

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

194
CAUSE NO: FSD OF 2020

BETWEEN: (1) PLATINUM PARTNERS VALUE ARBITRAGE
FUND (INTERNATIONAL) LIMITED (in official
liquidation)

(2) PLATINUM PARTNERS VALUE ARBITRAGE
INTERMEDIATE FUND LTD. (in official
liquidation)



PLAINTIFFS

AND:

(1) BDO USA, LLP

(2) BDO CAYMAN ISLANDS (A FIRM)

(3) BDO CAYMAN LTD



WRIT OF SUMMONS

TO: BDO USA, LLP
OF: 100 Park Avenue, New York, NY, 10017, United States of America

TO: BDO CAYMAN ISLANDS (A FIRM)
OF: 2nd Floor – Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman, KY1-1205, Cayman Islands

TO: BDO CAYMAN LTD
OF: 2nd Floor – Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman, KY1-1205, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named First and Second Plaintiffs 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, KY1-1106, Grand Cayman, 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 1st day of September 2020.

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.

INDORSEMENT OF CONCISE STATEMENT OF NATURE OF CLAIM

1. The First Plaintiff is an exempted company incorporated with limited liability under the laws of the Cayman Islands on 25 October 2002. It is regulated as a mutual fund by the Cayman Islands Monetary Authority (“CIMA”) under section 4(3) of the Mutual Funds Law (2003 Revision).
2. The Second Plaintiff is an exempted company incorporated with limited liability under the laws of the Cayman Islands on 9 April 2010.
3. The First Plaintiff was a feeder fund in a ‘master-feeder’ structure pursuant to which it received investment subscriptions and, in turn, invested substantially all of its assets in Platinum Partners Value Arbitrage Fund L.P. (the “**Master Fund**”), a non-party to this proceeding. The Second Plaintiff was a subsidiary of the First Plaintiff and acted as an intermediary pass-through between the First Plaintiff and the Master Fund for tax purposes. The Master Fund, in turn, invested in various financial instruments and related strategies.
4. The First Defendant is a limited liability partnership organised under the laws of the State of Delaware, United States of America. It is and was a firm of accountants and auditors practising from its offices at 100 Park Avenue, New York, New York, 10017, United States of America.
5. The Second Defendant is a defunct Cayman Islands’ partnership (partners unknown) and was, until its dissolution, a firm of accountants and auditors practising from their offices at 2nd Floor – Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman, KY1-1205, Cayman Islands. In 2011, the partnership converted to a Cayman Islands limited company (the Third Defendant), which became the successor in liability to the Second Defendant. The Second Defendant was the auditor of the Plaintiffs for the financial year ended 31 December 2010.
6. The Third Defendant is a Cayman Islands company which is, and was at all material times from its incorporation, a firm of accountants and auditors, practising from its offices at 2nd Floor – Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman, KY1-1205, Cayman Islands. The Third Defendant was the auditor of the Plaintiffs for the financial years ended 31 December 2011, 2012 and 2013.
7. By an Agreement to Provide Services dated 21 April 2011, the Second Defendant agreed to audit the Plaintiffs’ financial statements as at 31 December 2010 and for the year then ending and, on completion of its audits, to provide the Plaintiffs with its audit reports on the financial statements.

8. By Agreements to Provide Services dated 29 November 2011, 9 October 2012, and 17 September 2013 (together with the Agreement to provide services dated 21 April 2011, the “**Agreements**”), the Third Defendant agreed to audit the Plaintiffs’ financial statements as at 31 December 2011, 31 December 2012 and 31 December 2013 respectively and for the years then ending and, on completion of their audits, to provide the Plaintiffs with their audit reports on the financial statements.
9. The First Defendant performed audit work in respect of the above-mentioned audit engagements, assisted in the conduct of the engagement, contributed directly or indirectly to the issuance of the audit reports and thereby assumed responsibilities to the Plaintiffs.
10. The Second Defendant issued an audit report on 23 September 2011 in respect of the 2010 audit. The 2010 audit report was qualified, but only in a limited respect relating to the fair value of two specific investments (being 7.7% of the Plaintiffs’ net assets).
11. The Third Defendant issued the following unqualified audit reports:
 - a. dated 29 June 2012 for the 2011 audits;
 - b. dated 28 June 2013 for the 2012 audits; and
 - c. dated 11 February 2015 for the 2013 audits.
12. In the conduct of the audit engagements and/or in the production of the audit reports, the Defendants acted negligently and in breach of their contractual and/or tortious duties to the Plaintiffs and engaged in wilful default, by failing to act in accordance with applicable auditing and accounting standards and by issuing the reports in respect of financial statements which significantly misstated the financial condition of the Plaintiffs and/or by contributing directly or indirectly to such conduct and/or the issuance of such reports.
13. As a result, the Plaintiffs have suffered loss and damage.
14. The Agreements contained a dispute resolution clause by which disputes are to be resolved by way of arbitration, other than for non-monetary or equitable relief which the parties may pursue in this Honourable Court. The Agreements also provided that they are to be governed by and construed in accordance with the laws of the Cayman Islands, with the courts of the Cayman Islands having exclusive jurisdiction in relation to any claim or matter arising from the Agreements. As at the date of this writ, the Plaintiffs have commenced, or intend to commence, arbitration against the Second and Third Defendants in respect of the matters set out in paragraph 12 above.

15. The First Defendant is not an express signatory to the Agreements. Under the Agreements, the Second and Third Defendants were permitted to assign their rights to perform a portion of the services to any of their affiliates including the First Defendant. In that case, the Agreements provide, inter alia, that all of the applicable terms and conditions of the Agreements would apply to the assignee and the Second and Third Defendants would remain primarily responsible for the services.
16. In solicitor correspondence, the Second and Third Defendants have declined to confirm (a) that they are solely responsible for the work delegated to and undertaken by the First Defendant in respect of the Second and Third Defendants' audits of the Plaintiffs' financial statements for the 2010 to 2013 financial years; and (b) that they will not take the position that the First Defendant is a necessary or indispensable respondent in arbitration in respect of any allegations that the First Defendant engaged in fraud, wilful misconduct or a similar level of misconduct. Further, the First Defendant has not agreed to being named and joined as a respondent to the arbitration between the Plaintiffs and the Second and Third Defendants.

THE PLAINTIFFS claim the following remedies:

As against the First Defendant, damages for breach of contract and/or negligence and (to the extent necessary) wilful default under the following heads of damage:

1. a monthly management fee paid in respect of most share classes in an amount equal to $1/12^{\text{th}}$ of 2% of the Plaintiffs' month-end NAV;
2. an annual incentive allocation in the amount of 20% of the increase in the Intermediate Fund's NAV;
3. directors' fees;
4. certain operational expenses, including:
 - (a) margin and financing interest payments;
 - (b) trader fees;
 - (c) legal fees;
 - (d) third-party valuation fees;
 - (e) brokerage and commission fees;
 - (f) consulting fees; and

5. audit fees.
6. Alternatively, the Plaintiffs seek compensation calculated by reference to the increase between (a) the unpaid redemptions that would have been incurred in windings up of the Plaintiffs in September 2011 (or, alternatively, upon the publication of the Defendant's subsequent audit reports); and (b) actual unpaid redemptions in the current windings up of the Plaintiffs.
7. Pre- and post-judgment interest pursuant to Section 34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at the rate of 2.375% for such period as the Court thinks fit.
8. Costs.
9. Such other relief as the Court thinks fit.

In the alternative, as against the Second and Third Defendants:

10. A declaration that the Second and Third Defendants (as applicable) are solely responsible for the work delegated to and undertaken by the First Defendant in respect of the Second and Third Defendants' audits of the Plaintiffs' financial statements for the 2010 to 2013 financial years.

HSM Chambers

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HSM CHAMBERS
ATTORNEYS-AT-LAW FOR THE PLAINTIFFS

THIS WRIT was issued by HSM Chambers, 68 Fort Street, George Town, Grand Cayman, KY-1207, Cayman Islands, Solicitors for the Plaintiffs whose address is c/- Borrelli Walsh (Cayman) Ltd, PO Box 30847, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY-1204, Cayman Islands whose address for service is PO Box 31726, 68 Fort Street, George Town, Grand Cayman, KY-1207, Cayman Islands.

Acknowledgement of service of writ of summons (O.12, r.3)

**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 495G, 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.

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- BETWEEN:**
- (1) PLATINUM PARTNERS VALUE ARBITRAGE
FUND (INTERNATIONAL) LIMITED (in official
liquidation)**
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INTERMEDIATE FUND LTD. (in official
liquidation)**

PLAINTIFFS

- AND:**
- (1) BDO USA, LLP**
 - (2) BDO CAYMAN ISLANDS (A FIRM)**
 - (3) BDO CAYMAN LTD**

DEFENDANTS

**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 (tick appropriate box):

yes

no

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 appropriate box):

yes

no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

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 plaintiff if suing in person) of his name, address and reference, if any, in the box below

HSM Chambers
Attorneys-at-Law for the Plaintiff
68 Fort Street
PO Box 31726, George Town,
Grand Cayman, KY1-1207,
Cayman Islands
Ref: 419555-0001

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