

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN:



CAUSE NO. FSD 27 OF 2011



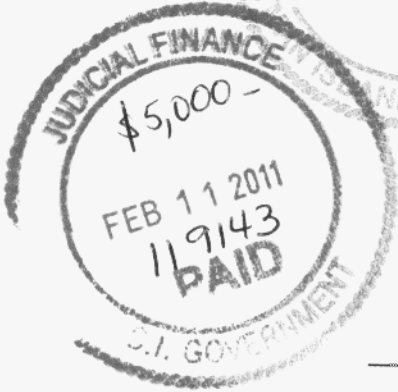
Fairfield Sigma Limited (in Liquidation)

Plaintiff

-and-

Westport Capital Investments

Defendant



**WRIT OF SUMMONS**

**TO:** Westport Capital Investments, Deutsche Bank International Trust Co. (Cayman) Limited, PO Box 1984, Boundary Hall, Cricket Square, 171 Elgin Avenue, Cayman Islands.

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff 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 495G, George Town, Grand Cayman, 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 11<sup>th</sup> day of February 2011

**IMPORTANT**

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

## STATEMENT OF CLAIM

1. The Plaintiff is a limited company originally incorporated in the British Virgin Islands in 1990 under the terms of the International Business Companies Act, 1984.
2. The Plaintiff was placed into liquidation by order of the High Court of the British Virgin Islands on 21 July 2009. The Plaintiff acts by its liquidators, Mr. Kenneth Krys and Ms. Joanna Lau.
3. At all material times the Plaintiff operated as an investment fund and was recognised and regulated by the BVI Financial Services Commission as a professional fund under the terms of the Mutual Funds Act, 1996.
4. The Defendant is a limited company incorporated in the Cayman Islands in 1998 under the terms of the Companies Law.
5. Materially all of the Plaintiff's funds were invested with Bernard L. Madoff Investment Securities LLC ("**BLMIS**").
6. On or around 14 January 2005 the Defendant subscribed for shares in the Plaintiff and paid EUR494,387.80. Consequently 3175.26 shares were allotted to the Defendant (the "**Shares**").
7. The Plaintiff's Articles of Association (the "**Articles**") provided that the price at which shares in the Plaintiff were to be redeemed by investors should be calculated with reference to the Net Asset Value ("**NAV**") of the Plaintiff.
8. On or about 23 January 2006 the Defendant applied to redeem the Shares held by it in the Plaintiff in accordance with the Articles.
9. On or about 28 February 2006 the NAV was calculated and the amount determined to be payable to the Defendant upon the redemption of the Shares was EUR525,664.29.
10. On or about 24 March 2006 the Plaintiff redeemed the Shares and EUR525,664.29 was paid by the Plaintiff to the Defendant on 24 March 2006 (the "**Redemption Payment**").

11. In respect of the said redemption the NAV was calculated under a mistake of fact as, unbeknown to the Plaintiff, BLMIS was in fact operating a ponzi scheme and its investments were therefore lost from the date of the Plaintiff's investment with BLMIS.
12. In the premises, the NAV of the Plaintiff at all material times was nil or a nominal value and the Redemption Payment should accordingly have been nil or, in the alternative, a nominal sum.
13. In the circumstances, the Defendant has been unjustly enriched at the expense of the Plaintiff and the Defendant is liable to make restitution to the Plaintiff:
  - a. in the sum of EUR525,664.29 being the amount of the Redemption Payment; or
  - b. in the alternative the difference between the Redemption Payment and the said nominal amount.
14. Alternatively, if (which is denied) the Plaintiff is not entitled to restitution as claimed in paragraph 13 above, the Defendant has been unjustly enriched at the expense of the Plaintiff and the Defendant is liable to make restitution to the Plaintiff in the sum of EUR31,276.49 being the difference between the total subscription monies paid by the Defendant to the Plaintiff and the amount of the Redemption Payment paid by the Plaintiff to the Defendant.
15. Further or alternatively, the Plaintiff is entitled to set aside the redemption of the Shares on the grounds that the payment of the Redemption Payment was effected under a mutual mistake.
16. Further, the Plaintiff is entitled to interest in an amount to be assessed by the Court.

**AND THE PLAINTIFF** claims:

- (1) EUR525,664.29 alternatively such sum as the Court thinks fit;
- (2) interest on the said sum to be assessed;
- (3) further or other relief; and
- (4) costs.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of EUR525,664.29 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.

*Forbes Hare*

---

Forbes Hare (incorporating J. Barry Smith) Attorneys-at-Law for the Plaintiff

**NOTE** - This Writ 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 the date of issue unless renewed by order of the Court.

THIS **WRIT** was issued by Forbes Hare (incorporating J. Barry Smith), Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Elizabethan Square, PO Box 856, Grand Cayman KY1-1103 (REF: CRY/JJD KY1113-003)

