

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO FSD: OF 2014
0002

BETWEEN:

EXECUTIVE WEALTH MANAGEMENT

Plaintiff

AND

THARWA INVESTMENTS S.A.

Defendant



WRIT OF SUMMONS

TO: ~~Tharwa Investments S.A.~~

Ankara Building, 24 De Castro Street, Wickhams Cay I, 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, P.O. Box 495, George Town, Grand Cayman, KY1-1106, 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:

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.

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was filed by Travers Thorp Alberga whose address for service is Harbour Place, P.O. Box 472, 103 South Church Street, Grand Cayman KY1-1106, Cayman Islands (Ref: IEH/E0393-001)

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a company duly incorporated in Guernsey. Its registered office is Frances House, Sir William Place, St Peter Port, Guernsey GY1 4NQ.
2. The Defendant is and was at all material times a company duly incorporated in the British Virgin Islands. Its registered office is Ankara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.
3. By an agreement in writing dated 27 March 2013 (the "**Agreement**") between the Plaintiff and the Defendant, the Plaintiff agreed to sell and the Defendant agreed to buy certain of the Plaintiff's shares in Fourwinds Capital Management and Fourwinds Capital Management (US) Inc. being companies incorporated in the Cayman Islands and the State of Delaware respectively (the "**Shares**"). The Shares were defined in the Agreement as the Common Shares and the US Company Common Shares respectively.
4. The Agreement contained the following express terms:
 - 4.1 Clauses 3.1 and 3.2 provided, inter alia, that the Defendant would pay the Plaintiff the sum of US\$250,500 as consideration for the Shares.
 - 4.2 Clause 4.3 provided, inter alia, that 25% of the consideration referred to above would be paid on 27 September 2013 with the balance to be paid on 27 March 2014, being dates six and twelve months following completion respectively.
 - 4.3 Clause 5.4 required the Defendant to serve notice of any claim in respect of the warranties provided by the Plaintiff pursuant to the Agreement as soon as

possible after the Defendant became aware of such a claim and in any event by 27 March 2014 (“**Claim Notice**”).

- 4.4 Clause 5.4 further provided that any claims referred to in a Claim Notice will not be enforceable and shall be deemed to have been withdrawn unless proceedings are commenced and served on the Plaintiff within 3 months from the date of the Claim Notice.
 - 4.5 Clause 18.1 provided for the Agreement to be governed by the law of the Cayman Islands, save in respect of the provisions relating to the sale and purchase of the US Company Common Shares which are to be governed by the law of the State of Delaware.
 - 4.6 Clause 18.2 provided for the Courts of the Cayman Islands to have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Agreement and for the parties to irrevocably waive any right they may have to object to an action being brought in the Cayman Islands.
5. The Plaintiff has complied with or alternatively is and was at all material times ready, willing and able to comply with all its obligations under the Agreement. The Plaintiff transferred its Shares to the Defendant on or around 27 March 2013.
 6. In breach of the Agreement, the Defendant has failed to pay any part of the consideration by the due date or at all despite numerous requests for payment. The sum of US\$62,625 is presently due and owing. On 27 March 2014, the full amount of US\$250,500 will fall due.
 7. On 26 September 2013, the Defendant served a Claim Notice. The Claim Notice was expressed to be served pursuant to Clause 5.4 of the Agreement and referred to, *inter alia*, the following warranty claims :
 - 7.1 The NAV of investments in the two funds known as the Acqua Fund and the Phaunous Fund had been overstated.

- 7.2 The audited consolidated financial statements for the year ended 31 December 2012 failed to disclose relevant losses and/or were misleading.
- 7.3 The combination of certain undisclosed adjustments to the 2013 expected revenues and the reimbursement of management fees overcharged in 2012 resulted in a drastic decrease in the 2013 net revenues.
- 7.4 The Plaintiff failed to disclose that the two largest investors in the underlying fund had elected to redeem their investments by the time of the Agreement.
- 7.5 The likelihood of generating substantial income from managing the Zephyr Fund had been overstated.
8. The Plaintiff denies, for the avoidance of any doubt, that it is in any way liable in respect of the purported claims contained in the Defendant's Claim Notice dated 26 September 2013. However, since no proceedings have been commenced and served in respect of such purported claims within 3 months of the Claim Notice, the Defendant is deemed to have withdrawn and is debarred from pursuing them in any event pursuant to Clause 5.4 of the Agreement.

AND THE PLAINTIFF CLAIMS:

- (1) The sum of US\$62,625.
- (2) The sum of US\$250,500 on or after 27 March 2014.
- (3) Interest under S. 34 Judicature Law (2007 Rev) or the equitable jurisdiction of the Court.
- (4) Further or alternatively, damages for breach of contract in addition to or in lieu of specific performance or at common law.
- (5) Interest on those damages as above.

- (6) A declaration that the Defendant is debarred from pursuing the purported claims referred to in its Claim Notice dated 26 September 2013.
- (7) Further or other relief.
- (8) Costs.

DATED: 8 JANUARY 2014

Travers Thorp Alberga
Travers Thorp Alberga
Attorneys-at-Law for the Plaintiff

If, within the limited for returning the Acknowledgment of Service the Defendant pays the amount claimed to the Plaintiff or its Attorneys further proceedings will be stayed.

TO: The Clerk of the Court

AND TO:

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE No. of 2013

BETWEEN

EXECUTIVE WEALTH MANAGEMENT

Plaintiff

AND

THARWA INVESTMENTS S.A.

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.

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

[Defendant in person]

Address for service:

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.

Travers Thorp Alberga
Attorneys-at-Law
P.O. Box 472
Grand Cayman, KY1-1106
Cayman Islands
Attorney: Ian Huskisson
Phone: (345) 949-0699
Facsimile: (345) 949-8171
Email: ihuskisson@traversthorpalberga.com
Ref: IEH/E0393-001

Indorsement 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 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 495, Grand Cayman, KY1-1106.

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 installments or otherwise.

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.