



**The Grounds of this Application are:**

1. Proceedings were started against the Plaintiff on 20<sup>th</sup> September 2000 when he was charged with the following offences, namely (1) assisting another to retain the benefit of the proceeds of criminal conduct, contrary to section 22(1)(a) of the Proceeds of Criminal Conduct Law (2001 Revision); (2) assisting another to retain the benefit of the proceeds of criminal conduct, contrary to section 22(1)(b)(i) of the Proceeds of Criminal Conduct Law (2001 Revision).
2. The particulars alleged against the Plaintiff in relation to the first charge were that between the 23<sup>rd</sup> day of December 1996 and the 19<sup>th</sup> day of April 2000 in Grand Cayman together with others knowing or suspecting that Richard Homa and Michael Gause were persons who were or had been engaged in criminal conduct or who had benefited from criminal conduct he entered into or was otherwise concerned with an arrangement whereby the retention on behalf of Richard Homa and Michael Gause of property which was the said Richard Homa and Michael Gause's proceeds of criminal conduct was facilitated.
3. The particulars alleged against the Plaintiff in relation to the second charge were that between the 23<sup>rd</sup> day of December 1996 and the 19<sup>th</sup> day of April 2000 in Grand Cayman together with others knowing or suspecting that Richard Homa and Michael Gause were persons who were or had been engaged in criminal conduct or who had benefited from criminal conduct he entered into or was otherwise concerned with an arrangement whereby property which was the proceeds of criminal conduct of the said Richard Homa and Michael Gause was used to secure that funds were placed at the disposal of the said Richard Homa and Michael Gause.
4. The charges related to a business carried on in the United States known as Cash4Titles. The business operated shops in various states of the United States at which small short term loans were provided to borrowers on the security of their car titles. The interest rates charged to the borrowers were high, as was the rate of interest paid to those who

invested in the business. The Plaintiff through his company Zephyr Financial Services Limited was a major investor in the business, both as a principal investor and as an agent on behalf of various clients. During 1999 the United States authorities found that the owner of the business Richard Homa and a promoter of the business Michael Gause had fraudulently diverted funds from the business for their own purposes. Messrs Homa and Gause were charged with various charges of fraud in the United States and were convicted.

5. To prove the charges against the Plaintiff the prosecution had to prove (inter alia) that the Plaintiff knew or suspected that Messrs Gause and Homa were fraudulently diverting funds from the business for their own purposes.
6. The Plaintiff in his dealings with the said business did not know or suspect that either Mr. Gause or Mr. Homa or anyone else was fraudulently diverting funds or was otherwise engaged in fraud.
7. Prior to the said charges being brought, and in anticipation of them, on 18<sup>th</sup> September 2000 this Honourable Court at the suit of the Defendant (Cause No. PCCL 3/00) made a Restraint Order prohibiting the Plaintiff from disposing of his assets, and a Receivership Order appointing Daniel Scott of Ernst & Young as receiver and manager of his realisable assets.
8. At the time of the making of the said Restraint Order the Plaintiff was the legal or beneficial owner of substantial assets, including the assets said out in paragraphs 1 a. to m of the Order.
9. In applying for the said Order and in causing the said charges to be preferred, the Defendant relied wholly or mainly on a report dated 19<sup>th</sup> July 2000 prepared by G. James Cleaver of Ernst & Young. The said Mr. Cleaver had on 19<sup>th</sup> April 2000 been appointed by the Governor in Council pursuant to section 16(i)(b) and (v) of the Companies Management Law, 1999, to assume control of the affairs of Zephyr International Limited, a

company owned by the Plaintiff, and to furnish within three months a report to the Governor in Council and to the Cayman Islands Monetary Authority.

10. In the discharge of his functions as controller of Zephyr International Limited Mr. Cleaver was concerned in a criminal investigation with regard to the offences with which the Plaintiff was charged as set out hereinabove. In support of the allegation that Mr. Cleaver was concerned in a criminal investigation relating to the Plaintiff (and to one Patrick Tibbetts who was charged with the like offences) the Plaintiff will say (inter alia) that:

- (a) Mr. Cleaver had on or about 16<sup>th</sup> February 2000 undertaken, at the behest of the Defendant and/or of the Cayman Islands Monetary Authority, an overriding duty to assist the Defendant in placing formal charges against (inter alia) the Plaintiff and Patrick Tibbetts.
- (b) Mr. Cleaver had access to and inspected all the files pertaining to Zephyr International Limited and to other companies beneficially owned by the Plaintiff.
- (c) Mr. Cleaver held interviews and meetings with all the employees of Zephyr International Limited on several occasions, including with the Plaintiff.
- (d) Mr. Cleaver's report focused principally on the issue whether the Plaintiff was guilty of misconduct and in particular, whether he knew or suspected that the business of Cash4Titles was being used as a vehicle of fraud.
- (e) No, or no significant, investigation was conducted by the Royal Cayman Islands Police into the possible complicity of the Plaintiff in the said fraud.
- (f) The application made on behalf of the Defendant for the said Restraint and Receivership Orders was based wholly or mainly upon the said report

and significant sections of the said report were repeated verbatim in the affidavit sworn on behalf of the Defendant in support of the said application.

11. In preparing and writing the said report Mr. Cleaver was guilty of serious default. In particular he purported to have made findings as to the complicity of the Plaintiff in the Cash4Titles fraud. These findings were expressed in the said report as follows:

(1) *"The Governor in Council has compelling reasons to decide not to allow Zephyr's directors to resume control of the company, namely the misconduct of Lewis Rowe and his fellow directors' failure to monitor his actions".* (Report, page 8).

(2) The heading on page 10: ***"MISCONDUCT – Perpetrating the Cash4Titles fraud"***.

(3) *Lewis Rowe is implicated in the massive fraud involving the C4T scheme".* (Page 10)

(4) *"There is reason to believe that Lewis Rowe had actual knowledge of the fraud....."*  
(page 10)

(5) *"I further suspect that Lewis Rowe almost certainly knew or should have known of the involvement of companies under Zephyr's management in the C4T scheme and the fraudulent nature of the scheme as early as 1997".* (page 62)

12. There was no material available to Mr. Cleaver or relied on by him which would have led a reasonably competent accountant to conclude that either (a) the Plaintiff had committed the misconduct alleged, namely perpetrating the Cash4Titles fraud; or (b) that the Plaintiff was implicated in the said fraud; or (c) that the Plaintiff had actual knowledge of the said fraud; or (d) that the Plaintiff knew of the involvement of companies in the said fraud.

13. As controller of Zephyr International Limited he owed a duty to the regulatory and prosecutorial authorities of the Islands and to the company which he controlled and to its officers:

(a) to exercise such skill and care as would be exercised by a reasonably competent accountant, and/or

(b) to make a report which was accurate and based on a thorough and diligent examination of the available records; and/or

(c) to avoid drawing conclusions which were not warranted by the material available to him; and/or

(d) to discharge his functions dispassionately and without prejudice.

14. In stating the conclusions set out in paragraph 12 above Mr. Cleaver breached his duties as aforesaid and committed serious default, in that:

(a) he failed to exercise the skill and care to be expected of a reasonably competent accountant;

(b) he drew conclusions as aforesaid which were not reasonably warranted on the basis of the material available;

(c) he entered upon and discharged his functions with prejudice, having previously committed himself to an overriding duty to assist the Respondent to place formal charges against (inter alia) the Plaintiff.

15. The Plaintiff will further rely upon the fact that Mr. Cleaver in his said report appeared to qualify the said conclusions by a reservation expressed as follows:

*“If he (the Plaintiff) did not have actual knowledge of the fraud, he may at least have been aware of suspicious activity in connection with the C4T programme. If he was, he did not report it. If he was not aware of suspicious activity, his lack of awareness was due to his own negligence and breaches of fiduciary duties owed to C4T investor companies, Zephyr Financial Services Limited, and Gause and Homa companies.”*

16. Thus Mr. Cleaver wrote a report which was ambiguous and calculated to confuse the prosecutorial authorities, in that it expressed trenchant conclusions as aforesaid (such as would require a prosecution to be instituted) and then contradicted the said conclusions by stating a different conclusion to the effect that the Plaintiff's conduct was consistent with negligence on his part (for which a prosecution could not be lawfully justified).

17. If Mr. Cleaver had not committed acts of serious default as aforesaid, the said proceedings would not have been started and continued. In particular:

(a) The facts and matters relied on by the Defendant in causing charges to be preferred against the Plaintiff on 20<sup>th</sup> September 2000 appear in the affidavit sworn by Stephen Hall-Jones on 18<sup>th</sup> September 2000 in support of the application for a restraint order and a receivership order, in which the affiant stated that the Plaintiff would be arrested within seven days and charged with the offences set out in paragraphs 2 and 3 hereinabove.

(b) The affiant further stated that the facts deposed to were based on the said report and on other reports provided by Mr. Cleaver, and that the application for a restraint order and a receivership order was made as a result of the said report and subsequent and continuing investigations.

(c) In fact the most serious allegations made by the affiant in the said affidavit, in

paragraphs 13 to 29 thereof inclusive, were a repetition almost word for word of the allegations made by Mr. Cleaver in the said report

(d) The allegations made by the affiant included allegations that:

- *"The facilitators of this fraud in the Cayman Islands were Lewis Rowe and Patrick Tibbetts respectively."*

- *"Lewis Rowe is implicated in the massive fraud involving the C4T scheme".*

- *"There is reason to believe that Lewis Rose had actual knowledge of the fraud..."*

(e) The prosecutorial authorities thus relied upon and adopted the false conclusions drawn by Mr. Cleaver.

18. Further or in the alternative there was serious default on the part of those responsible for instituting or continuing the proceedings on behalf of the Defendant (hereinafter referred to as "the prosecutors". In particular:

(a) The conclusions of the report of Mr. Cleaver on the issue of misconduct on the part of the Plaintiff included the following: *"If he (the Plaintiff) did not have actual knowledge of the fraud, he may at least have been aware of suspicious activity in connection with the C4T programme. If he was, he did not report it. If he was not aware of suspicious activity, his lack of awareness was due to his own negligence and breaches of fiduciary duties owed to C4T investor companies, Zephyr Financial Services Limited, and Gause and Homa companies. Had he been aware of suspicious activity, he would have been wise to report his awareness to the Reporting Authority or at least sought advice from legal counsel as to whether or not it should be reported. He did neither."*

(b) The said report continued by itemising other allegations under the headings "Other acts of deception and possible fraud"; "illegal acts"; "negligence and breach of duty"; "other questionable conduct requiring further investigation".

(c) Thus the said report stated no more than that the Plaintiff may have had knowledge of the fraud, or may have been aware of suspicious activity, or may have been negligent.

(d) Taken as a whole the material contained in the said report did not amount to anything more than mere suspicion that the Plaintiff might have been guilty of the offences charged against him.

(e) No further material was available to the prosecutors by the time when the charges were laid against the Plaintiff, such as would cause a reasonable prosecutor to conclude that there was a proper basis for the charges.

(f) The prosecutors departed from the conclusion expressed by Mr. Cleaver that "he may at least have been aware of suspicious activity", and represented to the court in the said affidavit that "he must at least have been aware of suspicious activity", without having any good or sufficient reason for such a departure.

(g) The prosecutors owed a duty to the public and to the individuals who may be charged with offences to prefer charges only when they were satisfied that there would be a more than 50% chance of conviction; and/or the further duty not to prefer charges based on mere suspicion.

(h) The prosecutors in breach of their aforesaid duties brought charges against the Plaintiff based on material which, even if proved, would not afford a basis for conviction, but which amounted to mere suspicion, and/or which was consistent with innocence.

19. If the prosecutors had not committed serious default as pleaded in the foregoing paragraph, the prosecution would not have started.
20. The Plaintiff was tried for the said offences at a trial which began on 11<sup>th</sup> May 2004 and ended on 3<sup>rd</sup> February 2005 when he was acquitted of the said offences.
21. The Plaintiff held realisable property which was the subject of the restraint order and receivership order as set out hereinabove, including the property set out in paragraphs 1 a. to m. of the said order.
22. The Plaintiff has suffered substantial loss in consequence of things done in relation to the said property by or in pursuance of the said restraint order and the said receivership order, in particular by reason of the acts and omissions of the various receivers appointed under the said orders and further orders which varied them.

#### **PARTICULARS OF SUBSTANTIAL LOSS**

- (1) The value of the Plaintiff's realisable property as at 29<sup>th</sup> June 2000 was estimated by him to be (not including his house and certain gifts) US\$24,678,344.
- (2) The value of the Plaintiff's realisable property as at 14<sup>th</sup> November 2000 was estimated by Dan Scott the then receiver and manager of the Plaintiff's assets to be (not including his house and the said gifts) US\$19,849,826.
- (3) The Plaintiff will provide further particulars of the true value of his realisable property as at 18<sup>th</sup> September 2000 when the said order was made.
- (4) The value of the Plaintiff's property at the time when it was restored to him, following an order dated 10<sup>th</sup> May 2005, was (not including his house) CI\$7,931.

(5) The Plaintiff's loss is calculated on the basis of the value of the property at the time of the said orders, plus/minus the amount by which the said property would have appreciated/diminished in value if the Plaintiff had not been restrained from dealing with it, less the value of the property when it was returned to him.

(6) Further the Plaintiff has lost the value of his salary as a Director of Zephyr Financial Services Limited, namely US\$11,000 per month from 18<sup>th</sup> September 2000 to 10<sup>th</sup> May 2005.

23. The Plaintiff claims compensation in such sum as this Honourable Court may believe to be just, having regard to the substantial loss suffered in relation to his property, and to the distress, humiliation and loss or reputation which he had suffered by reason of the said proceedings.

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

Dated the 2nd day of February 2011

  
\_\_\_\_\_  
**STENNING & ASSOCIATES**  
ATTORNEYS 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 Acknowledgment of Service are given with the accompanying form.**

This Originating Summons was issued by Stenning & Associates whose address for service is F & J Centre, Unit # 8, 58 Mary Street, George Town, Grand Cayman.

Please complete overleaf

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

**STENNING & ASSOCIATES**  
**F&J Centre**  
**Unit # 8**  
**58, Mary Street**  
**George Town**  
**Grand Cayman**

**REF: JS/KC/1174/003**

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

## **DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS**

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 495G, George Town, Grand Cayman.

### **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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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 its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO:            OF 2011**

**In the Matter of Section 65 of the Proceeds of Crime Law 2008**

**And in the Matter of an Application for Compensation by Lewis Rowe**

**BETWEEN:                            LEWIS ROWE                            PLAINTIFF**

**AND:                                    ATTORNEY GENERAL                    DEFENDANT**

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.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.
2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

   yes        no

Service of the Originating Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

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

