

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD *7/K* of 2020

BETWEEN:



(1) BDO CAYMAN LTD

(2) BDO TRINITY LTD



PLAINTIFFS

-AND-

ARDENT HARMONY FUND INC. (IN OFFICIAL LIQUIDATION)

DEFENDANT

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ORIGINATING SUMMONS

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**TO:** Ardent Harmony Fund, Inc (in Official Liquidation), acting by its joint official liquidators, Andrew Childe and Michael Pearson, of FFP Limited, 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, KY1-9006, Grand Cayman.

**LET THE DEFENDANT**, within 14 days after service of this Originating Summons on him, counting the day of service, return the accompanying Acknowledgement of Service to the Courts office, P.O. Box 495G, George Town, Grand Cayman.

This Originating Summons is issued on the application of **BDO Cayman Ltd** of 2<sup>nd</sup> Floor, Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman and **BDO Trinity Ltd** of 122-124 Frederick Street, 2<sup>nd</sup> Floor, CIC Building, Port of Spain, Trinidad and Tobago, for the following orders:

1. The grant of leave to the Plaintiffs pursuant to section 97(1) of the Companies Law (2020 Revision) to commence and proceed with these proceedings.
2. A permanent injunction restraining the Defendant, acting by its joint official liquidators, from continuing the proceedings commenced by it against the Second Plaintiff in the Supreme Court of

the State of New York, County of Nassau on 18 November 2019 with index number 616042/2019 (the “**New York Proceedings**”) on the grounds that the New York Proceedings were commenced in breach of:

- a. the audit engagement agreements between the First Plaintiff and the Defendant dated 9 June 2014 and 5 June 2015 (the “**Engagement Letters**”); and
  - b. the tolling agreement between the Defendant, the First Plaintiff, the Second Plaintiff and BDO USA LLP dated 14 November 2017 (as amended by extension agreements between the same parties dated 1 March 2018, 28 March 2018 and 5 April 2018) (the “**Tolling Agreement**”).
3. Alternatively to paragraph 2 above, an interim injunction restraining the Defendant, acting by its joint official liquidators, from continuing the New York Proceedings pending trial of the issue of whether the Defendant commenced the New York Proceedings in breach of the Tolling Agreement.
  4. A declaration that the “**Non-Arden Cayman Proceeding**” as defined in the Tolling Agreement was “**finally resolved**” within the meaning of the Tolling Agreement on 25 November 2019, being the date on which the Registrar of the Judicial Committee of the Privy Council issued an order dismissing the appeal in Appeal No. JCPC/2019/0043.
  5. An order that the Defendant pay damages to the First Plaintiff for breach of the Tolling Agreement and/or the Engagement Letters, and indemnify the First Plaintiff in respect of all future losses it may suffer as a result of such breaches.
  6. An order that the Defendant pay, as damages for breach of the Tolling Agreement, the Second Plaintiff’s costs of and occasioned by the New York Proceedings and indemnify the Second Plaintiff in respect of all such future costs as it may reasonably incur in connection with the New York Proceedings.
  7. An order that the Defendant pay the Plaintiffs’ costs of and occasioned by this Originating Summons on the indemnity basis, alternatively on the standard basis, to be taxed if not agreed.
  8. Such further or other relief as counsel may seek or this Honourable Court may deem appropriate.

If the Defendant does not acknowledge service, such judgment may be given or order made against him or in relation to him as the Court may think just and expedient.

Dated the 24<sup>th</sup> day of April 2020

*Campbells*

CAMPBELLS

Attorneys for the Plaintiffs

NOTE This Originating Summons may be served not later than 4 calendar months (or if leave is required to effect service out of the jurisdiction, 6 months) beginning with that date, unless renewed by order of the Court.

**IMPORTANT**

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

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This **Originating Summons** was filed by Campbells, Attorneys at Law for the Plaintiffs, whose address for service is Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (Ref: APP/ST/18299-32069)

**Acknowledgment of service of originating summons (O.10, r.5)**

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS**

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 495G, George Town, Grand Cayman.

**Noted 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. If you wish to defend claims made in the Originating Summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, an originating summons served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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(2) BDO TRINITY LTD**

**PLAINTIFFS**

**-AND-**

**ARDENT HARMONY FUND INC. (IN OFFICIAL LIQUIDATION)**

**DEFENDANT**

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**ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS**

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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.

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

- 
2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

   yes        no

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Service of the Originating Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

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.

**Please complete overleaf**

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

**CAMPBELLS  
FLOOR 4, WILLOW HOUSE  
PO BOX 884  
GEORGE TOWN  
GRAND CAYMAN KY1-9010  
CAYMAN ISLANDS  
(REF: APP/ST/18299-32069)**

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