

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 497 OF 2006

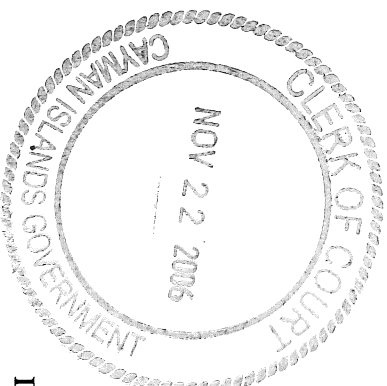
B E T W E E N:

KIRKCONNELL BROTHERS LTD.

AND

Plaintiff

1. D & R CONSTRUCTION LTD.
2. DANIEL CLARKE
3. KEN W. RITCH



Defendants



WRIT OF SUMMONS

TO: **D & R Construction** &
PO Box 876
Grand Cayman KY1-1103
CAYMAN ISLANDS

Daniel Clarke & Ken W. Ritch
PO Box 546
Grand Cayman KY1-1303
CAYMAN ISLANDS

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

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, Grand Cayman, KY1-1106, 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 judgment may be entered against you forthwith without further notice.

Issued this 21st day of November 2006

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

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

STATEMENT OF CLAIM

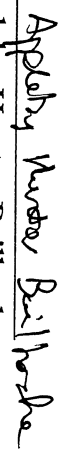
1. The Plaintiff is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's registered office is PO Box 72, Grand Cayman, KY1-1102, Cayman Islands.
2. The First Defendant is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The First Defendant's registered office is PO Box 876, Grand Cayman, KY1-1103, Cayman Islands.
3. The Second Defendant and Third Defendant are individuals who reside in the Cayman Islands with a mailing address of PO Box 546, Grand Cayman, KY1-1303, Cayman Islands.
4. The First Defendant entered into a credit agreement with the Plaintiff on or about 18 December 1995 (the "**Credit Agreement**"). The terms of the Credit Agreement were, *inter alia*, as follows:
 - a. That the Plaintiff would advance credit to the First Defendant;
 - b. That upon receipt of a statement at the end of each month the First Defendant would settle the account within 10 days;
 - c. That interest would accrue on unpaid balances after 30 days from the date of the statement at the rate of 18% per annum;
 - d. That credit privileges can be cancelled at any time by the Plaintiff without notice and if the account becomes in default or credit limits are exceeded.
5. The Plaintiff advanced credit to the First Defendant from time to time in accordance with the terms of the Credit Agreement.

6. The First Defendant defaulted on the terms of payment and as of the date of the commencement of this proceeding the First Defendant, pursuant to the terms of the Credit Agreement, owed to the Plaintiff the sum of CI\$28,731.31 plus interest of CI\$4,904.96, exclusive of costs for a total of CI\$33,636.27. Interest on that sum continues to accrue at the rate of CI\$14.17 per day.
7. The Second and Third Defendants personally guaranteed payment in full of the charges incurred by the First Defendant pursuant to the Credit Agreement by signing a Personal Guarantee on or about 18 December 1995. The terms of the Personal Guarantee were, *inter alia*, as follows:
 - a. That the Second and Third Defendants would guarantee payment in full without reservation of all the accounts, charges, obligations or debts due to the Plaintiff by the First Defendant in accordance with the terms of the Credit Agreement;
 - b. That the Personal Guarantee shall remain in full force and effect even after the First Defendant has changed ownership or the form of its business;
 - c. That the Personal Guarantee is a continuing guarantee.
8. Notwithstanding the demand for payment pursuant to the terms of the Credit Agreement, and demands made of the Second and Third Defendants as guarantors, the Defendants have either failed or neglected to make payment to the Plaintiff.
9. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$28,731.31 being the principal sum due;
- b) CI\$4,904.96 interest calculated to 21 November 2006 at the rate of 18% per annum in accordance with the terms of the Credit Agreement;
- c) Pre and post judgment interest from 22 November 2006 at the rate of 18% per annum in accordance with the terms of the Credit Agreement;

- d) Alternatively, pre and post judgment interest in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- e) Costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and
- f) Such further and other relief as this Court may deem just.



 Appleby Hunter Bailhache
 Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$28,731.31 plus interest of CI\$4,904.96 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$200.00 plus ad valorem fees of CI\$187.31. If, within the time for returning the acknowledgement of service, the defendants pay the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

INDORSEMENT REGARDING INTEREST

- 1. The contractual term upon which interest is claimed is as set out in paragraph 4 (c) above;
- 2. The prescribed rate of interest is 18% per annum;
- 3. The date from which interest is payable is 30 September 2005;
- 4. The total interest claimed as at 21 November 2006 is CI\$4,904.96; and
- 5. The amount of interest accruing due each day is CI\$14.17.

This WRIT OF SUMMONS was filed by Appleby Hunter Bailhache, Attorneys-at-Law for the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (ref: CJJ/09431.084)

Acknowledgment of service of writ of summons (O.12, r.3)

**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 each Defendant or by each Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

*See over for notes for guidance
Please complete overleaf*

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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.

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 communication 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.

Appleby Hunter Bailhache
Attorneys-at-Law
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104

Ref: CJJ/09431.084

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

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