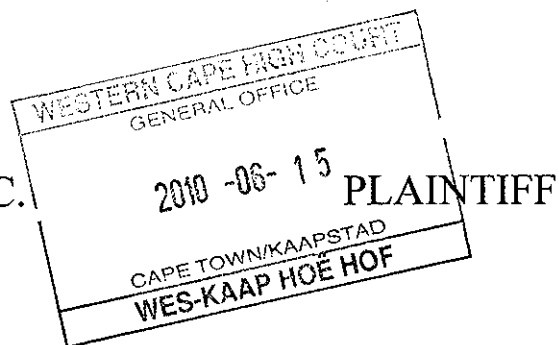


IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO. 13424/10

In the matter between:

T.R.MECHANICALS 786 C.C.



AND

COMBUSTION TECHNOLOGY(PTY) LTD      DEFENDANT

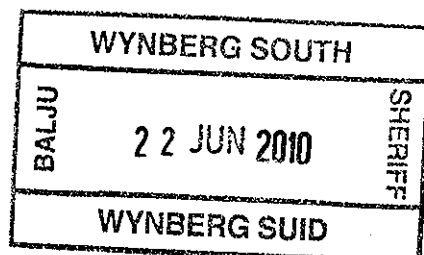
TO THE SHERIFF

INFORM:

COMBUSTION TECHNOLOGY(PTY) LTD      C/o UNIT 28 E,  
60 WHITE ROAD, RETREAT, CAPE TOWN

THAT :

T.R.MECHANICALS 786 C.C.    % ROCKFALLS & ROBINSON  
No.67 OTTERY ROAD, WYNBERG, CAPE TOWN



Two

Hereby institutes action against the Defendants in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendants further that if the Defendants dispute the claim and wish to defend the action, the Defendant shall:-

1. Within ten(10) days of service upon the Defendants of this summons, file with the Registrar of this Court at KEEROM STREET, CAPE TOWN Notice of Defendants intention to Defend and serve a copy thereof on the Attorneys of Plaintiff, which notice shall give an address (not being a Post Office of post restante) referred to in Rule 19(3) for the service upon the Defendants of all notices and documents in the action.
2. Thereafter and within twenty-one(21) days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the Plaintiff a Plea, Exception, notice to strike out, with or without a Counterclaim.

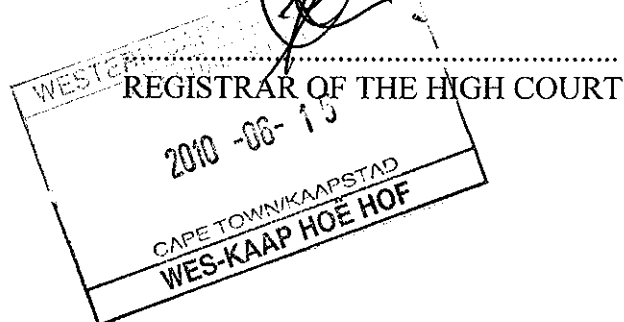
INFORM the Defendants further that if the Defendants fail to file and serve notice as aforesaid, judgment as claimed may be given against the Defendants without further notice to the Defendants, or if having filed and served such notice, the Defendants fail to plead, except, make application to strike out or counterclaim, judgment may be given against the Defendants.

AND immediately thereafter serve on the Defendants a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED AT.....THIS.....DAY OF.....2010

*Patel*  
.....  
ATTORNEYS FOR PLAINTIFF  
Y.M. PATEL & COMPANY  
NO.17 LONDON ROAD  
SALT RIVER

*Box 360*



## **ANNEXURE**

### **PARTICULARS OF PLAINTIFF'S CLAIM**

#### **THE PARTIES**

1. The plaintiff is **T.R. MECHANICALS 786 CC**, a (ref. no.: CK2001/067239/23), a close corporation, a *lex persona*, duly incorporated and registered in terms of the Close Corporations Act, No. 69 of 1984, with its registered address % ROCKFALLS & ROBINSON CC, No.67 Ottery Road Wynberg or its principal place of business at Deutch Road, Lansdowne, Western Cape, within the area of jurisdiction of this Honourable Court.
2. The defendant is **COMBUSTION TECHNOLOGY (PTY) LTD**, a private company duly incorporated in accordance with the company laws of the Republic of South Africa, having its principal place of business or registered office at Unit 28E, 60 White Road, Retreat, within the jurisdiction of this Honourable Court.

#### **JURISDICTION**

3. This Honourable Court has the jurisdiction to entertain this matter by virtue of the fact that the cause of action arose wholly within the area of jurisdiction of this Honourable Court.

**Y. M. PATEL & COMPANY**  
TEL : 4482839

### **FACTUAL BACKGROUND**

4. In and about January 2008 the Department of Public Transport, Roads and Works Chief Directorate Capital Works ("Department") awarded tender number: GC1739/10/2007 in respect of a specialist proposal to convert four sixteen ton industrial coal fired steam boilers to natural gas firing at Johannesburg Hospital to the plaintiff.
5. The tender document runs to several hundred pages.
  - 5.1 In the light of the aforementioned fact, the relevant written document will be available to this honourable court at the hearing hereof.
6. The aforementioned tender was awarded to the plaintiff pursuant to the submission of a tender document prepared by Riedwaan Taliep as a member of the plaintiff and one Grant Eric Renecke, in course and scope of his employment with the defendant.
  - 6.1 The tender was submitted by the plaintiff to the Department.
7. The defendant, represented by Renecke, and the plaintiff represented by Ridwan Taliep, concluded an oral agreement, the express, alternatively implied, alternatively tacit terms of included the following:

- 7.1 The defendant, as a result of its specialist expertise, would procure the burners specialised equipment and specialised work, whilst the plaintiff would attend to other work.
- 7.2 A bank account would be opened in the name of the plaintiff with Renecle as the sole authorised signatory in respect thereof.
- 7.3 All funds received from the government Department would be paid into the aforementioned bank account.
- 7.4 Upon receipt of 100% of the said funds the defendant would invoice the plaintiff for 5% of the funds so received, due to the plaintiff as the entity to whom the tender was awarded.
- 7.5 The defendant would timeously effect all Vat payments in respect of services rendered, and vat charged on payments made by the Department to the South African Revenue Services.
- 7.6 The defendant would repay the plaintiff its retention moneys paid to the Department once the latter has repaid same into the relevant banking account.
8. The plaintiff duly opened a bank account with First National Bank, Plumstead, (Branch Code 201109) being a business

cheque account with Account No: 62169062727.

9. In accordance with the abovementioned agreement, Renecke was the sole authorised signatory on the said banking account.

### **CLAIM 1**

10. The defendant is indebted to the plaintiff in the sum **R307 435,71**, arising out of and pursuant to the Johannesburg General Hospital project, namely:
- (a) Outstanding balance of the 5% payment which the defendant undertook to pay the plaintiff from the project: **R198 015,77.**
  - (b) Retention moneys which the defendant has to pay the plaintiff, which moneys the Department had already paid into the said account : **R33 700,00.**
    - (i) The defendant was unduly and unjustifiably enriched by the sum of **R33 700,00** at the expense of the plaintiff.
  - (c) Interest on the plaintiff's Vat Account which accrued as a result of the late submission by the defendant of Vat returns to SARS in respect of payments or moneys received by the Department pursuant to services rendered

by the parties: **R75 719,94.**

**TOTAL:**

**R307 435,71**

## **CLAIM 2**

11. The plaintiff rendered extra work at the relevant hospital at the request of the hospital, which amount inclusive of Vat amounted to **R651 924,84.**

11.1 The plaintiff submitted an invoice and an account to the defendant in respect of the aforesaid services rendered, but this amount which is due and payable to the plaintiff, remains unpaid.

12. The defendant is in breach of paying the plaintiff the amounts set out in claims 1 and 2 above, despite demand.

## **CLAIM 3**

13. In and or about 15 July 2008 and 16 September 2008 the said Department made an overpayment into the said banking account in the amount of **R885 498,60.**

13.1 The aforementioned overpayment occurred as a result of the defendant's "forex" (foreign exchange) exchange formula differing from that of the Department's.

- 13.2 The sum of **R885 498,60** was not due or payable to neither the plaintiff nor the defendant, yet such payment was effected into the said banking account, which account is solely under the control of the defendant.
14. The said Department has demanded payment from the plaintiff in respect of this sum which was not owing or due to the plaintiff and/or defendant, nor was the said sum due or payable to the plaintiff and/or the defendant.
15. In and/or about or during March 2008 to 7 September 2009 the defendant appropriated such moneys for itself even though such moneys were not owing to the defendant.
16. In the event of the defendant not repaying either the plaintiff or the relevant Department with the sum of **R885 498,60** not owing to the defendant, the defendant's estate would have been unjustifiably enriched at the expense and impoverishment of the plaintiff's estate which is being sued or will be sued for this amount of money.
17. The defendant appropriated and/or benefited from these moneys to the detriment and impoverishment of the plaintiff and its estate.
18. In the premises, the plaintiff is entitled to the sum of **R885 498,60** being the amount by which the defendant's estate has



been unjustifiably enriched at the expense and impoverishment of the plaintiff's estate, which amount the defendant fails, neglects or refuses to pay the plaintiff, despite demand.

### **CONCLUDING AVERMENTS**

19. In the premises, the plaintiff has suffered damages amounting to **R1 844 859,15** in consequence of the defendant's breach and unjustifiable enrichment as set out above, which amount the defendant fails, neglects or refuses to pay the plaintiff, despite demand.


### **WHEREFORE THE PLAINTIFF CLAIMS :**

- (a) Payment of the sum of **R1 844 859,15**;
- (b) Interest thereon at the prevailing legal rate of interest from fourteen (14) days after the Honourable Court's judgment to the date of satisfaction thereof;
- (c) Alternative relief;
- (d) Costs of suit including VAT;
- (e) Interest thereon at the prevailing rate of interest from fourteen (14) days after the Honourable Court's judgment to the date of satisfaction thereof.

DATED AT CAPE TOWN THIS

15<sup>th</sup>

DAY OF JUNE, 2010.

  
P. J. D. JETHRO  
Plaintiff's Counsel

Y. M. PATEL & COMPANY

Per: \_\_\_\_\_



YUSUF MOGAMAD PATEL

Plaintiff's Attorneys

17 London Road

SALT RIVER