

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 242 OF 2020

BETWEEN:

RABSCO INC.

Plaintiff

AND:

SURESH PRASAD

Defendant

WRIT OF SUMMONS



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 Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

Issued:

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.

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** is filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address for service is Harbour Place, 103 South Church St., Grand Cayman, Cayman Islands (Ref. M1081-001)

STATEMENT OF CLAIM

Parties

1. The Plaintiff, Rabsco Inc. (**Rabsco**) is a company incorporated in the Cayman Islands with registered office situated at Five Continents Partners Limited, 4th Floor Anderson Square, 64 Shedden Road, P.O. Box 10324 Grand Cayman, KY1-1003, Cayman Islands.
2. The Defendant Mr. Suresh Prasad (**Mr Prasad**) of Le Bleu (the Blue House), Britannia Estates, Britannia Drive, PO Box 127, Grand Cayman, Cayman Islands, KY1-1601, is formerly the sole director of Midland Acres Limited ("the **Company**"), which is now in Official Liquidation.

The Agreement

3. The parties entered into an agreement dated 1 January 2009 (the "**Agreement**") pursuant to which Rabsco took an assignment of a debt that the Company previously owed to Brasco Limited ("**Brasco**") which Mr Prasad had guaranteed. The aggregate amount of the debt assigned was US\$9,204,355 and pursuant to clause 2 (i) of the Agreement the debt "*shall bear interest, both before and after maturity, default and judgement at the rate of 12% per annum, which interest to the extent unpaid shall compound annually...*"
4. Under clause 2(ii) of the Agreement, the indebtedness and all interest accrued on it was payable by the Company to Rabsco "*sixty (60) days after written demand is made by or on behalf of Rabsco*"

Official Liquidation

5. On 12 May 2017 a formal written demand in accordance with clause 2 (ii) was served on the Company.
6. The Company did not pay its debts to Rabsco under the terms of the Agreement and was consequently placed into official liquidation by the Cayman Grand Court by the order of Parker J dated 7 September 2020.
7. The monies owed to Rabsco have not been paid and remain outstanding.

The Guarantee

8. The Agreement contains at clauses 7.1, 7.2, and 7.3 a personal guarantee given by Mr Prasad (the "**Guarantee**").

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9. Clause 7.1(b) provides as follows:

"Suresh hereby absolutely and unconditionally guarantees to Rabsco the due and punctual payment by Midland Acres of the Indebtedness and all interest accruing thereon, and the due and punctual performance by Midland Acres of all covenants and agreements of Midland Acres in favour of Rabsco which are set forth in this Agreement."

10. Clause 7.3 adds:

"In the event any demand is made upon a guarantor to pay or perform under a guarantee of that guarantor which is set forth in section 7.1, then the obligations in that regard of such guarantor shall be construed as if that guarantor had been a principal covenantor and not a surety."

11. Further, Clause 7.2 makes it clear that the Guarantee was to impose liability on Mr Prasad regardless of any actions that may have been taken by Rabsco:

"The liability of a guarantor under any guarantee set forth in Section 7.1 shall not be affected by any indulgence, whether of time for payment or otherwise, on the part of the one of RABSCO and BRASCO in whose favour such guarantee is provided (the "Indemnatee"), and shall remain in full force and of full effect notwithstanding that the Indemnatee may do any act or omit to do any act which otherwise would, as a result of the operation of law, partially or wholly relieve that guarantor from the liability of that guarantor under such guarantee or otherwise mitigate such liability. Without limiting the generality of the foregoing, the Indemnatee shall not be obliged to make any demand against, pursue any action against or exhaust its remedies against the party hereto (the "Principal") the obligations of which are guaranteed by the guarantee in question, before making demand upon and taking any action against the guarantor in respect of that guarantee, and may take and give up security for the payment of and/or other guarantees of payment or performance of any of such obligations, or of any other obligations of the Principal, and may accept compositions from and may otherwise deal with the Principal or with any other guarantor, without relieving the guarantor from the liability of that guarantor under the guarantee in question or otherwise mitigating such liability, and such guarantor shall remain liable under such guarantee notwithstanding any disability or lack of status or power of the Principal or any impediment whatsoever to the Indemnatee obtaining payment or performance of the sums or obligations, or any of them, the payment or performance of which are guaranteed by such guarantee."

12. Notwithstanding that the Agreement does not require it, on 17 September 2020 Rabsco made demand of Mr Prasad as Guarantor under the Guarantee, for payment of all debts

owing by the Company to Rabsco as at, 17 September 2020 plus all interest accrued.

13. Mr. Prasad as Guarantor has failed to make payment to Rabsco in response to this demand.

AND THE PLAINTIFF CLAIMS:

1. US \$35,017,406 being the principal sum due as of 20 October 2020;
2. Interest compounding at 12% until payment;
3. Costs; and
4. Further or other relief.

Dated this 20th day of October 2020

Travers Thorp Alberga

Travers Thorp Alberga
Attorneys-at-law for the Plaintiff

TO: Suresh Prasad, Le Bleu (the Blue House), Britannia Estates, Britannia Drive,
Grand Cayman, Cayman Islands

AND TO: Nelson & Co (Attorneys-at-law for the Defendant)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 2020

BETWEEN:

RABSCO INC.

Plaintiff

AND:

SURESH PRASAD

Defendant

ACKNOWLEDGEMENT 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

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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

Service of the Writ is acknowledged accordingly

(Signed)

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

Travers Thorp Alberga
Attorneys-at-Law
P.O. Box 472
Grand Cayman, KY1-1106
Cayman Islands
Phone: +1 (345) 949-0699
Facsimile: +1 (345) 949-8171
ATTN: Neil McLarnon
Ref: P0856-001

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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