.

146. The customisation programme affected the progress and completion of the construction and finishing of apartments A8, A9, G10, F13, C1S, G16, A17, C19, E20, E22, C23, H24 and I25 and the progress of apartment F21. The architect issued

hundreds of instructions to McAlpine with respect to these units which concerned only one of them or only some of them, between 6th December, 1989 and 10th May, 1991. These instructions, collectively, affected the progress of twenty-two (22) operations, although those whose progress was most adversely impacted by them were operations 27 (hang doors and fix hardware), 28 (miscellaneous millwork, including decorative columns and T & G ceiling), 29 (kitchen cabinets, counters and fittings, including equipment), 30 (marble, ceramic tile floor and wall finishes), 31 (sanitary fixtures and fittings, including bathtubs), 32 (painting and decorations), 33 (carpet and vinyl floor finisher), 35 (plumbing installation, including drainage), 37 (air conditioning installations) and 38 (elevator installations (hydraulic)). The following instructions received between December, 1989 and May, 1991 required additional work or caused completed work to be altered. Their total numbers for each unit, the numbers of instructions which gave effect to owners' changes and the first and last dates on which they were issued are as follows:

<u>UNIT</u>	<u>NUMBER OF INSTRUCTIONS</u>	<u>OWNERS' CHANGES</u>	<u>EARLIEST DATES</u>	<u>LATEST DATES</u>
1.	11	2	05/10/90	26/09/90
2.	7	2	04/01/90	26/09/90
3.	13	0	24/01/90	05/09/90
4.	17	3	31/01/90	11/02/91
5.	20	1	31/01/90	04/04/91
6.	9	0	24/01/90	14/09/90
7.	8	0	04/01/90	14/09/90
8.	142	120	06/12/89	10/05/91
9.	71	45	07/12/89	24/01/91
10.	27	9	11/12/89	07/03/91
11.	14	3	24/01/90	09/05/91
12.	14	2	17/01/90	11/02/91
13.	56	34	06/12/89	04/02/91
14.	17	1	07/02/90	11/02/91
15.	38	6	08/01/90	02/04/91
16.	41	23	11/12/89	07/03/91
17.	21	5	03/01/90	07/11/90
18.	45	9	06/12/89	11/03/91
19.	98	70	19/01/90	10/05/91
20.	64	39	23/01/90	09/05/91
21.	142	112	06/12/89	05/04/91
22.	112	70	03/01/90	25/04/91
23.	93	65	19/01/90	27/03/91
24.	39	8	06/12/89	11/03/91
25.	32	11	06/12/89	07/02/91
26.	22	4	06/12/89	07/02/91

(There are some duplications in the above table, since some instructions concerned more than one apartment.)

147. As a result of the delays in the progress and completion of operations 8, 10, 22 and 23 and of the events set out in paragraphs 135 to 138 and 146 hereof:

(a) operation 27 could only begin during week 78, i. e. thirty-three (33) weeks later than scheduled, and was completed during week 108, i.e. forty-seven (47) weeks later than scheduled.

(b) Operation 28 could only begin during week 80, i. e. forty-four (44) weeks later than scheduled, and was completed during week 137, i. e. seventy-three (73) weeks later than scheduled.

(c) Operation 29 could only begin during week 80, i. e. thirty-seven (37) weeks later than scheduled, and was completed during week 114, i.e. forty-eight (48) weeks later than scheduled.

(d) Operation 30 could only begin during week 83, i.e. forty-four (44) weeks later than scheduled, and was completed during week 127, i.e. fifty-seven (57) weeks later than scheduled.

(e) Operation 31 could only begin during week 75, i.e. thirty-nine (39) weeks later than scheduled, and was completed during week 129, i.e. fifty-nine (59) weeks later than scheduled.

(f) Operation 32 could only begin during week 63, i.e. twelve (12) weeks later than scheduled, and was completed during week 129, i.e. fifty-five (55) weeks later than scheduled.

(g) Operation 33 could only begin during week 103, i.e. forty-six (46) weeks later than scheduled, and was completed during week 127, i.e. fifty-three (53) weeks later than scheduled.

(h) operation 35, which had first progressed from week 21 to week 36 for the underground drainage, was interrupted between weeks 37 and 47 and resumed during week 48 for installation work, was only completed during week 137, i.e. seventy-seven (77) weeks later than scheduled.

(i) Operation 38, which had first progressed from week 41 to week 55, was interrupted between weeks 55 and 70 and could only resume during week 71, was only completed during week 98, i.e. twenty-eight (28) weeks later than scheduled.

148. The claimant will say that the building was practically completed on 19th April, 1991 and that the architect should have granted an extension of time until then. He failed to grant any such extension and, indeed, any extension of time at all during the construction of the building and, as a result, the time to practically complete the building became "at large" on 26th February, 1990 and McAlpine ceased, on that date, to be bound to do so on the said date for that reason alone, in addition to the ground set out in paragraph 143 hereof."

24. The works comprised in the Agreement between the Plaintiff and the Defendant were consequentially delayed and disrupted but with the added burden that the Defendant was in control of its own programme whereas the Plaintiff was subservient to the Defendant and obligated to re-direct labour wherever the Defendant chose to progress the delayed and disrupted Main Contract Works.

25. The Defendant, in its Points of Claim (paragraphs 134 and 135 thereof), as set out above, admits that the Plaintiff's works were delayed and disrupted and attributes no blame therefore to the Plaintiff.

26.

a) The Plaintiff says that as the Defendant well knew the effect that the matters set out in the Defendant's Points of Claim had on the work to be done by the Plaintiff under the Agreement between the Plaintiff and the Defendant was as follows:-

i) On or about 17<sup>th</sup> November, 1988, McAlpine and Andro Electric Co. Ltd. ("Andro") entered into a sub-contract under which the latter was to execute the electrical installation in the building for a price of CI\$ 348,936.00, subject to the terms set out in order no. C43/0011 issued by McAlpine to Andro on that date and to the conditions referred to therein and attached thereto, which were identical to the sub-contract conditions. The claimant will refer, at the hearing of the matter, to the said order for it's full terms and legal effect.

ii) Every variation and/or instruction which the Architect issued to M<sup>c</sup>Alpine and which dealt, in whole or in part, with work done or to be done by Andro was passed on by the contractor to the sub-contractor (*Andro, the Plaintiff herein*), which was thereupon bound to abide by such variation and/or instruction.

iii) McAlpine gave Andro the December, 1988 programme when it was issued and the construction programme in January, 1989.

iv) Andro was involved in direct loss and/or expense in amount of CI\$ 524,542.63 as a result of the events set out below and claims reimbursement thereof from McAlpine. That claim is summarised as follows:

a)	Additional Prelims.	CI\$	118,405.48
b)	Extension of Time.		74,634.16
c)	Loss of Productivity		<u>184,510.31</u>
	377,549.96		
d)	Interest on claim since August, 1991 @ 12%		121,992.68
e)	Cost of claim preparation		<u>25,000.00</u>
		CI\$	524,542.64

Andro's claim is detailed, in part, as follows:

a) The Electrical works to a condominium project are normally managed by a production Site Foreman and it was Andro's intention that work on the Great House would be so managed.

Andro would expect its Site Foreman to be primarily engaged in the physical construction of the Electrical Installation for the majority of his time on site. Andro estimated that five percent (5%) of the total manhours required to complete the project would be "prelim" or non-productive supervisory time.

Andro commenced work on 7<sup>th</sup> November, 1988 and received its first instruction to vary the scope of the work nineteen (19) days later on 6<sup>th</sup> December 1988.

The instruction to provide a supply for a garage door opener in one garage only is an excellent example of the hidden complications of even the simplest request. There is no information as to position, circuit number or rating, type of wiring device and/or plate therefor. Andro was unable to assess the cost and/or the programme implications of that instruction without that information but installed a conduit in the slab to keep its options open. The time lost in dealing with, and in preparing for, more than one eventuality in providing the point became a contributory component of the lost productivity and additional prelims section of its claim. There were hundreds of similar situations during the course of the construction of the building.

It became evident that there was a large number of dimensional discrepancies and conflicts between the electrical, plumbing, architectural and structural drawings. These were corrected and clarified by facsimile and memoranda rather than by reproduction of working drawings.

Andro received further instructions to vary the scope of works on 7<sup>th</sup> December, 1988 in the form which was to become the standard for most variations ie. several faxed pages to be

attached to the relevant drawings. It is time consuming and difficult for a production foreman to lay out his work with care and accuracy when referring to a drawing with multiple attached pages of contradictory information. Andro had no way of knowing if all of the relevant sheets were attached to a given drawing at the time of roughing in. More time was wasted double checking that all changes were incorporated into the work.

A damaged set of drawings was difficult to replace and it was also virtually impossible to maintain an effective record of 'as built' for the efficient installation of the wiring at a later stage. Subsequent out-of- sequence changes to the conduit rough-ins made a high proportion of those which Andro produced redundant.

The pressure to maintain a programme which was slipping into delay further increased these difficulties.

The number and frequency of changes to the work, whilst individually simple and inexpensive, had a combined effect, taken together of making it difficult to maintain pricing discipline and impossible to assess meaningful programme impacts. It became impossible for one man to maintain the burgeoning administrative duties of the Electrical Foreman whilst providing adequate site supervision of Andro's electricians. The sub-contractor (*Andro*) therefore assigned a second supervisory foreman to the site on the 13th February, 1989. The prelim manhours increased accordingly.

During March, April and May 1989 the number of CVI's increased significantly and it became apparent that the requirement for increased supervision was permanent. Andro's original estimate of non productive supervisory (prelim) time was four hundred and forty eight (448) manhours. Subsequent variations with a similar estimated ratio have added four hundred and twenty (420) manhours to the prelim total allowed within the Contract Sum as at 27th September, 1991.

The requirement for additional supervision was permanent throughout the project. The relationship between CVI's, variations & dayworks remained proportional throughout the project.

The intimate knowledge of the project which the two foremen retained was indispensable to the future progress of the sub-contractor (*Andro*) and they could not be re-assigned.

The detail of Andro's claim for additional non-productive preliminary manhours is the following:-

Prelim manhours expended - estimated prelim manhours	
= 5,312.5 manhours expended - (448 + 420)	4,444.50 manhours
The 1989 base hourly rate for Andro's Site Foremen was CI\$ 18.00	
The value of this component of the claim is therefore	
4,444.5 x CI\$ 18	= CI\$ 80,001.00
Overhead on above at tender rate of 15%	12,000.15
Profit on combined total of cost plus overhead at tender rate of 10%	9,200.12
Cost of financing additional prelims to contract completion:	
101,201.27 for average of 17 months to August, 1991 at 12%	<u>17,204.22</u>
Additional prelims claim	CI\$ 118,405.48

b) The construction programme called for the project to be complete by 26th February, 1990 with Electrical Works complete three (3) weeks before that date (Week 74). Andro was still active and receiving new instructions until 31st August 1991. The effective extension of time to Andro's programme was therefore eighty-one (81) weeks. With the exception of finance costs to August 1991 the actual time period to be agreed is irrelevant to the amount of Andro's claim which includes the following factors: additional prelim time (included in the preceding

section), increase in tradesman's wages for all manhours expended during the extended contract period and paid statutory benefits of holiday pay, sick pay for operatives and public holidays falling within the extended period. That part of Andro's claim is detailed as follows:

Increase in tradesman's wages, March, 1990 to September, 1991	CI\$	31,219.71
Public holidays paid, March, 1990 to September, 1991		8,016.64
Holiday pay earned from March, 1990 to September, 1991		10,168.61
Sick pay paid, March, 1990 to September, 1991.		<u>2,129.91</u>
Overhead on above at tender rate of 15%		7,730.23
Profit on combined total of cost plus overhead at tender rate of 10%		5,926.51
Cost of financing retention to completion (CI\$ 17,446.80 for fourteen (14) months at 12%)		2,442.55
Cost of working capital to completion (CI\$ 50,000.00 for fourteen (14) months at 12%)		7,000.00
Extension of time claim.	CI\$	74,634.16

c) Andro suffered direct loss and/or expense through loss of productivity as a result of the disruption of the normal progress of the construction of the building caused by a number of factors.

There was the dimensional conflicts between architectural and engineering drawings experienced in the early stages of the project.

There was the impact of a very high percentage of variations which were disruptive to the regular progress of the works in that they were inadequately scheduled and/or coordinated and regularly lacked specific design information such as circuit rating and feed location.

There was the fact that they required Andro to reschedule activities to incorporate work which was critical, to the programme. There was the delayed completion of branch circuit wiring due to late revisions or receptacles which were located in the "home run". There were the delays whilst awaiting clarification of design data following a variation together with further delays on larger items whilst agreeing pricing.

There was the out of sequence rough-in as a result of apartment customization, particularly in the kitchens where heights and locations of previously roughed-in boxes became unacceptable due to revisions to the cabinet layouts.

There was the fact that the routing of conduits became torturous as multiple revisions were made to runs to accommodate revisions such as stud wall re-locations.

There was the fact that wire pulling became more difficult as the number of offsets and bends between junction boxes increased. Where Dayworks were recorded to account for the revision of the conduits, the subsequent wiring time increases could not be assigned to a meaningful record.

Andro was not awarded equitable extensions of time within which to incorporate the changes and, therefore, the project progressed as if it was accelerated.

Each party to the various contracts and sub-contracts, upon receiving an instruction to vary his work, would progress his change with all possible speed so as not to be seen to delay the project further. The change for the one sub-contractor would interfere with the finished work of another, often without the second's knowledge. Adversarial relations developed, thus making proper coordination more difficult to achieve. Corrective action was expensive and unrecoverable under the original instruction and became part of the lost productive time.

Attempts to prevent the above situation developed into regular, lengthy tours of the project by the Architect together with the contractor's and the sub-contractors' supervisory personnel. These contributed to the additional prelim costs, although they resulted in some improvement in coordination.

In summary, the cumulative impact of the changes brought about a gradual but inexorable deterioration in Andro's ability to properly plan and progress its work which, due to the interdependency of its operations had a knock on effect on otherwise unaffected work. The detail of that part of Andro's claim is as follows:

Actual "as built" manhours		34,762.75
"as planned" manhours	minus	8,966.00
Estimated variations manhours	minus	8,063.00
Dayworks	minus	2,593.00
Additional prelims carried above	minus	<u>4,444.50</u>
Total hours of lost productivity	equals	10,696.25
Tender labour cost of CI\$ 12/hr 10,696.25 x 12	=	CI\$ 128,355.00
Overhead on above at tender rate of 15%		19,253.25
Profit on combined total of cost plus overhead at tender rate of 10%		14,760.83
Interest cost of financing cost to contract completion -CI\$ 130,000.00		
for average of fifteen (15) months to August 1991 at 12%		<u>22,141.24</u>
Loss of productivity claim,	CI\$	184,510.31

27. The Defendant included in its Points of Claim against G.H. Ltd. the following two paragraphs as 192. and 193. respectively:-

- a) Any amount which may be found to be due by McAlpine to Andro pursuant to the above claim, less a sum of CI\$ 90,000.00 already paid, would be a direct loss and/or expense incurred by the contractor which would be due to it by GHJ by reason of the events set out in paragraphs 78 to 142, 144, 146 and 147 hereof.
- b) Further and in the alternative, Andro claims the above sum as damages for breach of sub-contract conditions on the ground that it was prevented from commencing, progressing and completing operation 36 as scheduled by reason of the events set out in paragraphs 78 to 142, 144, 146 and 147 hereof and as a result, incurred loss and damage in the amount of CI\$ 524,542.63.

28. The Defendant well knew of the effect which these said matters had on the Plaintiff's Agreement and incorporated them into its said Points of Claim for direct loss and/or expense and/or damages against the Employer.

The Plaintiff will refer at the trial of this action to the Defendant's said Points of Claim against the Employer, dated 20th May 1994 which were sent to the Plaintiff's Attorneys by the Defendant's Attorneys shortly after it was signed by them.

29. By letter dated 26th May 1989 the Plaintiff gave the required notice to the Defendant of having incurred loss and expense as a result of the delays to the Main Contract The Plaintiff advised that it would record the losses and submit a claim in the future.

30. The Defendant did not challenge or refute this notice. On the contrary, the Defendant informed the Plaintiff that it was well aware of the delays alleged by the Plaintiff and had similarly served notice upon the Employer under the Main Contract and was formulating its own claim for an Extension of Time and Loss and Expense.

31. The Defendant further advised the Plaintiff that its claim, when formulated and submitted, would be included with, and carried as, an integral part of the Defendant's Main Contract Claim for recovery of loss and expense and/or damages.

32. In reliance on the matters pleaded in paragraphs 30. and 31. inclusive hereof the Plaintiff continued to make its best efforts to progress with the work with all diligence and to attempt to mitigate its loss and expense in so doing and to record the expenses incurred against the future submission of a claim.

33. By letter dated 28th February 1990 the Plaintiff submitted its first loss and expense claim under the Agreement in the sum of C1\$ 177,774.73. The calculation was derived from the estimated versus actual measured progress of the works at that time which were then approximately 56% complete. The Plaintiff will refer to the said letter of 28th February 1990 at the trial of this action for its full terms and legal effect.

34. The Defendant did not deny or refute the Plaintiff's claim either as to liability or quantum.

35. The Defendant responded to the Sub-contract Claim by continuing to assure the Plaintiff that it would be taken forward in full and incorporated into their own claim under the Main Contract.

36. By letter dated 9th March 1990 the Defendant acknowledged that the Plaintiff had a claim for both an Extension of Time and for Loss and Expense and made suggestions as to how the Plaintiff should prepare and formulate those two claims. The Plaintiff will refer to the said letter of 9th March 1990 at the trial of this action for its full terms and legal effect.

37. The Plaintiff did not receive an interim payment against its account submitted for February of 1990 which would normally have been paid during March.

38. The Plaintiff did not receive an interim payment against his account submitted for March of 1990 which would normally have been paid during April.

39. During this two month period the Plaintiff expended further sums totaling C1\$73,521 in the pursuit of its obligations under the Agreement and as no payments were received under the Agreement then the Plaintiff by letter dated 10th April 1990 gave notice to the Defendant of its intention to suspend work under the said Agreement for the reasons set out therein. The Plaintiff will refer to the said letter of 10th April 1990 at the trial of this action for its full terms and legal effect.

40. Shortly after the said letter of the 10th April 1990 was delivered by the Plaintiff to the Defendant, the Defendant orally made the following proposal to the Plaintiff:-

- a) That in consideration of the Plaintiff's continuing with the works, substantial payments would be made by the Defendant, to the Plaintiff, on account of the Loss and Expense claim which the Plaintiff had submitted.
- b) That the greater part of the eventual value of the claim should be deferred pending settlement of the Main Contract Claim, by Arbitration if necessary.
- c) That the full claim (whatever that might be upon the completion of the project) would be put forward along with the Main Contract Claim and represented to the best of the Defendant's ability, with all the resources at his command and then pursued vigorously by the Defendant all at no cost to the Plaintiff.
- d) That in consideration of the matters set out in (1) and (3) above the Plaintiff would not jeopardize the Main Contract Claim by suspending the works for non payment or by causing or being alleged to cause a further delay and/or disruption for any other Agreement related reason.
- e) That the final settlement of the Sub-contract claim would be proportional to the success the Defendant's Arbitration Award in the Main Contract Claim.

41. The Plaintiff accepted the Defendant's proposal and the following payments were made to the Plaintiff, by the Defendant, pursuant thereto:-

On 27th April 1990	CIS\$ 50,000.
On 5th May 1990	10,000.
On 30th November 1990	<u>30,000.</u>
Total.	CIS\$ 90,000.

42. Further delays and disruptions occurred to the works that the Plaintiff was to perform under the Agreement and the Plaintiff submitted to the Defendant revised calculations of its claimed for loss and expense at various intervals in order that the Defendant should be kept fully aware of the increasing losses and expenses being incurred by the Plaintiff.

43. At no time did the Defendant contest or refute any of those revised calculations as presented to it by the Plaintiff.

44. The Plaintiff fulfilled all of its obligations under the said Agreement and at no time did the Defendant complain, or have cause to complain, about any aspect of the Plaintiff's work, the quality of the said work, or the speed at which the said work was carried out by the Plaintiff.

45. Furthermore the Defendant has never at any time, attached, or sought to attach, any blame to the Plaintiff for the delays and the disruption of the Main Contract Works.

46. The Project was Certified as Practically Complete on 9th July 1991.

47. The period during which the works comprising the Agreement were carried out by the Plaintiff was eventually 140 weeks between 7th November 1988 and 9th July 1991.

This was an increase of 112% over the originally planned period under the agreement between the Plaintiff and the Defendant.

48. A final claim amounting to CI\$ 444,333.90 for loss and expense under the Agreement was submitted by the Plaintiff to the Defendant on 18th September 1991.

49. This final claim was not challenged, refuted and/or denied by the Defendant either as to liability or quantum.

50. On 9th January 1992 the Employer's Quantity Surveyor sent a summary of agreed variations to the Plaintiff's electrical works to a value of CI\$ 103,014.28 which sum when added to agreed fluctuations and Dayworks amounting to CI\$ 80,810.51 brought the Agreement Sum to CI\$ 532,760.79 thus showing an undisputed increase of 52.7 % over the sum original envisaged by the said Agreement.

51. Prior to the 9th January 1992 the Defendant had already paid to the Plaintiff CI\$684,793.12 thereby demonstrating an admission of his liability for a sum greater than the sum that the Architect had certified by that time for the Plaintiff's work.

52. The Defendant therefore itself Certified an increase of 72.5% to the Plaintiff's work plus CI\$90,000 on account against the Plaintiff's loss and expense claim.

53. Although the Architect, as alleged in paragraph 46. certified that the project was Practically Complete on the 9th July 1991 he granted to the Defendant, on the 7th January 1993 an Extension of Time of only 31 weeks the effect of which was that the Contract Completion Date became 9th October 1990. The Architect, by so certifying, was therefore of the opinion that the project should have been completed 9 months before it was actually completed and that the 9 month delay was the Defendant's fault.

54. On 18th February 1993 the Architect Certified CI\$ 342,846.42 of the Defendant's Claim for Loss and Expense which amounted to CI\$ 1,269,287.00. The Architect was therefore of the opinion that the remaining 73% of the Defendant's claimed Loss and Expense was incurred by the Defendant as a result of matters which were its own fault.

55. The Plaintiff is not concerned with whether the Architect's Certificates as referred to in paragraph 53 And 54 hereof are correct or not correct but will rely on the fact that the Architect did make the said decisions referred to herein.

56. A Notice of Arbitration was served by the Defendant upon the Employer and during 1993 the Arbitration process began. The Plaintiff was not directly involved in these matters and was therefore not privy to the precise dates on which the various steps in the Arbitration had to be taken.

57. On 3rd May 1994 the Plaintiff at the request of the Defendant, delivered to the Defendant a fully documented claim for loss and expense including inter alia copies of all time sheet records, weekly labour summaries and graphical analysis of labour expended versus productivity and detailed calculations of the amounts claimed. The Plaintiff will refer to all these documents at the trial of this action for their full terms and legal effect.

58. In January of 1995 the Plaintiff became aware that the Defendant and the Employer had begun negotiations to settle their dispute outside of the Arbitration proceedings but knew nothing of the nature of these negotiations and played no part in them.

59. By letter dated 30th January 1995 the Plaintiff's Attorney wrote to the Defendant's Attorney stating their understanding that a settlement had been reached and expressing the Plaintiff's extreme concern that it's position had been prejudiced. A copy of the award (settlement) which was reached was requested. Confirmation was also sought that the Plaintiff's claim would be met in full.

60. By letter dated 2nd February 1995 The Defendant's Attorneys admitted that although settlement discussions had taken place in London no final agreement had been arrived at. They denied the Plaintiff's entitlement to confirmation that their claims would be met in full.

61. By letter dated 3rd February 1995 the Plaintiff's Attorney requested a review of what had happened in relation to the Points of Claim and further requested that the Defendant tell the Plaintiff how the possible settlement would impact on the Plaintiff's claims. The Plaintiff's Attorneys also asked for an undertaking from the Defendant's Attorneys that they would not seek to rely on limitation points as a defence to the Plaintiff's Claim.

62. The Defendant's Attorney did not respond to any of those requests and so by letter dated 7th March 1995 the Plaintiff's Attorney wrote to the Defendant's Attorneys as follows :-

“We have not yet received proposals in relation to limitation of action arising from nonpayment of contract sums. This is now a matter of some urgency. As you are aware our clients are not anxious to take any step which aggravates the situation but must preserve their rights.

We must ask you, therefore, to provide us with your client's proposals to deal with the question of limitation by close of business on Friday the 10th of March.”

63. By letter dated 9th March 1995 the Defendant's Attorneys gave an undertaking that they would not seek to rely on the expiration of any limitation period(s) in the event of the Plaintiff's instituting proceedings and stated for the first time that the Defendant viewed the Plaintiff's claim as being “entirely without merit”.

64. By letter dated 10th March 1995 The Plaintiff's Attorneys noted the Defendant's position on liability and reminded the Defendant's Attorney that they had earlier indicated that they might be able to inform the Plaintiff of the state of negotiations concerning the Arbitration and how that may affect payment to the Plaintiff.

65. By letter dated 22nd March 1995 the Defendant's Attorneys responded by confirming that negotiations were continuing but a settlement had not then been reached. The Plaintiff, in the light of the Defendant's “categorical position”, was invited to reach its own conclusions as to how any such settlement might affect it.

66. Although the Defendant's claim against the Employer has now been settled outside of the Arbitration the Plaintiff has never been informed by the Defendant that the claim was settled or of the value of the final settlement that was reached in London between the Defendant and the Employer.

67. By letter dated 15th November 1995 the Plaintiff delivered an updated Final Account to the Defendant and requested payment.

68. By the 5th January 1996 the Plaintiff had not received a reply to his letter of 15th November 1995 and on that date the Plaintiff hand delivered, and recorded as received, a demand letter giving the Defendant 14 days to make payment of the claimed sums.

69. On the 8th January 1996 the Defendant hand delivered a letter dated 5th January 1996 purporting to reply to the Plaintiff's letter of 15th November 1995 and requesting details of costs incurred during the course of the project thereby enabling the Defendant's assessment of the Plaintiff's claim.

70. By letter dated and hand delivered on 8th January 1996 the Plaintiff replied to the Defendant in the following terms:-

"I am in receipt of your letter dated 5th January 1996 which was hand delivered at approximately Midday today, 8th January 1996.

As you must be aware we hand delivered a further letter dated 5th January 1996 upon this subject. This letter was signed as received at 10:50 AM on the 5th January.

It is extraordinary that your letter of 5th January purports to be in reply to our letter of 15th November 1995 and completely ignores our letter of 5th January when it is obvious that you must have had our letter in your possession before your letter of the same date was dispatched.

We therefore consider your letter of the 5th January somewhat redundant and we await a reply to our letter of 5th January.

We too are anxious to avoid a dispute but we think that your request for us to provide you with a copy of all documents relating to the costs actually incurred on this Sub-contract must be facetious.

All these documents were provided to you as part of our original claim which was submitted and put forward, by you, with your claim in 1991. They were also reviewed, by you and your Attorneys, in 1994 and were considered meritorious by them at that time.

They formed the basis of Paragraphs 187 to 198 inclusive which you thought fit to include in your Points of Claim against Great House Ltd.

Why then are you asking us to send you documents that you and your Attorneys have seen, reviewed, approved and adopted for the purposes of your claim against Great House. This request must merely be a delaying tactic on your part which we will not countenance.

We are well aware that this material will have to be disclosed on Discovery if this matter is not settled and proceeds to Trial, however, the obligation to make Discovery at the appropriate time is a mutual obligation on the parties to any dispute. If you wish us to make premature discovery to you of the documents in our possession we are of course prepared to

do so but only if you will exchange with us copies of all relevant documents in your possession.

We repeat our contention that you are now, by your conduct, entirely estopped and precluded from denying our claim in its entirety and we repeat the demand contained in the last paragraph of our letter dated 5th January 1996.”

71. By letter dated 30<sup>th</sup> January 1996 and received on the 1<sup>st</sup> February 1996 the Defendant sent a reply to the Plaintiff's letter of the 5th January 1996 and the Plaintiff replied thereto by letter dated 3<sup>rd</sup> February 1996. The Plaintiff will refer to all the said letters mentioned herein at the trial of this action for their full terms and legal effect.

72. The Defendant wrongfully refused and continues to refuse to meet the Plaintiff's claim.

73. In the premises the Plaintiff says that the Defendant's conduct and actions in relation to the Plaintiff's claim as set out herein precludes and/or estops the Defendant from contending that it is not liable to meet the Plaintiff's claim in full.

#### **AND THE PLAINTIFF NOW CLAIMS FROM THE DEFENDANT**

1. the sum of CI\$ 449,923.91 being the amount due to the Plaintiff under the said Agreement including the claim for loss and expense, the full details of which were delivered to the Defendant on 3<sup>rd</sup> and 9<sup>th</sup> May 1994 and are calculated as follows:-

#### **Particulars**

A)		
i)	Contract Sum as at 17th November 1988.	CI\$ 348,936.00
ii)	Variations and Dayworks as at June 1991.	<u>261,238.40</u>
	Sub Total.	610,174.40
iii)	Additional Prelims (Preliminaries) under clause 11(6) and 24.	118,405.48
iv)	Extension of Time under clause 11(6) and 24.	74,634.16
v)	Loss of Productivity under clause 11(6)	184,510.31
vi)	Interest on Claim @ Contract Rate of 12% from August 1991 to 9th May 1994 under clause 30(1)	121,992.68
vii)	Cost of Claim Preparation	<u>25,000.00</u>
	Sub Total as at 9th May 1994.	524,542.63
	Sub total of works done and material supplied.	CI\$ 1,134,717.03
viii)	Less Previous payments made.	<u>( 684,793.12)</u>
	Balance Due as at 9 <sup>th</sup> May 1994	<b><u>CI\$ 449,923.91</u></b>

B) And the Plaintiff claims, under clause 30(1) "interest for overdue amounts" on the said amount of CI\$ 449,923.91 at the Contract rate of 12% per annum as stated in the appendix to the Main Contract and calculated as follows:-.

(i) Interest from the 9th May 1994 until 31st December 1994 being 236 days @ 12% at the contract rate of CI\$ 147.92 per day.	CI\$	34,909.12
(ii) Interest from the 1st January 1995 until 31st December 1995 at the rate of 12%.	CI\$	53,990.87
(iii) Interest from 1st January 1996 until 7 <sup>th</sup> February 1996 being 38 days @ 12% at the contract rate of CI\$ 147.92 per day.	CI\$	5,620.96
Sub-Total Interest	<u>CI\$</u>	<u>94,520.95</u>

C) And the Plaintiff claims further loss being Interest paid to Commercial Banks and other creditors in order to finance the negative cash flow of the project from 28<sup>th</sup> February 1990 until date of filing of this claim i.e. 7<sup>th</sup> February 1996.

CI\$ 158,294.59

**Total amount Claimed.**

CI\$ 702,739.45

2. Alternatively, the Plaintiff claims damages for breach of the express and/or implied terms of the said Agreement by the Defendant in hindering and/or delaying the Plaintiff from performing the works comprised in the Agreement.

### Particulars

a) Total Direct Material Costs.	CI\$	308,689.90
b) Total Direct Labour Costs.	CI\$	413,473.20
c) Calculation of the Plaintiff's overhead attributable to the Great House Contract as a proportion of overall overhead expended by the Plaintiff during the period of the Contract.	<u>CI\$</u>	<u>196,890.12</u>
Sub Total	CI\$	919,053.22
d) Calculation of Lost Profit on the undisputed Contract Sum of CI\$ 610,174.40 at the originally estimated and tendered rate of 10%	<u>CI\$</u>	<u>61,017.44</u>
Sub Total	CI\$	980,070.66
e) Less Previous Payments.	<u>CI\$</u>	<u>( 684,793.12)</u>
Balance Due as at 9 <sup>th</sup> July 1991 (Substantial Completion).	CI\$	295,277.54

- f) Plus Damages being Interest paid to Commercial Banks and other creditors in order to finance the negative cash flow of the project from 28<sup>th</sup> February 1990 until date of filing of this claim i.e. 9<sup>th</sup> February 1996. CI\$ 158,294.59

And the Plaintiff claims Pre-judgment Interest at the rate allowed for the outstanding balance of the account as from 9<sup>th</sup> July 1991 up to the date of filing of this Statement of Claim.

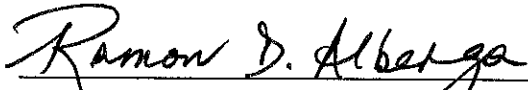
- g) Pre judgment interest from 9<sup>th</sup> July 1991 until 31<sup>st</sup> December 1991 being 174 days at the Rate of 8 3/8 % or \$ 67.35 per day. CI\$ 11,718.90
- h) Pre judgment interest from 1<sup>st</sup> January to 31<sup>st</sup> December 1992 at the Rate of 8 3/8 %per Annum CI\$ 24,581.85
- i) Pre judgment interest from 1<sup>st</sup> January to 31<sup>st</sup> December 1993 at the Rate of 8 3/8 %per Annum CI\$ 24,581.85
- j) Pre judgment interest from 1<sup>st</sup> January to 31<sup>st</sup> December 1994 at the Rate of 8 3/8 %per Annum CI\$ 24,581.85
- k) Pre judgment interest from 1<sup>st</sup> January to 31<sup>st</sup> December 1995 at the Rate of 8 3/8 %per Annum CI\$ 24,581.85
- l) Pre judgment interest from 1<sup>st</sup> January until 7<sup>th</sup> February 1996 being 38 days at the Rate of \$ 67.35 per day. CI\$ 2,559.30
- Sub total of Pre-judgment Interest CI\$ 112,605.60

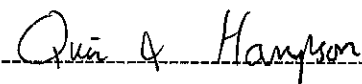
**Balance Claimed.** CI\$ 566,177.73

3. And the Plaintiff claims the costs of and incident to these proceedings.

Dated the 7<sup>th</sup> day of February 1996.

Settled:

  
Ramon D. Alberga Q.C.

  
 -----  
**QUIN & HAMPSON**  
**Attorneys-at-Law for the Plaintiff**

**THIS Writ of Summons** was issued by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff, whose address for service is that of its said attorneys-at-law, 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*

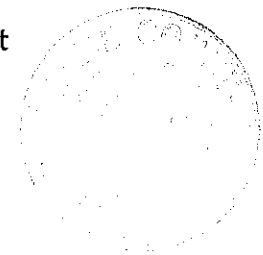
*Please complete overleaf*

## 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.

BETWEEN: ANDRO ELECTRIC CO. LTD. Plaintiff

AND: McALPINE 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.

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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

---

Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

Address for service:

*Please complete overleaf*

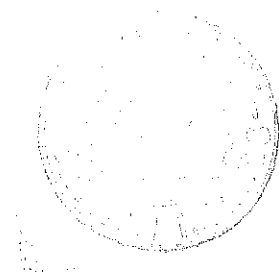
## Notes on address for service

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.*