

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 258 OF 2001

BETWEEN:

PREMIERE HOLDINGS LTD. (IN LIQUIDATION)

PLAINTIFF

AND

1. PRIVATE TERMS LTD.
2. CLASSIC TERMS
3. GILBERT MILLER



DEFENDANTS

---

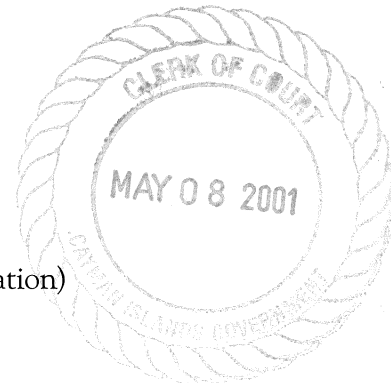
WRIT OF SUMMONS

---

TO: Private Terms Ltd.  
c/o K Corporate Services Ltd.  
P.O. Box 945GT  
Grand Cayman

AND TO: Classic Terms  
c/o Everest Management Limited (In Liquidation)  
P.O. Box 31078 SMB  
3<sup>rd</sup> Floor Buckingham Square Building  
Grand Cayman

AND TO: Gilbert Miller  
C/o CS Gill & Co.  
PO Box 945GT  
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 495GT, 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 judgment may be entered against you forthwith without further notice.

Issued this 8<sup>th</sup> day of May 2001.

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 is a company incorporated in the Cayman Islands on November 20, 1997 with registration number 77864. The Plaintiff was placed into compulsory liquidation by the Grand Court of the Cayman Islands on 11 July 2000. G. James Cleaver of Ernst & Young, PO Box 510GT, One Capital Place, Shedden Road, George Town, Grand Cayman and Phillip Stenger of 4095 Embassy Drive SE, Grand Rapids, MI. 49546 were appointed Joint Official Liquidators of the said Plaintiff.
2. The First Defendant, Private Terms Ltd. is a company incorporated in and under the laws of Nevis and prior to March 2001 had an established place of business at Zephyr International Ltd., PO Box 1561GT, 5<sup>th</sup> Floor, Zephyr House, Mary Street, George Town, Grand Cayman and was managed by Zephyr International Ltd. Since April 2001 the First Defendant has been managed by K Corporate Services of PO Box 945GT, Grand Cayman, who are also authorised to accept service on its behalf.

3. The Second Defendant, Classic Terms Ltd., is a company incorporated in the Cayman Islands having its registered office at Everest Management Limited (In Liquidation), P.O. Box 31078 SMB, 3<sup>rd</sup> Floor Buckingham Square Building. A winding up petition in respect of the Second Defendant is pending before this Honourable Court (Cause No. 543 of 2000)
4. The Third Defendant, Gilbert Miller, a US national is a beneficial owner of the First and Second Defendant companies and their controlling mind and will.
5. Between 29 December 1995 and 24 August 1998 the Third Defendant invested the total sum of US\$1,742,978.50 in an investment program known as Cash4Titles. US\$64,000.00 of this investment was invested by the Third Defendant through his alter ego the Second Defendant and US\$345,000.00 through his alter ego, the First Defendant.
6. Certain Promissory Notes issued to the Third Defendant in respect of the said investments effected by the Defendants in C4T Funding Inc. (an investment recipient in the Cash4Titles scheme), agreed an interest rate of 5% per month for funds invested, which was reduced from April 1998 to 4.5% per month.
7. From September 1998 the Third Defendant's capital balance invested with the Cash4Titles investment program together with roll-overs in interest, including funds invested through the First and Second Defendants, was US\$2,105,000.00 and he was collectively entitled to receive monthly interest payments of US\$94,725.00 from October 1998. As at August 1998, the Third Defendant's aggregate capital balance was US\$2,091,000.00 and he was collectively entitled to receive a monthly interest payment in September 1998 of US\$94,095.00.
8. Between 28 December 1995 and 20 December 1997 the Third Defendant also invested in the Cash4Titles investment program jointly with one Mr. Glen Collis, another US national. The total funds invested jointly with Mr. Glen Collis amounted to US\$434,267.79.

9. From May 1998 the Third Defendant's joint investment with Mr. Glen Collis, together with rolled over interest, totalled approximately US\$605,000.00 and with an interest entitlement of 4.5% per month, yielded a monthly interest payment of US\$27,225.00.
10. The Third Defendant was accordingly entitled to a combined maximum monthly interest payment from the Cash4Titles scheme of US\$121,320.00 from September 1998 and US\$121,950.00 from October 1998.
11. Repayments of interest on the Defendants' investments in the Cash4Titles scheme were made by the Plaintiff which acted as an intermediary between the Cash4Titles investment companies and investors. The Plaintiff received interest payments due to investors from Cash4Titles and paid this on to investors, including the Defendants.
12. The Cash4Titles investment program was in fact a fraudulent ponzi scheme whereby new investors' funds were utilised to pay the interest payments and any capital repayments of earlier investors, and in which funds were fraudulently diverted by the main perpetrators of the fraud, Richard Homa and Michael Gause.
13. On 15 September 1998, Mr. Dean Pearson, the Director and then controlling mind and will of the Plaintiff, caused the Plaintiff to pay to the Second and Third Defendants the total sum of US\$325,320.00, of which US\$92,070.00 was paid to the Second Defendant and US\$233,250.00 to the First Defendant. In breach of his fiduciary duties to the Plaintiff, Mr. Dean Pearson thus caused the Plaintiff to make an overpayment of US\$204,000.00 to the Defendants. Further or alternatively the overpayment of US\$204,000.00 was paid to the Defendants under a mistake of fact.
14. At all material times, the Defendants knew they had no entitlement to receive the sum of US\$204,000.00 in September 1998 and that this over-payment was made in breach of the fiduciary duties owed to the Plaintiff by Mr. Dean Pearson

alternatively made under a mistake of fact. In the circumstances, it is unconscionable for them to retain the benefit of the over-payment.

15. On 19 October 1998, 13 November 1998, 15 December 1998, 15 January 1999, 16 February 1999, 16 March 1999, 16 April 1999, and 19 May 1999, the Third Defendant received payments from the Plaintiff on each of the said months in the amount of US\$328,950.00, of which US\$92,700.00 was paid to his alter ego the Second Defendant and US\$236,250.00 was paid to his other alter ego, the First Defendant. Mr. Dean Pearson, the Director and controlling mind and will of the Plaintiff, in breach of his fiduciary duties to the Plaintiff, thus caused the Plaintiff to make 8 over-payments of US\$207,000.00 to the Defendant. Alternatively the said over-payments were made under a mistake of fact.
16. At all material times the Defendants knew they had no entitlement to receive the 8 said over-payments of US\$207,000.00 and that these over-payments were made in breach of the fiduciary duties owed to the Plaintiff by Mr. Dean Pearson alternatively made under a mistake of fact. In the circumstances, it is unconscionable for them to retain the benefit of the overpayments.
17. Further and/or alternatively the Defendants have been unjustly enriched at the expense of the Plaintiff by the receipt of the said over-payments, totalling US\$1,860,000.00.
18. Payments invested by the First and Second Defendants in the Cash4Titles scheme, and returns of interest and/or capital received by them, bear no apparent correlation. Funds were collectively regarded as belonging to the Third Defendant and repaid to the Third Defendant or his corporate alter egos, the First and Second Defendants, without regard for the need to maintain accurate, separate accounting records.
19. In light of the said pooling of funds conducted by the Defendants and the manner in which funds were mixed between the Defendants, it is just and equitable to treat the First and Second Defendants as the alter egos of the Third Defendant

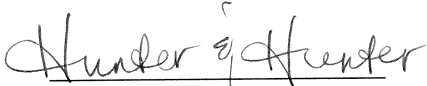
and to regard all payments and receipts as made to or for the Third Defendant individually.

20. The Plaintiff has identified funds standing to the credit of the First Defendant's bank account at CIBC Bank & Trust Co (Cayman) Ltd number 256 1059 in the sum of approximately US\$1.6 million as comprising those monies wrongfully and in breach of trust transferred to the First Defendant. Further or alternatively the Plaintiff has identified funds standing to the credit of the Second Defendant's bank account number 75040900 at Bank of Bermuda (Cayman) Ltd. in the sum of approximately US\$400,000.00 as comprising those monies wrongfully and in breach of trust transferred to the Second Defendant. The said monies remain the property of the Plaintiff and the Plaintiff is entitled to trace into such funds for the recovery of same.
21. Further the Plaintiff claims against the Defendants interest on all such sums as shall be found due to the Plaintiff at such rate and from such date as the Court thinks fit compounded pursuant to the equitable jurisdiction of the Court, alternatively, interest pursuant to Section 34 of the Judicature Law (1995 Revision).

**AND THE PLAINTIFF CLAIMS:**

- i. Restitution of the sum of US\$1,860,000.00.
- ii. A declaration that the First and Second Defendants are to be treated as one and the same person as their beneficial owner, the Third Defendant.
- iii. A declaration that the Defendants are liable to account to the Plaintiff as constructive trustee for all sums wrongfully or alternatively fraudulently diverted from the Plaintiff to the Defendants.

- iv. All necessary accounts and inquiries as to the funds wrongly or alternatively fraudulently diverted or alternatively paid under a mistake of fact to the Defendants.
- v. A declaration that the funds of approximately US\$1.6 million standing to the credit of the First Defendant's said account at CIBC Bank & Trust Co (Cayman) Ltd comprise the property of the Plaintiff and may be attached in satisfaction of the Plaintiff's claim.
- vi. A declaration that the funds of approximately US\$400,000.00 standing to the credit of the Second Defendant's said account at Bank of Bermuda (Cayman) Ltd comprise the property of the Plaintiff and may be attached in satisfaction of the Plaintiff's claim.
- vii. Interest on all such sums found due to the Plaintiff from the Defendants at such rate and from such date as the Court thinks fit.
- viii. All further proper accounts inquires and directions and such further and other relief as this Courts deems just.
- ix. Costs, including the fee payable on the filing of this Writ of US\$8,369.51.

  
Hunter & Hunter  
Attorneys for the Plaintiff

This Writ was issued by Hunter & Hunter, Attorneys-at-Law for and on behalf of the Plaintiffs herein whose address for service is 75 Fort Street, P.O. Box 190GT, George Town, Grand Cayman. (Ref: SD/08184.001)

## DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgement of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495 GT, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words of "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgement of Service, that he intends to apply for stay, execution will be stayed for 14 days after his Acknowledgement, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

*See over for notes for guidance*

*Please complete overleaf*

## Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words “sued as (*the name stated on the Writ of Summons*)”.
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description “Partner in the firm of (.....)” after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description “trading as (.....)” after his name.
6. Where the Defendant is a Limited Company the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2001

BETWEEN:

PREMIERE HOLDINGS LTD. (IN LIQUIDATION)

PLAINTIFF

AND

1. PRIVATE TERMS LTD.
2. CLASSIC TERMS
3. GILBERT MILLER

DEFENDANTS

---

---

ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

---

---

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

---

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

---

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes

No

- 
3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

Yes

---

Service of the Writ is acknowledged accordingly

---

(signed)

[Attorney] for

[Defendant in person]

Address for service:

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

*Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

Hunter & Hunter  
P.O. Box 190 GT  
The Huntlaw Building  
75 Fort Street  
Grand Cayman (Ref: JST/08184.001)

*Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*