

BETWEEN:

BCM ISLAND VISIONS LTD.

PLAINTIFF

AND

(1) CAYMAN NATIONAL BANK LTD.

(2) CAYMAN NATIONAL SECURITIES LTD.

DEFENDANTS



WRIT OF SUMMONS



TO: CAYMAN NATIONAL BANK LTD.
C/o Cayman National Trust Co. Ltd.
62 Forum Lane, Camana Bay, Grand Cayman

AND TO: CAYMAN NATIONAL SECURITIES LTD.
c/o Cayman National Bank & Trust Co. Ltd.
4th Floor, Cayman National Bank Building
200 Elgin Avenue, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of SH Corporate Services Ltd., Third Floor, First Caribbean House, P.O. Box 61, Grand Cayman, KY1-1102 Grand Cayman, in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any 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 31st 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 original issuance unless renewed by order of the Court

IMPORTANT

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

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STATEMENT OF CLAIM

The parties and their representatives

1. The Plaintiff ("BCM") is a Cayman Islands company incorporated on 21 November 1995 and having its registered office located at the offices of SH Corporate Services Ltd., Third Floor, First Caribbean House, P.O. Box 61, Grand Cayman, KY1-1102. The directors and shareholders of BCM are, and at all material times were, William P. Myers and Connie J. ("the Myers") a retired couple who at all times represented BCM. When this Statement of Claim refers to actions or statements by or to the Myers it is to be taken that such actions or statements were (unless the context indicates otherwise) taken or made on behalf of BCM.
2. The Defendants are associated Cayman Islands' companies and carry on the business of banking, finance and investment services, with registered offices located respectively c/o Cayman National Trust Co. Ltd. 62 Forum Lane, Camana Bay, Grand Cayman, and c/o Cayman National Bank & Trust Co. Ltd. 4th Floor, Cayman National Bank Building, 200 Elgin Avenue, Grand Cayman. The First Defendant which carries on business as "Cayman National Bank" will be referred to as "CNB" and the Second Defendant as "CNS". At all material times they were represented by individuals including a Mr Christopher Bodden, ("Mr Bodden") a Mr Ian Phillips, President of International Services ("Mr Phillips") and Miss Annie Ebanks, Senior Investment Adviser ("Miss Ebanks").

The events of March 2008

3. Prior to March 6, 2008 BCM was a customer of CNB and had deposited in the bank in its account, being US\$ account no. 022-19837 and subsequently US\$ fixed deposit account no. 023-07339 on 7-day call, funds in excess of US\$830,000. It was a fundamental term of the banking contract between CNB and BCM that such funds would not be used or disbursed except in accordance with the instructions of BCM.

The Defendants' advice, warranties and representations

4. On or about March 6, 2008 while the Myers were present at CNB's premises at Elgin Avenue Georgetown, employees of CNB introduced them to a lady whom they were told was a "financial specialist" of CNB (whose name they do not recollect) and to Mr Bodden who was in charge or control of accounts at CNB. The two said individuals took it upon themselves to advise BCM to invest in a company called "CLICO" of whom the Myers had never heard. They advised and warranted that the investment was guaranteed. Both elaborated on the "guaranteed" benefits of investing in CLICO and assured the Myers that such investment would be safe. Further in order to persuade them of the absolute safety of the investment they were told that CNB's employee retirement fund was invested in CLICO.
5. Shortly thereafter CNB introduced the Myers to Mr Phillips and Miss Ebanks at the premises of CNS. The Myers explained that they were retired and with limited funds and were only prepared to contemplate an investment through BCM which was absolutely safe. They made it clear that the money in BCM (of which they were 100% shareholders) was effectively a retirement fund and the only means available to them to enjoy early retirement. They made it clear that the only investment BCM could ever countenance was one which was absolutely safe and risk free.
6. Both Phillips and Ebanks emphasized the absolute safety of an investment with CLICO and recommended that the Myers invest in CLICO, stressing its diversity and that the investment was "guaranteed".
7. Accordingly again, CNS advised represented and warranted that an investment by BCM in CLICO (whatever that was) was, (i) absolutely safe, (ii) was guaranteed, (iii) involved investment in a number of diverse investments and for such reason too, was absolutely safe. Further, the Myers were informed that the principal was guaranteed. In the absence of further explanation by CNB or CNS' said representatives the ordinary and normal meaning of the expression "guaranteed" was that the principal was in a separate fund in the nature of a trust fund and therefore safe, alternatively that any bond would be capital protected, and in either case guaranteed by a government, either the Cayman Island Government or that of Trinidad and Tobago.
8. Neither Phillips nor Ebanks offered or proposed any other type of investment option or alternative. No mention was made of any need to diversify investments additionally to CLICO. At no stage did the representatives of CNB and CNS explain what sort of investment was proposed, whether stock, bonds or otherwise or the precise name of the company in which the investment was to be made by BCM.

Absence of any relevant documentation

9. The Myers were given (i) a document entitled "Corporate Overview" which vaunted the success of a company called "C.L. Financial Limited" (ii) a document called "The Executive Flexible Premium Annuity" which was said to be a "Fixed Income Investment" with interest payable at 7.00% on US funds invested for one year and 7.5% on US funds invested for two years. The latter document had the name "CL Financial Limited" in each top right hand corner indicating that the investment was to be with that company. The document stated that all funds, principal and interest would be "fully backed by CLICO" but there was no explanation of what that meant and if and to the extent that CLICO was the Colonial Life Insurance Company (Trinidad) Limited (which is not admitted) clearly that company could not accept the investment and also "back" it. At no stage did CNB's or CNS' representatives explain the documents and BCM, through the Myers relied upon what they had been told as aforesaid by the Defendants' said representatives.

The duty to give proper advice and explanation

10. As set out above, CNB and CNS took it upon themselves to give financial advice to BCM. In the circumstances there was a duty of care upon each of them and a duty to ensure that any advice given was accurate, properly explained and in accordance with the standards to be expected of competent financial institutions such as banks and finance houses.

BCM's reliance

11. On the faith of the warranties, representations and advice set out in paragraphs 4, 6 and 7 (and BCM will treat each statement alternatively as a warranty, and/or representation and/or as advice) BCM agreed to invest the sum of US\$300,000 for one year and the sum of US\$530,000 for two years in "CLICO". On the faith of the said warranties, representations and advice, BCM agreed to CNB transferring the total sum of US\$830,000 out of its said account at CNB on 6 March 2008 to CNS for the purpose of purchasing stocks or bonds which were guaranteed or where the principal was guaranteed, involved a diversity of investment which were absolutely safe and risk free, and with no prospect of BCM losing its money.
12. The Myers were rushed through the transaction and BCM was given no opportunity to obtain independent advice. The Myers were asked to and did personally sign, (i) an Application to Establish a Securities, Trading and Safekeeping Account, and (ii) a Trading Agreement. However at no stage was BCM asked to sign or execute any such document nor did it sign or execute any such document and accordingly the two documents are of no effect in relation to BCM or the matters stated herein.

Statements by the Defendants as to the transaction into which BCM had apparently entered

13. On March 11, 2008 two e-mails were received by BCM from "Cliff Bush Connolly" at "Cayman National". Each recorded the amount of money taken from BCM's account. Each e-mail was headed "Transaction Confirmation" and confirmed that "*the following transaction has completed successfully*". In one case "*Bought 530,000 shares CLICO 03/07/2010 @ USD 1.000 Invested in CLICO for 2 years*", in the other "*Bought 300,000 shares CLICOU [sic] 03/07/2010 @ USD 1.000 Investing in CLICO for 1 yr.*" By fax dated 16 March 2008 to Cliff Bush Connolly, BCM confirmed:

As per instructions, the interests [sic] from the two investments into CLICO are to be deposited into our savings accounts at Cayman National Bank.

In fact, as BCM's lawyers discovered for the first time on 16 February 2010, neither CNB nor CNS had ever purchased any shares or bonds for BCM at all.

14. BCM was sent periodic end of month statements every three months until September 2010 by CNS. They were effectively in the same form asserting that BCM was the owner of a total of 830,000 shares save that the May 2008 statement showed the investment at \$8,300 instead of at \$830,000 which was clearly a clerical error. By letter dated October 21, 2008 BCM stated:

On March 7, 2008 we purchased 300,000 (three hundred thousand) shares of CLICO (Trinidad 7.0%). And we purchased 530,000 (five hundred and thirty thousand) shares of CLICO (Trinidad 7.50%).

. . . . The fund was sold to us a principle [sic] guaranteed!!"

15. Following the letter, there was a conversation between Mrs Myers and Ms LaNishka Farrington-McSweeney on behalf of CNS and CNB accepting that there was an error in that the document stated "8300" instead of 830,000" but that the "*Principal [was] still guaranteed*". BCM relied upon the said Transaction Confirmation and monthly statement and the express assurance by Ms Farrington-McSweeney as authorized agent for CNS and CNB to the effect that it was the owner of a total of 830,000 shares. Had it not been for such constant assurances BCM would have demanded the return of its moneys from and after 6 March 2008.

The loss.

16. From and after January 2009 BCM received communications from the Defendants to the effect that CLICO was in financial difficulties and it was unlikely that BCM would receive any return on its moneys at all or at most \$75,000 at some time and the balance, at 0 % interest in 20 years.

The reality of what occurred

17. In fact, CNB and CNS did not purchase any shares or other investments for BCM. They maintain they used the money to purchase annuities on the life of one Naiem Qadir, then an employee of CNS. At no stage had the Myers and BCM ever heard of Naiem Qadir, nor had they ever consented to the purchase of an annuity on his life, nor had they ever consented to the withdrawal of moneys from BCM's said account with CNB for any such purpose.

THE CLAIMS

Lack of authority to debit the account

18. In the circumstances, (a) CNB had no authority to debit BCM's account and accordingly are still indebted to BCM in the sum of US\$830,000 and interest thereon, (b) alternatively CNB debited BCM's account in breach of the fundamental term set out at paragraph 3 above and are liable for damages for breach of contract in the sum of \$830,000 and interest thereon.

No concluded agreement

19. In the alternative to the above paragraph, there was no clear instruction or agreement as to the use to which BCM's moneys might be put and CNB is liable for the return of the moneys as, (i) paid for no consideration, and/or (ii) as a trustee under a resulting trust, and/or (iii) as money had and received.

Breach of Warranty and Misrepresentation

20. If, contrary to BCM's primary submission, there was any approval or authority to the removal of the money, CNB and CNS were in breach of warranty and misrepresented the position to BCM.

Particulars of Breach of Warranty and Misrepresentation

- a. The statement that the investment was guaranteed: This statement was false. At no stage was the investment whatever its nature, guaranteed as to principal or principal and interest. There was no government guarantee whatever. At one stage the Defendants stated in correspondence that there was a Trinidad & Tobago ("T & T") government guarantee. In fact the T & T government guarantee applied only to T &

T individuals and entities. There was no Cayman Islands' guarantee as CLICO Trinidad (the issuers of the policy to Mr Qadir) was an external insurer but not a licensed external insurer so that there was no statutory Cayman Islands requirement to hold funds under a trust deed (under s.7(1) of the Insurance Law (2008 Revision)) and no Cayman Island guarantee of those funds. Had CNS and CNB invested the money in CLICO (Cayman) (which is local and licensed) there would at least have been a Cayman Islands guarantee.

- b. The statement that the investment was absolutely safe and risk free: This statement was false. The investment was not risk free. It was in a "non-approved" jurisdiction where to the Defendants' knowledge there was a high risk. In support of its allegation of knowledge on the part of the Defendants BCM will rely upon an internal CNS document which is undated, and was probably created in or about March 2008. It is headed "*Client Risk Rating Document*" and sets out various investment risks relative to BCM. The document is in this form:

<i>Risk</i>	<i>Risk Factor</i>	<i>Risk Rating Points Awarded</i>
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3. CUSTODY/LOCATION OF ASSETS HELD

a) <i>Held by Outside Custodian — Non Approved jurisdiction</i>	10	10
b) <i>Held by Outside Custodian — Approved jurisdiction</i>	5	
c) <i>Held by CNC</i>		1

Accordingly the investment in a non-approved jurisdiction attracted the highest risk factor a "10".

- c. The statement that the money was to be invested in a number of diverse investments and for such reason too, was absolutely safe: This statement was false. The money was invested apparently only in one fund and on collapse of that fund there would be and was a complete loss.
 - d. The statements that the Defendants would and had purchased 830,000 CLICO shares for BCM was false. In fact BCM had no interest whatever in CLICO.
21. By reason of the several breaches of warranty, alternatively misrepresentations, BCM has suffered severe damage in that it will be unable to recover its moneys. Accordingly BCM is entitled to and claims damages for breach of warranty and misrepresentation.

Breach of the duty to advise and negligence

- 22. The Defendants were in breach of their duty, set out in paragraph 10 above, to advise in accordance with the standards there set out and without negligence.

Particulars of Negligence and Breach of Duty

- a. The Defendants failed to explain the nature of the proposed investment to the Myers to ensure they understood and agreed to what was proposed.
- b. The Defendants failed to provide any documentation for the Myers to read or for BCM to sign.

- c. The Defendants misinformed the Myers as set out in paragraphs 20 (a) to (d) inclusive.
 - d. The Defendants failed to carry out the Myers' instructions to propose only investments which were absolutely risk free, guaranteed and diverse.
 - e. The Defendants failed to disclose that they were in a situation where their duty to BCM was in conflict with their self interest (as further set out in paragraph 24 below.
23. By reason of the several breaches, BCM has suffered damage in that it has lost the entirety of its investment and interest thereupon.

The Defendants' conflict of interest and rescission

24. It is reasonably to be inferred that the Defendants received a substantial commission upon any investment they introduced to CLICO. Such inference can be drawn from the fact that the Defendants' representatives rushed the Myers into agreeing some investment by BCM into CLICO, no alternative investment or investments were proposed, no opportunity given for independent advice and no response has been made to BCM's request for information as to such commission. BCM will seek further information on discovery.
25. At no stage did the Defendants' disclose to the Myers the fact or amount of commission they were receiving. Further, the Defendants were in a position where their duty to advise BCM properly and impartially was in conflict with their self-interest. In these circumstances the transaction whereby the Defendants took US\$830,000 from BCM was and is voidable and BCM chooses to avoid it. Accordingly, BCM is entitled to the return of its moneys and interest.

Unjust enrichment

26. By reason of the foregoing the Defendants were unjustly enriched at the expense of BCM to the extent of US\$830,000 and BCM is entitled to the return of its moneys.

Endorsement as to interest

27. BCM claims an entitlement to interest on the sum of US\$830,000.00 running from 6 March 2008 when the said sum was debited from BCM's account as aforesaid:

- (a) pursuant to s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2006, 2008 and 2010:

(i) at the rate of 7¼% per annum from 6 March 2008 to 30 November 2008 (US\$164.86 per diem x 269 days):	44,347.34
(ii) at the rate of 5% per annum from 1 December 2008 to 31 October 2010 (US\$113.70 per diem x 700 days):	79,590.00
(iii) at the rate of 2½% per annum from 31 October 2010 to 31 May 2011 and continuing (US\$54.01 per diem x 212 days):	11,450.12
Total:	<u>US\$135,387.46</u>

- (b) alternatively, interest at commercial rates of interest payable by the Defendants as applicable on such sum from time to time; and

- (c) trustee (compounded) interest as may be appropriate.
28. BCM will give credit to the Defendants against its claim for interest as aforesaid, for the sum of US\$20,904.59 received to BCM's account from CNS on 12 March 2009, representing interest on the investment of US\$300,000 at 7% per annum, net of CNS' Safekeeping Fees.
29. BCM claims interest on all fixed or assessed costs and orders running from the date of service of the judgment, order or certificate of taxation respectively and at the prescribed rate of 2½% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules (2010).

AND THE PLAINTIFF CLAIMS

- (A) Under Paragraph 18(a), a declaration that CNB is and has at all times since March 2008 been indebted to BCM on BCM's account in the sum of US\$830,000 and payment of the said sum and interest thereon;
- (B) Under Paragraph 18 (b) against CNB, damages for breach of contract
- (C) Under Paragraph 19 against CNB and CNS, the return of the sum of US\$830,000 and interest thereon on the basis:
- (i) that it was money paid for no consideration;
 - (ii) that it is held by CNB and or CNS as a trustee under a resulting trust; or
 - (iii) that it is money had and received;
- (D) Under Paragraph 20 against CNB and CNS, damages for breach of warranty and damages for misrepresentation;
- (E) Under Paragraph 22 and 23 against CNB and CNS, damages for breach of duty and negligence
- (F) Under Paragraph 24 and 25, against CNB and CNS, rescission of the transaction whereby CNB and/or CNS took the sum of US\$830,000 from BCM's account and restoration of such sum to BCM;
- (G) Under Paragraph 26 against CNB and CNS, damages for unjust enrichment;
- (H) Pre-judgment interest in the sum of US\$135,387.46 to the date of issue of these proceedings (31 May 2011) as more particularly set out at Paragraph 27, and continuing to accrue at US\$54.01 per diem, and/or at commercial rates and trustee interest as to this Honourable Court may seem just, and giving credit for the sum of US\$20,904.59 as detailed at Paragraph 28.
- (I) Fixed costs pursuant to GCR Order 62/7(1) in the sum of CI\$500.00 together with the prescribed fees for issue of the Writ being CI\$4,000.00 or alternatively its costs to be assessed, and interest on its costs as pleaded at Paragraph 29.
- (J) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 31st day of May 2011.

Hampson & Co.

Hampson and Company
Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM are filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of its said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town P.O. Box 698, Grand Cayman, KY1-1107.

TO: The Clerk of the Grand Court

AND TO: **CAYMAN NATIONAL BANK LTD.**

AND: **CAYMAN NATIONAL SECURITIES LTD.**