

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 677 OF 2003

BETWEEN:

BRM CAPITAL FUND, L.P.

Plaintiff

AND:

CITITRUST (CAYMAN) LTD AS TRUSTEE OF THE JENS TRUST

Defendant



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**WRIT OF SUMMONS**

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TO: Cititrust (Cayman) Ltd as Trustee of The Jens Trust  
C/o Cititrust (Cayman) Ltd  
2<sup>nd</sup> Floor, CIBC Financial Centre  
Dr Roy's Drive  
Grand Cayman  
Cayman Islands  
British West Indies



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 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 16<sup>th</sup> day of October 2003

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 Acknowledgment of Service are given with the accompanying form.

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**STATEMENT OF CLAIM**

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1. At all material times the Plaintiff was and is a Cayman Islands exempted limited partnership whose registered office is located at Uglan House, South Church Street, Grand Cayman ("Partnership").
2. At all material times the Defendant was and is the trustee of The Jens Trust, and whose principal office is located at 2<sup>nd</sup> Floor, CIBC Financial Centre, Dr Roy's Drive, Grand Cayman, Cayman Islands, British West Indies ("Investor").
3. The Plaintiff Partnership is a venture capital investment fund which, *inter alia*, invests in Israeli or Israeli-related "start up" companies involved in the fields of enterprise software, communications and components.
4. The Defendant Investor is a limited partner of the Partnership.
5. Pursuant to a written subscription agreement dated 30<sup>th</sup> June 2000 ("Subscription Agreement") the Defendant Investor subscribed for a limited partnership interest in the Plaintiff Partnership, subject to the terms and conditions contained in the Subscription Agreement and an Amended And Restated Limited Partnership Agreement dated 30<sup>th</sup> June 2000 as further amended from time to time ("Partnership Agreement").
6. The Subscription Agreement contained, *inter alia*, the following express terms and conditions.

...

1. **Subscription for a Limited Partnership Interest**

- (a) **Purchase of Interests.** *Subject to the terms and conditions set forth in this Subscription Agreement and in the Partnership Agreement, the Investor agrees to purchase from the Partnership the Limited Partnership Interest ("Interest") in the Partnership set forth on the signature page below (except to the extent*

that a lesser Interest has been accepted by the General Partner pursuant to Section 8) at a purchase price equal to 100% of such Interest, payable in the manner and at the times provided in the Partnership Agreement, to become a party to the Partnership Agreement and to become a Limited Partner of the Partnership.

...

2. **Representations of the Investor.** The Investor hereby represents and warrants to the Partnership and to the General Partner as follows:

...

(d) **Full Contribution.** The Investor understands that, except as otherwise provided in the Partnership Agreement, the Investor may not make less than the full amount of any required capital contribution, and that default provisions with respect thereto pursuant to which the Investor may lose a material portion of its investment in the Partnership are contained in the Partnership Agreement.

...

3. **Capital Contributions**

(a) **Initial Capital Contributions.** Subject to the terms and conditions of the Partnership Agreement, the initial capital contribution for the purchase of the Investor's Interest shall take place on such date and at such place, as shall be selected by the General Partner upon not less than such number of day's (sic) prior written notice to the Investor as set forth in the Partnership Agreement...

(b) **Additional Capital Contributions.** The Investor will, subject to the terms and provisions of the Partnership Agreement, make additional capital contributions to the Partnership in accordance with the terms set forth in the Partnership Agreement when called.

...

SIGNATURE PAGE

*IN WITNESS WHEREOF, the undersigned has executed this Agreement for the purchase of a limited partnership interest in BRM Capital Fund, L.P. (the "Partnership") and has appointed the General Partner as the undersigned's agent and attorney-in-fact in connection with this Agreement and the Partnership Agreement as of the day and year first written above. This page constitutes the signature page for each of (i) the Subscription Agreement for the purchase of the Interest in the Partnership in the amount set forth, and (ii) the Partnership Agreement of the Partnership in which the undersigned shall be admitted as a Limited Partner of the Partnership.*

7. The Partnership Agreement contained, inter alia, the following express terms and conditions.

...

*Article 6 - CAPITAL OF THE PARTNERSHIP*

*6.1 OBLIGATION TO CONTRIBUTE*

*6.1.1 Drawdowns*

*6.1.1.1 General*

*Each Partner agrees to make payments of capital contributions to the Partnership, in accordance with and subject to the terms of this Agreement, in an aggregate amount equal to such Partner's Subscription. All capital contributions shall be made at such times and in such amounts as are specified by the General Partner in Call Notices issued pursuant to 6.2, in separate drawdowns ("Drawdowns") as provided in this Article 6.*

6.1.1.2 *Drawdowns during Investment Period.*

*The General Partner is authorised to make Drawdowns of capital contributions from time to time prior to the expiration of the Investment Period in accordance with this Article 6 for any purpose contemplated under this Agreement.*

...

6.2 *CALL NOTICES*

6.2.1 *General*

*The General Partner shall specify the time of each Drawdown of capital contributions in a written notice (a "Call Notice") given the Limited Partners prior to the date of such Drawdown (the "Drawdown Date").*

...

6.5 *FAILURE TO MAKE REQUIRED PAYMENT*

6.5.1 *Delayed Payment and Default*

6.5.1.1 *General*

*Except to the extent that such Limited Partner is excused pursuant to any provision of this Agreement from paying all or any part of its capital contribution pursuant to a Drawdown, upon any failure by a Limited Partner to pay in full when due the capital contribution to be paid by it on a Drawdown date, interest will accrue at the Default Rate on the outstanding unpaid balance of such capital contribution, from and including such Drawdown date until the earlier of the date of payment of such capital contribution or such time, if any, as such Limited Partner becomes a Defaulting Partner.*

...

6.5.1.3 *Designation as Defaulting Partner*

*A Limited Partner that has failed to make a payment and the satisfaction of such Partner's Subscription (together with any interest or other amounts due) pursuant to a Call Notice after notice from the General Partner by the close of business on the date that is 10 days after the relevant Drawdown Date, shall be deemed to be a "Defaulting Partner".*

...

6.5.5 *Other Remedies*

*The Partnership shall have all other remedies available under law to an exempted limited partnership to enforce the collection from the Defaulting Partner of any unpaid capital contributions for which a Drawdown Notice has been issued, any interest owed by such Partner as provided in 6.5.1.1, all costs of collection (including attorneys' fees) and interest at the Default Rate on all such costs from the date paid. All such other remedies shall be cumulative.*

...

14.8.4 *Governing Law*

*This Agreement shall be governed by and construed in accordance with Cayman Islands Law.*

...

*Default Rate[:] With respect to any fiscal period, the lesser of (a) LIBOR for such fiscal period plus 3%, or (b) the highest rate for such fiscal period permitted under applicable law.*

The Plaintiff will rely on the Subscription Agreement and the Partnership Agreement for their full meanings, terms and effects.

8. Pursuant to the terms and conditions of the Subscription Agreement and the Partnership Agreement, the Defendant agreed to make capital contributions to the value of US\$2,959,747.43 in consideration for its limited partnership interest in the Plaintiff.
9. On various dates between 30<sup>th</sup> June 2000 and January 2001 the Plaintiff by its General Partner BRM Capital Partners LLC ("General Partner"), issued notices to the Defendant requiring the Defendant to make capital commitments, and the Defendant made such capital commitments in accordance with the Subscription Agreement and the Partnership Agreement.
10. On or about 11<sup>th</sup> July 2003 the General Partner on behalf of the Plaintiff Partnership issued a written notice to the Defendant pursuant to Article 6.2 of the Partnership Agreement ("Notice") requiring the Defendant to pay a 5<sup>th</sup> Capital Call equal to 5% of the Defendant's capital commitment ("5<sup>th</sup> Capital Call").
11. Pursuant to the Notice, the Defendant was required to pay the sum of US\$147,987.37 to the Plaintiff on or before 28<sup>th</sup> July 2003.
12. In breach of the Subscription Agreement and the Partnership Agreement the Defendant has failed and/or refused to pay the sum of US\$147,987.37 or any sum in payment of the 5<sup>th</sup> Capital Call.
13. As a result of the Defendant's failure and/or refusal to pay the sum of US\$147,987.37, interest has been accruing on the said sum at the Default Rate, which amounts to US\$18.41 per day.
14. The Plaintiff claims interest on all sums found to be due to it at such rate and for such period as the Court shall think fit pursuant to contract and/or pursuant to the Judicature Law (2002 Revision).

**THEREFORE THE PLAINTIFF CLAIMS:**

1. Judgment for the sum of US\$147,987.37.
2. Interest on the Judgment Sum at the rate of US\$18.41 per day from 29<sup>th</sup> July 2003 to the date of Judgment, or such other rate as the Court shall think fit.

3. Costs on an indemnity basis pursuant to Article 6.5.5 of the Partnership Agreement.
4. Such other relief or remedy as the Court deems just.

Maples and Calder  
Maples and Calder  
Attorneys-at-law for the Plaintiff

This Writ was issued by Maples and Calder, Attorneys for the Plaintiff whose address for service is Uglan House, South Church Street, PO Box 309GT, George Town, Grand Cayman. (Ref. MW1/276037-01)

BETWEEN: BRM CAPITAL FUND, L.P.

Plaintiff

AND

CITITRUST (CAYMAN) LTD AS TRUSTEE OF THE JENS TRUST

Defendant

**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 of Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick where appropriate)  
 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 Plaintiffs (tick box)  
 yes  no

Service of the Writ is acknowledged accordingly

.....

Dated: , 2003

**Please complete overleaf**

**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.*

BRM Capital Fund, L.P.  
C/o Maples and Calder  
Attorneys-at-Law  
Ugland House  
South Church Street  
P.O. Box 309 GT  
George Town  
Grand Cayman  
Ref: 276037-01/MWI

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

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS**

The accompanying form of Acknowledgment 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 495GT, George Town, Grand Cayman.

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 28 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.