

104932.001

IN THE ROSS COUNTY COMMON PLEAS COURT
ROSS COUNTY, OHIO

BURGAN EXPRESS
FOR GENERAL TRADING AND
CONTRACTING CO
#20, KHAITAN COMERCIAL CENTER
KHAITAN, KUWAIT 83808

Case No. 11 005 000011

Plaintiff,

v.

MARK ANTHONY ATWOOD
1131 TREGO CREEK ROAD
CHILLICOTHE OH 45601
AND
WOLFPACK SECURITY SERVICES
1131 TREGO CREEK ROAD
CHILLICOTHE OH 45601

Defendant

**** NOTICE FOREIGN JUDGMENT ****
(O.R.C. 2329.023)

WHEREAS, ON October 1, 2004 A FOREIGN JUDGMENT OBTAINED AGAINST YOU IN
THE COURT OF FIRST INSTANCE OF KUWAIT , WAS FILED IN THIS COURT.


EXECUTION MAY ISSUE ON THIS JUDGMENT THIRTY (30) DAYS AFTER THE
ABOVE DATE.


CLERK OF COURTS

LIST NAME AND ADDRESS OF JUDGMENT CREDITOR'S ATTORNEY IN OHIO.

Respectfully Submitted,

BY:


Mark J. Sheriff (0019273)
msheriff@wileslaw.com
Attorney for Plaintiff
300 Spruce St., First Floor
Columbus, OH 43215
PH 614/221-5216 FAX 614/221-0624

10493200T

IN THE ROSS COUNTY COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

BURGAN EXPRESS FOR GENERAL
TRADING AND CONTRACTING CO.
No. 20, Khaitan Commercial Center
Khaitan, Kuwait 83808

and

MAHMOUD MOHAMMAD
ABBAS HAJIA KHAJAH
No. 2, Street 15, Block 9
Jabriya, Kuwait 46303

Plaintiffs/Judgment Creditors,

v.

MARK ANTHONY ATWOOD
1131 Trego Creek Road
Chillicothe, Ohio 45601

and

WOLFPACK SECURITY SERVICES
1131 Trego Creek Road,
Chillicothe, Ohio 45601

Defendants/Judgment Debtors.

Case No.

11005000011

Judge:

ater

2011 DEC 14 PM 1:05

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

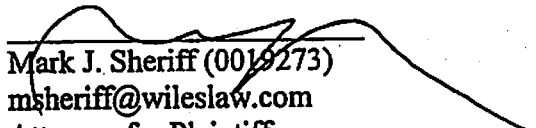
PRAECIPE TO ISSUE NOTICE OF
FILING OF FOREIGN JUDGMENT

Plaintiffs, through their attorney, hereby requests the Court to notify the judgment debtors of the filing of a foreign judgment on behalf of the Plaintiffs in the amount of 5,610,362.154 Kuwaiti Dinars (which at the conversion rate from 12/1/11 is equal to \$20,283,304.00 United States Dollars), plus attorney fees in the amount of 30 Kuwaiti Dinars (which at the conversion rate from 12/1/11 is equal to \$108.39 US Dollars), for a total of \$20,283,412.39 United States Dollars.

Respectfully Submitted,

WILES, BOYLE, BURKHOLDER & BRINGARDNER CO LPA

BY:


Mark J. Sheriff (0019273)
msheriff@wileslaw.com
Attorney for Plaintiff
300 Spruce St., Floor One
Columbus, OH 43215
Ph: 614-221-5216 Fax 614-221-0624

COURT OF COMMON PLEAS

104932.001

IN THE ROSS COUNTY COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

2011 DEC 14 PM 1:05
FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

MAHMOUD MOHAMMAD ABBAS
HAJIA KHAJAH, ET. AL,

Plaintiffs/Judgment Creditors,

v.

MARK ANTHONY ATWOOD, ET. AL,

Defendants/Judgment Debtors.

Case No.

11005000011
ater

AFFIDAVIT

Mark J. Sheriff, first being duly cautioned and sworn, hereby states that he is the attorney for Plaintiffs/Judgment Creditors, Mahmoud Mohammad Abbas Hajia Khajah (hereinafter "Hajia") and Burgan Express for General Trading and Contracting Company (hereinafter "Burgan Express"), who obtained a judgment against the Defendants/Judgment Debtors, Mark Anthony Atwood and Wolfpack Security Services in Kuwait, in the amount of 5,610,362.154 Kuwait Dinars, in addition to attorneys fees in the amount of 30 KD. Using the current exchange rate as of 12/1/2011, this judgment amounts to \$20,283,304.00 United States Dollars, plus attorneys fees in the amount of \$108.39 United States Dollars.

Affiant states that Defendants/Judgment Debtors were subject to both personal and subject matter jurisdiction of the Kuwaiti Courts. Defendants/Judgment Debtors appeared and participated in the litigation giving rise to this judgment. The Kuwaiti Judicial System provided Defendants/Judgment Debtors due process in a similar or equal manner to that of which they would be entitled to in the United States. See statement from Kuwaiti attorneys regarding due process, attached hereto as Exhibit "A."

Affiant further says that the last known address for the judgment debtor Mark Anthony Atwood is 1131 Trego Creek Road, Chillicothe, Ohio 45601. Mr. Atwood was born in Chillicothe, Ohio, has numerous family members in Central Ohio, and owns substantial real and personal property in Central Ohio. Further, the last known address for the judgment debtor Wolfpack Security Services is 1131 Trego Creek Road, Chillicothe, Ohio 45601. Additionally, Affiant says that Plaintiff Hajia's address is presently No. 2, Street 15, Block 9, Jabriya, Kuwait 46303. Further, Plaintiff Burgan Express's address is No. 20, Khaitan Commercial Center, Khaitan, Kuwait 83808.

Respectfully submitted,

WILES, BOYLE, BURKHOLDER & BRINGARDNER CO LPA

BY:

Mark J. Sheriff (0010273)

msheriff@wileslaw.com

Attorney for Plaintiff

300 Spruce St., First Floor

Columbus, OH 43215

PH 614/221-5216 FAX 614/221-0624

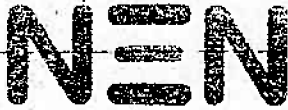
STATE OF OHIO)
 : ss.
COUNTY OF FRANKLIN)

BE IT REMEMBERED that on this 24 day of December, 2011, before me, the subscriber, a notary public in and for said county, personally came to the above-named Mark J. Sheriff and acknowledged the signing of the foregoing to be his voluntary act and deed.

IN TESTIMONY whereof I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



Carol G. Elifritz
CAROL G. ELIFRITZ
Notary Public, State of Ohio
My Commission Expires 06-07-2016



Al Wagayan | Al Awadhi | Al Saif
Attorneys & Legal Consultants

Re: Statement of my involvement as legal counsel for Mr. Mahmoud Mohammad Abbas Hajia and Burgan Express for General Trading & Contracting Co. in the civil proceeding in Kuwait against

My name is NAJEEB AL WAQAYAN, and on behalf of Najeeb Al Waqayan, Nader Al Awadhi and Emad Al Saif and we are Attorneys duly licensed to practice in the State of Kuwait. I am a member of the firm of AL Wagayan, Al Awadhi, Al Saif

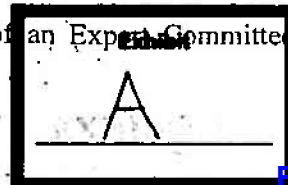
I submit this present Statement for all legal purposes, and particularly, in support of the efforts of Petitioners, Mr. Mahmoud Mohammad Abbas Hajia, Burgan Express for General Trading & Contracting Co., to have the Final Judgment issued by the Court of Appeals of Kuwait (Case No. 329/2009 Commercial/3), entered on June 14, 2010 against Mr. Mark Anthony Atwood, and his Company, Wolfpack Security Services recognized and enforced in the United States.

Undersigned and our office began representing Mr. Mahmoud Mohammad Abbas Hajia, and his company, Burgan Express for General Trading & Contracting in the year 2005.

As attorneys for Hajia and Burgan Express, our firm filed two civil actions in the Court of First Instance of Kuwait with respect to a dispute for a dispute which arose between the clients and Mr. Mark Anthony Atwood and his company, Wolfpack Security Services stemming from their Joint Venture Agreement entered into on June 16, 2004.

In the first civil action - Case No. 4270/2005 - submitted to the Clerk of the Court of First Instance on November 9, 2005, we Petitioned the Court to enter a order appointing an Expert Committee (a group of specialists nominated by the Ministry of Justice to act as Court experts) which would review the Partnership accounts and would render to the Judge an opinion as to the Partners' respective entitlements and liabilities pursuant to the terms of their Joint Venture Agreement.

In the second civil action submitted against the Defendants on November 12, 2006 (Case No. 4284/2005), we sought the appointment of an Expert Committee to confirm the





Al Wagayan | Al Awadhi | Al Saif
Attorneys & Legal Consultants

existence of a valid Joint Agreement and to determine the amount of damages that were due our clients from the Defendants as a result of the breach of said Agreement.

Mr. Atwood and his company Wolfpack vigorously defended themselves through counsel of their choice, Mr. Ahmad Ghazi Al-Otaibi, who filed appearances and responsive pleadings in both causes, as well as detailed brief and memoranda of law in support of his clients' defenses. Specifically, Mr. Atwood filed pleading in his defense which he submitted at hearings before the Court of Appeals scheduled on Oct. 10, 2006, March 31, 2006, and May 15, 2006.

On December 31, 2008 the Court of First Instance of Kuwait issued a Judgment in favor of the Plaintiffs in which it ordered the Defendants to pay in damages the sum of 4,345,774.358 Kuwaiti Dinars (Cases Nos. 4270/2005 & 4284/2005). In its decision, the Court confirmed the existence and validity of the Joint Venture Agreement between the Parties, thereby rejected the Defendant's allegations that the Venture was null and void. On Jan. 26, 2009 Plaintiffs, Mahmoud Mohammed Abbas Hajia and Burgan Express for General Trading & Contracting filed a Petition for Appeal before the Third Circuit of the Commercial Division of the High Court of Appeal of Kuwait against the ruling of the Court of First Instance seeking to have the amount of the award increased (Case No. 327/2009 Commercial/3).

The Defendant, Mark Atwood was served a copy of the Petition for Appeal on February 2nd, 2009 at 09:23 a.m. through his attorney of record who received a copy of the Petition for Appeal.

The first hearing in the Appellate proceeding was held on March 1, 2009. In their Petition, Plaintiffs Hajia and Burgan Express objected that the Court of First Instance had committed a reversible error by awarding a sum which was inferior to that which they were entitled to, based on the evidence.

The High Court of Appeals nominated yet another Expert Committee for the purpose of evaluating the Petitioners' claims.

On June 14, 2010 the High Court of Appeal entered a Final Judgment (Case No. 329/2009 Commercial/3) awarding the Plaintiff the sum of five million six hundred and ten thousand, three hundred and sixty one KD and 154 Fills (5,610,362.154 KD).

1. **Final stage of judicial review**
 2. **Commercial Pleading**
 3. **Appeal decision before**

Wolpack Security S
[Signature]


Respectfully submitted on this 01 day of May 2011.

Mr. Najeeb Al Wogayan

State of Kuwait

A07835208
Half Dinar

تتوقف ديتا


الوقيان - الموضي
 الموضي الموضي في حزب الوقيان - معاصرون
المخافي
نجيب إبراهيم الوقيان

LEGALIZED BY KUWAITI LAWYER SOCIETY
LAWYER Majeed Alwagayan
SOCIETY MEMBER
WITHOUT ANY RESPONSIBILITY AGAINST OTHERS
DATE 31/5/2011

Kuwait Bar Association
Lawyer: **NASER H. ALKRAWEEN**
Security Manager

Falcon Center For Translation & Interpretation
COURT OF COMMON PLEAS
SCIENTIFIC CONSULTATIONS, ORGANIZATIONAL SERVICES

مركز فالكون للترجمة والتعبئة
استشارات علمية - تنظيم مؤتمرات

2011 DEC 14 PM 1:06

(Translation)

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON (2)

Ministry of Justice
Administrative Affairs
Translation Section

Ministry of Justice
Court of Cassation

The paper translated by Falcon Center for Translation & Interpretation is an officially accredited office at the Ministry of Information are certified without any liability concerning the accuracy of the translation or the document.

Head of Section

Date

No.: L00000552 **PCI109**

Date: May 19, 2011

Page No.: 1

JDPX174

Certificate of Non-filing of Cassation Petition

Having perused the records of Court of Cassation, it is found that the appeal judgment on Lawsuit No. 327/09, Commercial / 3, entered on June 14, 2010

On the lawsuit filed by:

- Burgan Express for General Trading and Contracting Company
- Mahmoud Mohammad Abbas Hajia Khajah, owner of Burgan Trading Est.

Against:

Mark Anthony Atwood in his personal capacity and in his capacity as the owner of Wolfpack Security Services.

No cassation petition is filed for the above mentioned appeal judgment up to July 14, 2010

This certificate is given to the appellant upon his request.

Roll Clerk

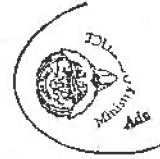
For Director, Court of Cassation Clerks Department

Signed/ Sealed



H.O.: Kuwait - Al-Salhiya - Al-Majarah Comm Center - Tel: 22430301 - Fax: 22430302
Branch: (1) Salwa Co-Op - Typing & Copying Branch - Telefax: 25638338
P.O.Box: 4141 Safat - Code 13042 Kuwait - C.R. 33172
9540 برقان اكسپرس

E-mail: falcon_translation@yahoo.com



أصدق أنا /
توضيح في ختم
ان تعمل وزارة العدل مشورية ما تضمنت هذه السورق
سجلت برقم ١٣٢ / ٥ تاريخ ١٢ / ٥
على صفة
سجل التصديق على صفة الترجمة



وزارة العدل
المسجلة
ادارة الوثائق
بإدارة الوثائق

2. Russell Westergard CONSUL
OF THE UNITED STATES OF AMERICA
AT KUWAIT, DULY COMMISSIONED AND
QUALIFIED, DO HEREBY CERTIFY THAT
Abdullah A. Alhussain WHOSE
SIGNATURE AND OFFICIAL SEAL ARE
RESPECTIVELY SUBMITTED AND AFFIXED
TO THE ANNEXED DOCUMENT, WAS AT
THE TIME OF SIGNING Minister
of Foreign Affairs
OF THE AUTHORITY OF THE KUWAIT
MINISTRY OF FOREIGN AFFAIRS, KUWAIT
TO WHOM CERTAIN MONIES AND
CREDITS ARE DUE, AND THE
SIGNATURE OF THE
DATED AT KUWAIT, ON 22 MAY 2011
ON 22 MAY 2011



Russell Westergard
Russell Westergard
Consul of The



L000000552 * 109 **



الرقم :
التاريخ : 2011-05-19
رقم الصفحة : 1

محكمة التمييز

JDPX174

شهادة
عدم حصول طعن بالتمييز

بعد الاطلاع على سجلات محكمة التمييز تبين أن الحكم الاستئنافي
رقم 09/327 تجاري / 3 الصادر بتاريخ 2010-06-14

في القضية المرفوعة من
- شركة برقان اكسبرس للتجارة العامة والعقارات
- محمود محمد عباس حاجيه خاجه صاحب مؤسسه برقان للتجا

ضد

- مارك اشتوني اتوود عن نفسه وبصفته صاحب مؤسسه
ولقبك سيكورتى سيرفيس

لم يرفع عنه طعن بالتمييز وذلك لغاية يوم 2010-07-14
وقد اعطيت هذه الشهادة / المستأنف
بناء على طلبه .

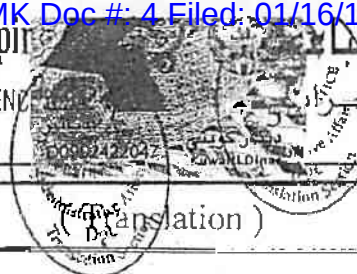
كاتب الجدول

مدير

ادارة كتاب محكمة التمييز
الاستعلام القضائي - غاصمة
الحجازي الشوي

State of Kuwait دولة الكويت





2011 DEC 14 PM 1:05
FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY DUNTON

COURT OF COMMON PLEAS

In the Name of Allah Most Gracious and Most Merciful
In the Name of His Highness The Amir of the State of Kuwait
Sheikh Sabah Al-Ahmed Al-Jaber al-Sabah

Court of Appeal
Circuit: 3rd, Commercial

In the hearing held in open Court on 2 Rajab 1431 AH, corresponding to
June 14, 2010 AD.

Under the headship of Judge Adel Ali Al-Baho, Court Undersecretary,

And the participation of

Counselor Mustafa Hasan Ali, and Counselor Ali Maher Mohamad

And the participation of Secretary of Session, Mr. Bassam Salman Al-Shabin

The following decision was entered

In the Appeal raised by:

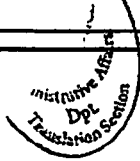
- 1) Burgan Express for General Trading and Contracting Company
- 2) Mahmoud Mohammad Abbas Hajia Khajah, owner of Burgan Trading Est.

Against

Mark Anthony Atwood, in his personal capacity and his capacity as the
owner of Wolfpack Security Services

Registered in table N.: 327/2009/Commercial/3

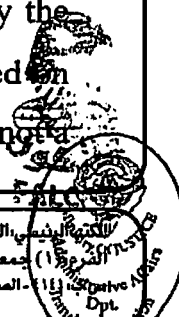




The Court

After a hearing in this cause and reviewing the arguments and documentation.

Whereas the appealed decision reviewed in detail the arguments in dispute, this Court does not need to go over once again the evidence and documents raised as a defense, and so the Court relies on the decision issued in the hearing of September 13, 2009 which summarizes the arguments and issues on appeal which the Court relies on as part of its consideration for rendering its decision. In summarizing the arguments that were raised by the First Appellant (formally, Burgan Express Establishment) against the Defendant in the case N. 4270 filed in the year 2005, commercial, the Appellant sued requesting that an Expert Committee be appointed for the purpose of determining what equipment, machinery, means of transportation, refrigeration units, generators, heavy equipment and vehicles were furnished to the Defendant, as well as determining the value of these items and their spare parts in order to establish the amount paid by the claimant for them from the inception of their dealing, and for the purposes of determining what capital and profits were generated during the venture, and thus, so as to compel the Defendant to pay any amount determined by the Expert Report to the Second Appellant, since he was the owner of Burgan Express Trading Establishment prior to it becoming a Company when he reached an agreement with Defendant on June 16, 2004 to pay the costs of equipments, machinery, and generator for the purpose of executing agreements with the United States Military to be performed by the Defendant in consideration for the agreement that the profits would be shared on the basis of 51% for the Claimant and 49 % for the Defendant, because he is not a





Kuwait, and in view of the fact that Claimant fully performed his obligations in accordance to the terms of the Venture, thereby achieving huge profits. Moreover, the Defendant did not pay him his portion of the profits generated by the project, and published a business announcement in the newspapers declaring that he had severed his relationship with the claimant Company. The claim is as outlined above, and the Second Appellant, in his capacity as owner of the subject Enterprise, Case No. 4284/2005 – Commercial, filed his initial claim in the Court of First Instance against the Defendant seeking a decision confirming the existence of a Joint Venture (the terms and details of which are cited in the beginning of this Petition) between him and the Defendant and the consequences resulting there from, and requesting that a Court Appointed Expert be nominated for the purpose of determining what contracts were executed between the Defendant and the US Army, together with their value and the value of what Appellant paid to finance these contracts, and the amount he paid for expenses, and his entitlement to his share of the profits commencing from July 1, 2004 up to the time the Expert Report is submitted, together with any additional entitlements since then until the day of judgment and the resolution between the Parties of the Claim in order to compel the defendant to comply with what has been determined by the Report. The Appellant based his claim on the Agreement with the Defendant of July 1, 2004 to form a Partnership for the Joint Venture in order to carry out the works mentioned the first claim which are to be performed in the name of Wolfback Security Services, owned by the Defendant in the USA, by virtue of the fact that the

Defendant has refused to pay the outstanding amounts due claimant by failing to pay him his share of the profits, as alleged in the Claim. The Court Appointed Committee submitted its report on Jan. 24, 2007 wherein it concluded that the



Parties ^{not} ~~were~~ bound by a Joint Venture Agreement with no incorporation deed executed and that the Claimant's share of the profits up to December 31, 2006 is three million five hundred sixteen thousand five hundred twenty nine Kuwaiti Dinars, and a total amount due of six million six hundred and seventy seven thousand two hundred and fifty seven Kuwaiti Dinars and 358 Fills., and the Court joined the two Claims requested by the Claimant: The first, that the existence of the Joint Venture between Burgan Express General Trading and Contracting Company and the Defendant effective from July 1, 2004 be confirmed; The second, that the Defendant be compelled to pay the above-cited company six million six hundred seventy seven thousand two hundred and fifty seven Kuwaiti Dinars and 358 Fills, together with 7% legal interest from October 1, 2004 until full satisfaction of the Claim.

Since the Defendant filed objections to the Report, the Court remanded the Claim to the Expert Department for the purpose of appointing a second Expert Committed which was different from the first one to evaluate said objections. The Committee submitted a report wherein it concluded that the net amounts due to the Plaintiff company were one million nine hundred and seventy four thousand and eight hundred and seventy two Kuwaiti Dinars and three hundred and fifty eight fills up to November 27, 2005, whereas it was not able to establish what additional monies were due. In the hearing of December 31, 2008 the Court reached a decision with respect to the two claims awarding the Claimant company the sum of four million three hundred and forty five thousand seven hundred and seventy four Kuwaiti Dinars and 385 Fills, and denied the Claimant's request for interest. In its decision the Court noted that the existence of the Joint Venture Agreement between the Parties had been proven, and rejected the Defendant's allegations that the Joint Venture was invalid.

Whereas the Court issued the cited Judgment on the basis of the foregoing findings accepting the procedural grounds for appeal, it granted the request to return the documentary evidence to the Expert Department in order to evaluate the exceptions contained in the Appeal with respect to the Reports of the last two Committees in order to liquidate the accounts which existed between the two Parties until the submission of the Report so as to determine what Burgan Trading Establishment was entitled to. Whereas pursuant to its assignment the appointed Committee submitted its report on December 20, 2009 wherein it concluded based on the liquidation of the accounts between the Parties on the basis of the



documents submitted to the Court of First Instance in the hearing of Jan. 7, 2008, the amounts due and owing to the Appellant for the profits and the capital invested since the commencement of business on July 1, 2004 until submission of the report on Dec. 30, 2009 is 5,610,361.154 KD, and found that Burgan For General Trading and Contracting Est. is still in existence in accordance to the license submitted by Appellants;

Whereas it was found that the Appellee received notice (sent to the address of his attorney) on May 16, 2010 of the submission of the Report, and in the hearing of June 7, 2010 the Attorney for the First Appellant appeared as well as the Second Appellant in person and they agreed with the Conclusions of the Committee, whereas the Appellee did not appear despite proper notice, and thus, the Court decided to issue its Judgment in today's hearing;

Whereas in the hearing held of September 13, 2009 this Circuit accepted the procedural grounds for appeal;

Whereas with regard to the merits of the Claim, it is found that the Experts' opinion is one of the elements which proves the Claim which the Court may base its decision upon to the extent that it is satisfied with the Report and that it is supported by the evidence submitted by in support of the Claim.

Whereas, it was evident from a review of the Report which was submitted by the last Expert Committee on December 20, 2009 that the Committee – as reflected in the Report on page 7 through to the beginning of page 10 – that it had reviewed the objections of the Appellants in light of the documentary evidence submitted in the claim in order to reach the conclusions which the Court previously referred to;





Whereas the Committee rendered its findings on the basis of the documents in support of the claim, the Court accepts its findings and incorporates them by reference in the Judgment despite the fact that the Appellee never appeared either personally or through counsel, even though he was notified on May 16, 2010 (at the address reflected on the Petition for Appeal of February 2, 2009);

Whereas in their closing arguments submitted in the hearing June 7, 2010 the Appellants approved the Report;

Whereas the appealed decision identified the basis for compelling in its judgment the Appellee to pay the awarded amount which this Court refers to in this cause as a basis for its decision, while amending the decision with respect to the amount due in view of the conclusion of the latest Report of the Expert Committee;

Whereas in consideration expenses, including Attorneys fees that the Appellee shall incur pursuant to Articles 119, subparagraph (1), 120 and 147 of the Rules of Procedure

FOR THESE REASON

The Court rules: As to the grounds for Appeal to amend the appealed decision, thereby ordering the Appellee to pay to First Appellant Company the sum of five million six hundred and ten thousand three hundred and sixty one Kuwait Dinars and 154 Fills, and obliged him to pay expenses and 30 Kuwait Dinars for attorney fees.

Secretary of Session

Ministry of Justice
Administrative Affairs Dept
Translation Section

The papers Translated by Falcon, the officially accredited office at the Ministry of Information are certified without any liability concerning the accuracy of the translation or the document.

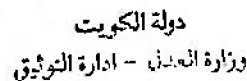
Head of Section :

Date :

Head of Directorate

محمد بن حسين
مترجم اول

Mar 2011



وزارة العدل - إدارة الوثائق
الوثيقة
سأرد بمقتضى النظام



2. Russell Westergaard
OF THE UNITED STATES OF AMERICA
AT KUWAIT, DOBY COMMISSIONED AND
QUALIFIED, DO HEREBY CERTIFY THAT
Fu'ad Q. Al-Qadaf WHOSE
SIGNATURE AND OFFICIAL SEAL ARE
RESPECTIVELY SUBMITTED AND AFFIXED
TO THE FOREGOING INSTRUMENT, WAS AT
THE TIME OF SIGNING Minister
of Foreign Affairs.

-----OF THE AUTHENTICATIONS SECTION,
MINISTRY OF FOREIGN AFFAIRS, KUWAIT
TO MINIST OFFICIAL NOTARY IN AND
CREDIT ARE ENG. SIGNATURE,
SIGNATURE, OFFICIAL SEAL.
DATED AT KUWAIT, STATE OF KUWAIT
ON 22 MAY 2011.

Russell Westergard
Consul of The
United States Of America



١٧
 وزارة الخارجية - الإدارة القنصلية
 اذن على صحة وتوقيع وختم
 وزير العمل
 18 MAY 2011
 دكتور اذني مسعود
 دكتور اذني مسعود
 دكتور اذني مسعود

بسم الله الرحمن الرحيم



باسم صاحب السمو أمير الكويت
الشيخ صباح الأحمد الجابر الصباح
محكمة الاستئناف



الدائرة : التجارية الثالثة

بالجلسة المنعقدة علنا بالمحكمة بتاريخ ٢ رجب ١٤٣١ هـ الموافق ٢٠١٠/١٢/٢٤ م.

برئاسة الأستاذ المستشار / عادل على البجوه وكيل المحكمة

وعضوية الأستأذنين

المستشار / مصطفى حسن على و المستشار / على ماهر محمد

وحضور السيد / بسام سلمان الشاهين أمين سر الجلسة

صدر الحكم الآتي

في الاستئناف المرفوع من :

(١) شركة برقان إكسبرس للتجارة العامة والمقاولات.

(٢) محمود محمد عباس حاجيه خاجه صاحب مؤسسة برقان للتجارة.

ضد

* مارك انتوني أتوود عن نفسه وبصفته صاحب مؤسسة صاحب مؤسسة وأهباك سيكوركي سيرفس.


والمقيد بالجدول برقم : ٣٢٧ / ٢٠٠٩ تجاري / ٣

المحكمة

بعد سماع المرافعة والاطلاع على الأوراق والمداولة .

حيث أن الحكم المستأنف ، عرض وبتفصيل يعني عن التكرار ،
 لوقائع النزاع وما قدم من مستندات وأثير من دفاع ، كما أوجز حكم
 هذه المحكمة الصادر بجلسة ٢٠٠٩/٩/١٣ الوقائع ~~والتحليل~~ ،
 فتحيل إليهما المحكمة ، معتبره أسبابهما ، فيما سلف ~~بجزم~~ من أسباب
 قضائها هذا بيد أنها توجز الوقائع في أن ~~المستأنف الأولي~~
 (باعتبارها مؤسسة برقان إكسبريس سابقاً) أقامت على المستأنف ضده
 الدعوى ٤٢٧٠ لسنة ٢٠٠٥ تجاري لنذب خبير لحصر وتحديد المعدات
 والآليات ووسائل النقل والمبردات والمولدات والمعدات الثقيلة
 والسيارات التي سلمتها للمدعى عليه وتحديد قيمتها وحصر قطع غيار
 المعدات وتحديد المصروفات التي أنفقتها المدعية والمؤسسة على
 المشروع من بداية التعامل وتحديد قيمة رأس المال والأرباح التي حققها
 هذا التعامل لتحديد المبالغ المستحقة لها وإلزام المدعى بما يسفر عنه
 تقرير الخبير بقالة أن المستأنف الثاني - كان صاحباً لمؤسسة برقان
 إكسبريس للتجارة - قبل أن تصبح شركة وفي ٢٠٠٤/٦/١٦ اتفق مع
 المدعى عليه أن يدفع قيمة معدات وآليات ومولدات لتنفيذ العقود المبرمة
 مع الجيش الأمريكي ويتولى المدعى عليه التعاقد مع هذا الجيش مقابل
 نسبة ٥١% من الأرباح للمدعى ونسبة ٤٩% للمدعى عليه كونه غير
 كويتي ... وإذ نفذ المدعى التزاماته وحقق المشروع أرباحاً طائلة ...
 ولم يوافيه المدعى عليه بما حقق المشروع من أرباح وأعلن بالجراند
 عن قطع علاقته بشركة المدعى كانت الدعوى بما سبق ... كما

تابع الحكم الصادر في الاستئناف رقم : ٢٢٧/٢٠٠٩ تجاري/٣

أقام المستأنف الثاني - بصفته صاحب المؤسسة سالفة الذكر الدعوى ٤٢٨٤ لسنة ٢٠٠٥ تجاري كلي على المدعى عليه في الدعوى الأولى للحكم بثبوت شركة المحاصة (الموضحة المعالم والبيان بصدده الصحيفة) بينه وبين المدعى عليه وما يترتب على ذلك من آثار ويندب خبير لبيان العقود التي أبرمها المدعى عليه مع  وقيمتها وما تم سداده إليه والباقي منها وما دفعه المدعى عليه من العقود وما أنفقته من مصروفات ونصيبه من أرباح الشركة من أول يوليو لسنة ٢٠٠٤ حتى إيداع التقرير وما يستجد حتى الفصل في الدعوى وتصفيه الحساب بين الطرفين لإلزام المدعى عليه بما يسفر عنه التقرير ، وأسس دعواه على أن اتفق مع المدعى عليه في أول يوليو ٢٠٠٤ على تكوين شركة محاصة لتنفيذ ذات الأعمال الواردة بالدعوى الأولى ويتم التعامل باسم مؤسسة ولقبك سكيورتي سيرفس المملوكة للمدعى عليه بالولايات المتحدة الأمريكية ... وإذ أعرض المدعى عليه عن رد باقي المبالغ التي دفعها المدعى ، ولم يؤد نصيبه من الأرباح كانت الدعوى بما سبق - وأودعت اللجنة التي ندبتها المحكمة تقريراً في ٢٤/١/٢٠٠٧ خلصت في نهايته إلى أن طرفي التداعي تربطهما شركة محاصة لم يحرر بشأنها عقد مكتوب - وأن نصيب المدعى من الأرباح حتى ٣١/١٢/٢٠٠٦ ثلاثة ملايين وخمسمائة وستة عشر ألفاً وخمسمائة وتسعة وعشرون ديناراً ومجموع المستحق له قبل المدعى عليه ستة مليون وستمائة وسبعة وسبعون ألفاً ومائتان وسبعة وخمسون ديناراً وثلاثمائة ثمانية وخمسون فلساً ... وضمت المحكمة الدعويين سداً المدعى طلباته بـ أولاً: ثبوت شركة

تابع الحكم الصادر في الاستئناف رقم: ٢٠٠٩/٣٢٧ تجاري/٢

المحاصة بين شركة برقان إكسبرس للتجارة العامة والمقاولات والمدعى عليه من أول يوليو سنة ٢٠٠٤ ثانياً: بإلزام المدعى عليه بأن يؤدي للشركة المذكورة سنة ملايين وستمئة سبعة وسبعين ألفاً ومائتين سبعة وخمسين ديناراً وثلاثمائة ثمانية وخمسين فلساً الخاتمة القانونية بواقع ٧% من ٢٠٠٤/١٠/١ حتى تمام السداد ... والا الاعتراض المدعى عليه على التقرير أعادت المحكمة الدعوى لإدارة الخبراء الاستئناف لجنة مغايرة للأولي لبحث هذه الاعتراضات ... وأودعت تقريراً انتهت فيه إلى أن صافي المستحق للشركة المدعية مليون وتسعمائة أربعة وسبعون ألفاً وثمانمائة إثتان وسبعون ديناراً وثلاثمائة ثمانية وخمسون فلساً حتى ٢٠٠٥/١١/٢٧ ... وأنه تعذر تحديد مستحقاتها فيما عدا ذلك ... وبجلسة ٢٠٠٨/١٢/٣١ قضت المحكمة في موضوع الدعويين بإلزام المدعى عليه بأن يؤدي للشركة المدعية أربعة ملايين وثلاثمائة خمسة وأربعين ألفاً وسبعمائة أربعة وسبعين ديناراً وثلاثمائة ثمانية وخمسين فلساً ورفضت طلب الفوائد ... وأوردت بمدونات حكمها إثبات قيام شركة المحاصة بين طرفي التداعي ورفض الدفع الذي أبداه المدعى عليه ببطلان اتفاق الطرفين على قيام شركة المحاصة بينهما.

وحيث أن الشركة المدعية ومحمود محمد عباس حاجيه خاجه (صاحب مؤسسة برقان للتجارة طعنأ على هذا الحكم بالاستئناف الراهن ناشدين الحكم بإلزام المستأنف ضده بأن يؤدي للشركة ٦٦٧٧٢٥٧,٣٥٨ ديناراً والفوائد بواقع ٧% على المبلغ المطالب به من ٢٠٠٤/١٠/١ وحتى تمام السداد ... واحتياطياً: بإعادة الدعوى لإدارة الخبراء - لتدب لجنة مغايرة للجنة الأخيرة لبحث الاعتراضات المبداه

تابع الحكم الصادر في الاستئناف رقم : ٢٠٠٩/٣٢٧ تجاري/٣

أمام محكمة أول درجة وبصحيفة الاستئناف على ضوء المستندات المقدمة أمام لجنة الخبراء بجلسة ٢٠٠٨/١/٧ وتصفيه الحساب بين الطرفين منذ ٢٠٠٤/٧/١ وحتى إيداع التقرير وأستأنف في سببين مفاد أولهما أن علاقة الطرفين تجارية تنشئ للمستأنف في طلب الفوائد عملاً بالمواد ١١٠ ، ١١١ ، ١١٣ من قانون التجارة وفحوى السبب الثاني أنهما قدما المستندات الدالة على طلباتهما وقدر لهما التقرير مبالغ دون ما ورد بهذه المستندات ، والمستحق لهما.

وحيث أن المحكمة أصدرت حكمها المشار إليه بصدر هذه الأسباب ، بقبول الاستئناف شكلاً وبإعادة الأوراق لإدارة الخبراء لبحث اعتراضات المستأنفة على تقرير اللجنة السابقين وصولاً لتصفيه الحساب بين الطرفين حتى إيداع التقرير وبيان مال مؤسسة برقان للتجارة ... ولما فرغت اللجنة المنتدبة من هذه المأمورية ، أودعت تقريراً في ٢٠٠٩/١٢/٢٠ ذيلته بنتيجة مضمونها أنه بتصفيه الحساب بين الطرفين على ضوء المستندات المقدمة لمحكمة أول درجة بجلسة ٢٠٠٨/١/٧ يكون المستحق للمستأنف من رأس المال والأرباح منذ بداية النشاط في ٢٠٠٤/٧/١ حتى إيداع التقرير في ٢٠٠٩/١٢/٣٠ - ٥٦١٠٣٦١,١٥٤ ديناراً ... وأن مؤسسة برقان للتجارة العامة والمقاولات ، طبقاً للترخيص المقدم من المستأنفين لم تزل قائمة - وإذا أخطر المستأنف ضده (على عنوان وكيله) في ٢٠١٠/٥/١٦ بإيداع التقرير ... وبجلسة ٢٠١٠/٦/٧ حضر وكيل المستأنفة الأولي والمستأنف الثاني بشخصه ، ووافقاً على ما انتهت إليه اللجنة ، ولم

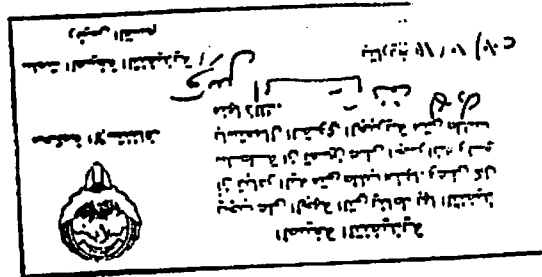
تابع الحكم الصادر في الاستئناف رقم : ٢٠٠٩/٣٢٧ تجاري/٣

يحضر المستأنف ضده ، رغم إخطاره ، قررت المحكمة إصدار حكمها بجلسة اليوم.

وحيث أن حكم هذه الدائرة الصادر بجلسة ٢٠٠٩/٩/١٣ قبل الاستئناف شكلاً .

وحيث أنه عن الموضوع فمن المقرر أن رأي الخبير المحامي قد عناصر الإثبات في الدعوى ، ولمحكمة الموضوع ، أن أطمأنت إليه أن تأخذ به وتقيم عليه قضاءها متى كان للرأي الذي خلص إليه سنده من أوراق الدعوى ... لما كان ذلك وكان البين من مطالعة تقرير لجنة الخبراء الأخير والمودع في ٢٠٠٩/١٢/٢٠ أن اللجنة - وحسبما أوردت بالصفحات من السابعة الى بداية العاشرة من تقريرها - قد بحثت اعتراضات المستأنفين على ضوء المستندات المقدمة في الدعوى ثم خلصت الى النتيجة سالفة الذكر - والتي أوردتها المحكمة سلفاً ... وإذ كان لهذا الرأي الذي انتهت إليه اللجنة - سنده من أوراق الدعوى ومن ثم تأخذ المحكمة بهذه النتيجة وتجعل ذلك التقرير جزءاً من أسباب حكمها هذا سيما وأن المستأنف ضده لم يمثل بشخصه أو وكيل عنه ، رغم إخطاره في ٢٠١٠/٥/١٦ (على ذات العنوان الذي أعلن بصحيفة الاستئناف عليه في ٢٠٠٩/٢/٢) وإذ كانت طلبات المستأنفين هي الحكم للشركة المستأنفة بالمبلغ الذي أظهره الجيد ، وكانت طلباتهما الختامية المبداه بجلسة ٢٠١٠/٦/٧ هي الموافقة على التقرير ... وإذ كان الحكم المستأنف قد بين تفصيلاً الأساس الذي أقام عليه قضاؤه بإلزام المستأنف ضده بالمبلغ المطالب به ، ومن ثم تحيل إليه المحكمة في هذا الصدد ، وتجعل من أسبابه أسباباً مكملة لأسباب حكمها - غير أنه وفي مجال

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(١٣)

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أمين سر الجلسة

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رئيس اللجنة

المصروفات وثلاثين ديناراً مقابل ألعاب المحاماة.
واحداً وستين ديناراً ومائة وأربعة وخمسين فلساً ، والأربعة
المستأنفة - الأولى - خمسة مائة وستين فلساً وثلاثين فلساً
المستأنفة فيما قضى به إلى إلزام المستأنف ضده بأن يرد في القضية
حسب المحكمة : في موضوع الاستئناف بطلان دليل الحق

قائمة الاستئناف

قانون المرافعات.

فإنهم لا يستطيعون دفعه إلا للمواد
وحيث أنه عن المصروفات ثمانية في المائة



لجنة الخبز في تقريرها الأخير.

تقرير المناقش المرفعة في المحكمة ، فتعده المحكمة على ضوء ما حاصرت إليه

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Head of Section

Date 22/11/2011

No.: L000003886

Date: May 19, 2011

Page No.: 1

PCI101

Certificate of Operative Part of Judgment

Court of Appeal Clerks Department hereby certifies that Lawsuit No. 327/09
Circuit: Commercial/ 03

Filed by:

Burgan Express for General Trading and Contracting Company and others

Against:

Mark Anthony Atwood in his personal capacity and in his capacity as the
owner of Wolfpack Security Services .

A judgment was entered in the above lawsuit in the session dated June 14,
2010 the operative part of which is as follows:

The court ruled, in the subject matter of appeal, to amend the appealed
judgment in connection with the adjudication thereof to oblige the appellee to
pay the first appellant company an amount of Kuwaiti Dinars five million six
hundred ten thousand three hundred sixty one and Fils one hundred fifty
four, and obliged to it to pay legal expenses and attorney fees

For the judgment entered by Court of First Instance under No. 4270/ 05, in
the session dated December 31, 2008

This certificate is given to the appellant, holder of Civil ID Card No.
255123000769, Power of Attorney: , upon his request.

Reviewer: Signed

For Director, Court of Appeal Clerks Department

Signed/ Sealed



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الفرع: (١) جمعية سلوى - ق (٨) - فرع ترجمة وطباعة وتصوير - تليفاكس: ٢٥٦٣٨٣٣٨

ص.ب. ٤١٤١ - الصفاة - الرمز البريدي ١٣٠١٢ الكويت. السجل التجاري: ٢٢١٧٢

E-mail: falcon_translation@yahoo.com

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2011-05-19

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الرقم

التاريخ

رقم الصفحة

PCI101

**



شهادة بمنع ورق حكم

تشيد ادارة كتاب محكمة الاستئناف أن القضية رقم 09/327

الدائــــــــــــــــرة : تجاري/03

المرفوعة من
شركة برقان اكسيرس للتجارة العامة والمقاولات
وأخــــــــــــــــرين

ضــــــــــــــــد
مارك اشتوني اتوود عن نفسه وبصفته صاحب مؤسسه
ولغباك سيكورتى سيرفيس

قد صدر فيها حكم بجلسة 14-06-2010 منطوقه كالآتي :

حكمت المحكمة في موضوع الاستئناف بتعديل الحكم المستأنف فيما قضى به من أن
المستأنف ضده بأن يؤدي للشركة المستأنفه الاولى خمسة ملايين وستمائة وثمانين
وثلاثمائة واحد وستين دينارا ومائتا وأربعة وخمسين فلسا والزمته المضروفات و
ثلاثين دينارا مقابل
اتعاب محاماه

وذلك عن الحكم الصادر من المحكمة الكلية برقم : 05/4270 الصادر

بجلسة 31-12-2008 م

وقد اعطيت هذه الشهادة الى المستأنف

بطاقة مدنية رقم 255123000769 وكالة :

بناء طلبه

المصدق

