

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

0103
CAUSE NO. FSD of 2012

BETWEEN:

TEMPO GROUP LIMITED

Plaintiff

AND

(1) FORTUNE EAST ASIA HOLDING CORPORATION
(2) WYNNER GROUP LIMITED

Defendants



WRIT OF SUMMONS

- TO: (1) Fortune East Asia Holding Corporation of Nerine Chambers, Quastisky Building, Road Town, Tortola, British Virgin Islands.
- (2) Wynnerr Group Limited of PO Box 71, Craigmuir Chambers, Road Town, Tortola, British Virgin 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, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 10th day of July 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

Parties

- 1 The Plaintiff, Tempo Group Limited ("**Tempo**"), is a company incorporated in the British Virgin Islands with its registered office at PO Box 71, Craigmuir Chambers, Road Town, Tortola, British Virgin Islands.
- 2 The First Defendant, Fortune East Asia Holding Corporation, formerly known as New Frontier Development Corporation ("**New Frontier**"), is a company incorporated in the British Virgin Islands with its registered office at Nerine Chambers, Quastisky Building, Road Town, Tortola, British Virgin Islands.
- 3 The Second Defendant, Wynner Group Limited ("**Wynner**"), is a company incorporated in the British Virgin Islands with its registered office at PO Box 71, Craigmuir Chambers, Road Town, Tortola, British Virgin Islands.

Background

- 4 Tempo, New Frontier and Wynner are shareholders in Fortuna Development Corporation ("**Fortuna**"), a company registered in the Cayman Islands. Prior to 25 March 2011, the shareholders and their percentage shareholding in Fortuna were as follows:
 - 4.1 Tempo: 30%;
 - 4.2 New Frontier: 29%;
 - 4.3 Wynner: 24%;
 - 4.4 Bates Group Limited ("**Bates**"), a company incorporated in the British Virgin Islands: 10%;
 - 4.5 Maxima Resources Corporation, a company registered in Western Samoa: 5%; and
 - 4.6 Mr Albert Hsu ("**Mr Hsu**"), a Taiwanese individual: 2%.

5 Prior to 25 March 2011, the shareholders in Bates were as follows:

5.1 Tempo: 33.33%;

5.2 New Frontier: 33.33%; and

5.3 Wynner: 33.33%.

6 On 17 June 2004, Tempo commenced Cause No. 291 of 2004 in this Court against Fortuna (subsequently Cause No. FSD 82 of 2011), claiming additional dividends and interest thereon.

7 On 8 June 2010, proceedings were commenced in the Eastern Caribbean Supreme Court, High Court of Justice, British Virgin Islands (Commercial Division) (Claim No: BVI HCM 2010/0074) ("**BVI Proceedings**") by Tempo and Dr Chen Ching Chih (a Taiwanese individual who is a director and shareholder of Tempo) against Bates, New Frontier, Wynner, Mr Steven Word Driscoll (the sole registered director of Bates) and Mr Hsu. On 25 March 2011, the BVI Proceedings were settled pursuant to a Settlement Agreement dated 25 March 2011 ("**Settlement Agreement**").

8 The following were express terms of the Settlement Agreement:

"3. *TRANSFER OF INTERESTS*

3.1 *Within seven days of the Effective Date:*

(a) *Bates will transfer 33.33% of the Bates Fortuna Interest (being a 3.33% interest in Fortuna) to Tempo (or at Tempo's written direction, such direction to be received prior to the Effective Date) (the Fortuna Transfer);*

(b) *in exchange for the Fortuna Transfer, Tempo will transfer 33.33% of the shareholding in Bates to Bates (whereby Bates will acquire its own shares) (the Bates Transfer); and*

(c) *the parties will use their best efforts to ensure that the Fortuna Transfer is effected.*

4. *DIVIDEND ACTION: CAUSE NO 291 OF 2004*

4.1 *In the event that following the final determination or settlement of Cause 291 of 2004 in the Grand Court of the Cayman Islands it is adjudged or agreed that additional dividend payments and / or interest is owed by Fortuna, New Frontier and Wynner will pay Tempo a rateable share (i.e. 33.33%) of such sums paid by Fortuna in respect of Bates.*

15. *GENERAL*

This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by the law of the Cayman Islands.

Each of the parties irrevocably agrees that the courts of the Cayman Islands are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any proceedings arising out of or in connection with this Agreement shall be brought in such courts. Each of the parties irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum."

9 On 12 April 2011, in accordance with Clause 3.1 of the Settlement Agreement, 3.33% of Bates' shareholding in Fortuna was transferred to Tempo. Accordingly, Tempo's shareholding in Fortuna has increased to 33.33% and Bates' shareholding in Fortuna was reduced to 6.67%. All other shareholdings in Fortuna remain the same. In addition, Tempo's 3.33% shareholding in Bates was repurchased, and accordingly, New Frontier's and Wynner's shareholdings in Bates increased to 50% each.

Tempo's entitlement under Clause 4.1 of the Settlement Agreement

10 On a true construction of Clause 4.1 of the Settlement Agreement, in the event that it was established in Cause No. FSD 82 of 2011 (formerly Cause No. 291 of 2004), by judgment or agreement, that Fortuna owed additional dividends and/or interest to Tempo, Tempo should

also be entitled to receive from New Frontier and Wynner the further dividend and interest to which it was entitled in respect of its further shareholding in Fortuna held indirectly through Bates, notwithstanding that its holding in Bates was to be transferred pursuant to the Settlement Agreement. For the avoidance of doubt, on a true construction, such entitlement was not dependent on any sum being paid by Fortuna to Bates.

- 11 If, contrary to Tempo's primary case as set out in paragraph 10 above (but which has been asserted on behalf of New Frontier and Wynner), Tempo's entitlement under clause 4.1 only arises when a payment has been made by Fortuna to Bates, it was an implied term of the Settlement Agreement that New Frontier and Wynner would exercise their control over Fortuna to procure that sums were paid to Bates in proportion to the sums established as being due to Tempo. Such a term is to be implied as a matter of obvious inference and/or to give business efficacy to the Settlement Agreement as otherwise New Frontier and Wynner could easily and unilaterally deprive clause 4.1 of any effect and circumvent its obvious commercial purpose by using their control of both Fortuna and Bates to procure that Fortuna did not pay sums to Bates equivalent to those to which Tempo had established an entitlement, and that Bates did not claim such sums from Fortuna.
- 12 By a Consent Judgment dated 13 December 2011 in the Cayman Islands proceedings Cause No. FSD 82 of 2011 (formerly Cause No. 291 of 2004), Fortuna was required to pay US\$6,000,000 to Tempo, comprising the following amounts in respect of dividends due to Tempo ("**Consent Order**"):
 - 12.1 US\$1,500,000 relating to a dividend payable on 10 September 2002;
 - 12.2 US\$3,000,000 relating to a dividend payable on 10 January 2003; and
 - 12.3 US\$1,500,000 relating to a dividend payable on 29 April 2003.
- 13 Payments pursuant to the Consent Order were made by Fortuna to Tempo on 4 January 2012.
- 14 By an Order of Justice Henderson dated 24 February 2012 in Cause No. FSD 82 of 2011 (formerly Cause No. 291 of 2004), Fortuna was ordered to pay US\$2,155,423 to Tempo, which represented simple interest on the sum of US\$6,000,000 at the rates prescribed by the

Judgments Debts (Rates of Interest) Rules from 17 June 2004 to 13 December 2011 ("**Interest Order**"). Payments under the Interest Order were made by Fortuna to Tempo on 24 March 2012.

- 15 In the premises, pursuant to Clause 4.1 of the Settlement Agreement, New Frontier and Wynner are liable to pay Tempo US\$666,667 being Tempo's 33.33% share of the dividends and interest due to Bates equivalent to the sums adjudged as being due to Tempo ("**Settlement Agreement Debt**").

Breach of the Settlement Agreement by Wynner and New Frontier

- 16 In breach of Clause 4.1 of the Settlement Agreement, Wynner and New Frontier have wrongfully refused to pay the Settlement Agreement Debt.

Particulars


- 17 Tempo demanded payment of the Settlement Agreement Debt by a letter dated 2 April 2012 from Tempo's Hong Kong attorneys, Holman Fenwick Wilan ("**HFW**"), to Wynner's and New Frontier's attorneys, Freshfields Bruckhaus Deringer LLP ("**Freshfields**"). Wynner and New Frontier notified Tempo of their refusal to pay the Settlement Agreement Debt by a letter dated 5 April 2012 from Freshfields to HFW. Tempo's demand for payment was repeated in a letter from HFW to Freshfields dated 19 April 2012. Wynner's and New Frontier's refusal to pay the Settlement Agreement Debt was repeated in a letter dated 3 May 2012 from Freshfields to HFW. As at the date hereof, no such payment has been received by Tempo.
- 18 By reason of the aforesaid breach, Tempo has suffered loss and damage in the amount of the Settlement Agreement Debt.
- 19 In the alternative, in breach of the implied term pleaded in paragraph 11 above, New Frontier and Wynner have failed to procure that Fortuna pay to Bates sums equivalent to the Settlement Agreement Debt. Tempo is entitled to specific performance of that obligation, alternatively, damages in lieu of specific performance in the amount of the Settlement Agreement Debt.
- 20 Tempo also claims interest pursuant to section 34 of the Judicature Law (2007 Revision) at the maximum prescribed rate from 13 December 2011 to the date hereof, a calculation of

which is attached at Schedule 1 in the total amount of US\$248,633.96. Interest at this claimed rate continues to accrue at the rate of US\$43.48 per day.

And the Plaintiff Claims

- (1) Under paragraph 15, the sum of US\$667,666;
- (2) Under paragraph 20, interest in the sum of US\$248,633.96 (to 10 July 2012) and continuing to accrue pursuant to section 34 of the Judicature Law;
- (3) In the alternative, damages under paragraph 18 and interest thereon to be assessed;
- (4) In the further alternative, specific performance under paragraph 19, alternatively, damages in lieu and interest thereon to be assessed; and
- (5) Costs.

DATED this 10th day of July 2012


Maples and Calder

THIS WRIT was issued by Maples and Calder, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: MWI/JJG/SBA/606226.03/23959650)

Schedule 1 – Calculation of Interest

Date of Dividend Distribution	Dividend Outstanding (US\$)	Interest from 17 June 2004 to 30 June 2006 (US\$) (3%)	Interest from 1 July 2006 to 30 November 2008 (US\$) (7.25%)	Interest from 1 December 2008 to 31 October 2010 (US\$) (5%)	Interest from 1 November 2010 to 13 December 2011 (US\$) (2.38%)	Interest from 14 December 2011 to 10 July 2012 (US\$) (2.38%)	Daily rate of interest (US\$) (2.38%)
10.09.2002	166,667.00	10,192.80	29,269.24	15,981.00	4,434.96	2,282.70	10.87
10.01.2003	333,333.00	20,385.60	58,529.64	31,962.00	8,869.92	4565.40	21.74
29.04.2003	166,667.00	10,192.80	29,269.24	15,981.00	4,434.96	2,282.70	10.87
Total:	666,667.00	40,771.20	117,068.12	63,924.00	17,739.84	9,130.80	43.48

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, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

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 Plaintiffs 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 overleaf for Notes for Guidance

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. 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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TEMPO GROUP LIMITED

Plaintiffs

AND

- (1) FORTUNE EAST ASIA HOLDING CORPORATION**
- (2) WYNNER GROUP LIMITED**

Defendants

**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.

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

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

yes no

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

Service of the Writ is acknowledged accordingly

(Signed).....
Attorney for

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.

Maples and Calder
Attorneys for the Plaintiff
Ugland House
PO Box 309 Grand Cayman
KY1-1104 Cayman Islands

Att: Mac Imrie / Jan Golaszewski
Ref: 606226.03

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

[Empty box for defendant's attorney indorsement]