

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>685</sup> OF 1998

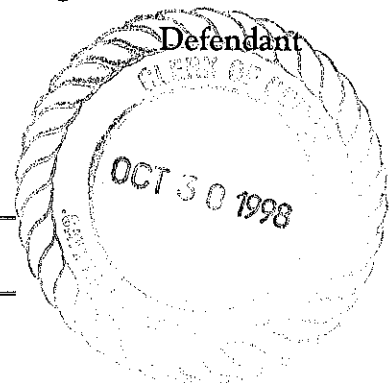
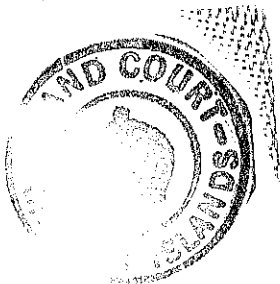
B E T W E E N:

FINVEN FINANCIAL INSTITUTION LIMITED

Plaintiff

AND

SMITH COGENERATION INTERNATIONAL LIMITED,  
a body incorporated under the laws of the British Virgin Islands



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WRIT OF SUMMONS

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TO: Smith Cogeneration International Limited of c/o Arias Fabrega & Fabrega Trust Co. B.V.I. Limited, PO Box 985, 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 [21] 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 495G, George Town, Grand Cayman, Cayman Islands, 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 30<sup>th</sup> day of October 1998.

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.

### STATEMENT OF CLAIM

1. By an agreement in writing entitled Limited Partnership Agreement of Smith Dominicana Holding Limited Partnership ("the Partnership Agreement") made on 30 April 1996 between the Plaintiff and Smith Cogeneration Dominicana Limited ("SCD") the Plaintiff and SCD agreed to form a limited partnership under the Exempted Limited Partnership Law 1991 and undertook certain obligations to one another.
2. Section 11.20 of the Partnership Agreement provided, so far as material, as follows:-
  - “(a) any Dispute that is not resolved by the parties shall be finally settled by Arbitration. The Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect (“Rules”), except to the extent that the Rules are in consistent with any provision of this Section, in which case the provisions of this Section shall control. Such Arbitration shall be conducted in New York City or such other place as the parties may agree mutually in writing.
  - ...
  - (d) the prevailing party shall be entitled to recover reasonable costs and fees, including but not limited to attorney’s fees and expenses, associated with the Arbitration. If both parties prevail to some extent based on their respective positions in the Arbitration, the Arbitrators’ decision must include an allocation of the fees and expenses based on the extent to which the disputing parties did not prevail on their positions. Each disputing party against which the decision assesses a monetary obligation shall pay that obligation on or before the 30<sup>th</sup> day following the decision or such other date as the decision may provide. The parties expressly agree that the Arbitrator shall have no power to consider or award punitive or exemplary damages or any other multiple or enhanced damages, whether statutory or common law.
  - ...

- (e) Any award shall be final and binding upon the parties, which agree to be bound conclusively by any award, except to the extent the award is subject to being vacated or modified under applicable or federal or state law. Any award shall be in writing and shall state the reasons upon which it is based. Judgment upon the award may be entered in any Court having jurisdiction thereof.”
3. By an agreement in writing entitled “Guarantee Agreement” made on 30 April 1996 between the Plaintiff and the Defendant, the Defendant guaranteed that SCD would fulfil its obligations to the Plaintiff under the Partnership Agreement, including, inter alia, its obligations under the aforesaid section 11.20.
4. A dispute having arisen between the parties as to whether the Plaintiff was entitled to exercise an option contained in section 10.5 of the Partnership Agreement, on 1 January 1998, the Plaintiff referred the said dispute to arbitration in accordance with the aforesaid section 11.20. In accordance with the provisions of the Partnership Agreement governing the appointment of a Arbitrator, on 15 January 1998 Abraham D. Sofaer was appointed arbitrator.
5. By an Arbitration award made on 8 July 1998, the said arbitrator awarded (referring to the Plaintiff as ‘Finven’ and SCD as ‘Smith Dominicana’) as follows:-

“Finven is therefore held to have the right to acquire or redeem Smith Dominicana’s General Partner Interest, and Smith Dominicana is hereby ordered to execute without delay any documents necessary, and to take such other actions as required, to effectuate Finven’s right to acquire or redeem Smith Dominicana’s General Partner Interest in the Partnership.

The Parties agreed that Finven’s reasonable attorneys’ fees and expenses should be set at \$350,000, and that Finven was entitled to receive this amount under their arbitration agreement. The amount agreed to is reasonable in light of the time and effort spent in preparing and prosecuting this arbitration claim, and in responding to the claims and defences asserted by Smith Dominicana. Smith Dominicana is hereby ordered to pay within seven days of the entry of this order the amount of \$350,000, with interest accruing for any delay at a rate to be set if necessary. Finven has the right to offset against the amount it is due from Smith Dominicana the \$50,000 it is required to pay to acquire or redeem Smith Dominicana’s General Partner Interest in the Partnership, and such offset shall be deemed effective as of the date of this Order.

Finven also retains any rights it may have to obtain payment of all or part of the remaining \$300,000 it is due for fees and expenses from Smith Cogeneration International, Inc., under section 5 of the Guarantee Agreement”.

6. SCD has not paid the US\$300,000 which it was directed by the award to pay, or any part thereof.
7. By letter dated 26 August 1998, the Plaintiff demanded payment of the said sum of US\$300,000 from the Defendant pursuant to the Guarantee Agreement.
8. The Defendant has failed to pay the said sum of US\$300,000 or any part thereof.
9. In the premises, the Plaintiff is entitled to payment of the said sum of US\$300,000, and also claims interest thereon at the rate of 7 3/8% per annum from the date of demand to the date of issue hereof namely US\$ 3,940.30 and thereafter a daily rate of US\$60.62 until Judgment or earlier payment.
10. The Plaintiff will give credit for any sums recovered from SCD under the award or any enforcement thereof.

AND THE PLAINTIFF claims:

1. Payment of the said sum of US\$300,000;
2. Interest on the above sum at the rate of 7 3/8% per annum until judgment or earlier payment being US\$ 3,940.30 up to the date of issue hereof and thereafter at a daily rate of US\$60.62;
3. Fixed costs of CI\$500.00 plus the fee on the issue of the Writ of CI\$1,730.00.

*Hunter & Hunter*

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**HUNTER & HUNTER**  
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Hunter & Hunter, Attorneys-at Law for the Plaintiff whose address for service is that of its said Attorneys, namely The West Wind Building, 2nd Floor, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref.: AJB/04472-018).