

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 124 OF 2008

B E T W E E N:

NATIONAL CONCRETE LTD.

Plaintiff

AND:

APEX GENERAL CONSTRUCTION LTD.

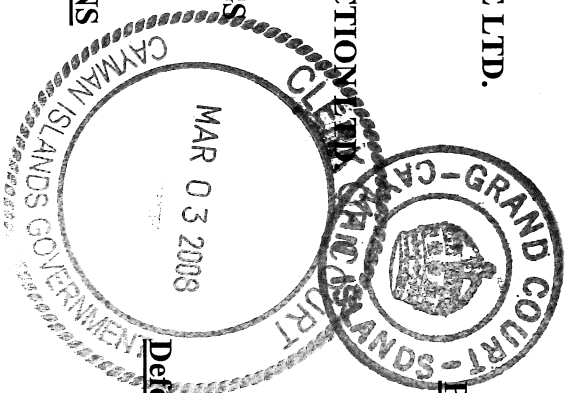
Plaintiff

AND:

WESPIE MULLINGS

Defendants

WRIT OF SUMMONS



To: **APEX GENERAL CONSTRUCTION LTD**, PO Box 10490, Grand Cayman KY1-1005, Grand Cayman, Cayman Islands.

And To: **WESPIE MULLINGS**, P.O. Box 10490, Georgetown, Grand Cayman, KY1-1005.

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 service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, PO Box 495 GT George Town, Grand Cayman, the accompanying 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 3rd day of March 2008.

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is an incorporated company doing business as a cement producer and distributor, with an address for service at P.O. Box 866, Georgetown, Grand Cayman, KY1-1103.
2. The Defendant, Apex General Construction Ltd is, to the best of the Plaintiff's knowledge an incorporated company with a mailing address of P.O. Box 11171, Airport Post Office, Grand Cayman ("Apex").
3. The Defendant, Wespie Mullings ("Mullings") is a businessman whose residence address is unknown to the Plaintiff, and is a guarantor of Apex, under certain agreements made between Apex and the Plaintiff.
4. To the best of the Plaintiff's knowledge, at all material times, Mullings was a director, officer or the directing mind of Apex.
5. On and after October 6, 2003, the Defendants entered a series of agreements with the Plaintiff, with some of those agreements being in writing, some being oral, and some being made by conduct and/or as a result of a course of dealing between the Plaintiff and the Defendants, particulars of which are set out below.
6. On or about October 6, 2003, the Plaintiff and the Defendants entered the first of these agreements, whereby the Plaintiff would extend general credit to the Defendants for the purchase and delivery of liquid cement to various locations in the future, and in consideration, the Defendants would pay the amounts demanded by the Plaintiff in invoices sent to the Defendants (the "Credit Agreement").

7. It was a term of the Credit Agreement that Mullings personally guaranteed to pay the Plaintiff all accounts, charges, obligations and debts incurred by Apex.
8. It was a further term of the Credit Agreement that the Defendants would pay the monies invoiced within 10 days of the date of the invoices, and if those monies were unpaid after 10 days, the Defendants would pay a service charge of 1.5% of the invoice balance each month.
9. On or about May 21, 2006, the Defendants and the Plaintiff entered an agreement which was partly oral and partly by course of conduct between the parties. That agreement was for the provision of cement products and services from the Plaintiff, which totalled C1\$8,676.00. On or around May 21, 2006, the Plaintiff sent the Defendants an invoice numbered 0028022-IN, in respect of this amount.
10. On or about June 10, 2006, the Defendants and the Plaintiff entered an agreement which was partly oral and partly by course of conduct between the parties. That agreement was for the provision of cement products and services from the Plaintiff, which totalled C1\$7,866.00. On or around June 10, 2006, the Plaintiff sent the Defendants an invoice numbered 0028250-IN, in respect of this amount.
11. On or about June 18, 2006, the Defendants and the Plaintiff entered an agreement which was partly oral and partly by course of conduct between the parties. That agreement was for the provision of cement products and services from the Plaintiff, which totalled C1\$6,526.00. On or around June 18, 2006, the Plaintiff sent the Defendants an invoice numbered 0028317-IN, in respect of this amount.
12. In so far as these agreements were made partly by conduct, the conduct consisted of, or is to be inferred by the following:

- a. At all material times, the Defendants knew that the Plaintiff used a standard form printed invoice to confirm the delivery of, and indebtedness resulting from an oral order for cement products and services;
- b. At all material times, the Defendants knew that the Credit Agreement applied to any subsequent oral agreements or agreements made by a course of dealing.

13. In or around June 13, 2006, Apex paid C1\$842.75 towards the total outstanding amounts from invoices 0028022-IN, 0028250-IN, and 0028317-IN.

14. In or around December 28, 2006, Apex paid C1\$2,000 towards the total outstanding amounts from invoices 0028022-IN, 0028250-IN, and 0028317-IN.

AND THE PLAINTIFF CLAIMS:-

- (i) C1\$20,225.25 in respect of amounts unpaid;
- (ii) C1\$2,732.94 in respect of interest owing to February 28, 2008 on Invoice 0028022-IN;
- (iii) C1\$2,359.80 in respect of interest owing to February 28, 2008 on Invoice 0028250-IN;
- (iv) C1\$1,957.80 in respect of interest owing to February 28, 2008 on Invoice 0028317-IN;
- (v) Interest pursuant to the *Judicature Law (2004 Revision)*;
- (vi) Costs, disbursements and all legal expenses on a solicitor/own client basis, pursuant to the Credit Agreement;
- (vii) Such further and other relief as this Honourable Court deems just.

If, within the time for returning the Acknowledgement of Service, the Defendant pays the total amount claimed of CI\$27,275.79 (plus interest, costs, disbursements and legal expenses, further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.

 Truman Boddien + Co^{ca}

TRUMAN BODDIEN & COMPANY

Attorneys-At-Law for the Plaintiff

Dated this 3rd day of March 2008

Filed this 3rd day of March 2008

THIS WRIT was issued by Truman Boddien & Company, PO Box 866, George Town, Anderson Square Building,
Shedden Road, Grand Cayman, Cayman Islands, BWI

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

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.

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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgement of service.
3. 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.
4. 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 named stated on the Writ of Summons*)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
9. 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. 127 OF 2008

B E T W E E N:

NATIONAL CONCRETE LTD.

Plaintiff

AND:

APEX GENERAL CONSTRUCTION LTD.

AND:

WESPIE MULLINGS

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.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.
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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*)

Yes No

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

Yes No

Service of the Writ of Summons 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 the does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

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

Truman Bodden & Company
PO Box 866GT
Anderson Square Building
George Town
Grand Cayman
Ref: MAH/368-10

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