

IN THE GRAND COURT OF THE CAYMAN ISLANDS



Case No. 513 OF 1996

BETWEEN: UBC LIMITED

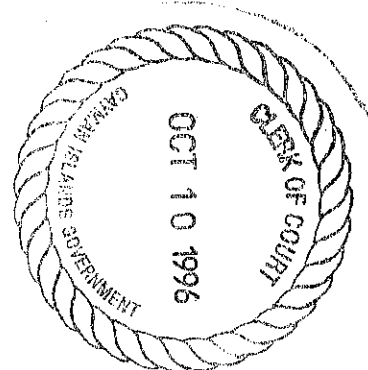
Plaintiff

AND: NOELL, INC.

Defendant

WRIT OF SUMMONS

TO: NOELL, Inc.
2411 Dulles Corner Park
Suite 410
Herndon, VA 22071
United States of America



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next pages.

Within _____ 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 495, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

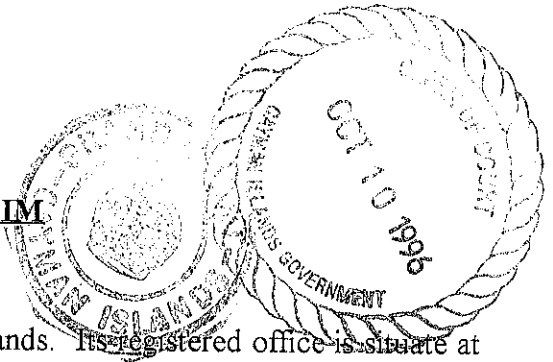
Issued this *10th* day of *October*, 1996.

NOTE - This Writ may not be served later than six (6) calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

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

STATEMENT OF CLAIM



1. The plaintiff is a company formed in the Cayman Islands. Its registered office is situate at Campbell Corporate Services Ltd., P.O. Box 268, George Town, Grand Cayman.

2. The plaintiff's name was changed, on 8th January, 1996, from Unit BCM Cape Ltd. to UBC Limited. All contracts and negotiations entered into by the plaintiff with the defendant were in the plaintiff's former name. The words "the plaintiff" herein mean both Unit BCM Cape Ltd. and UBC Limited.

3. The defendant is a corporation formed in one of the United States of America and has its principal office at 2411 Dulles Corner Park, Suite 410, Herndon, state of Virginia, one of the United States of America.

4. The defendant, either by itself or through its wholly-owned Cayman subsidiary company, NOELL Power (Cayman) Ltd., was a member of a consortium or joint venture which was awarded a contract by Caribbean Utilities Company, Ltd., in 1995, to provide and install certain equipment, and to perform related works, in Grand Cayman ("the contract"). The plaintiff cannot provide further and better particulars of this averment until after it has obtained discovery from the defendant.

5. The defendant was the manager of the said consortium or joint venture.

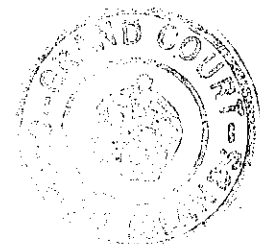
6. The defendant or the members of the said consortium or joint venture awarded to CIDESA Group International, Inc. and/or to its wholly-owned Cayman Islands subsidiary company, America Power Services Ltd. (collectively "CIDESA"), in 1995, a sub-contract for the supply of materials and labour with respect to certain works covered by the contract. The plaintiff cannot provide further and better particulars of this averment until after it has obtained discovery from the defendant.
7. CIDESA, in turn, awarded sub-sub-contracts to the plaintiff between July and November, 1995 to provide materials and labour with respect to the works covered by the contract (the "sub-sub-contracts").
8. CIDESA accordingly honoured payments due to the plaintiff as invoiced under the sub-sub-contracts up to the sub-sub-contract dated 20th October, 1995.
9. CIDESA failed to make certain payments due to the plaintiff no later than 11th November, 1995 under the terms of the sub-sub-contracts.
10. The plaintiff accordingly came to the conclusion that it no longer could or would continue to supply materials and labour under the sub-sub-contracts.
11. The defendant had a substantial interest in the performance by the plaintiff of the sub-sub-contracts for the reasons set out in paragraphs 3 to 6 hereof. It accordingly, on or about 31st October, 1995, guaranteed the payment to the plaintiff of all sums due and to become due to it by CIDESA.

12. The above guarantee ("the guarantee") was given in the Cayman Islands. It relates to the supply of materials and labour on these Islands under sub-sub-contracts entered into there. The guarantee is accordingly governed by the laws of the Cayman Islands.
13. The defendant acknowledged the said guarantee by its letter to the plaintiff of 5th December, 1995, which was written in response to the plaintiff's letter to the defendant of that date. The plaintiff will refer, at the trial of the action, to the said letters for their full terms and legal effect.
14. The plaintiff, acting strictly in reliance upon the guarantee, continued to supply materials and labour under the sub-sub-contracts until completion thereof.
15. The plaintiff would not have continued to supply materials and labour under the sub-sub-contracts after it received the guarantee if it had not been given by the defendant.
16. CIDESA failed to make certain payments due to the plaintiff no later than 7th December, 1995 under the terms of the sub-sub-contracts.
17. As a consequence of CIDESA's failures to pay as set out in paragraphs 9 and 16 hereof, the plaintiff is owed the sum of US\$116,320.78 under the sub-sub-contracts. The plaintiff began proceedings against CIDESA before the Grand Court in Cause No. 17 of 1996 and obtained judgment against the latter, on 8th February, 1996, for the amount of US\$116,320.78, interest thereon at the rate of 8 3/8 percent per annum from that date and fixed cost of CI\$500.00 ("the judgment"). That judgment has never been satisfied, in whole or in part.

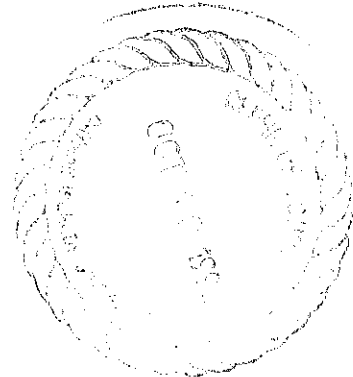
18. Despite the fact that the rate of post-judgment interest under the above judgment is 8 3/8 percent per annum, the plaintiff claims such post-judgment interest at the rate of 7 3/8 percent per annum only.
19. As of 1st August, 1996, CIDESA owed the plaintiff, under the judgment, the sums of US\$116,320.78, being the judgment debt, of US\$4,115.84 as post-judgment interest and of US\$609.76, the equivalent of CI\$500.00, as fixed costs, for a total of US\$121,046.37.
20. The defendant is therefore indebted towards the plaintiff in the said sum of US\$121,046.37 under the guarantee.
21. The defendant was, at all relevant times, fully aware that the plaintiff continued to perform the sub-sub-contracts strictly because it had obtained the guarantee and, as a result, it is estopped from denying the existence thereof and from alleging that there was no consideration therefor.
22. The plaintiff has called upon the defendant to honour its above guarantee and to pay it the sums due by CIDESA under the said judgment and the defendant has refused to do so.

AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:-

- (a) AN ORDER for the payment by the defendant to the plaintiff of the sum of US\$121,046.37.



- (b) PRE-JUDGMENT interest at the rate of 7 3/8 percent per annum or at such other rate as may be determined from time to time under the provisions of sec. 34 of The Judicature Law (1995 revision).
- (c) POST-JUDGMENT interest at the rate of 7 3/8 percent per annum or at such other rate as may be determined from time to time.
- (d) FURTHER and/or other relief.
- (e) COSTS.



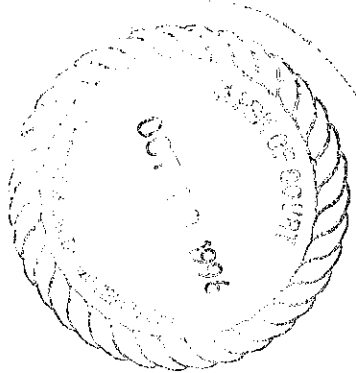
STATEMENT REGARDING INTEREST:

- (i) The rate of the interest claimed is 7 3/8% per annum.
- (ii) The date from which interest is calculated is 1st August, 1996.
- (iii) No pre-action interest is claimed.
- (iv) The amount of interest accruing each day thereafter is US\$24.47.

If, within the time for returning the Acknowledgement of Service, the Defendant pays the total amount claimed of US\$122,261.35 (which sum includes costs of CI\$496.28 or US\$605.23 as filing fees and fixed costs of CI\$500.00 or US\$609.75), further proceedings will be stayed. The money must be paid to the plaintiff or its attorneys.

Dated this 10th day of October, 1996

Charles Adams, Ritchie & Duckworth
Charles Adams Ritchie & Duckworth
Attorneys-at-law for the plaintiff



THIS WRIT OF SUMMONS was issued by Charles Adams, Ritchie & Duckworth, the attorneys-at-law for the plaintiff, whose address is Zephyr House, P.O. Box 709, George Town, Grand Cayman, Cayman Islands, B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 1996

BETWEEN: UBC LIMITED Plaintiff

AND: NOELL, INC. Plaintiff

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

___ yes ___ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

___ yes

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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.

Charles Adams, Ritchie & Duckworth
Attorneys-at-Law
P.O. Box 709
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.

FILED BY: CHARLES ADAMS, RITCHIE & DUCKWORTH, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I.

**DIRECTIONS FOR ACKNOWLEDGEMENT 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 495, 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 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 Acknowledgement 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 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 authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.