

Date of Filing:

Plaintiff designates  
New York County  
as the place of trial

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ARTHUR NTOZI

:  
Index No.

Plaintiff.

-against-

:  
**SUMMONS**

JULIUS MWALE

Defendant  
-----X

To the above named defendant:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is §501.

Dated: New York, New York

October 11, 2017

LAW OFFICE OF FRED N. ALIBATYA, PLLC



Fred N. Alibatya, Esq.

*Attorney for Plaintiff*

250 Park Avenue, 7<sup>th</sup> Floor

New York, NY 10177

Telephone: (212) 572-6282

To: Julius Mwale  
1018 Main Street  
Peekskill, NY 10566

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**Index No.**

ARTHUR NTOZI,

Plaintiff

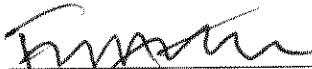
-against-

JULIUS MWALE

Defendant

**SUMMONS**

Pursuant to NYCRR Rule 130-1.1-a, the undersigned, an attorney admitted to practice in the State of New York certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed paper(s) are not frivolous.



Fred N. Alibatya, Esq.  
Attorney for Plaintiff  
250 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10177

To: Julius Mwale  
1018 Main Street  
Peekskill, NY 10566

Service of a copy of the within \_\_\_\_\_ is hereby admitted.

Dated, \_\_\_\_\_

Attorneys for \_\_\_\_\_

Please take notice

**Notice of Entry**

that the within is a (certified) true copy of a  
of the within court on

duly entered in the office of the clerk

\* \* **Notice of Settlement**

Yours, etc.,

Law Office of Fred N. Alibatya, PLLC  
250 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10177  
Telephone: (212) 572-6282

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X		
ARTHUR NTOZI	:	<b>INDEX No.:</b>
	:	Hon.
Plaintiff,	:	
	:	
-against-	:	<b><u>VERIFIED COMPLAINT</u></b>
	:	
JULIUS MWALE	:	
	:	<b>The basis of venue is CPLR</b>
Defendant	:	<b>§501</b>
-----X		

Plaintiff, by his attorneys, Law Office of Fred N. Alibatya, PLLC. complaining of Defendant. respectfully alleges as follows:

PARTIES

Plaintiff

1. Plaintiff Arthur Ntozi (hereinafter referred to as "Plaintiff") is a citizen of The Republic of Uganda.

Defendant

2. Defendant Julius Mwale (hereinafter referred to as "Defendant") is an individual who, upon information and belief, resides at 1018 Main Street, Peekskill, Westchester County, State of New York.

FACTUAL BACKGROUND

3. Plaintiff repeats and re-alleges each and every allegation in paragraphs numbered "1" through "2" of this complaint with the same force and effect as if fully set forth herein.

4. On or about July 15, 2013, Plaintiff and Defendant executed a stipulation of settlement (the "Stipulation") pursuant to which Defendant acknowledged and agreed that he was indebted to

Plaintiff in the principal sum of \$50,000.00 plus interest thereon at eight percent (8%) per annum from the first day of October 2010 for a total outstanding indebtedness of \$61,000. A copy of the Stipulation is annexed hereto and made a part hereof as Exhibit "1".

5. Pursuant to the Stipulation, for valuable consideration, Defendant agreed to pay to Plaintiff the sum of \$61,000.00 not later than July 15, 2013.
6. Defendant has since made only three partial payments in the amounts of (i) \$6,000.00 on or about August 29, 2013; (ii) \$10,500.00 on or about August 20, 2014; and (iii) \$6,840.09 on or about April 2015; for a total partial payment of \$23,340.09. Copies of checks relating to said payments are annexed hereto and made a part hereof as Exhibit "2".
7. On or about September 23, 2016, pursuant to the Stipulation, Plaintiff sent Defendant a notice of default and demanded payment of a total outstanding indebtedness of \$51,052.51 (inclusive of interest on the unpaid amounts from July 23, 2013) plus interest at 8% per annum from September 24, 2016. A copy of the notice of default is attached hereto and made a part hereof as Exhibit "3".
8. Defendant has failed to pay to Plaintiff the outstanding indebtedness or any part thereof, although payment thereof has been duly demanded, and there is now due and owing to Plaintiff from Defendant \$51,052.51 plus interest at 8% per annum from September 24, 2016.

**As and for a First Cause of Action**

9. Plaintiff repeats and re-alleges each and every allegation in paragraphs numbered "1" through "8" of this complaint with the same force and effect as if fully set forth herein.
10. By virtue of Defendant's breach of his contractual obligation to pay the sums due under the Stipulation, Plaintiff has been damaged in an amount of \$51,052.51 plus interest at 8% per annum from September 24, 2016.

**As and for a Second Cause of Action**

11. Plaintiff repeats and re-alleges each and every allegation in paragraphs numbered “1” through “10” of this complaint with the same force and effect as if fully set forth herein.
12. Defendant made the representations in the Stipulation for the purpose and with the intent of deceiving and defrauding Plaintiff and to induce Plaintiff to enter into the Stipulation.
13. Plaintiff believed the representations to be true and relied thereon and was induced to enter into the Stipulation by Defendant.
14. By reason of the foregoing Plaintiff has been damaged in the sum of \$51,052.51 plus interest at 8% per annum from September 24, 2016.

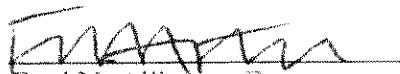
**PRAYER FOR RELIEF**

Wherefore Plaintiff respectfully requests that this Court enter a judgment:

- (a) on the first cause of action, awarding plaintiff judgment against the Defendant in the amount of \$51,052.51 plus interest at 8% per annum from September 24, 2016, plus the costs and disbursements of this action;
- (b) on the second cause of action, awarding the Plaintiff judgment against the Defendants in the amount of \$51,052.51 plus interest at 8% per annum from September 24, 2016, plus the costs and disbursements of this action; and
- (c) such other and further relief as the Court deems fair and proper.

DATED: New York, New York  
October 11, 2017

LAW OFFICE OF FRED N. ALIBATYA, PLLC

By   
Fred N. Alibatya, Esq.  
Attorneys for Plaintiff  
250 Park Avenue, 7<sup>th</sup> Floor  
New York, New York 10177  
Telephone: (212) 572-6282

Verification

Fred N. Alibatya, an attorney duly admitted to practice before the Courts of the State of New York and fully aware of the penalties of perjury, hereby affirms as follows:

1. Affirmant is the attorney for the plaintiff in the within action with offices located at 250 Park Avenue, 7<sup>th</sup> Floor, City of New York, County of New York, State of New York;
2. Affirmant has read the foregoing complaint and knows the contents thereof; the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matters he believes them to be true.
3. The reason why this verification is made by affirmant instead of the plaintiff is because the plaintiff is not presently within the County of New York, which is the county where deponent has his office.
4. Affirmant further says that the grounds of his belief as to all matters in the complaint not stated to be upon his knowledge are based upon investigation, and a review of information relevant to this action contained in the files of his law firm.

Dated: October 11, 2017



Fred N. Alibatya, Esq.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x

CREDITOR  
Arthur Ntozi,

Plaintiff,

-against-

**Index No. PRESUIT**

DEBTOR  
Julius Mwale,

Defendant.

-----x

**STIPULATION OF SETTLEMENT**

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for Arthur Ntozi (the "Creditor" or "Plaintiff") and Julius Mwale (the "Debtor" or "Defendant") that:

WHEREAS, there is no party herein who is an infant or an incompetent or any person who has an interest herein who is not a party hereto;

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Acknowledgement of Debt

Debtor hereby acknowledges and agrees that he is indebted to Creditor in the principal sum of \$50,000.00, *plus* interest thereon at eight percent (8%) per annum from the 1<sup>st</sup> day of October, 2010.

2. Agreement to Pay Settlement Amount

Debtor hereby agrees that he shall pay the Creditor the sum of Sixty-One Thousand and 00/100 (\$61,000.00) (the "Settlement Amount") in full settlement of the Creditor's claims constituting the dispute being settled, such payment to be made on or before July 15, 2013 (the "Due Date").

Payment of the Settlement Amount shall be made to, and received by, Law Office of Fred N. Alibatya, PLLC, attorney for Creditor, at 250 Park Avenue, 7<sup>th</sup> Floor, New York, New York 10177, on or before the Due Date.

3. Default

TIME IS OF THE ESSENCE, and in the event of default in any payment due hereunder, or in the event any check tendered by or on behalf of Debtor fails to clear the first time it is



deposited, notice of such default will be mailed by Creditor to Debtor, and should such default remain uncured for forty five (45) days, then Creditor may, without further notice, apply any prior payments received hereunder to the Settlement Amount specified in Paragraph 2 above and enter this Stipulation as a judgment by default in the Supreme Court of the State of New York, County of New York for the remaining balance of the Settlement Amount *plus* interest from July 16, 2013.

#### MISCELLANEOUS PROVISIONS

##### 4. Confidentiality

The terms and conditions of this Stipulation are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. Any disclosure in violation of this section shall be deemed a material breach of this Stipulation.

##### 5. Debtor's Business Confidential Information

EXCEPT AS MAY BE NECESSARY TO EFFECTUATE THE TERMS OF THIS AGREEMENT:

Creditor shall keep confidential in the strictest confidence such business information as may have been provided to Creditor by Debtor relating to SBA Technologies, Inc. ("Debtor's Business") in connection with the subject debt. Such business information is herein referred to as "Debtor's Business Confidential Information". Creditor will not disclose such Debtor's Business Confidential Information to anyone outside Debtor's Business without Debtor's Business' prior written consent. Nor will Creditor make use of any Debtor's Business Confidential Information for Creditor's own purposes or the benefit of anyone other than Debtor's Business.

However, Creditor shall have no obligation to treat as confidential any such Debtor's Business Confidential Information which:

- (a) was in Creditor's possession or known to Creditor, without an obligation to keep it confidential, before such information was disclosed to creditor by Debtor's Business;
- (b) is or becomes public knowledge through a source other than creditor and through no fault of Creditor; or
- (c) is or becomes lawfully available to creditor from a source other than Debtor's Business.

Creditor's obligation to maintain the confidentiality and security of Debtor's Business Confidential Information remains even after the Debtor's obligations are fully met and continues for so long as such Debtor's Business Confidential Information remains a trade secret.

(a) Relationships: Nothing contained in this provision or any prior agreement preceding this agreement shall be deemed to make Creditor a partner or joint venturer of Debtor and Debtor's Business for any purpose.

(b) Injunctive Relief: Any misappropriation of any of the Debtor's Business Confidential Information in violation of this provision may cause Debtor's Business irreparable harm, the amount of which may be difficult to ascertain, and therefore Creditor agrees that Debtor's Business shall have the right to apply to a court of competent jurisdiction for an order

enjoining any such further misappropriation and for such other relief as Debtor's Business deems appropriate. This right is to be in addition to the remedies otherwise available to Debtor's Business.

(c) Indemnity: Creditor agrees to indemnify Debtor's Business against any and all losses, damages, claims or expenses incurred or suffered by Debtor's Business as a result of Creditor's breach of this provision.

6. Advice of Counsel

Each Party acknowledges that he has been advised by counsel in connection with this Stipulation.

7. Authority to Bind

Each counsel or other person executing the Stipulation on behalf of any party hereto warrants that he or she has the full authority to bind his or her principal to this Stipulation.

8. No construction against drafting party

In the event that any dispute arises between the parties regarding the interpretation of this Stipulation, or any provision thereof, the parties acknowledge and agree that both parties shall be deemed collectively to be the drafting party and any rule of construction pursuant to which ambiguities are to be construed against the drafting party shall not be applicable.

9. Successors and Assigns

The Stipulation shall be binding upon, and inure to the benefit of, the heirs, executors, successors and assigns of the parties.

10. Severability

If a court finds any provision of this Stipulation invalid or unenforceable, the remainder of this Stipulation shall be interpreted so as to best effect the intent of the parties.

11. Integration

This Stipulation expresses the complete understanding of the parties with respect to the Creditor's claims and supersedes all prior agreements, representations and understandings. This Stipulation may not be amended except by a writing signed by both parties.

12. Waiver

The failure by any party to exercise any right in this Stipulation shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation, and failure by any party to assert any claim for breach of this Stipulation shall not be deemed to be a waiver as to that or any other breach and will not preclude any party from seeking to remedy a breach and enforce the terms of this Stipulation.

13. Governing Law

This Stipulation shall be governed by and in accordance with the laws of the State of New York.

14. Headings

The section headings contained in this Stipulation are for reference purposes only and shall not in any way affect the meaning or interpretation of this Stipulation.

15. Counterparts

This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands <sup>as of</sup> this 15<sup>th</sup> day of ~~May~~ <sup>July</sup>, 2013.

[Signature]  
By: Fred N. Alibatya, Esq.  
Law Office of Fred N. Alibatya, PLLC  
Attorneys for Creditor  
Address: 250 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10177

[Signature]  
By: John H. Hersh, Esq.  
Attorneys for Debtor  
Address: 1019 PARK ST  
PEREGRINE, NY 10566

Consented to:

[Signature]  
Julius Mwale  
Debtor  
Address: 1019 PARK ST.  
PEREGRINE, NY 10566

Sworn to before me this  
15<sup>th</sup> day of July, 2013

[Signature]  
Notary Public



**EXHIBIT 2**

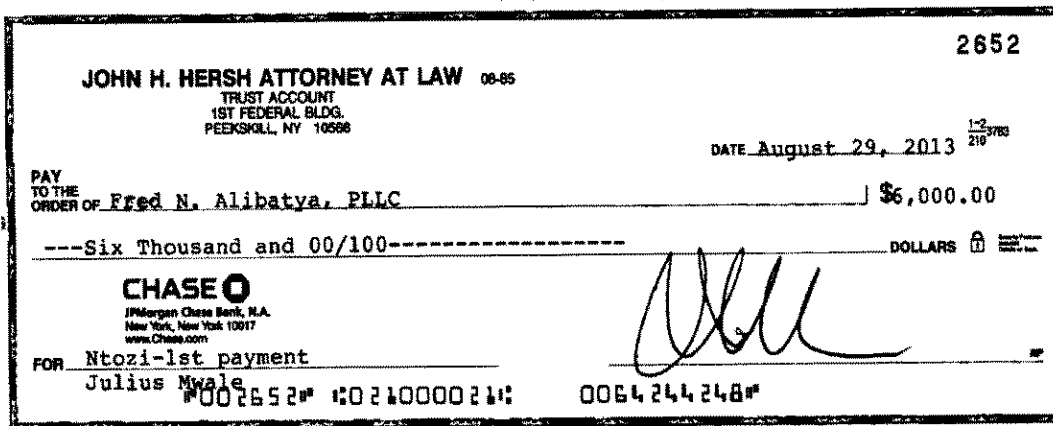
Chase Online

Sunday, July 13, 2014

Check Details for Check Number 2652

Post Date	Amount	Account number	Routing number
2013-09-12 00:00:00.0	\$6,000.00	64244248	02100002

Check Images (Front and Back)



This information is provided for your convenience and does not replace your monthly account statement(s), which are the official records of your accounts and does not replace any other notice we send you.

JPMorgan chase Bank, N.A. Member FDIC

© 2014 JPMorgan Chase & Co.

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

CASHIER'S CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK  
1771714063  
253  
440

Date 08/20/2014

Void after 7 years

Date 08/20/2014

Void after 7 years



Remitter: JULIUS MWALE

Pay To The FRED ALIBATYA  
Order Of:

pay: TEN THOUSAND FIVE HUNDRED  
DOLLARS AND 00 CENTS

\$\*\* 10,500.00 \*\*

Drawer: JPMORGAN CHASE BANK, N.A.

*[Signature]*

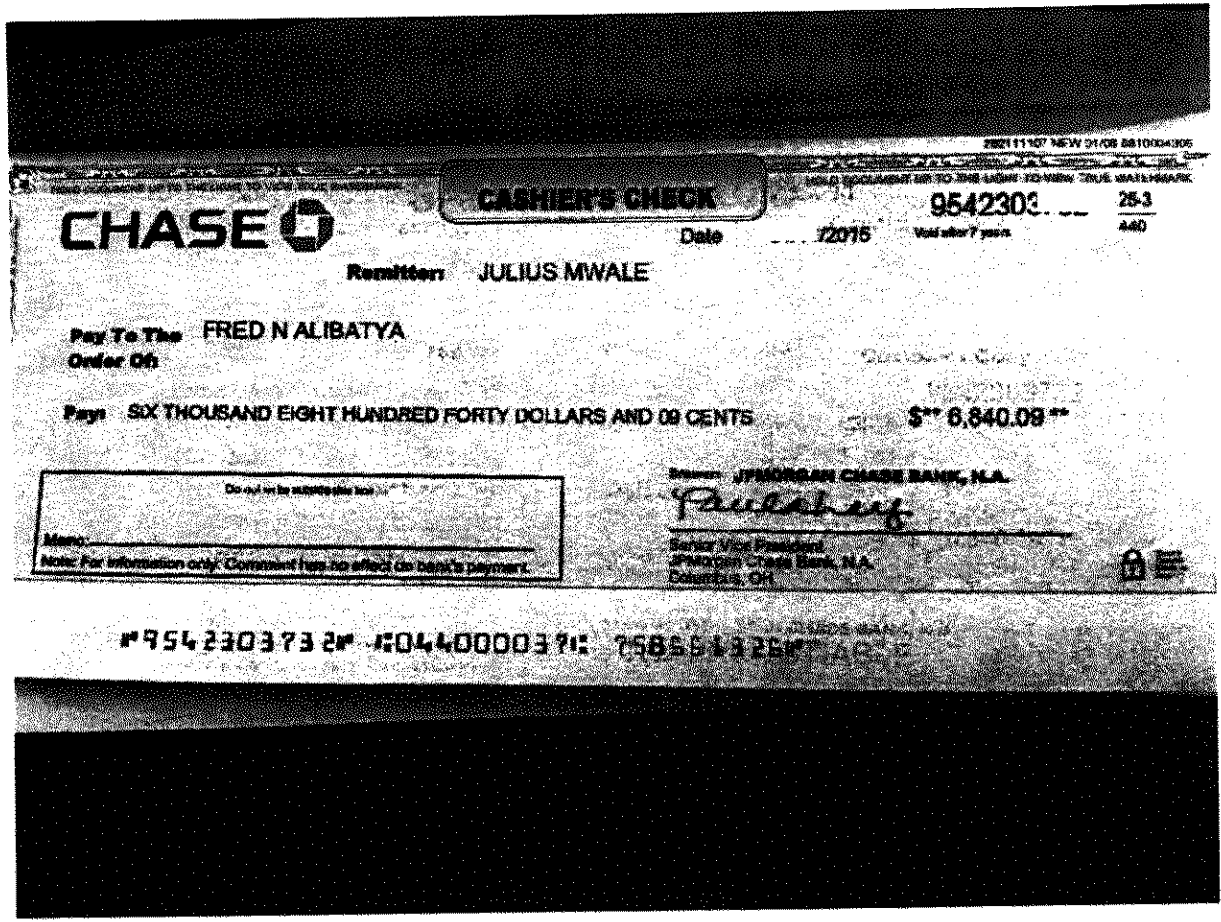
Senior Vice President  
JPMorgan Chase Bank, N.A.  
Columbus, OH



JP Morgan Chase Bank, N.A.

MEMO: *AVOID HOLD*  
*Julius Mwale*  
*partial payment*  
Do not write outside this box  
Memo: *Julius Mwale*  
Note: For information only. Comment has no effect on bank's payment.

⑆ 1171714063⑆ ⑆044000037⑆ 758661326⑆







Law Office of Fred N. Alibatya PLLC

September 23, 2016

**VIA FIRST CLASS MAIL and EMAIL**

Mr. Julius Mwale,  
1018 Main Street  
Peekskill, NY 10566

Re: \$51,052.51 Outstanding Payment to Arthur Ntozi under Stipulation of Settlement executed July 15, 2013

Dear Mr. Mwale,

We are attorneys for Arthur Ntozi in connection with that certain Stipulation of Settlement between the parties executed on or about July 15, 2013 (the Stipulation), a copy of which is enclosed for your reference.

Under the terms of the Stipulation, you were obligated to pay Fifty-One Thousand Six Hundred Twenty Three Dollars (\$51,623.00) as of December 15, 2014. You have since made a payment of only Six Thousand Eight Hundred Forty and 09/100 Dollars (\$6,840.09), leaving an unpaid balance of Forty-Four Thousand Seven Hundred Eight-Two and 91/100 Dollars (\$44,782.91) plus interest at 8% per annum from December 15, 2014 to date, for a total outstanding amount of Fifty-One Thousand Fifty-Two and 51/100 Dollars (\$51,052.51).

Accordingly, please make a payment by bank certified or cashier's check, delivered to us at the address above, in the amount of Fifty-One Thousand Fifty-Two and 51/100 Dollars (\$51,052.51) made payable to Law Office of Fred N. Alibatya, PLLC, as attorneys for Arthur Ntozi.

If payment is not received within 45 days from September 24, 2016, Mr. Ntozi will, without any further notice, have the Stipulation entered as a judgment by default against you in the Supreme Court of the State of New York.

Very truly yours,

  
Fred N. Alibatya, Esq.

cc: John H. Hersh, Esq., via email

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No.

ARTHUR NTOZI,

Plaintiff

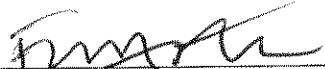
-against-

JULIUS MWALE

Defendant

COMPLAINT

Pursuant to NYCRR Rule 130-1.1-a, the undersigned, an attorney admitted to practice in the State of New York certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed paper(s) are not frivolous.



Fred N. Alibatya, Esq.  
Attorney for Plaintiff  
250 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10177

To: Julius Mwale  
1018 Main Street  
Peekskill, NY 10566

Service of a copy of the within

is hereby admitted.

Dated, \_\_\_\_\_

Attorneys for

Please take notice

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duly entered in the office of the clerk

\* \* **Notice of Settlement**

Yours, etc.,

Law Office of Fred N. Alibatya, PLLC  
250 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10177  
Telephone: (212) 572-6282