



**STATEMENT OF CLAIM**

1. The First Defendant, Gilbert Chartrand (“Chartrand”) is resident in LaSalle, in the province of Quebec, Canada. At all material times, Chartrand was involved in the establishment, management and administration of a number of Cayman Islands registered mutual funds including Metropolitan Real Estate Fund Limited (“the Fund”).
2. The voting shares of the Fund were owned by Georgian Bay Holdings Corporation Ltd. (“Georgian Bay”), a company incorporated pursuant to the Companies Law (Revised).
3. The Fund was managed by Providence Fund Manager, Ltd. (“Providence) a company incorporated under the Companies Law (Revised).
4. At all material times both Georgian Bay and Providence were owned and or controlled by Chartrand. In this way, Chartrand was responsible for and did control and/or manage the Fund at all material times until it was put into liquidation.
5. The Second Defendant, Cayman National Bank and Trust Company Limited (“CNB”), is a company incorporated in the Cayman Islands. It carries on business as a bank and trust corporation from offices situated Elgin Avenue, P O Box 1097, George Town, Grand Cayman.
6. Chartrand is the legal and/or beneficial owner of account number 206728 at CNB.
7. At all material times, the non-voting participating shares of the Fund were owned by CEF.
8. By special resolution issued on 6<sup>th</sup> June 1996, the Fund was put into voluntary liquidation and Messrs. Chris Johnson and Alun G. Davies were appointed its joint liquidators. By Order of the Grand Court made on 10<sup>th</sup> June 1996 (Cause number 287

- 296 of 1996), it was ordered that the liquidation of the Fund continue under the supervision of the Court.

9. On or about 24<sup>th</sup> July 1995, Chartrand caused the Fund to transfer US\$191,455 to Providence and on or about 2<sup>nd</sup> August 1995, Chartrand caused Providence to transfer US\$191,455 to his account #206 728 at CNB.

**Particulars of Transfers**

24 <sup>th</sup> July 1995	Metropolitan Real Estate Fund	in credit	US\$191,455.00
24 <sup>th</sup> July 1995	Metropolitan Real Estate Fund	debited by	US\$191,455.00
24 <sup>th</sup> July 1995	Providence Fund Manager	credited by	
	US\$191,455.00		
31 <sup>st</sup> July 1995	Providence Fund Manager	debited by	
	US\$191,455.00		
2 <sup>nd</sup> Aug 1995	Chartrand's Account at CNB (A/c #206728)	credited by	US\$191,455.00

The said transfers were made for no consideration, without proper authority and in breach of the fiduciary duties owed to the Fund by Chartrand and or entities owned and/or controlled by him.

12. By reasons of the matters aforesaid:
- (a) the First Defendant is liable as constructive trustee to account to the Fund for all monies transferred from it to account #206728 at CNB and all interest earned thereon;
  - (b) the Fund is entitled to trace the monies transferred and the First Defendant is liable to make restitution thereof; and/or
  - (c) the First Defendant has had and received the sum of US\$191,455.00 to the use of the Fund and is liable to repay it; and/or
  - (d) the First Defendant holds the sum credited to account number 206728 up to US\$191,455.00 and the interest accrued thereon upon constructive trust for the benefit of the Fund absolutely.

2. By Deed of Settlement and Assignment made on 7<sup>th</sup> May 1998 between inter alia, CEF of the one part and the Fund (acting by its joint liquidators) of the other part, all the assets of the Fund, including its rights of action against Defendant 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 Fund to Georgian Bay.

AND the Plaintiff claims:

1. Against the First Defendant:
  - (a) A declaration that:
    - (i) the monies standing to the credit of his account number 206728 in the Second Defendant; and/or
    - (ii) any assets derived from the said monies which are held by the Second Defendant as custodian, up to a limit of US\$191,455.00 plus interest accrued thereon,are held upon constructive trust for the benefit of the plaintiff absolutely.
  - (b) Further and alternatively, a declaration that the Plaintiff is entitled to trace and the First Defendant is liable to make restitution of the sum of US\$191,455.00.
  - (c) Further and alternatively, judgment for the sum of US\$191,455 being monies had and received by the First Defendant.
  - (d) Interest pursuant to statute.
  - (e) Costs
2. Against the Second Defendant:
  - (a) A declaration that the monies standing to the credit of the First Defendant's account number 206728 with the Second Defendant, up to a limit of US\$191,455.00 plus interest accrued thereon, is held upon constructive trust for the benefit of the Plaintiff absolutely.

- (b) An order that the Second Defendant pay to the Plaintiff the monies standing to the credit of the said account number 206728 maintained with it and/or transfer to the Plaintiff the assets derived therefrom.
- (c) 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 "Gilbert Chartrand".
- (d) An order that the 2<sup>nd</sup> Defendant do produce the documents specified in its list of documents for inspection by the Plaintiff.
- (e) Such further or other relief that the Court thinks fit.

Dated this <sup>27<sup>th</sup></sup> day of July, 1999.

Mapleard Calder  
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.