



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 214 OF 2010

BETWEEN:

 BDO (A FIRM) Plaintiff
AND
ARIEL FUND LTD (IN VOLUNTARY LIQUIDATION) Defendant


ORIGINATING SUMMONS



TO: Ariel Fund Ltd (In Voluntary Liquidation)
C/- Geoff Varga & Bart Schwartz, Voluntary Liquidators
Kinetic Partners (Cayman) Limited
The Harbour Centre, 42 North Church Street
P.O. Box 10387, Grand Cayman,
Cayman Islands KY1-1004

LET THE DEFENDANT, within 14 days after service of this Summons on it, counting the day of service, return the accompanying Acknowledgement of Service to the Courts office, PO Box 495, George Town, Grand Cayman KY1-1106.


By this Summons, which is issued on the application of the Plaintiff, BDO (A Firm), the Plaintiff seeks the determination of the Court on the following questions and the following relief:

1. A declaration that, on a true construction of the Articles of Association of Ariel Fund Limited, the Plaintiff is entitled to an indemnity from the assets of Defendant in respect of all claims arising from the Plaintiff's conduct as auditor of the Defendant pursuant to Article 139 of the Defendant's Articles of Association (the "**Indemnity**"), save where the claim against the Plaintiff establishes wilful neglect or default on the part of the Plaintiff.
2. A declaration that, pursuant to the Indemnity, the Plaintiff is entitled to payment, from the assets of the Defendant, of the sums referred to in paragraphs 3 and 4.
3. The Defendant pay forthwith to the Plaintiff the amounts of \$117,986.84 and \$130,507 pursuant to the Indemnity.
4. The Defendant set aside and maintain a further fund of \$100,000 from which the Defendant shall, as soon as practicable after the Plaintiff's presentation of relevant invoices to the Defendant, reimburse the Plaintiff for all costs incurred by the Plaintiff that are subject to the Indemnity.
5. In the alternative to paragraph 4 above, the Defendant pay forthwith into Court, and maintain by further payments as may be required from time to time, a sum to be determined by the Court, as a fund available for payment of the Plaintiff's claims pursuant to the Indemnity.
6. That until such time as payment is made pursuant to paragraph 2 and a reserve set aside pursuant to either paragraphs 3 to 5 above, Messrs Varga and Schwartz as the voluntary liquidators of the Defendant make no distributions to creditors of the Defendant save with the direction of the Court.
7. Such other directions and orders for the administration of the Indemnity as are considered necessary by the Court.
8. Such further or other relief as the Court shall deem fit; and
9. An order that the costs of this action be paid by the Defendant to the Plaintiff.

The grounds upon which the Plaintiff claims to be entitled to the relief sought herein as set out in the Affidavit of Glen Trenouth, true copies of which are served herewith.

If the Defendant does not acknowledge service, within 14 days, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the 27th day of September 2010



Appleby

Attorneys-at-Law for the Plaintiff

NOTE - This Summons may not be served later than 4 calendar months (*or, if leave is required to effect service out of the jurisdiction, 6 months*) beginning with that date unless renewed by order of the Court.

IMPORTANT

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

THIS ORIGINATING SUMMONS was issued by Appleby, Attorneys-at-Law for the Plaintiff, whose address for service is that of its said Attorneys, namely Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref: THW/GH/13033.009).