

CAUSE NO FSD:

OF 2012

0069

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

BETWEEN:

(1) BERNHARD HUGENROTH  
(2) HUGENROTH BETEILIGUNGS GMBH

- and -

AGRI.CAPITAL



WRIT OF SUMMONS



TO: AGRI.CAPITAL of c/o Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, KY1 9002, Grand Cayman, 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 24th day of April 2012

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.

## STATEMENT OF CLAIM

1. The First Plaintiff is a German national who at all material times was the sole shareholder in the Second Plaintiff. The Second Plaintiff is a company incorporated under the laws of Germany and registered with the commercial register of the Lower Court of Muenster under registration number HRB 12658.
2. The Defendant is an exempt company incorporated under the Companies Law of the Cayman Islands on 29 August 2005 with company registration number 154063.
3. On 6 April 2011 the First Plaintiff and the Defendant entered into an agreement (the "Agreement") which provided for the sale by the First Plaintiff to the Defendant and the purchase by the Defendant from the First Plaintiff of the First Plaintiff's shareholding (the "Shares") in the Defendant. The Agreement (to which the Plaintiffs will refer at trial for its full terms and effect) provided inter alia:

1.2 *Subject to the subsections a) to c) below, upon December 31, 2011 (the "Repurchase Date") [the Defendant] shall purchase the [Shares] and [the First Plaintiff] shall be obligated to sell to [the Defendant] all (but not less than all) of the [Shares] held by [the First Plaintiff] on the Repurchase Date at a per-share price equal to the Stated Value at the Repurchase Date.*

(a) ...

(b) ...

(c) *The Repurchase Date shall be rescheduled from December 31, 2011 to a specified date in the period from July 31, 2011 to November 30, 2011 (the "Rescheduled Repurchase Date") if [the First Plaintiff] provides written notice of such intention to [the Defendant] at least 30 days prior to the Rescheduled Repurchase Date.*

1.3 *In the case of a purchase of the [Shares] pursuant to section 1.2 above, [the Defendant] and [the First Plaintiff] shall in good faith mutually determine a closing date with respect to the exercise of such right pursuant to section 1.2. Any closing date so determined shall, subject to any applicable regulatory waiting periods, not be later than 60 days after the expiration of all applicable notice periods under section 1.2, and shall be referred to herein as the "Transaction Closing Date." The closing shall be held at 10.00am local time, on the Transaction Closing Date at such time or place as the parties mutually agree.*

1.4 (a) ...

(b) *At the closing of the purchase of the [Shares] from [the First Plaintiff] pursuant to section 1.2, [the Defendant] (or its designee(s)) shall pay to [the First Plaintiff] the applicable price for such [Shares] as set forth in section 1.2 ...*

1.6 *The rights and obligations of [the First Plaintiff] under this Agreement may be assigned by [the First Plaintiff] to [the Second Plaintiff] ...*

2.2 *This Agreement shall be governed by, construed in accordance with, and enforced under, the internal laws of the State of New York applicable to contracts executed and to be performed solely within such state.*

4. The Defendant procured the granting of a guarantee (the "Guarantee") dated 4 April 2011 and given by Deutsche Bank AG in favour of the First Plaintiff, as security for the obligations of the Defendant pursuant to the Agreement. The Guarantee was limited to the sum of one million Euros and stated that it would expire on 15 March 2012 and that thereafter the Guarantee could no longer be drawn upon. The Plaintiffs will refer to the Guarantee at trial for its full cause and effect.

5. On 28 June 2011 the First Plaintiff transferred the Shares into the ownership of the Second Plaintiff and assigned to the Second Plaintiff its rights under the Agreement.

6. On 22 November 2011 the First Plaintiff and the Defendant entered into a further agreement (the "Amendment Agreement") whereby the term of the Agreement was extended. The Amendment Agreement, to which the Plaintiffs will refer at trial for its full terms and effects, provided inter alia:

1.1 *The Repurchase Date is hereby rescheduled from December 31, 2011 to March 31, 2012.*

1.2 *Section 1.2(c) of the Agreement is hereby revised and shall now read as follows: "The Repurchase Date shall be rescheduled from March 31, 2012 to a specified date in the period from December 31, 2011 to February 29, 2012 (the "Rescheduled Repurchase Date") if [the First Plaintiff] provided written notice of such intention to [the Defendant] at least 30 days prior to the Rescheduled Repurchase Date.*

7. The Amendment Agreement further provided that the Defendant should procure the provision of a replacement bank guarantee, in place of the Guarantee, which replacement guarantee should be valid up to 15 June 2012 and should be "*submitted by [the Defendant] to [the First Plaintiff] without undue delay following execution of this Amendment Agreement.*"

8. By letter dated 12 January 2012 (the "Notice") the First Plaintiff:

8.1. gave notice to the Defendant on behalf of himself and the Second Plaintiff of his exercise of his rights under the Agreement and the Amendment Agreement to require the Defendant to purchase the Shares (comprising 13,809,525 common shares at a price of Eur. 0.15 per share), and further gave notice that the Repurchase Date would be rescheduled to 29 February 2012;

8.2. proposed that the Transaction Closing Date (pursuant to section 1.3 of the Agreement as amended) should be 29 February 2012; and

8.3. required the Defendant to procure the provision of the replacement bank guarantee as required by the Amendment Agreement.

9. The Defendant failed to comply with the terms of the Notice or with the provisions of the Agreement as amended. In particular the Defendant failed to provide plaintiffs with a replacement bank guaranty as agreed to by the Defendant in the Amendment Agreement.
10. On 13 March 2012 the Plaintiffs made demand under the Guarantee. On 23 March 2012 Deutsche Bank AG paid the sum of one million Euros to the Plaintiffs in satisfaction of the Guarantee.
11. By letter dated 23 March 2012 the Plaintiffs by their New York attorneys made demand of the balance of the purchase price for the Shares in the sum of one million, seventy-one thousand, four hundred and twenty-eight Euros and seventy five cents (Eur. 1,071,428.75).
12. By a further letter dated 17 April 2012 the Plaintiffs by their Cayman attorneys made demand of the same sum, but the Defendant has failed to pay.
13. The Plaintiffs are entitled to and claim interest on the amount claimed from the Defendant pursuant to section 34 of the Judicature Law at a rate of 2<sup>7</sup>/<sub>8</sub>% from 29 February 2012 until judgment or sooner payment.

**AND THE PLAINTIFFS CLAIM:**

- (1) The said sum of Eur. 1,071,428.75;
- (2) Interest pursuant to statute in the sum of Eur. 4,641.45 up to 24 April 2012 and accruing at a daily rate of Eur. 84.39;
- (3) A declaration that the Plaintiffs were entitled to make demand under the Guarantee and to draw on sums paid by Deutsche Bank AG pursuant to the Guarantee;
- (4) Further or other relief;
- (5) Costs.

  
**Higgs & Johnson, attorneys for the Plaintiff**

**Acknowledgement of service of writ of summons (0.12, r.3)**

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. 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.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

**Notes for Guidance**

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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. 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.
  3. 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 Writ of Summons)".
  4. 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.
  5. 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.
  6. 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.
  7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
  8. A Defendant acting in person may obtain help in completing the form at the Courts Office.
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**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO FSD:                      OF 2012**

**BETWEEN:**

**(1) BERNHARD HUGENROTH  
(2) HUGENROTH BETEILIGUNGS GMBH**

**Plaintiffs**

**- and -**

**AGRI.CAPITAL**

**Defendant**

**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

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.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes       no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

yes                       no

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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

**Please complete overleaf**

**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 or principal office.

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

Higgs & Johnson  
Attorneys-at-Law for the Plaintiff  
5<sup>th</sup> Floor, Anderson Square Building  
P.O. Box 866  
Shedden Road  
George Town  
Grand Cayman, KY1-1103  
Cayman Islands  
Ref: 502133-000001 (RBHH/JMH)

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