

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 22 | 2005 ✓

BETWEEN: SEGOES SERVICES, LTD. PLAINTIFF

AND (1) JOHN KAWESKE DEFENDANTS  
(2) JAMES FONTANETTA

WRIT OF SUMMONS

TO:

John Kaweske of 4 Raleigh Quay North, Raleigh Quay, Governor's Harbour, Grand Cayman

James Fontanetta of 24 Cayman Reef Resort, 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 495G, 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 judgment may be entered against you forthwith without further notice.

Issued this            day of            , 2005.

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.

The Plaintiff claims:

1. The Plaintiff (the "Company") is a company incorporated on 2 August 1993 under the laws of the Cayman Islands and carried on securities brokerage and investment business on behalf of customers from premises at 3<sup>rd</sup> Floor, Whitehall House, North Church Street, George Town. On 29<sup>th</sup> April 2005, an order was made by the Grand Court of the Cayman Islands appointing Joint Provisional Liquidators over the Company.
2. At all material times the Defendants were the directors of the Company.
3. As directors of the Company the Defendants owed to the Company *inter alia* the following general duties:
  - (i) A duty to act *bona fide* in the interests of the Company.
  - (ii) A duty to supervise the business and affairs of the Company.
  - (ii) A duty to act for proper purposes.
  - (iii) A duty to avoid a conflict between their own interests and their duties to the Company.
  - (iv) A duty, where the Company is insolvent and/or on the verge of insolvency, to act in the interests of and/or to have regard primarily to the interests of the Company's creditors.
4. On 28 April 2005 the First Defendant wrote a letter on the Company's letter head to the

customers of the Company stating that:

*“SEGOES has recently terminated the employment of James Fontanetta and Rebeca Gonzalez from the Company.*

*I have learned that various unauthorized transactions have occurred in the SEGOES Trust, the SEGOS Bond Fund and in other pooled investments. I have engaged the United States law firm of Greeberg Traurig, P.A. and the United States accounting firm of Daxcal Bolton, P.A. to review and investigate the transactions. I have asked them to act as quickly as possible to review these matters.*

*In order to protect the rights of all concerned, SEGOES has suspended all non essential activities and has taken steps to maintain all cash positions. Online statements are not reflecting the accurate balances or positions for client accounts. All segregated customer accounts have been transferred to Synergy Investments as per previous correspondence.*

*I have also incurred a substantial personal loss as a result of this activity.*

*I am contacting our insurance providers to see how our coverage might assist us. It would be of great assistance if you can provide us with any correspondence from any SEGOES employees, including emails and statements or records of telephone conversations. Please email such information to [jk@segoes.com](mailto:jk@segoes.com).*

*I regret that I am unable to provide you with additional information but I expect that I will be able to do so in the future.*

*Thank you for your patience and consideration*

*Respectfully*

*John Kaweske  
Director”*

5. In breach of those duties pleaded in paragraph 3 the Defendants either jointly or severally:


- (i) Failed to put in place and implement adequate internal systems and procedures to ensure that the assets of the Company and the investments of its customers were subject to proper safeguards to prevent unauthorized dealings with the assets of the Company and the investments of its customers.
  - (ii) Failed to properly supervise the business and affairs of the Company in order to prevent unauthorized dealings with the assets of the Company and with the investments of its customers.
  - (iii) Failed to act for proper purposes in that they converted to their own use and misapplied the assets of the Company and the investments of its customers.
  - (iv) Failed to ensure that insurance policies for the benefit of the Company and its customers were maintained and renewed.
  - (v) Failed to take any steps to protect or secure the assets of the Company and of its customers/creditors when the Company became unable to repay its debts and investments to customers as they fell due.
6. By reason of the Defendants' breaches of duty and/or each of them, the Company has suffered loss and damage.
  7. The Applicants claim interest on such loss and damage pursuant to S 34 Judicature Law.

**AND THE APPLICANTS CLAIM:**

1. Damages for breach of duty.
2. An Order that all necessary accounts and enquiries may be taken and made for ascertaining what sums the Defendants are liable to contribute to the assets of the Company by way of compensation for such misfeasance and breach of duty as aforesaid.
3. Interest pursuant to S 34 Judicature Law.

4. Costs.

Dated this 6 day of May 2005

  
\_\_\_\_\_  
**CAMPBELLS**  
**Attorneys-at-Law for the Plaintiff**

**This Writ of Summons is filed by Campbells, of 4th Floor, Scotiabank Building, George Town, Grand Cayman, Attorneys for the Plaintiff which is a company in provisional liquidation and the provisional liquidators of which are Kenneth M Krys and Christopher Stride of RSM Cayman Islands, Commerce House, Dr Roys Drive, George Town, Grand Cayman**

## DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

### OF WRIT OF SUMMONS

1. 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 495, George Town, Grand Cayman

2. A Defendant who states in his Acknowledgment 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 "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 Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, 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 installments or otherwise.

*See over for notes for guidance*

### 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. 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 his 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.

BETWEEN: SEGOES SERVICES, LTD. PLAINTIFF

AND (1) JOHN KAWESKE DEFENDANTS
(2) JAMES FONTANETTA

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 the Defendants whereby they 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:
overleaf

Please complete

**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.*

Messrs. Campbells  
Attorneys-at-Law  
Fourth Floor,  
Scotiabank Building,  
P.O. Box 884,  
George Town,  
GRAND CAYMAN

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