

IN THE GRAND COURT OF THE CAYMAN ISLANDS

328
CAUSE NO. OF 2009

BETWEEN:

**THREEM, SPC LTD. (IN VOLUNTARY LIQUIDATION) IN THE
NAME AND ON BEHALF OF THREEM FUND OF HEDGE FUNDS
LEVERAGE PROVIDER SEGREGATED PORTFOLIO AND THREEM
FUND OF HEDGE FUNDS SEGREGATED PORTFOLIO**

Plaintiff

-and-

YA OFFSHORE GLOBAL INVESTMENTS LTD.

Defendant



WRIT OF SUMMONS



TO: YA Offshore Global Investments Ltd c/o Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff c/o the Voluntary Liquidator, Geoff Varga, Kinetic Partners Cayman LLP, of The Harbour Centre, 42 North Church Street, PO Box 10387, Grand Cayman, KY1-1004, Cayman Islands in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 9th day of July, 2009.

NOTE – This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. At all times material to this action:-

1.1 The Plaintiff:-

1.1.1 was an opened ended investment company, established as an exempted company with limited liability pursuant to the laws of the Cayman Islands;

1.1.2 had permission from the Cayman Islands Registrar of Companies to be registered as an exempted Segregated Portfolio Company (“SPC”); and

1.1.3 pursuant to its registration as an SPC, created three segregated portfolios, namely the ThreeAM Fund of Hedge Funds Segregated Portfolio, the ThreeAM Fund of Hedge Funds for Leverage Provider Segregated Portfolio, and the ThreeAM Leveraged Fund of Hedge Funds Segregated Portfolio (each a “Segregated Portfolio” and together the “Segregated Portfolios”).

1.2 The Defendant:-

1.2.1 previously called Cornell Capital Partners Offshore Ltd, was an open ended investment company, established as an exempted company with limited liability pursuant to the laws of the Cayman Islands, and was governed by its Memorandum and Articles of Association, as amended and restated from time to time, the last such amendment and restatement occurring by way of special resolution dated 30 June 2003 (“the Articles”); and

1.2.2 invested substantially all of its assets, through a Master-Feeder structure, in YA Offshore Global Investments L.P. (the “Master Fund”).

2. In order to procure potential investors to invest in the Defendant, the Defendant published a Confidential Private Placement Memorandum dated November 2006 (the “Memorandum”) which provided information to existing and prospective investors about the Defendant, together with the terms on which the Defendant was offering to issue Class L shares (the

“Shares”) to those investors who wished to invest in the Defendant.

3. For the purposes of the Defendant’s Memorandum and Articles of Association, the Shares were “Participating Shares”.
4. In or about January 2007, and in reliance on the representations made by the Defendant in the Memorandum, the Plaintiff decided to invest a sum of \$2,725,000 in the Defendant in return for Shares; however, rather than invest that sum directly itself, the Plaintiff opted to invest through a nominee company, Field Nominees Limited (“Field”).
5. Field is a nominee company, incorporated pursuant to the laws of Bermuda, and is operated and controlled by Butterfield Trust (Bermuda) Limited, a wholly owned subsidiary of the Bank of N.T. Butterfield & Sons Ltd., and regulated by the Bermuda Monetary Authority.
6. On or about 29 January 2007, and in reliance on the Memorandum, the Plaintiff, for and on behalf of ThreeAM Fund of Hedge Funds Segregated Portfolio and ThreeAM Leveraged Fund of Hedge Funds Segregated Portfolio, instructed Field to deliver to the Defendant (through its designate) completed copies of two separate sets of Subscription Documents (as defined in the Memorandum) seeking a subscription of 25,500 and 1,750 Shares respectively, together with a sum of US \$2,725,000 being the subscription price payable in respect of both subscriptions (the “Subscriptions”).
7. The Defendant, through its Board of Directors, accepted the Subscriptions, and on or about 1 February 2007, the Defendant issued Field 27,250 Shares.
8. As a result of the matters pleaded in paragraph 7 above, Field became a shareholder in the Defendant as and from 1 February 2007.
9. The Shares were redeemable, upon request, by Field. The Memorandum provided *inter alia*:-
“A Shareholder generally may redeem, as of any Permitted Redemption Date, all or some of its Shares on at least 90 days’ advance written notice to the Investment Manager (directly or through the Administrator); however, Shares may be redeemed only pursuant to (i) the terms of the Articles of Association (which are summarized

below) and (ii) any specific redemption terms applicable to the Class of Shares being redeemed that are set forth in the Board resolution creating the Class of Shares as well as in **Appendix A** attached hereto. As used herein, "**Permitted Redemption Date**" means the Business Day selected by the Investment Manager in its sole and absolute discretion as described in the Designation of Certification, which is attached hereto as **Appendix A**, as of which the Fund's Net Asset Value is determined.

Shares will be redeemed at a per Share price (the "**Redemption Price per Share**") based on the Net Asset Value of the applicable Series (after payment of any Incentive Fee with respect to the Class of Shares being redeemed) as of the day immediately prior to the date the redemption is effective.

Payment of the Redemption Price, under normal circumstances, will be made as follows. The Fund will pay 90% of the Redemption Price within 60 days after the date as of which the redemption is effective, and the remaining amount will be paid on the completion of the audit of the Fund's financial statements relating to the Fiscal Year in which the redemption occurred. Payment of the Redemption Price may be delayed beyond such periods in the Board's sole and absolute discretion. In certain circumstances (for example where realization of illiquid investments is required), redemption proceeds may be paid out after a longer period. The Board will seek to ensure such proceeds are paid out as soon as possible in such circumstances, and may seek to establish a borrowing facility to provide the necessary liquidity accordingly."

The Memorandum further provided:-

*"The Redemption Price normally will be paid in cash. The Board may, in its sole and absolute discretion, pay a Redemption Price (in whole or in part) in securities held by the Fund ("**Redemption-In-Kind Securities**") however, the Board has not done so to date and does not plan to do so in the future."*

10. Appendix A to the Memorandum provided *inter alia* that "Permitted Redemption Date" means March 31, June 30, September 30 and December 31 of each calendar year. Thus,

upon the giving of at least ninety days advance written notice to the Defendant's Investment Manager (or the Defendant's Administrator, as defined), Field was entitled to redeem its Shares (or any portion thereof) on any Permitted Redemption Date.

11. In accordance with the Memorandum, on October 27, 2008 notice was given by Butterfield Trust (Bermuda) Limited to the Defendant that Field wished to redeem its Shares (the "Redemption Request"). The Redemption Request was signed by authorised signatories of Field. Given the ninety day notice requirement with respect to any redemption, the next Permitted Redemption Date was 31 March 2009.
12. Receipt of the Redemption Request was acknowledged on October 29, 2008 by email from Paula McGuire of SEI Investment Global Fund Services Ltd (the Defendant's Administrator), who advised that the Redemption Request was "noted" for March 31, 2009.
13. On or about 11 March 2009, the Defendant's Investment Advisor, Yorkville Advisors, LLC, wrote to Field and advised, *inter alia*, that:-
 - 13.1 it was the Investment Advisors' intention to make an in-kind distribution to Field in satisfaction of the Redemption Request, through a distribution of securities held indirectly by the Defendant through its investment in the Master Fund;
 - 13.2 the securities which were to be distributed to Field would be delivered to a brokerage account elected by Field, or alternatively, the Investment Manager's prime broker would assist Field in opening its own account;
 - 13.3 Field would be responsible for the disposition of those securities, and would be subject to the risk of their performance until such disposition; and
 - 13.4 In lieu of an in-kind distribution, Field could elect to participate in an auction ("the Auction") to sell the shares of the Defendant that it had requested to redeem pursuant to the Redemption Request.
14. Field did not wish to take part in the Auction, as provided for in Investment Manager's 11 March letter, preferring to receive the Redemption Price in accordance with the Articles and

Memorandum.

15. According to the Defendant's Account Information, the net asset value of the Shares at the 31 March 2009 valuation date, was US \$5,937,904.
16. By way of letter dated 1 April 2009, the Investment Manager advised Field *inter alia* that:-
 - 16.1 the Redemption Requests were to be satisfied through a distribution of securities held indirectly by the Defendant; and
 - 16.2 the securities selected to be distributed would be valued as of the close of business on 31 March 2009, and would represent the Redemption Price payable to Field as if Field had redeemed the Shares on 28 February 2009, and thereafter, there would be a cash payment, upon finalisation of the Defendant's NAV as at 31 March 2009 (and thus finalisation of the Redemption Price payable to Field), made to Field representing the difference between the value of those securities distributed to Field, and the Redemption Price.
17. On 1 April 2009, and in part payment of the Redemption Price (as provided for in paragraph 16.2 above), the Defendant distributed the following securities, with the following stated values, to Field:-

	<u>Security</u>	<u>Purported Value</u>
17.1.	<i>Coroware</i>	US\$3,234,809
17.2.	<i>Your Space</i>	US\$1,743,449
17.3.	<i>Pop N Go</i>	<u>US\$ 698,217</u>
		US\$5,676,475

("the Securities")

18. Thus the purported value of the Securities was US\$5,676,475.
19. Upon finalisation of the Defendant's NAV as at 31 March 2009, the Defendant determined that the Redemption Price payable by it to Field was US\$5,852,245 (after deduction of fees). On May 1, 2009 the Defendant made two cash payments to Field in the amounts of

US\$114,863 and US\$60,910 totaling US\$175,773 in accordance with paragraph 16.2 above.

20. The Memorandum provides the methodology pursuant to which the Defendant's NAV is to be calculated. That methodology provides *inter alia* that:-

"The net asset value ("Net Asset Value") of the Fund is calculated by adding the value of the Fund's investments, cash and other assets and subtracting its accrued liabilities and expenses, all determined in accordance with GAAP. The Net Asset Value of the Fund reflects its proportionate share of the assets and liabilities of the Master Fund, plus the value of the Fund's other assets, less the Fund's accrued liabilities and expenses."

21. In addition, the Memorandum provides a methodology for determining the value of the securities and investments indirectly owned by the Defendant, through the Master Fund ("the Valuation Methodology").
22. Despite the Securities having a purported value of US\$5,676,475, based on the Valuation Methodology and an independent appraisal, the Securities had an actual value as at 31 March 2009 of only US\$1,174,242, calculated as follows:-

	<u>Security</u>	<u>Purported Value</u>	<u>Actual Value</u>
22.1.	<i>Coroware</i>	US\$3,234,809	US\$ 355,238
22.2.	<i>Your Space</i>	US\$1,743,449	US\$ 634,085
22.3.	<i>Pop N Go</i>	<u>US\$ 698,217</u>	<u>US\$ 184,919</u>
		US\$5,676,475	US\$1,174,242

23. Thus, based on a correct application of the Valuation Methodology, the Defendant has received only a part payment totaling US \$1,350,015, made up of US\$1,174,242 in securities, and US\$175,773 in cash, with respect to the Redemption Price payable of US\$5,852,245. Accordingly, there remains a total amount outstanding, due and payable of US\$4,502,230.
24. Despite demand, the Defendant has failed, refused or neglected to pay Field or the Plaintiff the outstanding sum.

25. By way of Deed dated 30 June 2009 Field assigned its full right, title and interest in and to the debt due and owing by the Defendant arising out of the unpaid portion of the Redemption Price, together with any and all causes of action then vesting in Field with respect to the Defendant's indebtedness, to the Plaintiff, for and on behalf of ThreeAM Fund of Hedge Funds Segregated Portfolio and ThreeAM Leveraged Fund of Hedge Funds Segregated Portfolio ("the Assignment"). Notice of the Assignment, in writing, was given to the Defendant by Field on 8 July 2009.
26. Accordingly, the Defendant is indebted to the Plaintiff in the sum of US\$4,502,230, or is liable in damages for a like amount, for breach of contract in failing to pay the balance of the Redemption Price as set out above.
27. The Plaintiff is entitled to, and claims, statutory interest upon the sum claimed in paragraph 26, pursuant to the Judicature Law (2007 Revision), or at such other rates the Court may think fit.

AND THE PLAINTIFF CLAIMS:-

- (i) The sum of US\$4,502,230 as a debt due and owing;
- (ii) In the alternative, damages for breach of contract;
- (iii) Interest pursuant to the Judicature Law (2007 Revision);
- (iv) Such further or other relief this Honourable Court may deem necessary; and
- (v) Costs.

Ogier

Ogier

Attorneys for the Plaintiff

This Writ and Statement of Claim was issued by Ogier, Attorneys for the Plaintiff, whose address for service is:
Queensgate House, South Church Street, P.O. Box 1234, Grand Cayman KY1-1108, Cayman Islands
(Reference: 421050.00001/SHF)

**DIRECTIONS FOR ACKNOWLEDGMENT
OF SERVICE OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495GT, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e., the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e., a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance.

Please complete overleaf.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words “sued as (the name stated on the Writ of Summons)”.
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description “Partner in the firm of (_____)” after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description “trading as (_____)” after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

BETWEEN:

**THREEAM, SPC LTD. (IN VOLUNTARY LIQUIDATION) IN THE
NAME AND ON BEHALF OF THREEAM FUND OF HEDGE FUNDS
LEVERAGE PROVIDER SEGREGATED PORTFOLIO AND THEREAM
FUND OF HEDGE FUNDS SEGREGATED PORTFOLIO**

Plaintiff

-and-

YA OFFSHORE GLOBAL INVESTMENTS LTD.

Defendant

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest in the proceedings (tick appropriate box).

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).

yes

Service of the Writ of Summons is acknowledged accordingly.

Attorney for
Please complete overleaf

Notes on address for service:

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

OGIER
Attorneys-at-Law
PO Box 1234
George Town
Grand Cayman
Cayman Islands KY1-1108
(Reference: 421050.00001)

Indorsement by Defendant's Attorney (or by Defendant is suing in person) of his name, address and reference, if any, in the box below.