

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO.: [0142] OF 2013 ()

BETWEEN:

- (1) CAYMAR CAPITAL LTD.
- (2) CAYMAN HOLDINGS, LLC
- (3) MASTMI LIMITED PARTNERSHIP
- (4) CAYMAN HOLDINGS GP, LLC

Plaintiffs

-AND-

- (1) GENBAR CAYMAN GP, LLC
- (2) GERFLY GmbH
- (3) AFI INVESTMENTS, LLC
- (4) ANROWE, LTD.
- (5) HIGHGATE CAPITAL INVESTMENTS, LLC

Defendants



WRIT OF SUMMONS

TO:

- (1) GenBar Cayman GP LLC, 801 Brickell Avenue PH2, Miami, Florida 33131
- (2) Gerfly GmbH, 801 Brickell Avenue PH2, Miami, Florida 33131
- (3) AFI Investments, LLC, 801 Brickell Avenue PH2, Miami, Florida 33131
- (4) Anrowe, Ltd., International House, Castle Hill, Victoria Road, Douglas, Isle of Man, United Kingdom, IM2 4RB
- (5) Highgate Capital Investments, LLC, 545 E. John Carpenter Freeway #1400, Irving, Texas, 75062

This WRIT OF SUMMONS was filed by Maples and Calder, attorneys for the Plaintiffs whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (Ref: MWI/LLK/688622/28767393).

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 28 days or such other time as the Court may order 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 GT, 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 1st day of November 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.

This WRIT OF SUMMONS was filed by Maples and Calder, attorneys for the Plaintiffs whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (Ref: MWI/LLK/686622/28767393).

- 3 Between them, the Shareholders own the entire issued share capital of the Marriott Cayman Hotel Company. In addition to being a shareholder, the First Defendant ("**GenBar**") is also the sole director of the Marriott Cayman Hotel Company.
- 4 This claim concerns a share purchase agreement dated 13 August 2013 ("**the SPA**") between all the parties to this action (including the Fourth Plaintiff) pursuant to which the Defendants agreed to sell and the Plaintiffs agreed to buy all the shares in the Marriott Cayman Hotel Company owned by each Defendant. The SPA has now been terminated and, as a result of such termination, the Defendants were required to repay monies to the Plaintiffs and to reimburse the Plaintiffs for capital contributions made by the Plaintiffs on the Defendants' behalf.
- 5 The Defendants failed to comply with their said obligations under the SPA to repay and to reimburse the Plaintiffs. As a result, the SPA provides that the Defendants are now under an obligation to procure the issue, in favour of the Plaintiffs, of shares in the Marriott Cayman Hotel Company. The value of the shares to be issued reflects the sums owed by the Defendants.
- 6 In this action, the Plaintiffs seek specific performance of the SPA.
- 7 The legal status of each of the Parties and the respective jurisdictions in which they are incorporated or established and/or have a registered address are set out in the Schedule to this Statement of Claim.
- 8 In addition to the other definitions employed herein:
- 8.1 the First Plaintiff is referred to as "**Caymar**";
- 8.2 the Second Defendant is referred to as "**Gerfly**"; and
- 8.3 the Third Defendant is referred to as "**AFI**".

The Shareholders Agreement

- 9 The relationship between the Shareholders and the rights and obligations of GenBar, in its role as a director, of the Marriott Cayman Hotel Company, is regulated by (inter alia) an agreement in writing dated 4 October 2012 (the "**Shareholders Agreement**"). The

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Shareholders Agreement supplements the provisions of the Marriott Cayman Hotel Company's articles of association.

- 10 The provisions of the SPA relied upon by the Plaintiffs in this action make reference to the following provision of the Shareholders Agreement, which relates to the obligation of the Shareholders to provide capital contributions and the consequences if they fail to do so:

3.4 Failure to Purchase Additional Shares Timely. *Notwithstanding anything else contained in this Agreement to the contrary, a Shareholder's obligations to purchase Additional Shares in response to any call for Additional Capital Contributions are non-recourse obligations of the Shareholder. Accordingly, if any Shareholder fails or refuses to make timely the Additional Capital Contributions within thirty (30) days (or such lesser time as may be required in order to avoid a default under any Company obligation or as approved by the Class A Shareholders) after the date of notice of such required Additional Capital Contribution, then the provisions of this Section 3.4 shall be applicable.*

[...]

(b) In lieu of the provisions of Section 3.4(a), the Non-Defaulting Shareholders may elect to make such Additional Capital Contributions and purchase their pro rata share of the Additional Shares (in such Defaulting Shareholder's class) which the Defaulting Shareholder failed to purchase (the "Default Additional Shares"). In such event, the Overall Ownership Percentage of each Non-Defaulting Shareholder that funds (each, a "Funding Shareholder") a portion of the Defaulting Shareholder's failed Additional Capital Contribution (the "Failed Contribution") shall be increased (and the Defaulting Shareholder's Overall Ownership Percentage shall be commensurately decreased) by a percentage achieved by multiplying the Funding Shareholder's Overall Ownership Percentage by a fraction (i) the numerator of which is 125% of the Failed Contribution funded by such Funding Shareholder and (ii) the denominator of which is the total Capital Contribution funded by the Funding Shareholder(s).

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In order to accomplish the foregoing, the Funding Shareholders shall be issued additional Shares ("Bonus Additional Shares") for no additional consideration as necessary to cause the Shareholders' Overall Ownership Percentages to equal the adjusted Overall Ownership Percentages dictated by the foregoing formula. Bonus Additional Shares shall be issued in the same class as the Default Additional Shares."

- 11 Section 12.2 of the Shareholders Agreement provides that it is governed by the law of the Cayman Islands.

The Share Purchase Agreement

- 12 The SPA contains the express terms set out below in relation to the Defendants' obligations to repay sums received from the Plaintiffs and to reimburse the Plaintiffs for capital contributions made on behalf of the Defendants. For convenience, the following extracts contain paragraph spacing that is not contained in the original text (any such paragraph spacing added herein is indicated by "[/]").

"1.2 Reimbursement for Recent Capital Contribution.

[/] In addition to the payment of the Purchase Price, upon execution of this Agreement, (a) [those of the Plaintiffs purchasing the Class B shares of the Company] shall pay to GenBar, the amount of [US\$582,000.00] (the "GenBar Amount"), and (b) [those of the Plaintiffs purchasing the Class C shares of the Marriott Cayman Hotel Company] shall pay to AFI, the amount of [US\$72,750.00] (the "AFI Amount") as consideration for the assignment by each of GenBar and AFI (an "Assignor") to said [Plaintiff(s)] (collectively the "Assignees") of all the Assignor's right, title and interest in and to the repayment by [the Marriott Cayman Hotel Company] of the Shareholder Funding (as such term is defined in that certain Joint Unanimous Written Consent of the Directors and Class A Shareholders of [the Marriott Cayman Hotel Company] dated June 18, 2013) equal to the GenBar Amount and AFI Amount made by each Assignor to the [the Marriott Cayman Hotel Company] on or about June 25, 2013 (the "Sellers' Shareholder Funding").

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[...]

In addition should the [Marriott Cayman Hotel Company] call for any additional capital contributions during the pendency of this Agreement, [the Plaintiffs] shall fund all amounts on each [Defendant]'s behalf.

[f] In the event the Closing does not occur and this Agreement is terminated, within twenty one (21) days after termination of this Agreement, (x) GenBar and AFI shall repay the GenBar Amount and the AFI Amount to [the Plaintiffs purchasing the Class B shares of the Marriott Cayman Hotel Company] and [the Plaintiffs purchasing the Class C shares of the Marriott Cayman Hotel Company], respectively, (y) [the Defendants] shall refund to [the Plaintiffs] any other capital contributions made on the [the Defendants]' behalf, and (z) the assignment by each Assignor to the Assignees of such Assignor's rights and obligations in and to the Sellers' Shareholder Funding shall be null and void and each Assignor shall retain all right, title and interest in and to the repayment by [the Marriott Cayman Hotel Company] of the Sellers' Shareholder Funding.

[The obligations of GenBar, AFI and the Defendants in these sub-paragraphs (x), (y) and (z) of Article 1.2 are hereinafter referred to as "**the Defendants' Repayment Obligations**".]

[f] Notwithstanding any other provision of this Agreement or the Shareholders Agreement, in the event: the Closing does not occur, this Agreement is terminated, and, any one or more of the Sellers fails to pay the amounts owed to [the Plaintiffs] as set forth in the previous sentence (the "Default Amount") within the twenty-one (21) day period after termination of this Agreement, then, without further notice or election of any kind whatsoever, the Default Amount shall automatically be deemed to be a Failed Contribution and create Default Additional Shares (as such terms are defined in Section 3.4(b) of the Shareholders Agreement) of Gerfly, and the overall ownership of Gerfly of Class A-2 Shares of [the Marriott Cayman Hotel Company] shall be decreased and [the Plaintiffs] overall ownership of Class A-2 Shares of the [the Marriott Cayman

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Hotel Company shall be increased (as [the Plaintiffs] may allocate amongst themselves in their sole discretion) in the manner set forth in Section 3.4(b) of the Shareholders Agreement (including but not limited to the issuance of Bonus Additional Shares, as such term is defined in the Shareholders Agreement), in the form of Class A-2 Shares to [the Plaintiffs]."

13 The provisions of the SPA relating to its termination are as follows:

6.1 Termination of Agreement

[/] This Agreement may be terminated prior to Closing as to all [the Plaintiffs] and all [the Defendants] as follows:

[...]

(d) by [the Plaintiffs] prior to Closing if [the Plaintiffs] are not satisfied with the Due Diligence....

6.2 Procedure Upon Termination

[/] In the event of termination and abandonment by [the Plaintiffs] or [the Defendants], or both, pursuant to Section 6.1, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, and the purchase of the Shares owned by the Sellers hereunder shall be abandoned, without further action by [the Plaintiffs] or [the Defendants].

6.3 Effect of Termination

[/] Except for the obligations set forth in Section 1.2. above, in the event that this Agreement is validly terminated in accordance with Section 6.1, then each of the related parties shall be relieved of their duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to [the Plaintiffs] or [the Defendants]; provided, that no such termination shall relieve any party hereto from liability for any wilful breach of this Agreement.

14 The governing law of the SPA is provided for by Article 8.5 of the SPA, which states:

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8.5 Governing Law.

[f] This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the Laws of the State of Florida without regard to the conflicts of laws provisions thereof; provided, however, as to the law governing the actual transfer of Shares under this Agreement, said transfers shall be governed exclusively by, the Laws of the Cayman Islands without regard to the conflicts of laws provisions thereof."

- 15 The Plaintiffs performed their obligations under Article 1.2 of the SPA in the following manner:
- 15.1 On or around 13 August 2013 Caymar, who was elected as the party who would purchase the Class B shares, caused the GenBar Amount to be paid to GenBar;
- 15.2 On or around 13 August 2013 Caymar, who was elected as the party who would purchase the Class C shares, caused the AFI Amount to be paid to AFI;
- 15.3 On or around 11 September 2013, Caymar caused the sum of US\$180,000 (the "**First Capital Contribution**") to be paid to the Marriott Cayman Hotel Company; and
- 15.4 On or around 25 September 2013, Caymar caused the sum of US\$72,000 (the "**Second Capital Contribution**") to be paid to the Marriott Cayman Hotel Company.
- 16 Both the First Capital Contribution and the Second Capital Contribution represented capital contributions owed by the Defendants to the Marriott Cayman Hotel Company.
- 17 By written notice served upon the Defendants on or around 3 October 2013, the Plaintiffs terminated the SPA pursuant to Article 6.2.

The Defendants' breach of the SPA

- 18 Article 6.3 of the SPA expressly provided that the obligations under Article 1.2 of the SPA survived the termination of the SPA.
- 19 Upon termination of the SPA, Article 1.2 of the SPA imposed, inter alia, the following obligations upon the Defendants, to be performed within 21 days after termination:

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- 19.1 GerFly was required to repay Caymar the sum of US\$582,000.00;
- 19.2 AFI was required to Caymar the sum of US\$72,750.00;
- 19.3 The Defendants were required to pay to Caymar the sums of US\$180,000 and US\$72,000, which sums are equal to First Capital Contribution and the Second Capital Contribution.
- 20 The Plaintiffs' written notice of termination served on the Defendants on or around 3 October 2013 expressly requested that the Defendants perform the Defendants' Repayment Obligations, summarised at paragraph 19 above. The Plaintiffs repeated such request by a letter served on the Defendants on or around 11 October 2013.
- 21 In breach of Article 1.2 of the SPA, no sums were received by Caymar or any other Plaintiff from any of the Defendants within 21 days, or at all.
- 22 The Defendants did not provide any explanation for their failure to perform the Defendants' Repayment Obligations, either within 21 days, or at all.
- 23 Accordingly, pursuant to Article 1.2 of the SPA, upon 25 October 2013, being the first date after 21 days following termination of the SPA, the Defendants' Repayment Obligations were replaced by a right on the part of the Plaintiffs to receive additional Class A-2 Shares, and a corresponding obligation on the part of the Defendants to procure the same, in the manner set out in Section 3.4(b) of the Shareholders Agreement ("**the Defendants' Share Obligation**").
- 24 By way of a letter served upon the Defendants on or around 25 October 2013 and a letter served upon the Defendants on or around 29 October 2013, the Plaintiffs expressly:
- 24.1 requested that the Defendants perform the Defendants' Share Obligation, summarised at paragraph 23 above; and
- 24.2 notified the Defendants that the Plaintiffs had, in the exercise of their right to allocate between themselves the additional Class A-2 Shares to be received, elected Caymar to be the party to receive the said additional shares.


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- 25 The mathematical formula set out in Section 3.4(b) of the Shareholders Agreement operates to require the issue of the number of additional Class A-2 Shares of the Marriott Cayman Hotel Company in favour of Caymar which would create a transfer of ownership from Gerfly to Caymar of eleven percent (11%) of the overall ownership of the Marriott Cayman Hotel Company (the "**Additional Shares**").
- 26 In breach of the Defendants' Share Obligation, the Defendants have wrongfully failed to procure the issue of the Additional Shares in favour of Caymar.
- 27 The value of the Additional Shares to be issued reflects sums of which the Defendants have had the benefit, being sums paid by Caymar to the Defendants and by Caymar on behalf of the Defendants by way of capital contributions.
- 28 The Plaintiffs have complied with all their obligations under the SPA.
- 29 In the premises of the foregoing, the Plaintiffs seek an order for specific performance of the SPA, namely an order requiring the Defendants to procure the issue of the Additional Shares of the Marriott Cayman Hotel Company in favour of Caymar.

AND the Plaintiffs claim:

- 1 An order for specific performance of the SPA;
- 2 Costs;
- 3 Such further or other relief as the Court thinks fit.

FILED this 1st day of November 2013



Maples and Calder

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Schedule

Parties' legal statuses and connected jurisdictions

Plaintiffs

- 1 The First Plaintiff, Caymar Capital Ltd, is a non-resident company incorporated with limited liability under the laws of the Cayman Islands. Its registered office is located in the Cayman Islands.
- 2 The Second Plaintiff, Cayman Holdings, LLC is a limited liability company incorporated in Florida, U.S.A..
- 3 The Third Plaintiff, Mastmi Limited Partnership, is a limited liability partnership established in Florida, U.S.A..
- 4 The Fourth Plaintiff, Cayman Holdings GP, LLC, is a limited liability company incorporated in Florida, U.S.A..

Defendants

- 5 The First Defendant, GenBar Cayman GP, LLC, is a limited liability company incorporated in Delaware, U.S.A..
 - 6 The Second Defendant, Gerfly GmbH, is a Swiss GmbH with a registered address in Switzerland.
 - 7 The Third Defendant, AFI Investments, LLC, is a limited liability company incorporated in Delaware, U.S.A..
 - 8 The Fourth Defendant, Anrowe, Ltd., is a company incorporated in the Isle of Man.
 - 9 Highgate Capital Investments, LLC, is a limited liability company incorporated in Delaware, U.S.A..
-

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 Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Maples and Calder Ugland House PO Box 309 George Town Grand Cayman KY1-1104 Cayman Islands Ref: [MWI/LLK/686622-000001]
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Indorsement by Defendant's attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

Gerfly GmbH 801 Brickell Avenue PH2 Miami Florida 33131

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

- 12 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 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 13 A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiffs (or on the Plaintiffs 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.

- 14 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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.

Notes for Guidance

- 15 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
- 16 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.
- 17 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)".
- 18 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.
- 19 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.
- 20 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.
- 21 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
- 22 A Defendant acting in person may obtain help in completing the form at the Courts Office.

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 Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Maples and Calder Ugland House PO Box 309 George Town Grand Cayman KY1-1104 Cayman Islands Ref: [MWI/LLK/686622-000001]
--

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

AFI Investments, LLC 801 Brickell Avenue PH2 Miami Florida 33131
--

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

- 23 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 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 24 A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiffs (or on the Plaintiffs if acting in person).

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

Maples and Calder
Ugland House
PO Box 309
George Town
Grand Cayman
KY1-1104
Cayman Islands

Ref: [MWI/LLK/686622-000001]

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

Anrowe, Ltd.
International House
Castle Hill
Victoria Road
Douglas
Isle of Man
United Kingdom
1M2 4RB

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

- 34 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 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

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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 Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Maples and Calder
Ugland House
PO Box 309
George Town
Grand Cayman
KY1-1104
Cayman Islands

Ref: [MWI/LLK/686622-000001]

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

Highgate Capital Investments, LLC
545 E. John Carpenter Freeway #1400
Irving
Texas
75062

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

- 45 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 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.
- 46 A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiffs (or on the Plaintiffs 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.
- 47 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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.

Notes for Guidance

- 48 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
 - 49 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.
 - 50 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)".
 - 51 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.
 - 52 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.
 - 53 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.
 - 54 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
 - 55 A Defendant acting in person may obtain help in completing the form at the Courts Office.
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