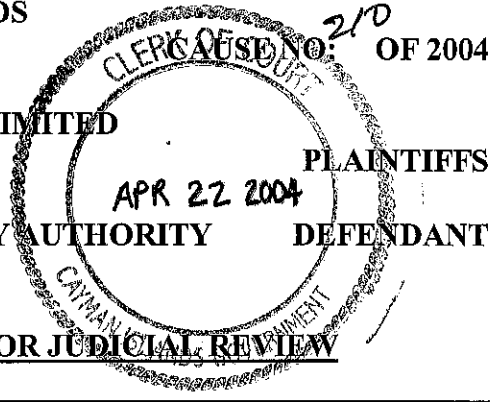


IN THE GRAND COURT OF THE CAYMAN ISLANDS



BETWEEN: (1) GOLDEN ACCUMULATOR LIMITED
 (2) CORAL HOUSE LTD PLAINTIFFS
 AND: CAYMAN ISLANDS MONETARY AUTHORITY DEFENDANT



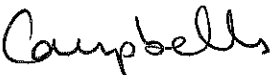
APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	<p>(1) Golden Accumulator Limited Bridge Street Services Limited PO Box 30691SM Buckingham Square Penthouse Seven Mile Beach, West Bay Road</p> <p>(2) Coral House Ltd Bridge Street Services Limited PO Box 30691SM Buckingham Square Penthouse Seven Mile Beach, West Bay Road</p> <p>The relevant decision (as set out below) is a decision to request information from LOM Securities (Cayman) Limited which relates to the financial affairs of the Plaintiff Companies.</p>
Judgment, order, decision or other proceeding in respect of which relief is sought	<p>Decision of the Cayman Islands Monetary Authority made on 6th April 2004 to exercise its powers under section 34(9) of the Cayman Islands Monetary Authority Law (2003 Revision) to require LOM Securities (Cayman) Limited ("LOM") to produce such documents as are in its possession or control as set out in the schedule attached to the request and to provide such information that is listed in the schedule on or before Friday 23rd April 2004.</p>

Relief Sought

1. An Order of certiorari to quash the said decision;
2. A Declaration that the purported request for information by the Defendant is ultra vires and/or void;
3. An Order of Prohibition and/or an injunction to prevent the Defendant from exercising its powers to enforce the said decision and/or in the alternative an Order of Prohibition and/or an injunction to prevent the Defendant disclosing any information obtained pursuant to the said decision to the Bermuda Monetary Authority;
4. Interim relief in the form of a stay or alternatively an injunction restraining the Defendant from enforcing the said decision pending the outcome of both the application for leave to apply for Judicial Review and any subsequent application for Judicial Review in the event that leave is granted;
5. Costs; and
6. Any other orders or relief that the Court deems appropriate.

The Plaintiff requests an urgent oral application for leave in view of the interim relief sought and the fact that the Plaintiff is required to comply with the said decision on or before Friday 23rd April 2004.

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Campbells Attorneys-at-Law PO Box 884 GT Grand Cayman
Signed 	Dated 22 nd April 2004

GROUND ON WHICH RELIEF IS SOUGHT

THE FACTS

1. On the 7th April 2004 LOM Securities (Cayman) Limited ("LOM") was served by the Defendant with a "Direction to Provide Information Under Section 34(9) Of The Monetary Authority Law (2003 Revision)" (the "Cayman Direction").
2. The Cayman Direction requests information which relates to the financial affairs of both the Plaintiffs.
3. The Cayman Direction stated inter alia as follows;

Whereas a request had been made to the Cayman Islands Monetary Authority ("the Authority") by an overseas regulatory authority, the Bermuda Monetary

Authority, for assistance and information pursuant to section 49(3) of the Monetary Authority Law (2003 Revision), (herein referred to as "the law"); and

Whereas the Authority has decided to exercise its powers under section 34(9) of the Law, I hereby direct that you LOM Securities (Cayman) Limited, PO Box 30997SMB, Third Floor, Buckingham Square, 720 West Bay Road, Grand Cayman, do within 10 business days of the date of the service of this direction upon you produce such documents as are in your possession or control listed in the schedule hereto and to provide such information listed in the said schedule".

4. The schedule to the Cayman Direction requests information pertaining to two accounts held by LOM. Account number 3030058 was held on behalf of the First Plaintiff at the relevant time and Account number 3030045 was held on behalf of the Second Plaintiff at the relevant time. In addition, the schedule requests information specifically in relation to the First Plaintiff.
5. LOM has a number of affiliated companies including Lines Overseas Management Limited, LOM Securities (Bermuda) Limited and LOM Asset Management Limited. On or about 30th March 2004, the said affiliated companies received a direction dated 30th March 2004 from the Bermuda Monetary Authority to provide information, inter alia, in relation to the same two accounts contained in the schedule to the Cayman Direction from the Defendant ("Bermuda Direction").
6. The Bermuda Direction stated as follows:

"Take NOTICE that the U.S. Securities and Exchange Commission has requested the continued assistance of the Bermuda Monetary Authority ("the Authority") in relation to a non-public investigation being carried out by it regarding possible violations of US federal securities law involving (i) trades in the shares of Sedona Software Solutions Inc., (ticker symbol SSSI, CUSIP No 81567A102), a Vancouver, Canada-based public company and (ii) trades in the shares of Shep Technologies, Inc., listed on the NASD OTCBB under the symbol STLOF. Consequently the Authority is now seeking the information and documents particularized below."

7. The information requested is then set out at the bottom of the Bermuda Direction. The information requested included, inter alia, information in relation to account numbers 3030058 and 3030045.
8. In light of;
 - a. the timing of the service of the Bermuda Direction and the subsequent Cayman Direction; and
 - b. the fact that both the Bermuda Direction and the Cayman Direction seek information in relation to the same two account numbers;it is apparent that by the request from the Bermuda Monetary Authority to the Defendant, which caused the Defendant to issue the Cayman Direction, the Bermuda Authority seeks information in response to the request made to it by the United States Securities and Exchange Commission.
9. The Plaintiffs are making an application for an injunction to the Courts in Bermuda in relation to the Bermuda Direction.

THE LEGISLATIVE FRAMEWORK

10. The Defendant was established pursuant to the Monetary Authority Law 1996. It is a body corporate with perpetual succession and may sue and be sued in its corporate name (section 5(1) of the Monetary Authority Law (2003 Revision) (“the Law”).
11. The purposes of the Defendant are set out in section 6 of the Law. In other sections of the Law, the Defendant is granted a number of statutory powers for the purposes of carrying out its functions.
12. Section 6 (1) provides that the principle functions of the Defendant are;
 - a. Monetary functions;
 - b. Regulatory functions, namely;
 - i. To regulate and supervise financial services business carried out in or from within the Islands in accordance with the Law and the regulatory laws;

- ii. To monitor compliance with the money laundering regulations;
and
- iii. To perform any other regulatory or supervisory duties that may be imposed on the Defendant by any other law.
- c. Co-operative functions, namely to provide assistance to overseas regulatory authorities in accordance with this Law; and
- d. Government advisory functions.

13. The Cayman Direction was purportedly made pursuant to section 34(9) of the Law which provides as follows:

(9) Where in accordance with section 49, the Authority is satisfied that assistance should be provided in response to a request by an overseas regulatory authority it may in writing direct-

- (a) a person regulated under the regulatory laws;*
- (b) a connected person;*
- (c) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or*
- (d) a person reasonably believed to have information relevant to enquiries to which the request relates,*

within a stated time, to-

- (i) provide the Authority with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;*
- (ii) produce specified documents or documents of a specified description relevant to those inquiries; or*
- (iii) give to the Authority such assistance in connection with those inquiries as the Authority may specify in writing.*

14. The relevant parts of Section 49 of the Law (as amended by the Monetary Authority (Amendment) Law 2003 is as follows:

(3) Subjection to subsection (9) –

- a. where the Authority is satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority may disclose to the overseas regulatory authority the requested information, but shall keep a record of all such requests and disclosures and an inventory of the information disclosed, and shall make the records and inventory available to the Attorney-General or the Financial Secretary upon request; and*
 - b. where the Authority is not satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority, after having sent a copy of the request to the Attorney-General and to the Financial Secretary in accordance with subsection(1), may disclose to the overseas regulatory authority to exercise regulatory functions including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority; and*
 - c. where the Authority has provided information under paragraph (a) or (b) and the Authority has received the advice of the Attorney-General, that there are reasonable grounds for believing that an offence specified in an overseas regulatory authority's request for assistance has been committed and –*
 - i. the information already provided by the Authority to the overseas regulatory authority relates to the offence; or*
 - ii. the Cayman Authority, under a treaty for the provision of mutual assistance between the authorities in the Islands and the relevant country or territory, has given permission for disclosure of the information,*

the overseas regulatory authority may, with the consent of the Authority, further disclose the information for the purpose of criminal investigation into contraventions of laws or regulations administered by that regulatory authority identified in its request;
- (4) In deciding whether or not to assist an overseas regulatory authority (whether by use of the Authority's powers under subsection (3), section 34, section 35, or otherwise), the Authority shall take into account –*
- a. whether corresponding assistance would be given in the relevant country or territory to the Authority;*

- b. *whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in the Islands or involve the assertion of a jurisdiction not recognised by the Islands;*
 - c. *the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in the Islands; and*
 - d. *except in the case of a routine regulatory request, whether in the light of advice from the Attorney-General or the Financial Secretary, it is not in the public interest to give the assistance sought.*
- (5) *For the purposes of paragraph (a) of subsection (4), the Authority may require an overseas regulatory authority which requests assistance to give a written undertaking, such form as the Authority may require, to provide corresponding assistance to the Authority... ..*
- (7A) *The Authority shall decline to give its consent to further disclosure of information pursuant to subsection (3)(c) unless the overseas regulatory authority has given a written undertaking that the information will not be used in any criminal proceedings without the consent of the relevant Cayman Islands authority; and... ..*
- (9) *The Authority shall not give to an overseas regulatory authority any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless –*
- (a) *the Authority has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or*
 - (b) *the Authority has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Authority; and*
 - (c) *the Authority is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that authority; and*
 - (d) *the Authority is satisfied that information provided following the exercise of its powers under subsection (3) will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence under section 34(17) or an offence of perjury.*
- (10) *Where the Authority is not satisfied that a request for assistance from an overseas regulatory authority is a routine regulatory request, the Authority shall notify the Attorney-General and the Financial Secretary*

immediately the request is received, with particulars of the request, and shall send them copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to amicus curiae, to appear or take part in any proceedings in the Islands, or in any appeal from such proceedings, arising directly or indirectly from any such request.

- (11) *For the purposes of this section and subject to any general direction given by the Governor under section 33, a "routine regulatory request" in relation to an overseas regulatory authority is a request for the purpose of allowing the overseas regulatory authority to carry out its day to day functions of approval of licences, approval of persons subject to regulation and registration of applicants.*

THE GROUNDS FOR REVIEW

15. The Plaintiffs are companies which are individually affected by the decision of the Defendant to issue the Cayman Direction. It is therefore contended that the Plaintiffs have sufficient standing to bring this application.
16. It is contended that the decision of the Defendant to make the Cayman Direction is in not within the powers as set out in sections 34(9) and 49 and is therefore ultra vires and/or unlawful for the following reasons;
- a. The Cayman Direction does not fall within section 49(3)(a) in that it is not a routine regulatory request from an overseas regulatory authority. A "routine regulatory request" is defined in section 49(11) as "*a request for the purpose of allowing the overseas regulatory authority to carry out its day to day functions of approval of licences, approval of persons subject to regulation and registration of applicants*". The request in this case is from the Bermuda Monetary Authority to enable it to comply with a request from the United States Securities and Exchange Commission in relation to an investigation being carried out by it regarding possible violations of the United States federal securities law. Accordingly, this is not a routine regulatory request as defined in subsection 11.
 - b. Where a request from an overseas regulatory authority is not a routine request, then section 49(3)(b) only allows disclosure of information by the

Defendant where the information disclosed is to allow the “*overseas regulatory authority to exercise regulatory functions including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority*”. In this case the Bermuda Monetary Authority intends to pass the information disclosed to the United States Securities and Exchange Commission. It is not conducting its own civil and administrative investigations or undertaking proceedings to enforce laws etc administered by the Bermuda Monetary Authority. Rather, it is attempting to assist an investigation by the United States Securities and Exchange Commission.

- c. Further and in the alternative, this is not a “*civil and administrative investigation*” being conducted by the United States Securities and Exchange Commission. Under the US federal securities law a breach of any of the laws will entitle the US Securities and Exchange Commission to elect to prosecute the matter civilly or to refer the matter to prosecutors to have it prosecuted criminally. Where the matter is prosecuted civilly and it is found that a person is in breach of the law, a fine is usually imposed along with other sanctions depending upon the breach. Where the matter is prosecuted criminally, in addition to a fine, a custodial sentence may be imposed. The Defendant has no power to provide assistance in these circumstances and any attempt by the Defendant to do so is unlawful and ultra vires. Such a request does not fall within the powers of the Defendant pursuant to the Law.
- d. The Defendant appears to be in breach of section 49(9)(a) and (b) which requires that it be satisfied that the intended recipient of the information, i.e., the Bermuda Monetary Authority is “*subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality*” and that an undertaking is given “*not to disclose the information provided without the consent of the Authority*”. In this case, the Bermuda Monetary Authority has made it clear that it intends to disclose any information received to the United States Securities

and Exchange Commission. There is no indication of any restrictions being placed upon the United States Securities and Exchange Commission in relation to their use of the disclosed information and it must be presumed that no such undertaking has been given.

- e. Further, the Defendant is in breach of section 49(9)(c) which requires the Defendant to be “*satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority’s regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that authority*”. In this case, it is clear that Bermuda Monetary Authority does not intend to use the information to enforce its own laws etc. Rather it intends to disclose the information to the United States Securities and Exchange Commission to be used in criminal proceedings
- f. If the request from the Bermuda Monetary Authority was in fact a routine request (which is denied for the reasons set out in subparagraph 16(a) above) subsection 4 provides that in deciding whether to exercise its discretion to grant the request it shall take into account “*whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in the Islands or involve the assertion of a jurisdiction not recognised by the Islands*”. The Defendant has failed to take into account the precise nature of the criminal investigations by the United States Securities and Exchange Commission and to determine whether there are parallel laws in the Cayman Islands.
- g. In accordance with section 49(3)(b), given that the request is not a routine request for assistance as defined, there is no evidence that the Defendant has sent a copy of the request to the Attorney-General and to the Financial Secretary and obtained the Attorney-General’s and/or the Financial Secretary’s opinion as to whether disclosure is within the public interest in accordance with section 49(4)(d).

REQUEST FOR INTERIM RELIEF

17. The Plaintiffs requests interim relief in the nature of a stay and/or injunction restraining the Defendant from exercising its powers to enforce the said decision pending the outcome of both the application for leave to apply for Judicial Review and any subsequent application for Judicial Review in the event that leave is granted.
18. It is respectfully submitted that the balance of convenience lies in favour of the Plaintiffs as they are likely to suffer irreparable harm if the requested information is disclosed and the Defendant is not likely to suffer any loss or harm as a result of the stay and/or injunction being granted.

Campbells

CAMPBELLS
Attorneys for the Plaintiffs