

IN THE GRAND COURT OF THE CAYMAN ISLANDS

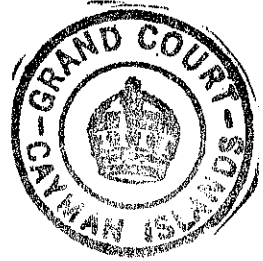
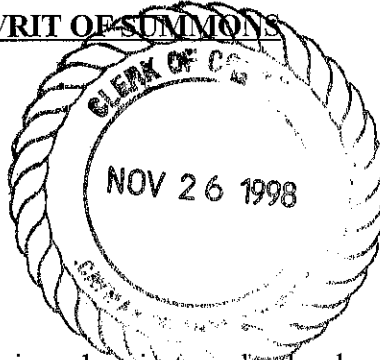
752  
CAUSE NO. OF 1998

BETWEEN: NELSON AFIF CURI PLAINTIFF

AND: UBT INVESTMENTS LTD. DEFENDANT

WRIT OF SUMMONS

TO: UBT Investments Ltd  
PO Box 1334 GT  
Anderson Square  
Sheddon Road  
George Town  
Grand Cayman



**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, PO Box 495G.T. George Town, Grand Cayman, 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 26 day of November, 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 this Court**

## STATEMENT OF CLAIM

1. The Plaintiff Nelson Curi is a Brazilian citizen and resident.
2. The Defendant is a corporation registered and incorporated under the laws of the Cayman Islands.
3. Through his ownership interests in various Brazilian entities, the Plaintiff is in the business of importing sugar and alcohol and selling same for domestic consumption in Brazil and abroad.

---

In order to foster such transactions and realize certain economic benefits, the Plaintiff decided to form a Cayman Islands corporation that would operate as a key trading partner with the Plaintiff's Brazilian entities.
4. Accordingly, the Plaintiff caused Vivalet Limited to be formed on or about April, 1993, as a corporation registered and incorporated under the laws of the Cayman Islands ("Vivalet"). The Plaintiff is and was at all material times the sole beneficial owner of Vivalet.
5. Pursuant to an agreement entered into between the Plaintiff and the Defendant dated 12 June 1997 (the "Nominee Agreement"), the Defendant agreed to hold 300 fully paid Ordinary Shares in the capital of Vivalet (the "Shares").
6. The following were express, or alternatively implied terms of the Nominee Agreement:
  - A. The Defendant would hold the Shares, at all times, as nominee for and on trust for the Plaintiff;
  - B. The Defendant would at all times exercise its rights as a shareholder and member of Vivalet only in accordance with the directions received from the Plaintiff or, alternatively, that the Defendant would exercise its rights as shareholder in the best interests of the Plaintiff;

- C. The Defendant would transfer the Shares to the Plaintiff, or his nominee, on being requested to do so by the Plaintiff.
  - D. At all times, the Defendant agreed to act as a fiduciary for and on behalf of the Plaintiff and agreed to take all necessary actions to protect the business and other interests of the Plaintiff and Vivalet.
7. Without any prior written notice to, consultation with or instructions from Plaintiff, the Defendant passed a special resolution on August 19, 1998 resolving that Vivalet be voluntarily wound up subject to the supervision of the Grand Court of the Cayman Islands (the "Court").
8. In its petition in support of the liquidation of Vivalet, the Defendant represented to the Court that its decision to wind up Vivalet was based upon, among other things: an Order received from this Court seeking to enforce a \$U.S. 4.4 million award in favor of Czarnikow Rionda Sugar Trading Corp. ("Rionda") against Vivalet arising from a New York arbitration proceeding; the need to make further inquiries into the circumstances relating to the arbitration proceeding and award; that it would be in the best interests of the sole known creditor of Vivalet, Rionda, that such winding up occur; and that it understood Vivalet had only one asset of approximately US\$1,000 in its bank account.
9. Although the Defendant knew of the pending order seeking to enforce the arbitration award in the Cayman Islands, rather than defend Vivalet or otherwise protect its interests at such a critical time, the Defendant:
- A. failed to defend Vivalet against the imposition of the arbitration award (which has become a Cayman Islands Judgment);
  - B. failed to timely notify Plaintiff of the order seeking enforcement of the award; and
  - C. decided on its own, and without any authority or instructions from the Plaintiff to appoint a liquidator to Vivalet.

10. Had the Defendant properly acted, by following the terms of the Nominee Agreement and by otherwise exercising its required fiduciary duty and duties of care towards the Plaintiff, the Defendant would have learned that Vivalet was not a party to the contract that formed the basis of the arbitration award nor was Vivalet given proper notice of such proceedings and therefore steps could have been taken to prevent the imposition of the US\$ 4.4 million judgment against Vivalet.
  
11. In passing the resolution to cause the liquidation of Vivalet, and by failing to take the actions specified in paragraph 9 A and B above, and taking the action specified in 9C, the Defendant breached the express and/or implied terms of the Nominee Agreement and acted in breach of its fiduciary duty to the Plaintiff. Further, and/or alternatively, the Defendant acted negligently and in breach of the duty of care owed to the Plaintiff.

**PARTICULARS OF NEGLIGENCE:**

- (a) Failing to investigate and ascertain the facts identified in paragraph 10 above.
  - (b) Initiating the liquidation proceedings against Vivalet although a cursory examination of the arbitration award would have disclosed that Vivalet was not a party to the contract in respect of which the arbitration award was obtained.
  - (c) Failing to make inquiries from competent and qualified attorneys or otherwise to ascertain whether the arbitration award had been properly entered against Vivalet.
  - (d) Failing to consult the Plaintiff adequately or at all before initiating the liquidation proceedings.
- 
12. The Plaintiff was and is the sole beneficial owner of Vivalet and has been substantially damaged by the Defendant's conduct

## PARTICULARS OF DAMAGE

- (a) Prior to its liquidation, Vivalet was an active trading company in international markets and had established significant name recognition and goodwill with suppliers and Brazilian Customs authorities.
- (b) The liquidation of Vivalet has prevented the Plaintiff from utilizing the services of Vivalet to negotiate and act on the Plaintiff's behalf to fulfill existing contractual obligations of the Plaintiff as well as entering into new business transactions.
- (c) The US\$4.4 Million judgment and the liquidation of Vivalet have effectively eliminated any prospect of the Plaintiff obtaining financing in the international financial markets which the Plaintiff requires to conduct his business.
- (d) The Plaintiff has been prevented from realizing profits that would have been realized on such sales and has lost the services of Vivalet and has suffered loss and damage as a result of the liquidation of Vivalet.
- (e) The judgments entered against Vivalet Ltd., have been the basis at least in part for Rionda's position that it should not pay on certain letters of credit (in the aggregate amount of \$US 45 Million) which were assigned to United European Bank by the Plaintiff as attorney in fact for Vivalet. This has irreversibly damaged the business relationship between United European Bank and the Plaintiff. Furthermore, this has exposed the Plaintiff and his Brazilian companies to further personal, possible criminal, and corporate liability.
- (f) The loss and damage suffered by the Plaintiff is considerable and will be quantified and particularized as soon as this can be done.

13. By letter dated 10th November 1998, the Plaintiff, through its attorneys, made demand upon the Defendant for transfer of the Shares in accordance with the Nominee Agreement. In breach of

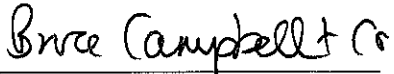
the terms of the Nominee Agreement, the Defendant, through his attorneys, failed and refused to transfer the Shares.

**THE PLAINTIFF THEREFORE CLAIMS:**

1. A Declaration that the Defendant holds the Shares as nominee for and/or as trustee for the Plaintiff.
2. Specific performance of the Nominee Agreement, by requiring the Defendant to transfer the Shares to the Plaintiff.
3. Damages arising from the Defendant's breach of the Nominee Agreement, breach of trust and/or fiduciary duty and negligence.
4. An Enquiry as to Damages as aforesaid.
5. Interest upon the Damages as aforesaid pursuant to section 34 of the Judicature Law (1995 Revision).
6. Costs.

Dated the day of November, 1998.

**RICHARD A. MAHFOOD Q.C.**

  
**BRUCE CAMPBELL & CO.**  
Attorneys at Law for  
the Plaintiff

THIS WRIT OF SUMMONS Filed By Messrs. BRUCE CAMPBELL & CO, Attorneys at Law for the Plaintiff herein, whose address for service is 4<sup>th</sup> Floor, Bank of Nova Scotia Building, George Town, Grand Cayman, Tel: 949 2648; Fax: 949 8612 (Ref: J.R.M.) .