

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 182 OF 2011

BETWEEN:

- (1) **BANIF-BANCO INTERNACIONAL DO FUNCHAL (CAYMAN) LTD**  
(a company incorporated in the Cayman Islands)
- (2) **FINAB-INTERNATIONAL CORPORATE MANAGEMENT SERVICES LTD.**  
(a company incorporated in the Cayman Islands)

Plaintiffs

AND

**FERNANDO MENDES**

Defendant

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**WRIT OF SUMMONS**

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TO: **FERNANDO MENDES** of 57 South Sound Road #10, George Town, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this      day of May 2011

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.

## IMPORTANT

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

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### STATEMENT OF CLAIM

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#### Parties

- 1 The First Plaintiff ("**Banif**") is, and at all times material to this claim has been:
  - 1.1 a company incorporated under the laws of the Cayman Islands; and
  - 1.2 carrying on a banking business under a Class B Banking licence granted by the Cayman Islands Monetary Authority pursuant to the Banks and Trust Companies Law (2009 Revision).
- 2 The Second Plaintiff ("**Finab**") is, and at all times material to this claim has been:
  - 2.1 a company incorporated under the laws of the Cayman Islands; and
  - 2.2 carrying on a business as a company manager licensed under the Companies Management Law (2003 Revision).
- 3 The Defendant is a former Operations Manager of Banif and Corporate Manager of Finab (together the "**Plaintiffs**") who resides in the Cayman Islands.
- 4 The Defendant's employment with Banif was terminated on or about 1 September 2010. The Defendant's relationship with Finab was terminated on or about 11 February 2011 upon his arrest by the Royal Cayman Islands Police Force for theft and fraud arising out of his work for Banif and Finab.
- 5 In the Defendant's roles as Operations Manager of Banif and Corporate Manager of Finab, he had access to and was privy to various types of information that was confidential to the Plaintiffs and their customers, including the following information:

- 5.1 Confidential information arising from the relationship between the Plaintiffs and their customers; and
- 5.2 Confidential information about the Plaintiffs' customers provided to the Plaintiffs for the purposes of performing banking and professional duties for the customers, and pursuant to duties on the part of each Plaintiff to keep the information confidential (together the "**Confidential Information**").

6 It was an express or alternatively implied term of the Defendant's employment and/or appointment with Banif and Finab that, even after the conclusion of his employment and/or other relationships with the Plaintiffs, the Defendant would not disclose the Confidential Information to the public or to any third parties unless duly authorised to do so, or in some other manner permitted by Cayman Islands law, and would not otherwise misuse the Confidential Information.

#### **Particulars**

- 6.1 Clause 3.3.2 of Banif's Code of Conduct, which applied to his roles with Banif and Finab and of which he was well aware, contained the following provisions:

*While working for the Group, and even after termination of their employment, employees have the duty to protect the confidentiality of non-public information obtained or created in the context of their jobs.*

*Employees should not disclose proprietary or confidential information about the Group, its Employees, its Clients or its Suppliers to anyone who is not authorised to receive it or has no need to obtain that information, except when such disclosure is authorised by the Group, the Employee, the Client or the Supplier or is mandatory by law.*

*Employees should make sure that business-related documents are created, completed, copied, transmitted, couriered, filed and destroyed by the means provided in order to minimise the risk that unauthorised persons have access to them.*

*Employees should not discuss sensitive matters or confidential information in public places, such as restaurants, public transportation, on the internet or on any other electronic channels, and should be cautious when using mobile or speaker phones or when discussing such information in open workplace areas.*

*Examples of proprietary and confidential information include: any system, information or process that gives the Group an opportunity to obtain an advantage over a competitor, non-public information about transactions of the Group; results, strategies and projections; non-public information about business plans and relationships with Clients; non-public information about Employees, Clients and Suppliers; technology, systems and products of the Group."*

6.2 Further or alternatively, it was an implied term of the Defendant's employment with Banif and/or Finab that he would not disclose Confidential Information unless duly authorised to do so, or in some other manner permitted by Cayman Islands law.

7 On or about 11 April 2011, in breach of the duties pleaded above, the Defendant voluntarily and without compulsion of law submitted a statement by way of affidavit for use as evidence in a legal action being conducted in the Supreme Court of the State of New York by Global Access Investment Advisor LLC and Global Access Consultoria Financeira Ltda (together the "**US Plaintiffs**") against Oscar Lopes, Pali Capital and Banif and others (the "**US Proceedings**").

8 The statement by way of affidavit referred to above contained Confidential Information about the Plaintiffs and their customers including details of their names, bank accounts and beneficial ownership.

9 By his unauthorised disclosure and publication of the Confidential Information in the statement by way of affidavit, the Defendant has breached the duties pleaded above.

10 As a result of the Defendant's breach of his duties to the Plaintiffs, the Plaintiffs have suffered loss and damage, full particulars of which will be provided.

11 Unless restrained by an injunction ordered by the Court, the Defendant will commit further breaches of the implied duty not to misuse the Confidential Information.

12 The Plaintiffs claim interest on damages pursuant to section 34 of the Judicature Law (2007 Revision).

**And the Plaintiffs Claim against the Defendant**

- (1) An injunction preventing the Defendant from breaching the express or implied term of his contract of employment set out in paragraph 5 above howsoever whether directly or indirectly, by himself or through others acting on his behalf.
- (2) Alternatively, an order to restrain the Defendant from disclosing to any person or persons any information in relation to the affairs of the Plaintiff or any client thereof of which he has become possessed whilst in the service of the Plaintiffs except as may be authorised by the board of the Plaintiffs or as ordered by a court of competent jurisdiction.
- (3) Damages as referred to in paragraph 10 above.
- (4) Interest on such damages pursuant to section 34 of the Judicature Law (2007 Revision).
- (5) Costs; and/or
- (6) Such further or other relief as the Court may deem just.

WRIT issued this        day of May 2011

FILED this 13th day of May 2011

Maples and Calder  
Maples and Calder

THIS WRIT was issued by Maples and Calder, attorneys for the Plaintiffs, whose address for service is PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: MWI/RXC/664915/21054274)