



ND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2023

R&A HEAVY EQUIPMENT SERVICES, LLC

PLAINTIFF

AND:

SCOTTS EQUIPMENT LTD

RESPONDENT

WRIT OF SUMMONS

TO: Scotts Equipment Ltd.
North Sound Road
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 the 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, Cayman Islands, 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 ____ day of _____ 2023

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 renewed by order of the Court.

IMPORTANT

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

PARTICULARS OF CLAIM

1. The Plaintiff, **R&A HEAVY EQUIPMENT SERVICES, LLC** was at all material times a company duly incorporated in Florida in the United States of America on or about the 8th of March 2020 and carrying on the business of labour supply, heavy equipment operation, repairs, and maintenance.
2. The Respondent, **SCOTTS EQUIPMENT LTD**, was at all material times a company duly incorporated in the Cayman Islands on or about the 3rd of January 1989 and carrying on the business of developmental services by selling marl, sand, soil, and quarry materials.
3. On or about the 8th of January 2022, the Plaintiff and the Respondent entered a contract in the Cayman Islands. It was an express term of the contract that the Plaintiff would provide the Respondent with labour to dig raw aggregate materials which were to be processed for sale by the Respondent. The work was to be performed at the Scotts Equipment Quarry located in Breakers, Grand Cayman.
4. Further express terms of the contract included that:
 - (a) *[The Plaintiff was to] dig approximately 3,960 yards (8yd buckets – 45 buckets per hour) of raw materials per day. Rate of \$2.50 per yard. Minimum of 3,690 yards a day, (12) twelve-hour days (11) Eleven hours of run time, (6) Six days a week (M-S) equal to a total rate of \$8,395.00 [CI\$9,900] per day per machine. R & A will not charge for any buckets in excess of 45 buckets per hour.*
 - (b) *R & A Heavy Equipment will supply one (1) Operator, one (1) Mechanic, one (1) Welder, one (1) Oiler, and a mechanic crane truck with tools...*
 - (c) *R & A Heavy Equipment will be responsible for all maintenance repairs on a timely manner. Maintenance repairs and parts will be included in the price per yard.*
.....
 - (d) *Payments are due weekly for previous weeks invoice. Late fee of 5% will apply to all invoices over 15 days late. Scotts Equipment will loan R & A USD\$175,000 for mobilization, parts, and welder...*
 - (e) **DEFAULT**
The occurrence of any of the following shall constitute a default of agreement.

- A. *Failure to make required payment under the agreement.*
- B. *Violation of any provision or requirement that is not corrected within 30 days after written notice of violation...*

5. The Plaintiff and Representatives of the Respondent had been having discussions dating back to 2020 and had several meetings with various agents for the Respondent including Ernie Scott, Alburn Scott, Anthony Scott, Amanda Jervis and Jody Jervis. Prior to the contract dated the 8th of January 2022, the Plaintiff by its agent, Gopala Kistamma, drafted a contract titled "Proposal" which was submitted to the Respondent and dated the 26th of December 2020.
6. The Respondent altered the proposed contract of the 26th of December 2020, by deleting clause 4 which stated;

"If operator is unable to operate machine due to customers responsibility (example: blasting, work area) R & A will bill Scott Equipment \$400 per hour until machine is operating again".

And amended clause 3 to remove.

"Scott equipment is responsible for purchase of all parts needed to complete job".

7. The Plaintiff, by its agent, Gopala Kistamma, suggested that should that clause be removed, the Plaintiff would then charge **\$20.00** per bucket.
8. On the 8th January 2022 the Plaintiff by its agent, Gopala Kistamma, met with Jody Jervis and Amanda Jervis on behalf of the Respondent and explained the capability of the Manitowoc 4600 machine and his experience with the machine. The Respondent agreed and both signed giving effect to the said contract of the 8th of January 2022.
9. On or about the 7th of March 2022, the Plaintiff began performance of the contract dated the 8th of January 2022.
10. In furtherance of the contract the Plaintiff maintained a stock of parts it purchased and shipped to the Cayman Islands. The Respondent cleared the parts through customs, and these were stored at the Breakers quarry.
11. In furtherance of the contract the Plaintiff also sold to the Respondent his work truck, a 2006 Chevrolet C7500 with vin 1GBM7C1C56F427241 ("the Truck"). The

bill of sale included some of the tools that were also with the truck but at the instruction of the Respondent not all.

12. Staff and other related expense relative to Plaintiffs performance including the cost of the truck and the duties relative to the same, payroll expenses, work permit fees, health insurance among other expenses are discharged by the Respondent and are to be set off against the Plaintiff account. A statement was provided by the Respondent on 22nd December 2022 dated 12 December 2022 that shows a figure as at the date to be **Ci\$717,453.43**.
13. Within the first two weeks of the work commencing, the Plaintiff provided the Respondent with an invoice for the work carried out. The Respondent then suggested that payment should be based on the amounts that go through the gate. The Plaintiff did not agree with this and informed the Respondent that he did not agree with any alteration to the contract.
14. The Respondent contacted a surveyor with which they had a working relationship, and a report was produced date 9th April 2022 that suggested that the amount of material was below the estimated amount that should be produced. The Plaintiff asked a third party to witness a manual count with a verbal agreement from the Respondent agent, Jody Jervis, but this was later rescinded by the Respondent.
15. The Plaintiff agent, Mr. Gopala Kistamma, made several attempts to resolve the issue by visiting the Respondent's office. However, the Respondent would not accommodate him. While the impasse relative to the method for calculating payment continued no further invoice was sent despite the Plaintiff continuing to perform the contract and did so until October 2022 when an explosion occurred at the site and the government suspended works. Thereafter invoices up to 30th September 2022 in respect of the Manitowoc 4600 were sent. Full payment has not been received to date.
16. The Respondent has failed, neglected, and/or refused to provide the agreed payment as per the contract dated the 8th January 2022 and instead purports that the Plaintiff has breached the contract by failing to dig the agreed 3,960 yards of raw material per day.
17. The Plaintiff submits that the contract has not been breached by it as it dugged the required 3,960 yards and more per day.
18. Additionally, a portion of the dig amount is used to backfill the lake to allow deeper blasting and digging which does not form part of any purported calculation.

19. After works restarted the parties again agreed in November 2022 to do two geometrical surveys and a manual count. The essence of the manual count being to count yardage of material dug by moving the material from one area to the next using truck(s) with known yardage.
20. Two surveys, one by the Respondent's general surveyor, were carried out using geometrical calculations of the piles of materials dug over a period to ascertain the daily amount. The last calculation suggests that a dig amount of 2,719.025176 cubic yards was done.
21. The manual calculation was halted by the Respondent after around 2,700 yards were reached. At the halt of the manual calculation, a significant amount of material was left behind. Additionally, the trucks were being loaded beyond their correct yardage.
22. The Respondent has since refused to complete the manual calculations of raw material and wishes to only rely on the geometrical calculations provided by the surveyor that was instructed by the Respondent.
23. The Respondent further proposed that payment be tied to sales of raw and refined material by yardage rather than as per the contract which stipulates that payment be made based on an agreed estimated dig of unrefined aggregate dug per day.
24. The primary machine used by the Plaintiff was a Manitowoc 4600, however between May 2022 and June 2022, which amounts to approximately ten (10) weeks, the Plaintiff operated a second machine, a Manitowoc 3950, in tandem with the Manitowoc 4600. Manitowoc 3950 has approximately 33% of the capacity of the Manitowoc 4600.
25. Additionally, when there was an unusual demand exceeding the contract production amount for aggregate which cannot be met by the Plaintiff usual extended hour run of the machine, the Plaintiff with the aid of an employee from the Respondent, ran the Manitowoc 4600 for approximately 10 weeks on a non-stop 24-hour basis.
26. The Plaintiff having continued to meet its obligation and the Respondent refusing to adhere to the terms of the contract, the Plaintiff seized digging on or about 17th November 2022.
27. On the 3rd of February 2023, the Plaintiff agent, Gopala Kistamma, went to retrieve the Mechanic Crane work truck from the Respondent's compound at approximately

12:00 p.m. as agreed. Upon arrival it was noted that the locks that were latched onto the tool compartments of the truck had been removed and were discovered in the vicinity of the truck. It was also discovered that the power inverter was removed which caused damage to the truck.

28. The various compartments of the truck were opened, and it was discovered that all the tools were missing. The nature of tools missing included but was not limited to a ½" Hytorc hydraulic wrench, 1" Hytorc hydraulic wrench, ¾" Hytorc hydraulic wrench along with Hytorc cassettes; electric Hytorc hydraulic pump; 60k watt converter; 60,50,30,20 and 10 tonne hydraulic cylinders; 1", ¾", ½", ¼" impacts driver tools with sockets and extensions, varying wrenches, hoist, hoist chains, pry bar, welding torches, welding cables, plasma cutter, welding machine. Also, there were 4 cylinders at the back of the truck that was also removed. All these tools were acquired over thirty (30) years by the Plaintiff.
29. A report was made to the Bodden Town Police Station, and officers later arrived and began their investigations.
30. Request to the Respondent for the return of all tools has only yielded a suggestion of a partial tool return.
31. The Respondent also refuse to return or compensate the Plaintiff for unused parts purchased by the Plaintiff including one set of drag chain, one set of hoist chain, two spools of drag cable for Manitowoc 3950, two spool of hoist cable for Manitowoc 3950, Three spools of drag cable for Manitowoc 4600, two spools of hoist cable for Manitowoc 4600 and one Cummins Diesel KTA 1150 engine.
32. The Respondent, its servants and/or agents have breached the contract of the 8th of January 2022 and caused loss to the Plaintiff by:

PARTICULARS OF BREACH OF CONTRACT

- a. Failing, neglecting, and/or refusing to honour the terms of the contract of the 8th of January 2022.
- b. Failing, neglecting, and/or refusing to make required payments under the agreement.
- c. Failing, neglecting, and/or refusing to make payment for the contracted amount of work done.

- d. Failing, neglecting, and/or refusing to discharge the invoices within fifteen (15) days.
- e. Failing, neglecting, and/or refusing to pay the contractual late fee of 5% on invoices over fifteen (15) days outstanding.

33. Further, and/or in the alternative, the Respondent, its servants and/or agents were negligent and caused loss to the Plaintiff by:

PARTICULARS OF NEGLIGENCE

- a. Failing, neglecting, and/or refusing to keep the Plaintiff's truck safe whilst in its care.
- b. Causing or permitting damage to the Plaintiff's truck.
- c. Causing or permitting the removal and retention of Plaintiff's tools.
- d. Causing or permitting the retention of the Plaintiff's spare parts.

34. As a result of the Respondent's breach of contract and/or negligence, the Plaintiff has sustained continuing losses and damage.

PARTICULARS OF LOSS AND DAMAGE

- a. To date the Plaintiff should work and be credited for 334 days of operation of Manitowoc 4600 at CI\$9,900 per day **(CI\$3,306,000.00- CI\$717,453.43)**
CI\$2,588,547.00
- b. Additionally, the Plaintiff should have been credited for 10 weeks (48 days) days of operation of Manitowoc 3950 at CI\$8,395 per day:
CI\$142,560.00
- c. Loss of tools to be confirmed.
- d. Loss of use of truck and tools to be assessed.
- e. Damage to 2006 Chevrolet C7500 to be confirmed.

TAKE NOTICE that the Plaintiff reserves the right to amend this head of damages when further or better particulars are obtained.

CAUSING LOSS BY UNLAWFUL MEANS

35. Further and/or in the alternative, on or about the 2nd of February 2023, the Respondent, its servants, and/or agents acting for the Respondent's own benefit and ends caused loss to the Plaintiff by unlawfully and without the consent of the Plaintiff:
- a. cutting the locks off of the Plaintiff's truck and discarding them in the vicinity of the truck; and
 - b. removing all the contents of the Plaintiff's truck, including but not limited to the Plaintiff's tools of its trade.
36. In so unlawfully interfering with the Plaintiff's truck and tools, the Respondent, its servants, and/or agents interfered with the freedom of the Plaintiff to carry out its trade and the freedom to enter into contracts with and carry out work for third parties.
37. The Respondent, its servants and/or agents intended by their unlawful acts to cause such loss to the Plaintiff and/or to damage the Plaintiff's business. The alleged intention is to be inferred from:

PARTICULARS OF INTENTION

- a. the intention embodied in the Respondent, its servants and/or agents deliberately carrying out the acts alleged;
- b. the secrecy with which they were carried out during the night of on or about the 2nd of February 2023;
- c. the removal of the inverter from the truck;
- d. the benefits of possessing the tools of which the Plaintiff was and obviously and foreseeably deprived;
- e. the fact that such deprivation was the necessary consequence of the Respondent obtaining for itself by its unlawful acts the like benefits of possessing the tools; and

- f. the fact that the Respondent and the Plaintiff were involved in an ongoing disagreement concerning the contract of the 8th of January 2022

38. Further, the Respondent has unlawfully refused and continues to refuse to permit the Plaintiff to remove the truck from the Cayman Islands by retaining the documents to the vehicle despite accounting for it by setoff against amount owed to the Plaintiff and is thereby unlawfully interfering with the truck. The refusal was implied from the various request made to the Respondent on behalf of the Plaintiff without release of the documents to allow export back to Florida.

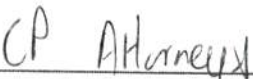
39. As a result of the Respondent's unlawful interference with the Plaintiff's truck and tools, the Plaintiff has sustained continuing economic losses and damages, and lost its expected economic benefits from possessing such tools and the ability to enter and fulfill contracts with third parties.

TAKE NOTICE that the Plaintiff reserves the right to amend this head of damages when further or better particulars are obtained.

40. Further, the Plaintiff claims interest upon the sum owed pursuant to the contract of 8th January 2022 of **CI\$2,731,107.00** at 2-3/8% pursuant to **section 34** of the **Judicature Act (2021 Revision)** and then continuing at CI\$177.22 per days until judgment or sooner payment. Interest is also claimed on any further damages the court orders pursuant to **section 34** of the **Judicature Act (2021 Revision)** or otherwise at such rate as this Honourable Court deems fit.

AND THE PLAINTIFF CLAIMS:

- (1) Damages
- (2) An order that the Respondent pays the amount owing.
- (3) An order that the Respondent return to the Plaintiff all tools removed from truck
- (4) The Respondent to deliver up the documents of the Plaintiff's Truck
- (5) Costs
- (6) Interest
- (7) Such further and/or other relief as this Honourable Court deems fit.



CP Attorneys
Attorneys for the Plaintiff

This **WRIT** is filed by **CP Attorneys** on behalf of the **Plaintiff**, whose address for service is Unit 118, Dolphin House, Elizabethan Square, 80 Shedden Road, George Town, PO Box 561, Grand Cayman KY1-1602, Cayman Islands, 345-623-8088.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICES
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 "Statements of Claim" appear on the top of page 2) the Defence must be served within 28 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgement is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 28 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 judgement 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 is 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 28 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 (.....)" his name.
6. Where the Defendant is a LIMITED COMPANY, the form must be completed by an Attorney or by someone authorized 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 2023

BETWEEN: R&A HEAVY EQUIPMENT SERVICES, LLC

PLAINTIFF

AND: SCOTTS EQUIPMENT LTD

RESPONDENT

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 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

Service of this Originating Summons is acknowledged accordingly

(Signed) _____
Defendant/Attorney for the Defendant

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 communication 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 Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

CP Attorneys
Unit 118, Dolphin House
Elizabethan Square
80 Shedden Road
George Town
PO Box 561
Grand Cayman KY1-1602
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.