

IN THE GRAND COURT OF THE CAYMAN ISLANDS

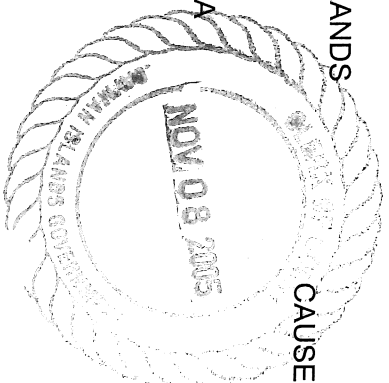
CAUSE NO: **515** OF 2005

BETWEEN: LUIS EDUARDO CORREA

PLAINTIFF

AND: JUAN E RASSMUSS

DEFENDANT



WRIT OF SUMMONS

TO: Juan E Rassmuss

Huerfanos,  
1178 Ofc.301,  
Santiago  
CHILE

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on page 3.

Within 14 days after the service of this Writ on the Defendant, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, 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 **8<sup>th</sup>** day of November 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 Acknowledgment of Service are given with the accompanying form.

**THE PLAINTIFF'S CLAIM IS FOR:**

1. A declaration that upon the true construction of an agreement made between the Plaintiff and the Defendant on or about 15 December 2000, the Plaintiff is entitled to a further 17 shares in Pacific Overseas Financial Corporation (the "Company");
2. An order that the Defendant do transfer to the Plaintiff 17 of the 67 shares in the Company currently held by him
3. Further or other relief
4. Costs

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

This Writ is filed by Walkers, Attorneys-at-Law, Walker House, Mary Street, P.O. Box 265 GT, George Town, Grand Cayman, for the Plaintiff whose address for service is care of its said Attorneys-at-Law.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 515 OF 2005

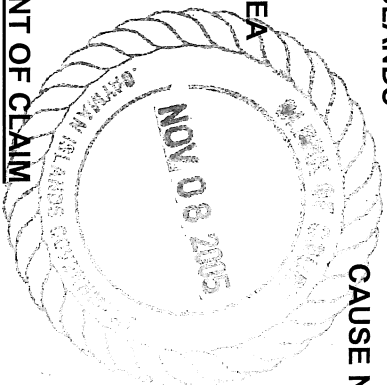
BETWEEN:

LUIS EDUARDO CORREA

PLAINTIFF

AND: JUAN E RASSMUSS

DEFENDANT



STATEMENT OF CLAIM

1. At all material times the Plaintiff and the Defendant were the only shareholders of Pacific Overseas Financial Corporation, a company duly incorporated in the Cayman Islands on 24 October 1989 ("the Company"). The Company has an issued share capital of 100 shares at US\$1.00 par value each.
2. In or about October 1989 the Plaintiff and the Defendant entered into an agreement ("the Joint Venture Agreement") to start an investment business through which the Plaintiff and the Defendant would make investments, primarily in Latin America ("the Joint Venture").
3. The Joint Venture Agreement included terms that:
  - (a) two companies would be incorporated, one in Chile and one in the Cayman Islands, through which the Joint Venture would be run;
  - (b) the Defendant would provide the initial capital for the Joint Venture of US\$3,000,000;
  - (c) the Plaintiff would develop the Joint Venture using his contacts and experience;
  - (d) the Defendant would initially own 80 of the issued shares in the Company;
  - (e) the Plaintiff would initially own 20 of the issued shares in the Company;
  - (f) the Plaintiff would be retained to manage the Company and be paid a salary as a term of his retainer;
  - (g) the Plaintiff would have an option to become a one-third owner of the Company exercisable at any time; and
  - (h) the Plaintiff would become a 50% shareholder in the Company if the Joint Venture was successful.

4. Pursuant to the terms of the Joint Venture Agreement:
- (a) on 20 October 1989 a Chilean company was incorporated and on 24 October 1989 the Company was incorporated;
  - (b) the Defendant contributed capital of US\$3,000,000 to the Joint Venture as and when capital was required;
  - (c) the Plaintiff used his contacts and experience to develop the Joint Venture;
  - (d) the Defendant was initially the beneficial owner of 80 of the shares in the Company;
  - (e) the Plaintiff was initially the beneficial owner of 20 of the shares in the Company;
  - (f) at all material times the Plaintiff has managed the Company and received a salary for that;
  - (g) on 21 March 1997 the Plaintiff exercised the option granted in the Joint Venture Agreement ("the Option").

Particulars

- (i) on 21 March 1997 at a meeting between the Plaintiff and the Defendant in Santiago, Chile the Plaintiff told the Defendant that he wished to exercise the Option. The Plaintiff and the Defendant agreed that the Plaintiff would purchase from the Defendant a further 13 shares in the Company ("the 13 Shares") and that he would pay the Defendant US\$400,000 for the 13 Shares. The price paid was the book value of 13.33% of the shares in the Company which was calculated as the difference between the book value of the 20% of the shares the Plaintiff already owned and the one-third interest in the Company he was intended to achieve by exercising the Option;
- (ii) in or about April 1997 the Plaintiff paid the Defendant US\$400,000 for the 13 Shares;
- (iii) between April 1997 and January 1998 the Plaintiff made a number of demands on the Defendant to transfer the 13 Shares to the Plaintiff;
- (iv) in or about January 1998 the Defendant transferred the 13 Shares to the Plaintiff;
- (v) by letter dated 29 January 1998 the Plaintiff and the Defendant instructed Cayman National Trust Co Limited to register the altered shareholding effective 1 January 1997;
- (vi) on 9 March 1998 both the Plaintiff and the Defendant entered into Nominee Agreements with CNT (Nominees) Ltd reflecting the altered shareholding.

(h) the Joint Venture has been and remains profitable. The Company became the holding company for a number of subsidiaries ("the Subsidiaries", collectively with the Company "the Group"), including Pacific Overseas International Bank Ltd ("POIB"), a company incorporated in the Turks & Caicos Islands on 25 October 1990.

5. Also at the meeting on 21 March 1997 referred to in paragraph 4(g) above, the Plaintiff informed the Defendant that he wanted the Defendant to give effect to the agreement between them that the Plaintiff would become a 50% shareholder in the Company if the Joint Venture was successful. The Defendant acknowledged that the Joint Venture had been a success and agreed that he and the Plaintiff should meet to discuss the equalisation of their interests in the Joint Venture.
6. The Company was used by the Group to provide funding to the Subsidiaries. At all material times, all dividends declared by POIB which were payable to the Company were treated by the Plaintiff and the Defendant as money payable to them as the beneficial owners of the Company in accordance with their shareholding in the Company.
7. From the commencement of the Joint Venture the Defendant provided funding as and when necessary to POIB and a running account operated between the Defendant and POIB recording the fluctuating sum due to or from the Defendant. In the accounts of POIB this account was stated to record sums due to/from "related parties" and the sums paid and received were referred to as "partner loans".
8. Between 1 January 1991 and 31 December 1993 the Defendant took back to back loans on behalf of his companies from POIB and deposited funds with POIB as security for the loans. As at 1 January 1994, when POIB adopted a computerised accounting system, the total amount due to POIB from the Defendant's companies was set off against the total sum due from POIB to the Defendant leaving a balance in the Defendant's favour of US\$361,900. Between 1 January 1994 and December 1995 the Defendant received further payments from POIB which were recorded as partner loans and by December 1996 the running account between the Defendant and POIB showed a balance due to POIB from the Defendant of US\$7,712,432.00.
9. During 1995, the Plaintiff became concerned about the sums owing to POIB by the Defendant as there had been no movement on the running account for many months. In or about December 1996 the Plaintiff and the Defendant agreed that the outstanding

debit balance on the running account would be treated as the Defendant's share of a dividend that would be declared by POIB. On or about 20 December 1996 the Board of POIB recommended that a dividend of US\$10million be declared and paid of which US\$ 7,712,432.20 would be set off against the outstanding account receivable from the Defendant and the balance would be paid before the end of the first quarter of 1997. Both the Plaintiff and the Defendant were present at the Board meeting and the proposal to utilise the dividend in this manner was proposed by the Defendant, as Chairman of the meeting.

10. On or about 20 December 1996 at an extraordinary meeting of POIB the proposed dividend was declared and paid as recommended by the Directors. The sum of US\$7,712,432.20 was designated to be set off against the sum shown on the running account to be due from the Defendant to POIB. The balance of US\$2,287,567.80 was added to the sum of US\$12,721.00 which was the balance of the dividend declared on 21 June 1996 which had not been distributed, to constitute a total retained dividend of US\$2,300,289.01 ("the Retained Dividend").

11. During the first quarter of 1997, the sum of US\$545,570.06 was paid to the Defendant out of the Retained Dividend. During the first quarter of 1997, the Plaintiff was paid the sum of US\$2,065,000.00, being the balance of the Retained Dividend and an interim dividend for 1997.

12. In or about January 1998, the Plaintiff and the Defendant launched a new business, Sophia Communications, as part of the Joint Venture. The Plaintiff again pressed the Defendant to give effect to the agreement between them that the Plaintiff would become a 50% shareholder in the Company if the Joint Venture was successful and asked that the arrangements between the Plaintiff and the Defendant be formalised.

13. On or about 29 January 1998 the Plaintiff and the Defendant orally agreed that :

- (i) the Defendant would transfer 17 shares in the Company ("the 17 Shares") to the Plaintiff to give effect to the agreement between them that the Plaintiff would become a 50% shareholder in the Company if the Joint Venture was successful; and
- (ii) the transfer of those shares would be delayed until after the completion of a lease back transaction ("the SWISS RE transaction") between SWISS RE and Seguros Nuevo Mundo S.A. ("SNM"), a Venezuelan insurance company owned indirectly by the Company.

(4)

14. However, it was further agreed between the Plaintiff and the Defendant that, in order to reflect the equalisation of the parties' interests in the Joint Venture, pending the transfer of the 17 shares :
- (i) henceforth new and independent companies would be incorporated as vehicles for the Group's interest in future businesses to be developed, such as Sophia Communications, which companies would be jointly owned by the Plaintiff and the Defendant on a 50% basis; and
  - (ii) all new investments in the Joint Venture would be provided by the Company as they now had a 50:50 interest in both the Joint Venture and the Company.
15. The completion of the SWISS RE transaction was delayed and did not complete until December 1998.
16. In accordance with the terms of the agreement referred to in paragraph 14 above, the Plaintiff and the Defendant have been registered as the owner of 50% of the shares in each of the Subsidiaries of the Company and the Group that have been incorporated since 29 January 1998;

Particulars

- (i) on 2 February 1998 Pacific Overseas Telecommunications Limited was incorporated, with the Plaintiff and the Defendant owning 50% each of the shares of the company;
  - (ii) on 16 May 2000 Inmobiliaria Latina Investments Ltd. was incorporated with the Plaintiff and the Defendant owning 50% each of the shares of the company;
  - (iii) on 6 July 2000, an 80% interest in Paiva Ramos Investments Ltd. was acquired by Inmobiliaria Latina Investments Ltd., and the remaining 20% was acquired by Inmobiliaria Latina Investments Ltd. in or about May 2001.
17. On or about 26 May 1999 POIB sold a substantial part of its investment in a company called Elevadores Atlas S.A. for the sum of US\$28,479,620.18. In or about June 1999 the Defendant asked the Plaintiff to agree that POIB should declare a dividend using the proceeds of sale of the Elevadores Atlas investment. The Defendant wanted to receive the sum of US\$15,000,000. The Plaintiff was unable to agree to this as POIB was

unable declare a dividend of that magnitude at that time as it would have adversely impacted upon its net asset value. Instead, to ensure that the defendant received the US\$15,000,000 that he required, the Plaintiff and the Defendant agreed that :

- (i) POIB would declare a dividend of US\$11,000,000 and the Plaintiff agreed that this dividend would be paid in its entirety to the Defendant; and
  - (ii) POIB would make a loan of US\$4,000,000 to the Defendant.
18. On or about 16 June 1999 the Board of POIB recommended that a dividend of US\$11,000,000 be declared and paid. Both the Plaintiff and the Defendant were present at the Board meeting and the proposal to recommend the dividend was proposed by the Defendant, as Chairman of the meeting.
19. On or about 18 June 1999 at an extraordinary meeting of POIB the proposed dividend was declared and paid as recommended by the Directors. By three transfers made on 5, 7 and 8 July 1999 respectively, the total sum of US\$15,000,000 was transferred to the Defendant ("the Transfer"). The sum of US\$12,000,000 was transferred on 5 July 1999 to an account in Hamburg for the benefit of the Defendant. The dividend of US\$11,000,000 ("the Dividend"), including the Plaintiff's share of it, was included in that transfer. The balance of the Transfer was recorded by POIB as a loan to the Defendant.
20. On Friday, 15 December 2000 the Plaintiff met with the Defendant and pressed him to complete the transfer of the 17 Shares. The Plaintiff suggested that they agree a price for the shares and that the agreed price be deducted from his share of the Dividend prior to repayment by the Defendant. The Plaintiff proposed that the price of the 17 shares should be calculated on the same basis as the price of the 13 shares had been calculated in 1997 and he offered to pay the Defendant US\$510,000 for the 17 shares which reflected the book value of 17% of the Company. The Defendant refused to accept the Plaintiff's offer but agreed to make the transfer if he could retain the Dividend in its entirety, including the share of the Dividend that belonged to the Plaintiff. The Plaintiff agreed to allow the Defendant to retain the Plaintiff's share of the Dividend in consideration for the transfer of the 17 shares and the Defendant agreed to make the transfer immediately. The Defendant requested the Plaintiff to draft the necessary documentation to give effect to the transfer.

21. The Plaintiff immediately instructed Enrique Guzman, legal counsel, for the Company to draft a letter for the Defendant's signature in the same terms as the letter he had drafted in January 1998 when the 13 shares were transferred.
22. The document was ready for the signature on Monday 18 December 2000 and the Plaintiff spoke to the Defendant by telephone and informed him that the letter had been prepared. The Defendant told the Plaintiff not to send the letter to him and requested that the Plaintiff and the Defendant have a meeting to discuss the matter further.
23. At a meeting in or about January 2001 between the Plaintiff and the Defendant, the Defendant stated that he did not intend to honour the agreement that had been reached in December 2000 and that he would not sign the letter confirming the transfer of the 17 shares to the Plaintiff. The Defendant would not discuss the matter further and walked out of the meeting.

24. Since January 2001 :
  - (i) the Defendant has retained the Plaintiff's share of the Dividend; and
  - (ii) the Plaintiff has made repeated requests and demands of the Defendant to execute a transfer of the 17 Shares to the Plaintiff which in breach of the agreements reached between the Plaintiff and the Defendant the Defendant has failed and/or refused and continues to refuse to do.

**AND THE PLAINTIFF CLAIMS:**

1. A declaration that the Defendant is obliged to transfer to the Plaintiff a further 17 shares in the Company;
2. An order that the Defendant do transfer to the Plaintiff 17 of the 67 shares in the Company currently registered in the Defendant's name;
3. Further or other relief;

(7)

4. Costs.

DATED this 8th day of November 2005

*Walkers*

WALKERS  
Attorneys at Law for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Walkers, Attorneys-at-Law, P.O. Box 265 GT, Walker House, Mary Street, George Town, Grand Cayman, for the Plaintiff whose address for service is care of its said Attorneys-at-Law.

(8)