

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 51 OF 1999

BETWEEN: COMPAGNIE D'ESCOMPTE FINANCIERS CEF SA

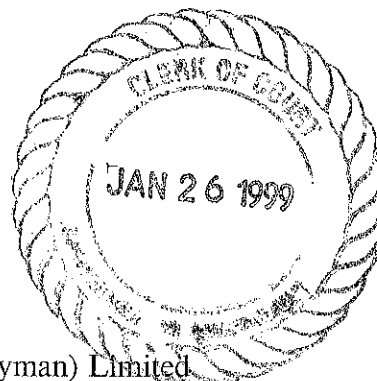
PLAINTIFF

AND: (1) ELITE FUND LIMITED  
(2) BANKAMERICA TRUST AND BANKING CORPORATION  
(CAYMAN) LIMITED

DEFENDANTS



WRIT OF SUMMONS



TO: Elite Fund Limited  
Maricorp Services Limited  
P.O. Box 2076GT  
Grand Cayman

AND TO: BankAmerica Trust and Banking Corporation (Cayman) Limited  
Guinness Mahon Building  
Fort Street  
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, P.O. Box 495 G, George Town, Grand Cayman, 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 Acknowledgement within the time stated, or if you return the acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued this 26<sup>th</sup> day of January, 1999.

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 Acknowledgement of Service are given with the accompanying form.

### **STATEMENT OF CLAIM**

1. The Plaintiff, Compagnie D'Escomptes Financiers CEF S.A. ("CEF"), is a company incorporated in Switzerland whose principal place of business is at Grellingerstrasse 75, CH-4020, Basel.
2. The 2<sup>nd</sup> Defendant, BankAmerica Trust and Banking Corporation (Cayman) Limited ("BankAmerica"), is a company incorporated in the Cayman Islands. It carries on business as a bank and trust corporation from offices at Guinness Mahon Building, George Town, Grand Cayman.
3. Companies called "Elite Fund Limited" have been incorporated and registered under the Companies Law (1995 Revision) of the Cayman Islands and under the International Business Companies Act of the British Virgin Islands on 24<sup>th</sup> July, 1995 and 2<sup>nd</sup> January, 1998, respectively. In this pleading, these companies are referred to as "Elite Cayman" and "Elite BVI", respectively. The expression "Elite" (without any suffix) is used to mean Elite Cayman and/or Elite BVI. Both Elite Cayman and Elite BVI were incorporated by or on the instructions of Gilbert Chartrand ("Chartrand"). Both Elite Cayman and Elite BVI are and were at all material times managed and controlled by Chartrand acting both

directly and indirectly through Georgian Bay Holdings Corporation (“Georgian Bay”) and/or Elite Fund Management Limited and/or Anchorage Fund Management Limited.

4. The first Defendant is Elite Cayman, whose registered office is at Maricorp Services Limited, P.O. Box 2076GT, Grand Cayman. Elite Cayman is or was at material times carrying on business as a mutual fund for which purpose it is licensed under the Mutual Funds Law (1998 Revision).
5. Elite BVI has its registered office at P.O. Box 895, Omar Hodge Building, Road Town, Tortola, British Virgin Islands and, so far as CEF has been able to ascertain, purports to be carrying on business as a mutual fund and/or mutual fund manager for which purpose it has not, but ought to have been, licensed under the law of the British Virgin Islands.
6. Chartrand incorporated Elite BVI for the dishonest and improper purpose of facilitating the misappropriation of funds belonging to (a) Elite Cayman and (b) a group of 11 mutual funds whose non-voting participating shares were wholly owned by CEF (collectively “the Funds”).
7. By special resolutions passed on 6<sup>th</sup> June 1996, each of the Funds was put into voluntary liquidation and Christopher D. Johnson and Alun G. Davies were appointed joint liquidators. By orders of the Court made on 10<sup>th</sup> June 1996 (Cause Nos. 285, 286, 287, 292, 294, 295, 296, 299, 300, 301 and 303 of 1996) it was ordered that the liquidation of the Funds continue under the supervision of the Court.
8. By a Deed of Settlement and Assignment made on 7<sup>th</sup> May 1998 between, *inter alia*, CEF of the one part and the Funds (acting by their joint liquidators) of the other part, all the assets of the Funds, including their rights of action against Elite, were assigned to CEF absolutely. By letters dated 8<sup>th</sup> July 1998, written notice of the assignment was given on behalf of the Funds to Elite Cayman.

9. Georgian Bay is believed to have been used by Chartrand as a general clearinghouse for transactions done on behalf of the Funds. Between 14<sup>th</sup> February and 30<sup>th</sup> March, 1996, Chartrand caused Georgian Bay to transfer to Elite a total of US\$138,169.49 belonging to one or more of the Funds.

PARTICULARS

14-2-96	US\$32,000.00
20-2-96	US\$27,000.00
30-3-96	US\$78,947.37
30-4-96	US\$222.09
<b>Total:</b>	<b><u>US\$138,169.49</u></b>

10. The said transfers were made for no consideration, without any proper authority and in breach of the fiduciary duties owed by Chartrand to the Funds. Until discovery, CEF has no means of knowing whether the transferee was Elite Cayman or Elite BVI; nor does it have any means of knowing whether the ultimate recipient of the funds was Elite Cayman or Elite BVI or some other company controlled by Chartrand.
11. If Elite Cayman was not the ultimate recipient of the said US\$138,169.49, it was nevertheless mixed up in the tortious acts of Chartrand so as to facilitate his wrongdoing and is under a duty to assist CEF by giving it full information about the transfers and the identity of the ultimate recipient.
12. At material times, Elite Cayman had a bank account with BankAmerica. Through no fault of its own, BankAmerica has therefore become mixed up in the tortious acts of Chartrand and Elite Cayman and so as to facilitate their wrongdoing and is under a duty to assist CEF by giving it full information about Elite Cayman's account and disclosing whether or not Elite Cayman or Elite BVI was the ultimate recipient of all or part of the said US\$138,169.49.

13. By reason of the matters aforesaid, Elite Cayman is liable as constructive trustee to account to CEF for all the monies transferred to it from the Funds and CEF is entitled to trace the said monies and Elite Cayman is liable to make restitution thereof.

14. Alternatively, if Elite Cayman was not the ultimate recipient of the said US\$138,169.49, it is liable to CEF for damages on the basis that it has knowingly assisted Chartrand's breach of fiduciary duty by transferring the said money on to Elite BVI.

AND THE PLAINTIFF claims:

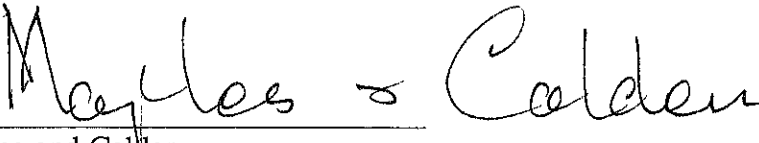
1. Against the 1<sup>st</sup> Defendant:

- (i) A declaration that the Plaintiff is entitled to trace and the 1<sup>st</sup> Defendant is liable to make restitution of the sum of US\$138,169.49.
- (ii) Alternatively, damages.
- (iii) An order that the 1<sup>st</sup> Defendant be restrained (whether by itself, its directors or other officers or agents or otherwise howsoever) until judgement or further order in the meantime from causing or in any way being party to the transfer, assignment, charging or disposal of (a) any funds standing to its credit in accounts with the 2<sup>nd</sup> Defendant or any other bank within the jurisdiction of this Court and (b) any other assets within the jurisdiction of this Court, save to the extent that such funds and assets exceed US\$138,169.49 in amount.
- (iv) An order that the 1<sup>st</sup> Defendant do make and serve an affidavit verifying a list of documents specifying each and every document in its possession, custody or power relating to its assets and liabilities including all documents relating to its bank accounts.
- (v) An order that the 1<sup>st</sup> Defendant do produce the documents specified in its list of documents for inspection by the Plaintiff.
- (vi) Such other or further relief as the Court thinks fit.
- (vii) Costs.

2. Against the 2<sup>nd</sup> Defendant:

- (i) An order that the 2<sup>nd</sup> Defendant do make and serve on the Plaintiff's attorneys an affidavit verifying a list of documents specifying each and every document in its possession, custody or power relating to any bank or other account opened, established or held in the name of "Elite Fund Limited".
  
- (ii) An order that the 2<sup>nd</sup> Defendant do produce the documents specified in its list of documents for inspection by the Plaintiff.

Dated this 26<sup>th</sup> day of January, 1999.

  
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Maples and Calder

This Writ of Summons was issued by Maples and Calder, attorneys for the Plaintiff, whose address for service is Ugland House, PO Box 309GT, Grand Cayman, Cayman Islands.