



WRIT OF SUMMONS

(Order 2 rule 3(1))

WRIT ISSUED FROM..... 22 (Order 2 rule 3(1)) 2019... SUIT No. Embrosebo 482019

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION
ACCRA**

GEN X TRADING COMPANY LTD :::: **PLAINTIFF**
BLOCK F, CARPENTER ROAD 3000024651
EAST AIRPORT, ACCRA

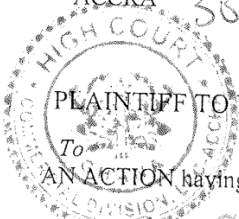
AND

1. VISH ASHIAGBOR 3000024641
2. ERIC NANA NIPA 3000024644
JOINT RECEIVERS,
CAPITAL BANK GH. LTD (IN RECEIVERSHIP) 3000009188
25B MANET TOWERS, AIRPORT CITY, ACCRA

3. GCB BANK GHANA LIMITED :::: **DEFENDANTS**
HIGH STREET, ACCRA 3000005749

4. COLLINS ADOMAKO MENSAH
AIRPORT CITY BRANCH, GCB BANK,
ACCRA 3000024744

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PLAINTIFF TO DIRECT SERVICE

To
AN ACTION having been commenced against you by the issue of this writ by the above-named Plaintiff.

SEAL 22-2-19
YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the day of service you do cause an appearance to be entered for you.

AND TAKE NOTICE that in default of your so doing, judgment may be given in your absence without further notice to you.

Dated this 22nd day of February 2019..19

Chief Justice of Ghana
SOPHIA A. A. AKUFFO (MS)

NB: This writ is to be served within twelve calendar months from the date of issue unless, it is renewed within six calendar months from the date of that renewal.

The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer at Form 5 at the Registry of the Court of issue of the writ at A defendant appearing personally may, if he desire give notice of appearance by post.

*State name, place of residence or business address of plaintiff if known (not P.O. Box number).
**State name, place of residence or business address of defendant (not P.O. Box number).

FORM I

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION
ACCRA-A.D. 2019

22-2-19
3:00
[Handwritten signature]

SUIT NO.

GEN X TRADING COMPANY LTD
BLOCK F, CARPENTER ROAD
EAST AIRPORT, ACCRA

∴ PLAINTIFF

Vs

1. VISH ASHIAGBOR
2. ERIC NANA NIPA
JOINT RECEIVERS,
CAPITAL BANK GH. LTD (IN RECEIVERSHIP)
25B MANET TOWERS, AIRPORT CITY, ACCRA

3. GCB BANK GHANA LIMITED ∴ DEFENDANTS
HIGH STREET, ACCRA

4. COLLINS ADOMAKO MENSAH
AIRPORT CITY BRANCH, GCB BANK,
ACCRA

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STATEMENT OF CLAIM

1. Plaintiff is a limited liability company duly incorporated under the laws of Ghana and in the business of retail of household consumables.
2. 1st and 2nd Defendants are the Joint Receivers of Capital Bank Ghana Limited (In Receivership) (Hereinafter referred to as "Capital Bank") appointed to wind down the affairs of Capital Bank.
3. 3rd Defendant is a bank licensed to carry on the business of banking. By a Purchase and Assumption Agreement dated 14th August 2017, all deposits of Capital Bank, including that of Plaintiff were transferred to 3rd Defendant, thereby making Plaintiff a customer of 3rd Defendant.
4. 4th Defendant is a former employee of Capital Bank and currently an employee of 3rd Defendant, stationed at its Airport City Branch.

5. Plaintiff states that it was a customer of Capital Bank and operated the following accounts with its Spintex Branch: Account numbers; 2420001154131, 2420001154132 and 2420001154133.
 6. Plaintiff states that 4th Defendant was the Relationship Manager of Plaintiff's accounts with Capital Bank and was responsible for managing Plaintiff's accounts and attending to all its needs in respect of its banking activities.
 7. Plaintiff states that sometime between 2016 and 2017, it observed that cheques issued to its creditors and suppliers were constantly returned due to insufficient funds in the accounts of Plaintiff. This is in spite of the fact that Plaintiff always ensured that it had enough funds in its accounts whenever it issued cheques.
 8. Plaintiff states that during the said period that the cheques kept returning, Plaintiff through its Managing Director made several complaints to the 4th Defendant, as its Relationship Manager, but 4th Defendant always assured Plaintiff that there was nothing wrong on its accounts.
 9. Plaintiff states that during the period in question, anytime Plaintiff requested for its bank statements, 4th Defendant informed Plaintiff's Managing Director that there was a problem with their system and he could only print statements in Microsoft Excel for Plaintiff.
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10. Plaintiff states that sometime in 2017, Plaintiff's Managing Director requested for Plaintiff's bank statement from a different officer of Capital Bank and the said officer furnished Plaintiff with the bank statements accordingly. The 4th Defendant was absent from the branch on the said day.
 11. Plaintiff states that after carrying out a reconciliation of its bank statements, it observed that sums to the tune of GHS 264,092 (Two Hundred and Sixty Four Thousand and Ninety Two Ghana Cedis) had been fraudulently transferred from Plaintiff's accounts without its knowledge, authorization and/or consent.
 12. Plaintiff states that it observed that most of these sums had been transferred to one A N D Financial Services.
 13. Plaintiff states that it also observed that although it received SMS alerts whenever a transaction occurred on its accounts, it never received any SMS alerts in respect of the unauthorized transfers.
 14. Plaintiff states that it further observed that the Microsoft Excel statements previously printed by 4th Defendant for Plaintiff was falsified and did not reflect the true state of accounts of Plaintiff.

15. Plaintiff states that upon realizing the fraudulent transactions on its accounts, it immediately lodged a complaint with management of the Spintex Branch of Capital Bank.

PARTICULARS OF FRAUD

- i. Transferring monies from Plaintiff's account without its knowledge, consent and/or authorization.
 - ii. Stopping SMS alerts for the unauthorized transactions that occurred on Plaintiff's accounts.
 - iii. Printing falsified bank statements for Plaintiff
16. Plaintiff states that 4th Defendant was subsequently queried to explain the unauthorised transfers on Plaintiff's account. Plaintiff was kept in copy of email correspondences between 4th Defendant and Management of the bank.
17. Plaintiff states that it later came to its knowledge that the said A N D Financial Services, the company which was the recipient of the funds transferred from Plaintiff's accounts, was owned by 4th Defendant.
18. Plaintiff states that subsequently, a delegation from Capital Bank, including the Head of Business Banking, two Relationship Managers as well as 4th Defendant, visited the offices of Plaintiff.
19. Plaintiff states that it was informed by the delegation that the sums unlawfully transferred from the accounts of Plaintiff would be re-paid by 4th Defendant within 4 weeks.
20. Plaintiff states that on 26th October 2017, the 4th Defendant deposited the sum of GHS 50,000 (Fifty Thousand Ghana Cedis) into Plaintiffs accounts with ADB Bank.
21. Plaintiff states that 4th Defendant also issued to Plaintiff, two cheques of GHS 100,000 (One Hundred Thousand Ghana Cedis) each. However both cheques were returned due to insufficient funds in 4th Defendant's accounts.
22. Plaintiff states that it also lodged a complaint at the Achimota Police Station and was duly informed that the matter will be investigated. Anytime officers of Plaintiff enquired from the police station, the status of the investigations, they were informed that investigations are still on-going.
23. Plaintiff states that between August 2016 and April 2017, a number of cheques issued by Plaintiff to its suppliers and creditors were returned as a result of the unlawful transfers from its accounts.

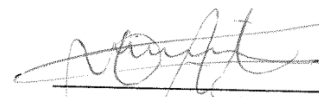
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24. Plaintiff states that the nature of its business is such that the business thrives on credit from its suppliers.
25. Plaintiff states that prior to the period stated above when its cheques kept returning, Plaintiff had built an enviable reputation as a company which honoured all its obligations timeously and paid its creditors on time. This caused suppliers of Plaintiff to extend a lot of credit to Plaintiff in their business dealings with Plaintiff. This heavily boosted the business fortunes of Plaintiff.
26. Plaintiff avers that due to the constant return of its cheques within the period stated above, it lost its hard earned reputation with its suppliers as a company which promptly pays its creditors. Plaintiff lost a lot of business as a result because a lot of its suppliers refused to give products on credit as Plaintiff hitherto enjoyed.
27. Plaintiff states that the returning of its cheques for insufficient funds in its accounts, when it had enough funds to pay the cheques, was defamatory of Plaintiff, as the act of the cheques returning, in its natural and ordinary meaning and by way of innuendo, meant and were understood to mean that:
 - i. Plaintiff is not in a position to fulfil its financial obligations to its suppliers and creditors.
 - ii. Plaintiff has committed the criminal offence of issuing dud cheques.
 - iii. Plaintiff cannot be trusted and is not worthy of receiving goods on credit.
 - iv. Plaintiff cannot be a trusted partner in any business venture.
 - v. Plaintiff does not manage its business properly hence its inability to pay its creditors.
28. Plaintiff states that it has suffered unquantifiable damages in its business operations as a result of the unlawful transactions on its accounts.
29. Plaintiff states 1st and 2nd Defendants who were appointed as Receivers to wind down the affairs of Capital Bank are liable as Receivers, for the unlawful transactions on Plaintiff's accounts with Capital Bank.
30. Plaintiff states that by virtue of the Purchase and Assumption Agreement between 1st and 2nd Defendants as Receivers of Capital Bank and 3rd Defendant, which transferred Plaintiff's accounts with Capital Bank to 3rd Defendant Bank, 3rd Defendant is jointly and severally liable for the unlawful transactions that occurred on Plaintiff's accounts.
31. Plaintiff states that unless compelled by an order of this court, Defendants will not pay to Plaintiff the sums that were unlawfully transferred from Plaintiff's accounts without its knowledge, consent and/or authorization and Defendants will not also compensate Plaintiff for the damages suffered.

32. *WHEREFORE*, Plaintiff claims against Defendants jointly and severally for:
- a. Payment of the sum of GHS 214, 092 (Two Hundred and Fourteen Thousand and Ninety Two Ghana Cedis) being outstanding balance of the sums unlawfully transferred from Plaintiffs bank accounts.
 - b. Interest on the sum in (a) above at the prevailing commercial bank lending rate from 31st March 2017 until the date of final payment.
 - c. Damages of GHS 10million for loss of reputation for unlawfully returning cheques issued by Plaintiff to its suppliers and creditors.
 - d. Damages of GHS 5million for defamation resulting from the unlawful returning of cheques issued by the Plaintiff to its suppliers and creditors.
 - e. Cost, inclusive of solicitors fees.

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DATED AT RENAISSANCE LAW CHAMBERS, NO. 436/1 YEBOAH DUNCAN STREET (BEHIND OXFORD STREET SHOPPING MALL), OSU-RE, ACCRA, THIS 18TH DAY OF FEBRUARY, 2019.


SOLICITOR FOR PLAINTIFF
LICENSE NO. GAR 21283/19

THE REGISTRAR
HIGH COURT (COMMERCIAL DIVISION)
ACCRA

AND TO THE ABOVE NAMED DEFENDANTS