

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0016 OF 2012

BETWEEN: **SWISS-ASIA GENGHIS HEDGE FUND**
(as assignee of SOMERS NOMINEES (FAR EAST) LIMITED) **PLAINTIFF**

AND: **MAOMING FUND** **DEFENDANT**



WRIT OF SUMMONS



TO: **MAOMING FUND**
Appleby Trust (Cayman) Ltd
PO Box 1350
Clifton House
George Town
Grand Cayman KY1-1108



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 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 495, 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 day of January 2013

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.

7. On 19 August 2011, Somers submitted a redemption request for all of the shares in the Fund which it held as nominee on behalf of Genghis (the “Shares”), to be redeemed on the next Dealing Date, namely 3 October 2011 (the “Redemption”).
8. By a letter dated 11 October 2011, the Fund, by its administrator (“Apex”), provided a net asset value (“NAV”) for the Shares as at 30 September 2011 of US\$1,669,110.66 (the “Redemption Price”). The Redemption Price was not paid by the Fund to Somers.
9. Negotiations took place between the Fund, the Fund’s investment manager, and the investment manager of Genghis, Swiss-Asia Financial Services Pte. Ltd. (“Swiss-Asia”) concerning the mechanism for payment of the Redemption Price.
10. By a letter dated 21 December 2011 (the “Letter”), executed by the Fund on or about 5 January 2012, it was agreed that the Redemption would be cancelled, and Somers/Genghis would waive their right to payment of the Redemption Price, in consideration for which the Fund agreed to re-purchase the Shares for cash in accordance with the following terms:

“[the Fund] commits to re-purchase shares of at least one sixth of [Somers’] current entire holding every month starting on the 1 January 2012 dealing date and ending the 1st June 2012 dealing date, by when [Somers’] entire remaining Investment should have been fully re-purchased. It is also understood that if there is sufficient liquidity in the [Fund] that allows it to re-purchase a larger portion of [Somers’] shareholding at any given month, it will do so.

On or before 3rd February 2012, the Fund will liquidate one sixth by value (calculated by reference to [Apex’s] best estimate of the Fund’s net asset value on or about 1 January 2012), or such greater proportion as liquidity in the Fund’s portfolio permits, of that portion of the Fund’s entire portfolio which is equal to [Somers’] percentage shareholding in the Fund immediately before the 1st February 2012 dealing date. The price for such repurchase will be such amount of net cash as is received by the Fund from the realization of those liquidated securities. On or before 1st March 2012 the Fund will liquidate one fifth by value (calculated by reference to [Apex’s] best estimate of the Fund’s net asset value on or about 3 February 2012), or such greater proportion as liquidity in the Fund’s portfolio then permits, of that portion of the Fund’s entire portfolio which is equal to [Somers’] percentage shareholding in the Fund immediately before 1st March 2012, and so on for each month thereafter until [Somers’] entire shareholding has been re-purchased. The re-purchase price for March 2012 and each subsequent month shall be calculated in the same manner as the calculation of the re-purchase price in January 2012. Payment will be made as soon as reasonably practicable after the relevant dealing day.

The Fund should also treat the above re-purchase commitments in priority to any redemption requests received after [19 August 2011.]”

11. In accordance with the terms of the Letter, Apex provided its best estimates of the Fund's net asset value of tranches of 1/6th of the Shares as follows:

(a)	28 February 2012	US\$263,416.60	(Dealing date 1 February 2012);
(b)	23 March 2012	US\$268,213.29	(Dealing date 1 March 2012);
(c)	24 April 2012	US\$253,668.67	(Dealing date 2 April 2012); and
(d)	24 May 2012	US\$245,432.98	(Dealing date 2 May 2012)

(together, the "Disclosed Purchase Price") and totalling US\$980,731.54).

12. Wrongfully, and in breach of the express terms of the Letter, the Fund has failed to pay any of the Disclosed Purchase Price to Somers (save for a sum of US\$50,000.00 paid on or about 21 March 2012).

13. Further, in breach of the express terms of the Letter, the Fund has not paid any of the "Undisclosed Purchase Price" to Somers (i.e. because Apex did not provide any estimates of the Fund's net asset value in relation to the remaining 2 tranches of 1/6th of the Shares, the Purchase Price of those Shares, while due, is "Undisclosed").

14. By reason of the foregoing, Genghis, as the assignee of Somers, is owed the Disclosed and Undisclosed Purchase Price by the Fund, as Somers' assignee (namely the sum of US\$980,731.54 plus the Undisclosed Purchase Price), together with interest alternatively they have suffered damages in a like amount (or such amount as may be determined by this honourable Court).

15. The value of the remaining 1/3rd of the Shares at the dealing date next after 30 June 2012 (i.e. the Undisclosed Purchase Price) was approximately US\$678,412.50 based on figures provided by Apex as at 29 June 2012.

16. Further, Genghis seeks and is entitled to interest, pursuant to section 34 of the Judicature Law (2007 Revision) to be assessed. As at 16 January 2013, the interest accrued at the prevailing Grand Court rate (2¾%) is as follows:

(a)	On the Disclosed Purchase Price:	US\$18,946.42	Daily rate	US\$67.07
(b)	On the Undisclosed Purchase Price:	US\$8,740.49	Daily rate	US\$44.14.

17. By a letter dated 5 December 2012, Campbells, on behalf of Genghis, made demand of the Fund for payment of the Disclosed and Undisclosed Purchase Prices, together with interest. Payment has not been forthcoming.

18. If and to the extent necessary (which is denied), Genghis will contend that:

(a) Provision by Apex of the estimated NAV's set out in Paragraph 11 above and

(b) Payment of the sum referred to in Paragraph 12 above

amount to part performance of the agreement embodied in the Letter sufficient to constitute it final and binding alternatively, sufficient to estop the Fund from denying the existence of the agreement embodied in the Letter and its obligation to pay Somers or its assignee Genghis the sums due under it.

AND THE PLAINTIFF CLAIMS:

- 1) Payment of the Disclosed and Undisclosed Purchase Price alternatively damages
- 2) Interest pursuant to section 34 of the Judicature Law (2007 Revision) to be assessed
- 3) Such further or other relief as this honourable Court thinks fit.
- 4) Costs.



CAMPBELLS
Attorneys-at Law for the Plaintiff

Dated: 16 January 2013

Filed: 16 January 2013

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Campbells, Attorneys for the Plaintiff, whose address for service is Floor 4, Willow House, Cricket Square, George Town, PO Box 884, Grand Cayman KY1-1103, Cayman Islands (Ref: JRM/KAH/sm/14036-19802)

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 Fund, "residence" means its registered principal office.

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

Campbells
P.O. Box 884
Floor 4 Willow House
Cricket Square
George Town
Grand Cayman KY1-1103

Ref: JRM/KAH/14036-19802

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

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

1. The acFunding 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 495, 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

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 FUND the form must be completed by an Attorney or by someone authorised to act on behalf of the Fund, but the Fund can take no further step in the proceedings without an Attorney acting on his 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.