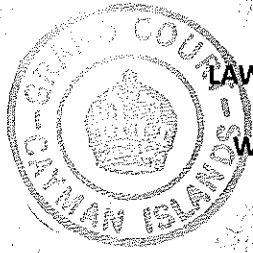


BETWEEN:



LAWRENCE BEVERLEY HEATH

FIRST PLAINTIFF

WILLAUD CORPORATION

SECOND PLAINTIFF

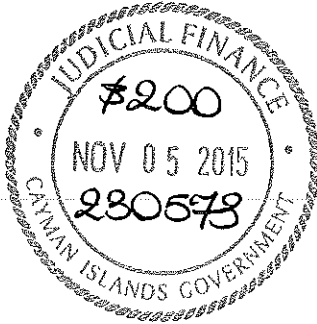
AND:

THE DUNDEE MERCHANT BANK

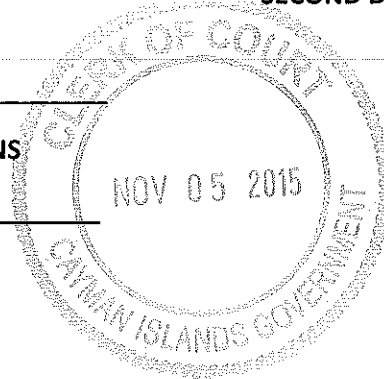
FIRST DEFENDANT

SHARON LEXA LAMB

SECOND DEFENDANT



WRIT OF SUMMONS



TO: The Dundee Merchant Bank  
 The Waterfront Centre, 28 North Church Street  
 P.O. Box 2506 GT, KY1-1104  
 George Town, Grand Cayman  
 Cayman Islands

Sharon Lexa Lamb  
 The Waterfront Centre, 28 North Church Street  
 P.O. Box 2506 GT, KY1-1104  
 George Town, 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 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgement 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 November 2015

**NOTE**

This Writ may not be served later than 4 calendar 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.

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## STATEMENT OF CLAIM

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### THE PARTIES

1. The First Plaintiff, Lawrence Beverley Heath ("Mr. Heath") is a retired Queen's Counsel and business man. He is the ultimate beneficial owner of the shares and assets of the Second Plaintiff.
2. The Second Plaintiff, Willaud Corporation ("Willaud BVI" or "the Company"), is a company registered as a BVI Business Company (number 1066808), limited by shares and with a registered office at Sea Meadow House, Road Town, Tortola, British Virgin Islands ("BVI"). At all material times, Willaud BVI's object was to act as an investment vehicle for Mr. Heath.
3. The First Defendant, The Dundee Merchant Bank ("TDMB"), is an exempted company. It was registered in the Cayman Islands on 15 February 1983 under number 12024. At all material times TDMB has held a Class B Bank and Trust Licence (number 83028) and a Securities and Investment Business Licence (number 25014). For a period of time, the commencement date being unknown to the Plaintiffs and the termination date being on or around February 2015, TDMB acted as a custodian for various assets belonging to the First and Second Plaintiffs.
4. The Second Defendant, Sharon Lexa Lamb ("Ms. Lamb"), is a Cayman Islands resident and status holder. At all material times Ms. Lamb was working in the financial services industry. From January 2003 Ms. Lamb was employed by the Dundee Group and, from no later than 15 February 2013 to 7 September 2015, Ms. Lamb was a director of Willaud BVI.

### BACKGROUND

5. On various dates between 2007 and 2014 Mr. Heath transferred assets into the name of Willaud BVI for it to hold on his behalf. Such assets were transferred with the assistance of Mr. Heath's Canadian based investment advisors and managers, namely Leon Fraser & Associates Inc., Investment Counsel ("Leon Frazer") and later Northland Wealth Management ("Northland").
6. On or around the date of the first transfer of assets into the name of Willaud BVI, Mr Heath and/or Willaud BVI entered into an agreement with TDMB. In exchange for a fee, TDMB agreed to act as custodian of the First and Second Plaintiffs assets, securities and investments.
7. Derek Buntain ("Mr. Buntain"), who was Chairman of TDMB at the material time was also one of the directors of Willaud BVI. The Register of Members shows that there were two other directors of Willaud BVI at this time, namely Evelyn J. Cann ("Ms. Cann") and Helene Romaine ("Ms. Romaine"), neither of whom are known to Mr. Heath.
8. Longbar Nominees Limited ("Longbar") (a company with a registered office at 129 Front Street, Hamilton, Bermuda), for which Mr. Buntain was President, acted as nominee shareholder of all one-hundred (100) issued shares in Willaud BVI. Longbar held all such shares on trust for Mr. Heath.

9. It was a condition of the agreement to appoint TDMB as custodian that the Plaintiffs assets would be held in the name of Willaud BVI at Butterfield Bank (Cayman) Limited ("Butterfield"). Butterfield is a company registered in the Cayman Islands. It is the holder of both a Class "A" Banking & Trust Licence (number 77003) and a Securities and Investment Business Licence (number 25015). Pursuant to this agreement, the assets of the Plaintiffs were transferred into the custody of TDMB and payment for TDMB's services was made by the Plaintiffs.
10. It was understood by Mr. Heath that TDMB and Willaud BVI would liaise with each other and with Leon Frazer (and later Northland) about Mr. Heath's assets but that all parties would ensure that Mr. Heath was kept fully informed of proposed material changes to his portfolio and, indeed, seek his instructions on any such changes in advance. On or around 21<sup>st</sup> May 2013 Mr. Heath changed his investment counsel from Leon Frazer to Northland.
11. The Register of Members for Willaud BVI states that on 15 February 2013 Ms. Lamb was appointed as a director of Willaud BVI. On the same date Ms. Romaine and Ms. Cann resigned.
12. On or around October 2014 Northland notified Mr. Heath of TDMB's intention to cease operations in the Cayman Islands and surrender its banking and securities licence.
13. Sometime after this notification, one or both of the Defendants entered into an agreement (on Mr. Heath's and Willaud BVI's behalf) with a company named B & C Capital Ltd ("B & C"). Neither the precise date nor the particulars of the agreement are known to the Plaintiffs. On or around 12 February 2015, unknown to Mr. Heath, Ms. Lamb transferred some or all of Willaud BVI's remaining assets into the custody of B&C.
14. B&C is a Cayman Islands ordinary resident company which was registered on 13<sup>th</sup> May 2008 (number 210496). B&C carries on business as an unregulated asset management, brokerage and investment banking firm.
15. In the first half of 2015, Mr. Heath sought to locate the assets held on his behalf in the name of Willaud BVI. During the course of his inquiries, he uncovered the transfer of assets away from TDMB and Butterfield to B&C.
16. Following this discovery, Mr. Heath has sought to trace and recover all of his assets which he had earlier transferred into the name of Willaud BVI. The Defendants have failed to provide Mr. Heath with sufficient information for him to do so.
17. On 7 September 2015 Ms. Lamb and Mr. Buntain resigned as directors of Willaud BVI. Kanika Green ("Ms. Green") of Corporate Management Solutions (Cayman) Ltd, a Company Management Business incorporated and licenced in the Cayman Islands, was appointed as sole director in their place.
18. On 23 September 2015 the shares held on trust by Longbar were transferred into the name of Mr. Heath and the Register of Members was amended accordingly.

**FIRST CAUSE OF ACTION**

**(BOTH DEFENDANTS)**

**DUTY TO ACCOUNT**

19. The Plaintiffs incorporate by reference the allegations contained in the above paragraphs.
20. In her capacity as a director and agent of Willaud BVI, Ms. Lamb owed to the Plaintiffs the following fiduciary duties, *inter alia*:
- a. A duty to act honestly, in good faith and in the best interests of the Plaintiffs;
  - b. A duty to account to the Plaintiffs in respect of all transactions which she conducted or oversaw on their behalf.
21. In order to comply with this duty, Ms. Lamb was required to keep records sufficient to show and explain the company's transactions and enable the financial position of the Company to be determined with reasonable accuracy.
22. The duty to account is a continuing one. It exists, and is fully enforceable, notwithstanding the termination of the agency/directorship.
23. In its capacity as the custodian of the assets of the Plaintiffs, TDMB also acted as a fiduciary and owed duties to the Plaintiffs accordingly. TDMB had, and continues to have, a duty to account to its principals for its stewardship of their assets during the period of its appointment.

**PARTICULARS OF BREACH**

24. In correspondence dated 1 October 2015 and 26 October 2015, the Plaintiffs asked Ms. Lamb to render an account of her dealings on their behalf.
25. In breach of her fiduciary duties, despite being given ample time and opportunity to comply with the Plaintiffs requests, Ms. Lamb has failed to produce any, or any satisfactory, account.
26. On 26 October 2015, TDMB was asked to account for its custodianship of the Plaintiffs assets.
27. In breach of its fiduciary duty, TDMB has failed to respond to the Plaintiffs requests.

**PARTICULARS OF LOSS**

28. Without access to such accounts from their fiduciaries, the Plaintiffs cannot hold the Defendants to account for the management (or mismanagement) of their property.
29. By reason of the matters pleaded above the Plaintiffs have suffered loss and damage. The Plaintiffs are unable to particularise such losses in the absence of accounts.

30. The Plaintiffs further claim against the Defendants interest (to be assessed) pursuant to section 34 of the Judicature Law and /or the rules of equity on the sums claimed, or found to be owed, at such rate and for such period as to the court shall deem just.

**SECOND CAUSE OF ACTION**

**(SECOND DEFENDANT ONLY)**

**DUTY TO RETURN PROPERTY AND PROVIDE ACCESS TO DOCUMENTS**

31. The Plaintiffs incorporate by reference the allegations contained in the above paragraphs.
32. As a former director and agent of Willaud BVI, and a fiduciary of both Plaintiffs, Ms. Lamb was, and is, under a duty to provide access to records which she has created, sent or received on behalf of her principals, namely the Plaintiffs.

**PARTICULARS OF BREACH**

33. On 7 September 2015 Ms. Lamb and Mr. Buntain resigned as directors of Willaud BVI and Ms. Green was appointed in their stead. The outgoing directors provided Ms. Green with inadequate information about the Company and its affairs.
34. The Plaintiffs have made repeated requests of Ms. Lamb for information and for the return of Company documents (including a detailed written request on 1 October 2015).
35. Ms. Lamb has failed to return Company property in her possession or provide access to such documents. In doing so, she has acted in breach of her fiduciary duties.

**PARTICULARS OF LOSS**

36. Without access to the Plaintiffs property held by Ms. Lamb (specifically the books, records, correspondence, contracts and financial statements pre-dating the newly appointed director) the Plaintiffs have sustained, and are continuing to sustain, losses since Ms. Green cannot effectively manage the day to day business of the Company.
37. By reason of the matters pleaded above the Plaintiffs have suffered loss and damage. The Plaintiffs are unable to particularize such losses in the absence of further information from the Defendants.
38. The Plaintiffs further claim against the Second Defendant interest (to be assessed) pursuant to section 34 of the Judicature Law and /or the rules of equity, on the sums claimed or found to be owed at such rate and for such period as to the court shall deem just.

**AND the Plaintiffs claim:**

(1) Against both Defendants:

- a. A declaration that the Plaintiffs are entitled to a full account of the First and Second Defendants dealings on their behalf;
- b. An order against each Defendant for a full account of such dealings;
- c. Such further or other relief, including all further necessary or appropriate accounts, inquiries and directions; which may flow from (1) a. and (1) b. above.

39. Against the Second Defendant:

- a. A declaration that the Plaintiffs are entitled to the return all documents (whether in electronic or paper form) created, sent and/or received by the Second Defendant in her capacity as director of the Second Plaintiff;
- b. An order that the Second Defendant must deliver up all such Company property referred to above within 14 days;

40. Interest (to be assessed), pursuant to section 34 of the Judicature Law and /or the rules of equity, on the sums claimed or found to be owed at such rate and for such period as the court shall deem just; and

41. Costs.

Dated this 5<sup>th</sup> day of November 2015

Samson & McGrath

Samson & McGrath

Attorneys for the First and Second Plaintiffs

**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, 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

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2015

BETWEEN:

LAWRENCE BEVERLEY HEATH

FIRST PLAINTIFF

WILLAUD CORPORATION

SECOND PLAINTIFF

AND:

THE DUNDEE MERCHANT BANK

FIRST DEFENDANT

SHARON LEXA LAMB

SECOND 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)
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)

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.

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

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]