

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 73 OF 2000

**BETWEEN: COMPAGNIE D'ESCOMPTES FINANCIERS CEF SA**

**PLAINTIFF**

**AND: (1) ELITE FUND LIMITED**

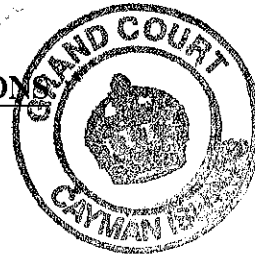
**(2) AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD**

**DEFENDANTS**

WRIT OF SUMMONS

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

AND TO: Australia and New Zealand Banking Group Ltd  
c/o Bank of Nova Scotia Trust Co (Cayman) Ltd  
Albert Panton Street  
PO Box 501 GT  
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 495 GT, 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                    day of February, 2000.

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 1<sup>st</sup> Defendant Elite Fund Limited ("Elite"), is a company incorporated under the Companies Law (Revised), having its registered office at Maricorp Services Limited, P.O. Box 2076GT, Grand Cayman. At material times Elite carried on business as a mutual fund for which purpose it was licensed under the Mutual Funds Law (1998 Revision).
3. The 2<sup>nd</sup> Defendant, Australia and New Zealand Banking Group Ltd., is a company incorporated in the State of Victoria, Australia ("ANZ Bank"), which carries on business as a bank through a world-wide network of branches and representative offices including a Cayman Islands branch whose registered office is at the office of Bank of Nova Scotia Trust Co (Cayman) Ltd, Albert Panton Street, PO Box 501 GT, Grand Cayman and a United Kingdom branch whose registered office and principal place of business is at Minerva House, PO Box 7, Montague Close, London SE1 9DH (hereinafter referred to as the "London Branch").

4. At all material times Elite was owned and/or controlled by Gilbert Chartrand (“Chartrand”) acting both directly and indirectly through various Cayman Islands corporations including Georgian Bay Holdings Corporation Limited (“Georgian Bay”), Elite Fund Management Limited (“EFML”), Metropolitan Fund Management Ltd (“Metropolitan”), and Orelia Corporation Limited (“Orelia”). Georgian Bay, EFML, Metropolitan and Orelia are all directly or indirectly wholly and/or substantially owned and/or controlled by Chartrand.
5. In or about January 1994, Chartrand incorporated eleven mutual funds (“the Funds”) in the Cayman Islands at the Plaintiff’s request and through which the Plaintiff made substantial investments by subscribing for non-voting participating shares. The Funds were all companies incorporated under the Companies Law (Revised) and duly registered under the Mutual Funds Law (1998 Revision). Each Fund was in turn managed by a separate company (“the Fund Managers”) which were themselves companies incorporated under the Companies Law (Revised). The scheme of management employed by Chartrand included the use of Georgian Bay to undertake the function of administering the Funds, via the Fund Managers. The Fund Managers were themselves, wholly and/or substantially owned and/or controlled by Georgian Bay/Chartrand. In this way, Chartrand was responsible for and did in fact manage the Funds at all material times until they were put into liquidation; whereas the Plaintiff remained their beneficial owner.
6. Georgian Bay was used by Chartrand as a general clearinghouse for transactions done on behalf of the Funds. Between 25<sup>th</sup> January 1996 and 5<sup>th</sup> March 1997, Chartrand caused Georgian Bay and or corporations under his control, including Metropolitan and Orelia, to transfer to Elite, in United States and Canadian dollars, (hereinafter “the United States dollars (US\$) equivalent” or “equivalent in US dollars”) belonging to one or more of the Funds.

#### PARTICULARS OF TRANSFERS

<u>Date</u>	<u>Amount in US\$/(US\$ equivalent)</u>
25 <sup>th</sup> January 1996	17,000.00
12 <sup>th</sup> March 1996	37,724.64

14 <sup>th</sup> April 1996	17,100.38	22,800.50
25 <sup>th</sup> April 1996	37,500.00	50,000.00
26 <sup>th</sup> April 1996	36,811.50	49,082.00
9 <sup>th</sup> May 1996	37,329.00	
17 <sup>th</sup> May 1996	100,000.00	
24 <sup>th</sup> June 1996	18,115.00	
31 <sup>st</sup> October 1996	95,250.00	127,000.00
3 <sup>rd</sup> January 1997	5,740.30	
3 <sup>rd</sup> January 1997	36,842.87	
5 <sup>th</sup> March 1997	9,750.00	13,0000.00

**Totals:** **US\$449,163.69**

7. At all material times, Elite maintained an account number 674069-01 at the London Branch (the "Elite ANZ Bank account"). This account was maintained in the name of "Elite Fund Limited" and Chartrand and/or Clive Munyard (an employee of the Fund Managers) were the authorised signatories to the said account. Between 27<sup>th</sup> May 1996 and 23<sup>rd</sup> June 1998, Elite ANZ Bank account was credited with the equivalent of US\$ 193,005.31 such sums being transferred to it by *inter alia* Georgian Bay, Metropolitan and Orelia.

#### PARTICULARS OF TRANSFERS

<u>Date</u>	<u>Amount in US\$/(US\$ equivalent)</u>	
27 <sup>th</sup> May 1996	102,000.00	
19 <sup>th</sup> November 1996	25,000.00	
30 <sup>th</sup> December 1996	31,102.57	
30 <sup>th</sup> December 1996	5,977.80	7,970.40
8 <sup>th</sup> October 1997	28,871.86	
23 <sup>rd</sup> June, 1998	53.08	

**Totals:** **US\$193,005.31**

8. The said transfers described in paragraphs 6 and 7 above were made for no consideration, without any proper authority and in breach of the fiduciary duties owed by Chartrand to the Funds.

9. The Funds are entitled to trace the equivalent to US\$193,005.31 and/or Elite is liable to account to the Funds as constructive trustee for the money and such other sum as may be shown to have been transferred directly or indirectly from the Funds to Elite's ANZ Bank account. The credit balance on Elite ANZ Bank account was US\$505,000.000 as at November 1999. Until discovery, the Plaintiff is unable to say whether any amount in excess of US\$193,005.31 is traceable to the balance now credited to the Elite ANZ Bank account.
10. Further and/or alternatively, Elite has had and received the equivalent of the sum of US\$449,163.69 to the use of the Funds and is liable to repay it.
11. 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.
12. 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.
13. If Elite was not the ultimate recipient of the equivalent of US\$449,163.69, 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.
14. In consequence of the maintenance of an account by Elite at the London Branch, ANZ Bank has therefore, through no fault of its own, become mixed up in the tortious acts of Chartrand and/or Elite so as to facilitate their wrongdoing and is under a duty to assist CEF by giving it full information about Elite's ANZ Bank account and disclosing whether

or not Elite was the ultimate recipient of all or part of the sums equivalent to US\$449,163.69.

15. By reason of the matters aforesaid:

- (a) Elite is liable as constructive trustee to account to CEF for all the monies transferred to its ANZ Bank account from the Funds and all interest thereon;
- (b) Elite has had and received the equivalent of US\$449,163.69 to the use of the Funds and is liable to repay it; and
- (c) CEF is entitled to trace the said monies and Elite is liable to make restitution thereof.

16. Alternatively, if Elite was not the ultimate recipient of the equivalent of US\$449,163.69, it is liable to CEF for damages on the basis that it has knowingly assisted Chartrand's breach of fiduciary and/or contractual duty.

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 funds equivalent to the sum of US\$193,005.31;
- (ii) Alternatively, the sum of US\$449,163.69 being money had and received by the 1<sup>st</sup> Defendant to the use of the Plaintiff.
- (iii) Alternatively, damages.
- (iv) 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\$449,163.69.
- (v) 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

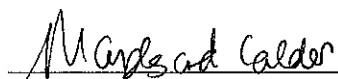
power relating to its assets and liabilities including all documents relating to its bank accounts.

- (vi) An order that the 1<sup>st</sup> Defendant do produce the documents specified in its list of documents for inspection by the Plaintiff.
- (vii) Such other or further relief as the Court thinks fit.
- (viii) Costs.

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

- (i) A declaration that: (i) the monies standing to the credit of its account number 674069-01 in account with the London branch and/or (ii) any assets derived from the said monies which are held by the second Defendant as custodian for the first Defendant, up to a limit of US\$449,163.69 plus the interest accrued thereon, are held upon constructive trust for the benefit of the Plaintiff absolutely.
- (ii) An order that the second Defendant pay to the Plaintiff the monies standing to the credit of the said account number 674069-01 maintained with its London Branch and/or transfer to the Plaintiff the assets derived therefrom.
- (iii) 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".
- (iv) An order that the 2<sup>nd</sup> Defendant do produce the documents specified in its list of documents for inspection by the Plaintiff.
- (v) Such further or other relief that the Court thinks fit.

Dated this 16<sup>th</sup> day of February, 2000.

  
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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 Uglan House, PO Box 309 GT, Grand Cayman, Cayman Islands.