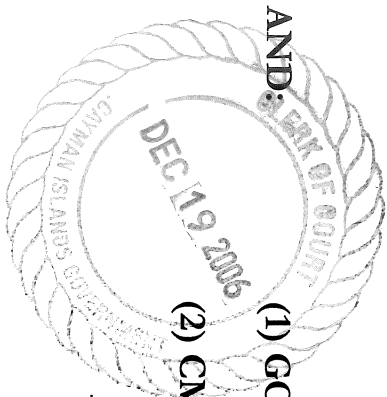


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CAUSE NO. 548 OF 2006

BETWEEN: (1) DAVID RANKIN

(2) PARAMOUNT CARPETS SALES AND SERVICES  
LTD

PLAINTIFFS



(1) GODFREY DAWKINS  
(2) CMA MERCHANTS AND ASSOCIATES

DEFENDANTS

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WRIT OF SUMMONS

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TO: GODFREY DAWKINS  
CMA MERCHANTS AND ASSOCIATES  
P.O. Box 31384 SMB  
Eastern Ave., George Town  
Grand Cayman, 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, 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 14<sup>TH</sup> day of December 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 Acknowledgment of Service are given with the accompanying form.

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## STATEMENT OF CLAIM

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1. The 1<sup>st</sup> Plaintiff was at all material times a Manager of the 2<sup>nd</sup> Plaintiff. The second Plaintiff was at all material times carrying on business as an installer and retail supplier of construction materials.
2. The 1<sup>st</sup> Defendant was at all material times the controlling director of the 2<sup>nd</sup> Defendant whose principal office is Eastern Ave. George Town, Grand Cayman, Cayman Islands. The 2<sup>nd</sup> Defendant was at all material times carrying on business as a wholesale supplier of windows and doors.
3. In about June 2006, the 1<sup>st</sup> Plaintiff and 2<sup>nd</sup> Plaintiff were minded to acquire a certain quantity of windows and doors which were being imported by the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant.
4. In about July 2006, the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant provided the 1<sup>st</sup> Plaintiff and 2<sup>nd</sup> Plaintiff with samples of the quality of windows which the 1<sup>st</sup> Defendant and/or the 2<sup>nd</sup> Defendant would supply to the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff should the parties be able to reach a mutual agreement. Further thereto, the 1<sup>st</sup> Defendant demonstrated to the 1<sup>st</sup> Plaintiff, on the sample window, that the windows and doors were solid and sturdy and they had strong seals and moldings and that they were easy to open and close and the tension in the windows was very loose.
5. On or about July 2006, the 1<sup>st</sup> Defendant for himself and or for and on behalf of the 2<sup>nd</sup> Defendant represented to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs that the windows and doors, which would be provided to the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff would exceeded local specifications required under the Planning Law in terms of their ability to withstand hurricane force winds.
6. Induced by those representations and the demonstratations, in July 2006, the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff agreed to purchase 1400 windows and doors from the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant and the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant agreed to (i) sell and (ii) supply and (iii) deliver windows (the Windows) and doors (the “Doors”) to the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff (the Agreement).
7. The existence of the Agreement is evidenced by the invoices of the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Plaintiff. Full particulars of Windows and Doors which were to be delivered in accordance with the Agreement full particulars of which will be provided at trial.
8. At the time of the Agreement, the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant well knew that the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Plaintiff were buying the Windows and

Doors for installation into construction projects on the island as well as for retail sale from the 2<sup>nd</sup> Plaintiff's offices in Cayman Brac.

9. It was an express condition of the Agreement that the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant would supply double doors in frames.
10. It was also an express condition of the Agreement were that the Windows exceeded local planning requirements in terms of their ability to withstand hurricane force winds.
11. There were implied conditions (implied by law) of the agreement as follows:
  - a. That the Windows would correspond to the sample in that the Windows were sturdy and that the Windows had a strong seals and moldings and that they were easy to open and close.
  - b. That the Windows would be reasonably fit for the purposes for which they were intended and that they would be of satisfactory quality sufficient enough to be properly insulated and appropriate to keep out the elements and or withstand hurricane force winds and rain.

These conditions were implied by the Sale of Goods Law (as Revised).

12. In pursuance of the Agreement the Plaintiff paid the Defendants the sum of US\$11,441.96 and the Defendants delivered the Windows and Doors to the Plaintiff.
13. In breach of the express conditions of the Agreement, the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant supplied triple doors in frames as opposed to double doors in frames. Also, in breach of the express conditions of the Agreement, the Windows and Doors did not meet and exceed local specifications under the Planning Law (as Revised) in terms of their ability to withstand hurricane force winds and rain.
14. In breach of the implied conditions of the Agreement, the Windows did not correspond to the sample and the Windows were not fit for the purposes for which they were intended for the reasons set out below.

Particulars of the Windows not corresponding to the sample and not being fit for the purpose for which they were intended

- a. As for the Windows, contrary to the 1<sup>st</sup> Defendant's representations, many windows frames broke or otherwise fell apart; the glass window panes were falling out of the moldings and or castings, the windows did not seal properly when closed, the windows were nearly impossible to close once opened and the tension in the windows was too tight.

15. In breach of the implied conditions of the Agreement, the Doors were not fit for the purposes for which they were intended for the reasons set out below.

Particulars of the Doors not being fit for the purpose

a. The Doors, they did not close or lock properly, there were no seals on the doors and they vibrated once installed. They did not open and close properly if at all.

16. By reason of the said breaches of the express and or implied conditions, the Plaintiff was entitled to reject the Windows and Doors goods and did so by the letters from his Attorneys dated 2<sup>nd</sup> October 2006 and 14<sup>th</sup> October 2006 at which time the 1<sup>st</sup> Plaintiff also demanded that the 1<sup>st</sup> Defendant and or 2<sup>nd</sup> Defendant repay the sum of US\$ 111,441.96. Notwithstanding such rejection, the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant has refused or otherwise failed to take back of the goods or to repay the sum of US\$111,441.96.

17. By reason of the said breach the Plaintiff has suffered loss and damage in that the Plaintiffs were unable to use the Windows on the construction projects and they had to source windows and doors from another provider in order to meet his deadlines.

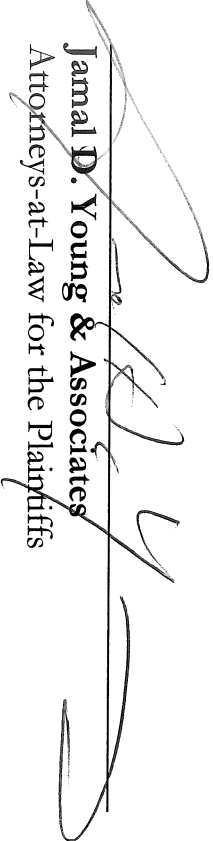
18. Also by reason of the said breaches, the Plaintiffs lost profit as the 2<sup>nd</sup> Plaintiff lost an opportunity to supply the Windows and Doors from their offices in Cayman Brac;

19. The breaches of the Agreement have been acknowledged and or agreed to both orally and in writing by the 1<sup>st</sup> Defendant and or the 2<sup>nd</sup> Defendant and or their agents representatives and employees.

The 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Defendant claims against the First and/or Second Defendants,

- 1) The return of the purchase price and/or Damages to be assessed
- 2) Interest Pursuant to the Judicature Law and Judgment Debts (Rates of Interest) Rules.
- 3) Costs to be taxed if not agreed.
- 4) Such further an other relief as the Court deems fit.

If within the time for returning the Acknowledgement of Services, the Defendant pays the total amount claimed (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiffs or his Attorneys.



**Jamal D. Young & Associates**  
Attorneys-at-Law for the Plaintiffs

Filed by Jamal D. Young & Associates, Attorneys-at-Law for and on behalf of the Plaintiffs herein, whose address for service is situated at Rankin's Plaza, 21 Eclipse Drive, P.O. Box 1431 GT, George Town, Grand Cayman, Cayman Islands.

**Acknowledgement of writ of summons (0.12, 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 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2006

548

BETWEEN: (1) DAVID RANKIN

(2) PARAMOUNT CARPETS SALES AND SERVICES LTD. AND

PLAINTIFFS

AND: (1) GODFREY DAWKINS

(2) CMA MERCHANTS AND ASSOCIATES

DEFENDANTS

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)

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yes  no

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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  no

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Service of the Writ is acknowledged accordingly

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(Signed).....

Attorney for

**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.

Jamal D. Young & Associates  
Rankin's Plaza, 21 Eclipse Drive  
P.O. Box 1431 GT,  
George Town, Grand Cayman  
Cayman Islands

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

