REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 604 of 2006

NICHOLAS MAHIHU MURIITHI ……..…. PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LTD ……..... DEFENDANT

R U L I N G

The Plaintiff herein filed suit by plaint dated 6th November 2006 claiming the following main reliefs:

"(a) A declaration that the debit entries made on the Plaintiff's *Plus Account* Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* and the transfers in respect thereof to loan account numbers 30-8012162 and 011-8012162 on 23rd October 2006, were unauthorized, unlawful and void.

(b) permanent mandatory injunction directing the Defendant whether by itself, agents, servants or otherwise howsoever to reverse or correct the debit entries made on the Plaintiff's *Plus Account* Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* and the transfers in respect thereof to loan account numbers 30-8012162 on 23rd October 2006, and credit the Plaintiff's said account with the sum unlawfully debited together with interest thereon at the Defendant's prevailing commercial rate of 15 per centum per annum from 23rd October 2006, until the date of reversal or correction.

(c) A permanent injunction restraining the Defendant, whether by itself, agents, servants or otherwise howsoever, from making any further unauthorized debit entries on the Plaintiff's *Prestige Plus* Account Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* in settlement of alleged outstanding loans due to the Defendant from Kirinyaga Supply Stores (K) Limited or any other entities.

(d) General and special damages for breach of contract, conversion and emotional distress and interest at the Defendant's prevailing commercial rate of 15 per centum per annum from 23rd October 2006, until payment in full.

(e) …..

(f) ….."

Contemporaneously with plaint the Plaintiff filed a notice of motion dated 6th November 2006 by which he sought the following main orders:

"1. …..

2. Pending the *inter-partes* hearing of this application, determination of this suit or until further orders:-

(a) The Defendant, whether by itself, agents, servants or otherwise howsoever, be ordered to reverse or correct the debit entries made on the Plaintiff's *Prestige Plus* Account Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* and the transfers in respect thereof to loan account numbers 30-8012162 and 001-8012162 on 23rd October 2006, and credit the Plaintiff's said account with the sum unlawfully debited.

(b) The Defendant, whether by itself, agents, servants or otherwise howsoever, be restrained from making any further unauthorized debit entries on the Plaintiff's *Prestige Plus* Account Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* in settlement of alleged outstanding loans due to the Defendant from Kirinyaga Supply Stores (K) Limited or any other entity.

3. ….."

The grounds for the application appearing on the face thereof are:

"1. The Defendant has in blatant breach of a contract between it and the Plaintiff, the Defendant's terms and conditions and the general banking practice, debited the Plaintiff's account with a total sum of KShs. 2,263,238.55 and transferred the same to loan account numbers 30-8012162 and 011-8012162 which the Plaintiff is not privy to and refused and/or otherwise failed to reverse and correct the unauthorized debits despite notice and complaint from the Plaintiff.

2. The Defendant has wrongfully converted the said amount of KShs. 2,263,238.55 to its own use and wrongfully deprived the Plaintiff of the same.

3. The Defendant has, in blatant breach of contract and of its duty to the Plaintiff as his bankers, wrongfully refused and/or otherwise failed to honour cheques or orders in the total sum of KShs. 1,993,610.00 drawn on the Plaintiff's account when presented for payment and failed to pay the amounts thereof out of the moneys of the Plaintiff in its hands applied to that purpose, but wrongfully marked the said cheques "refer to drawer" and returned the same to the recipients unpaid.

4. The Defendant is obliged to reverse or correct the debit entries made on the Plaintiff's *Prestige Plus* Account Number 1220266 with the Defendant at the Defendant's *Barclays Plaza Business Centre Branch* and the transfers in respect thereof to loan account numbers 30-8012162 and 011-8012162 on 23rd October 2006, and credit the Plaintiff's said account with the sum unlawfully debited.

5. The Defendant has further demanded from the Plaintiff a sum of KShs. 1,037,121.25 allegedly due to the Defendant on account 2108722/30 in the name of Kirinyaga Supplies Stores which the Plaintiff is not privy too.

6. There is real danger that unless restrained by an order of this Honourable Court, the Defendant will continue making further unauthorized debit entries on the Plaintiff's account in settlement of alleged outstanding loans due to it from Kirinyaga Supply Stores (K) Limited or any other entities and the Plaintiff will thereby suffer substantial irreparable injury."

There is an affidavit sworn by the Plaintiff in support of the application to which various documents are annexed.

The Defendant has opposed the application upon the various grounds set out in the replying affidavit sworn by one JEREMY MUTHOMI who has described himself as the collection manager of the Defendant. Those grounds are:

1. That the Plaintiff has not come to court with clean hands.

2. That the Plaintiff owed and continues to owe the Defendant monies on account of loans and facilities advanced to him while he was trading as Kirinyaga Supply Stores, a sole proprietorship.

3. That the Plaintiff never communicated to the Defendant the purported change of status of his sole proprietorship, Kirinyaga Supply Stores, to a limited liability company called KIRINYAGA SUPPLY STORES (K) LIMITED, or any other limited liability company.

4. That at any rate the Defendant never dealt with the alleged limited liability company and always dealt with the Plaintiff as the sole proprietor of the business called Kirinyaga Supply Stores.

5. That the Plaintiff in any event admitted his indebtedness to the Defendant in writing by two letters dated 3rd and 25th October, 2006.

6. That though the Defendant had written off the debt, this was merely an accounting procedure required by prudent financial management and the Central Bank, and did not absolve the Plaintiff from liability to pay.

The Defendant subsequently filed a statement of defence dated 20th November 2006. The grounds of opposition to the application listed above are essentially the same as the defence.

I have considered the submissions of the learned counsels appearing, including the authorities cited. The principles to be considered in applications for temporary injunctions are well-established. They were crystallised in the well-known case of **GIELLA VS. CASSMAN BROWN & CO. LTD [1973] E.A. 358.** Those principles are:

1. An applicant must show a prima facie case with a probability of success.

2. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injuries which would not adequately be compensated by an award of damages.

3. If the court is in doubt, it will decide the application on a balance of convenience.

These principles apply equally to both temporary prohibitory and mandatory injunctions. With regard to mandatory injunction, however, there is a further requirement; it ought not be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases, either where the court thought that the matter ought to be decided at once, or where the injunction was directed at a simple and

summary act which could be remedied, or where the defendant had attempted to steal a match on the plaintiff. It was so restated by the Court of Appeal in the case of **KENYA BREWERIES LIMITED VS. OKEYO [2002] 1. EA 109.**

The following facts appear not to be in dispute:

1. The Plaintiff is the Defendant's customer at its Barclays Plaza Business Centre Branch maintaining there a current *Plus Account* Number 1220266.

2. On or about 23rd October 2006 the Defendant debited the Plaintiff's said account with the total sum of KShs. 2,263,238/55 and transferred the same to loan account numbers 30-8012162 and 001-8012162.

3. The said debits were made without notice to the Plaintiff who had in the meantime issued a number of cheques to third parties in the total sum of KShs. 1,993,610/00. The cheques were dishonoured by the Defendant due to insufficiency of funds occasioned by the aforesaid debits.

4. Loan account numbers 30-8012162 and 001-8012162 had been opened at the Defendant's Karatina Branch. The accounts had since been closed.

From the materials placed before the court, the following facts cannot be in dispute:

1. Account numbers 30-8012162 and 001-8012162 had been opened by the Plaintiff in the name of Kirinyaga Supply Stores.

2. Kirinyaga Supply Stores was a business whose sole proprietor was the Plaintiff.

3. Certain loans and an overdraft were advanced to Kirinyaga Supply Stores upon the said accounts. All the necessary documentation was executed by the Plaintiff as the sole proprietor of the business, Kirinyaga Supply Stores. The Plaintiff also supplied security in the form of charges upon certain immovable properties.

4. The said loans and overdraft were never fully repaid, and the Defendant was unable to realize the securities for reasons that the bids for the properties were too low, and in the case of one property, that no bids at all were forthcoming.

5. The business Kirinyaga Supply Stores ceased operation sometime. According to the Plaintiff the business converted into a limited liability company called KIRINYAGA SUPPLY STORES (K) LIMITED. According to the Defendant, it was never informed of this development if indeed it occurred; at any rate, it never dealt with Kirinyaga Supply Stores (K) Limited and always dealt with the Plaintiff at the material time as the sole proprietor of Kirinyaga Supply Stores.

Has the Plaintiff shown a *prima facie* case with a probability of success?

In essence, it is his case that the Defendant unlawfully and in breach of the contract between it and himself debited his current account to pay off debts owed, not by himself, but by Kirinyaga Supply Stores (K) Limited, a limited liability company. It is his further case that in any event those debts were statute-barred and no longer due.

The Defendant's defence is that the Plaintiff, as sole proprietor of Kirinyaga Supply Stores, took the loans and overdraft in question. He subsequently acknowledged in writing his indebtedness to the Defendant upon those loans and overdraft. The loan and overdraft agreements and the contract between the parties in respect to the Plaintiff's present personal current account authorise the Defendant to debit the said account to pay off the Plaintiff's previous indebtedness to the Defendant.

In the present interlocutory application, which is not an application for summary judgement or for striking out pleadings (where issues of law and even of fact can be decided with finality), the court must guard against the temptation to decide with finality any issues in controversy, both of law and fact, which ought properly to await trial of the action. The following primary issues are in controversy:

1. Whether the Plaintiff owed the Defendant money at any time upon the aforesaid loan and overdraft accounts.

2. If so, whether the debts became statute-barred.

3. If the debts became statute-barred, whether the Plaintiff acknowledged the debts, thereby reviving them.

4. Whether the Defendant was authorised by its contracts with the Plaintiff to recover money owed to it upon the loan and overdraft accounts from the Plaintiff's personal current account.

Did the Plaintiff at any time owe the Defendant monies upon the loan and overdraft accounts?

Annexed to the Plaintiff's own affidavit sworn in support of the application are copies of two loan agreements, dated respectively 11th August 1995 and 22nd January 1996, for the loan sums, respectively, of KShs. 562,500/00 and KShs. 1,000,000/00, granted to Kirinyaga Supply Stores. These loan agreements are signed by the Plaintiff as sole proprietor of Kirinyaga Supply Stores. There is also exhibited a

document dated 11th August 1995 granting Kirinyaga Supply Stores an overdraft facility of KShs. 800,000/00.

A copy of a mandate card dated 2nd December 1987 exhibited in the replying affidavit shows that the Plaintiff opened a bank account with the Defendant at its Karatina Branch in the name of Kirinyaga Supply Stores in his capacity as sole proprietor thereof.

It appears to me, *prima facie*, that Kirinyaga Supply Stores was a business owned solely by the Plaintiff. In law, a sole proprietorship has no legal existence separate from that of its proprietor. In essence therefore Kirinyaga Supply Stores was the Plaintiff. The loan and overdraft facilities granted to Kirinyaga Supply Stores by the Defendant were in fact granted to the Plaintiff. It is likely, and it appears to have been so, that the Plaintiff subsequently converted his sole proprietorship, Kirinyaga Supply Stores, to a limited liability company called Kirinyaga Supply Stores (K) Limited. But there is no proper evidence before the court that this conversion was brought to the attention of the Defendant. There is no evidence that any further arrangements were entered into with the Defendant by which the new company, Kirinyaga Supply Stores (K) Limited, assumed the liabilities of the sole proprietorship, Kirinyaga Supply Stores, to the Defendant. Indeed, there is no evidence at this stage that the Defendant has ever dealt with Kirinyaga Supply Stores (K) Limited. So, it does appear, *prima facie*, to be beyond dispute that the loans and overdraft in question were advanced to the Plaintiff, remained the liability of the Plaintiff and never became the liability of the company called Kirinyaga Supply Stores (K) Limited. Regarding this primary issue therefore, the Plaintiff has not established a *prima facie* case with a probability of success.

Did the debts become statute-barred?

As already seen, the loans and overdraft were advanced on 11th August 1995 and 22nd January 1996. The two loans were for terms of 15 months and 20 months respectively. The overdraft facility was to be reduced by monthly payments of KShs. 37,500/00 plus interest. If the limit of KShs. 800,000/00 was advanced upon the overdraft facility, it means that it would have taken slightly over 21 months to repay the principal amount of the overdraft. Over 10 years had passed by the time the cause of action herein arose since these facilities were advanced to the Plaintiff. It does appear, *prima facie*, that these debts eventually became statute-barred by passage of time by virtue of section 4(1) (a) of the Limitation of Actions Act, Cap. 22. With regard to this particular issue therefore, the Plaintiff has shown a *prima facie* case with a probability of success.

Did the Plaintiff acknowledge the debts, thereby reviving them?

It is the Defendant's case that the Plaintiff did exactly that by its two letters to the Defendant dated 3rd October 2006 and 15th October 2006. Copies of both are annexed to the replying affidavit. The first letter states as follows:

"Dear Sir,

RE: KIRINYAGA SUPPLY STORES LTD

LOAN UNDER SECURITY – IRIANI/KAGUYU/733 AS FOLLOWS

OD – 1 MILLION, LOAN – 1 MILLION, GURANTEE – 1 MILLION

I am a mature and in sound mind (sic) adult aged 54 years and I would want to state as follow:

I am aware of the above loan of way back 15 years ago. To the best of my knowledge the loan was written off in your books and I am surprised that you have again revived the same.

I had several times visited the office of the then Risk Director – MR. JAMES TURNER at Barclays Plaza and the office of MR. CAMPBELL KAMBO and this matter had been settled.

I have been operating with Barclays since 1978 to date and I currently operate my current account at Plaza and I would humbly request as follows:-

Since two of the Directors of this Company passed away sometime back and business under Kirinyaga Supply Stores closed down, I request to half of the money(sic) which would be 1 million since 1 million was a guarantee in favour of East African Portland Cement which I surrendered. I therefore propose as follows, down payment of KShs. 200,000/00 and KShs. 50,000/00 every month from my current account considering that I have repaid over 10 million since this facility was offered.

I am very surprised that after more than 10 years you decided to revive this loan disregarding my previous arrangement but because I have no other alternative I request you to approve my proposal and I will prove both my interest and ability.

I hope to hear from you."

The second letter states as follows in the material part:

"Dear Sir,

RE: ACCOUNT 077-1220266 – KSHS. 1,996,488/= AND 266,750/=

I refer to the above and wish to express my extreme disappointment at the way my account was handled.

I am aware of an old debt of KShs. 3,000,000/= acquired through Kirinyaga Supply Stores Ltd. For which I was a Director way back in 1990's. The business underwent rough times and eventually would (sic) up when two of the directors passed away and I was therefore left with the huge burden. Given the state of affairs, I could not manage to service the loan and the loan went into arrears. As a result of this I had several discussions with different Bank officials including James Turner, the Risk Director then. He looked at my case and decided to waive the remaining debt because I had already paid over 10,000,000/= for a debt that was originally 3,000,000/=. Campbell Kambo of DRU was also aware of this.

With this assurance I went about re-building my life and I started off another business which has recently started picking up. Some time in September 2006 I received a call from Boniface of Recoveries Department regarding the loan. I expressed my surprise at this and explained that the debt had been written off but he maintained that I had to pay it and he told me the balance was KShs. 3,000,000/=. I then suggested to him to sell off my property in Nyeri valued at KShs. 20,000,000/= but he said it was not possible. I then decided to write a proposal on 3/10/2006 which I sent to Recoveries Department. I have not received any response to date. Instead I got a rude shock on 23/10/2006 when I saw the debits in my personal account. In my letter I proposed to pay 200,000/= and 50,000/= monthly thereafter to clear the debt from my personal current account. I had also requested for your consideration to reduce the debt to 1,000,000/= given that the other Directors had passed away. This was because the original debt was 3,000,000/=. Out of this 1,000,000/= was a guarantee in favour of East African Portland Cement. 1,000,000/= was an overdraft and 1,000,000/= a loan. We had surrendered the guarantee so that debt had reduced to 2,000,000/= and that is why in my proposal I requested to pay half of the debt.

I had written out cheques totalling KShs. 180,000/= on the strength of the funds that were in my account and I am concerned that if the cheques are not honoured it will gravely tarnish my name and some of the payees could take legal action against me. Furthermore it will deck a great blow to my business which has just started picking up a situation that would help me recover financially and therefore enable me reap (sic) the debt. I am therefore e requesting you to honour the cheques. They are as follows…..

I was also to make a transfer of KShs. 600,000/= to account 09-1168612.

I am very willing to have a discussion with you on how to repay the loan. I have even continued to operate an account in Barclays which would not have been the case if I had anything to hide. I intend to maintain the relationship with your bank. I request you to consider my proposal and the circumstances explained above. I look forward to an invitation for a discussion with you".

Learned counsel for the Plaintiff had submitted that these two

letters do not amount to an acknowledgement at the best for the following reasons:

1. That the letters are written by the Plaintiff, who was not the person liable or accountable for the debts, and not by Kirinyaga Supply Stores or Kirinyaga Supply Stores (K) Limited, the persons liable to pay the debt. I have already held that the loans and overdraft were in fact advanced to the Plaintiff as sole proprietor of Kirinyaga Supply Stores. I have also already held that there is no evidence, so far, that Kirinyaga Supply Stores (K) Limited ever assumed, with the consent of the Defendant, the liabilities to it of Kirinyaga Supply Stores. There is thus no merit in this submission.

2. That the letters relate to debts that were not in existence at the time of acknowledgment and were written long after the period of limitation had expired. Learned counsel further submitted that an acknowledgement must be made before the period of limitation has run out and must be in respect to an existing debt. Section 23(3) of Cap. 22 aforesaid provides as follows:

"(3) Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to moveable property of a deceased person, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement of the last payment:

Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest treated as a payment in respect of the principal sum".

Section 23 aforesaid falls within PART III of the Act, which is titled, "**EXTENTION OF PERIODS OF LIMITATION".** So, obviously, the effect of the acknowledgement is to revive a claim that has otherwise expired by limitation of time. I do not accept, upon authority of the statute, the submission that an acknowledgment, to be effective, must be made before the period of limitation has expired. While the claim is still alive there would be no need for acknowledgment to make the claim actionable.

3. That the letters dispute liability to pay on the grounds that the debts were written off. Indeed in the two letters the Plaintiff raised the issues that the debts had been waived or written off. It was conceded by the Defendant that indeed the debts had been written off in its books, albeit only as an accounting procedure that never discharged the Plaintiff's obligation to pay them. I accept this submission of the Defendant. The Plaintiff cannot rely on the Defendants internal accounting procedure to resist the debts if they are otherwise payable.

4. That the letters on their face put the acknowledgment subject to condition and qualification contrary to law. Indeed it is clear from the letters that in the mind of the Plaintiff the matter required discussion before he could pay the debts. He also raised the condition that at least part of the debt ought to be waived to enable him to pay the balance. No replies by the Defendant, if there were any, have been exhibited. In

his second letter the Plaintiff said that he looked forward for an invitation to discuss the matter further. So, the matter was not closed. He had not made an irrevocable acknowledgement of and commitment to pay the debts. I therefore find, *prima facie*, that there was no certain, unqualified and unambiguous acknowledgement of the debts as required by law.

The Plaintiff has therefore demonstrated a prima facie case with a probability of success as far as the issue of acknowledgment of the debt is concerned.

Was the Defendant authorised by its contracts with the Plaintiff to recover money owed to it upon the loan and overdraft accounts from the Plaintiff's personal current account?

The loan agreements provide for set-off as follows:

"SET-OFF

The Bank is authorised by the Borrower to apply at any time any credit balance of the Borrower with the Bank in reduction of any sum due under this agreement from time to time".

In the "Terms and Conditions of Current Account" (annexed to the supporting affidavit) which govern the Plaintiff's personal current account with the Defendant, Clause 8.6 provides:

"We (the Bank) may use any amounts you have in any account with us in any currency to reduce or repay any amounts you owe us on any account (including on card accounts you hold with us, and any other amounts you may owe us), either in your own name or jointly with anyone else. We will tell you if we do this."

It does appear, *prima facie*, that the Defendant had the necessary contractual authority to debit the Plaintiff's personal current account to recover amounts owed to it upon the loan and overdraft accounts. So, the Plaintiff has not shown a *prima facie* case with a probability of success as far as this issue is concerned.

As already seen, however, the Plaintiff has demonstrated a *prima facie* case with a probability of success as far as the issue of whether or not the debts are statute-barred by limitation of time is concerned. This is sufficient. The Plaintiff's case is premised upon the pleading that he never owed any money to the Defendant, and if he did, the debts have since become statute-barred by limitation of time. I am therefore satisfied, on the whole, that he has demonstrated a *prima facie* case with a probability of success.

Has the Plaintiff demonstrated that he might suffer irreparable injury which would not adequately be compensated by an award of damages unless the interlocutory injunction sought is granted?

The Plaintiff is a businessman. He has sworn that he uses his personal current account on his business and that he had in fact issued a large number of cheques to his business interlocutors. He pleads that his business and himself stand to suffer irreparably in reputation and loss of opportunity if the Defendant continues to debit his account, thereby making likely the dishonour of cheques that he might issue. He pleads further that he will be unable to meet his obligations to his business interlocutors. The Defendant's answer is that this being a personal account, the Plaintiff cannot have been using it for business. I do not see anything in law or practice that would prevent a businessman from using his personal account in the operations of his business. It may be inadvisable from an accounting point of view, but certainly not illegal.

I am satisfied, upon the materials placed before the court, that the Plaintiff stands to suffer irreparable loss unless the prohibitory temporary injunction sought is granted. His credit standing will be ruined, he will likely lose business, his reputation will suffer and he risks suits for recovery of what he may owe his business interlocutors upon the dishonoured cheques or unmet obligations. All these injuries may not be monetarily quantifiable.

The Plaintiff has therefore met the necessary conditions for the grant of the temporary prohibitory injunction. **What about a temporary mandatory injunction?** He needs to demonstrate that there are special circumstances and that this is a clear case where a temporary mandatory injunction ought to be granted. We have already seen that the debts owed to the Defendant by the Plaintiff may well be statute-barred. I have already accepted that the Plaintiff was using the funds in his personal current account for his business. He had already issued a large number of cheques to third parties upon the strength of those funds. The Defendant debited the account even as the Plaintiff waited for an invitation to discuss the old debts. The Plaintiff had expressed a willingness to pay at least part of the debts, should it be acceptable to the Defendant, and had in fact issued some cheques towards this. The Defendant appears not to have responded to the Plaintiff's offer. Instead it debited the account with a huge proportion of the funds available. It appears to me that the Defendant acted in bad faith. No harm would have been occasioned by discussing the matter with the Plaintiff as requested because there were funds in the Plaintiff's account maintained with the Defendant. In the circumstance of this case I am satisfied that the Defendant was stealing a match on the Plaintiff by acting the way it did. I therefore hold that a temporary mandatory injunction as sought is merited.

It has been argued for the Defendant that the Plaintiff had come to court with unclean hands by not disclosing that he had previously opened an account with the Defendant at its Karatina Branch and had there been advanced loan and overdraft facilities which he failed to pay. But we must not forget that his case is that those debts ultimately became the obligation of Kirinyaga Supply Stores (K) Limited and were in any event statute-barred. So, I am not satisfied that there has been any conduct of the Plaintiff that makes him undeserving of the discretion of the court.

For all the above reasons I will allow the Plaintiff's application by notice of motion dated 5th November 2006. I will grant prayer No. 2 of

the application as sought. This will be conditional upon the Plaintiff maintaining a credit balance of at least KShs. 1,000,000/00 in his *Plus Account* Number 1220266 maintained with the Defendant at its *Barclays Plaza Business Centre Branch*. This, it will be recalled, is the amount that the Plaintiff offered to pay to liquidate the debts. Costs of the application shall be in the cause. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF JANUARY, 2007.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 18TH DAY OF JANUARY, 2007.