

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Fees Paid.....
Receipt No.....
Date

CAUSE NO: 370 OF 2006

B E T W E E N:

- (1) ZÜBLIN CHILE INGENIERIA Y CONSTRUCCIONES LTDA
- (2) ZÜBLIN CHILE INGENIERIA Y CONSTRUCCIONES LTDA
SUCURSAL PERU



AND

- (1) ALBERT FORSYTH (also known as ALBERT FORSYTH SOLARI)
- (2) FADIA DANERI DE FORSYTH
- (3) ATLANTIC SECURITY BANK

Defendants

WRIT OF SUMMONS

TO: **Albert Forsyth** (also known as Albert Forsyth Solari) of Avenida Alfredo Salazar 653, Piso 3, San Isidiro, Lima 27, Peru and **Atlantic Security Bank** of Uglend House, PO Box 309GT, George Town, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the following pages.

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, P.O. Box 495 GT, 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 Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 6th day of September 2006

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

Parties

1. The First Plaintiff is Züblin Chile Ingenieria y Construcciones Ltda (“Züblin Chile”), a construction and mining company registered and resident in Chile and having its address at Cerro Portezuelo No. 9760, Loteo Industrial El Portezuelo, Panamericana North, Quilicura, Santiago de Chile, Chile.
2. The Second Plaintiff is Züblin Chile Ingenieria y Construcciones Ltda Sucursal Peru (“Züblin Peru”), registered in Peru as a branch of Züblin Chile and having its address at Avenida Andres Reyes 380, Lima, Peru.
3. The First Defendant is Albert Forsyth also known as Albert Forsyth Solari (“Mr. Forsyth”) who is and was at all material times a citizen of Peru and an attorney at law in that country. Mr. Forsyth was a partner in the Peruvian law firm of Muñiz, Ramirez, Perez-Tainan & Lunar-Victoria (the “Muñiz law firm”), which at all material times acted as Peruvian legal advisors to the Plaintiff. Mr. Forsyth was forced to leave the Muñiz law firm in May 2005 after the Muñiz law firm was notified of Mr. Forsyth’s involvement in the fraud detailed below.
4. The Second Defendant is Fadia Daneri de Forsyth (“Mrs. Forsyth”), a citizen of Peru and the wife of the First Defendant, Mr. Forsyth. Mrs. Forsyth assisted Mr. Forsyth to launder and conceal the funds illegally obtained by Mr. Forsyth as described below.
5. The Third Defendant is Atlantic Security Bank, an exempted company incorporated and existing under the laws of the Cayman Islands and having its

registered office at Ugland House, PO Box 309GT, George Town, Grand Cayman.

Conspiracy to Defraud

6. Commencing in or about 1998, various employees (the “employees”) of the Plaintiffs formed a plan together with Mr. Forsyth to embezzle many millions of dollars from the Plaintiffs, using their position as trusted insiders.
7. One of the most prolific methods of embezzlement entailed the submission of fraudulent invoices to the Plaintiffs by Mr. Forsyth and employees of the Plaintiffs for various non-existent parts, services and other expenses allegedly incurred on behalf of the Plaintiffs.
8. The Plaintiffs have identified the following individual co-conspirators as heavily involved in perpetrating the fraud on the Plaintiffs:
 - 8.1. Saúl Evangelista López-Fernández - the (former) Chief Financial Officer of the Second Plaintiff;
 - 8.2. Wolf-Dieter Dahl - the (former) Branch Manager of the Second Plaintiff;
 - 8.3. José Sánchez-Diéguéz - the (former) Managing Director of the First Plaintiff; and
 - 8.4. Claudio Torres - the (former) Chief Accountant of the Second Plaintiff.
9. The fraudulent invoices were submitted in the names of shell corporations in the name of Dagwood Services Co Ltd (“Dagwood”), a BVI registered company and Deutsche Ingenieure Und Projekt Gesellschaft Ltd (“DIPG”), a BVI registered company controlled by Mr. Forsyth. These shell corporations had no active businesses and supplied no services, goods or any other valuable consideration to the Plaintiffs.

10. While the full amount of the losses incurred by the Plaintiffs and Ed. Züblin AG (“Züblin”), their parent company, is unknown, it is estimated that approximately US\$12 million was embezzled by Mr. Forsyth and other conspirators. Of this amount, the Plaintiffs have identified approximately US\$1.6 million that was routed to an account held in the name of Mr. Forsyth and/or his wife at Atlantic Security Bank, the Third Defendant, in the Cayman Islands.

Particulars of fraud

11. On or about 22 September 1998, Mr. Forsyth opened a checking account number 400-263167-06 at a Miami based bank known as Totalbank. On his account opening form, Mr. Forsyth gave his occupation as “self-employed attorney” instead of providing the details of his employment at the Muñiz law firm. On 24 September 2001, Mr. Forsyth added his wife’s name as a signatory to the account.
12. On or about 7 July 1999, Mr. Forsyth opened a business checking account number 400-185177-06 for DIPG at Totalbank. Mr. Forsyth stated on the account opening form that he was the secretary and the attorney-in-fact of DIPG.
13. Between the dates of 1998 and 2002, Mr. Forsyth and his co-conspirators defrauded the Plaintiffs out of millions of dollars, inter alia, through an over-invoicing scheme. Of relevance to these proceedings, Mr. Forsyth or the BVI companies, DIPG and Dagwood, controlled by him, were involved in a number of fraudulent transactions during the year of 1999 and 2000:
 - 13.1. On 10 March 1999, Dagwood issued a fraudulent invoice to the Second Defendant for US\$275,000. The invoice required funds to be paid to Mr. Forsyth’s account (No. 26316706) held at Totalbank. On 3 June 1999, Mr. Forsyth’s co-conspirators, López-Fernández and Torres, paid this sum from the Second Plaintiff’s account No. 0011-686-0100020689 with Banco Continental (Lima) to Mr. Forsyth’s account at Totalbank, as required.

13.2. On 1 July 1999, Dagwood issued a fraudulent invoice to the Second Plaintiff for US\$360,000. The invoice required funds to be paid to Mr. Forsyth's personal account held at Totalbank (No. 26316706). On 5 July 1999 Mr. Forsyth's co-conspirators, López-Fernández and Torres, paid this sum from the Second Plaintiff's account No. 0011-686-0100020689 with Banco Continental (Lima) into Mr. Forsyth's account at Totalbank, as required.

13.3. On 10 August 1999, DIPG issued a fraudulent invoice to the Second Plaintiff for US\$315,710.67. On 17 August 1999 Mr. Forsyth's co-conspirators, López-Fernández and Torres, paid this sum from the Second Plaintiff's account No. 0011-686-0100020689 with Banco Continental (Lima) to an account (No. 589001449865) in the name of Prohotel International DBA ("Prohotel") with Chase Bank of Texas in Houston (as required by the invoice) from where the sum was immediately transferred to Mr. Forsyth's account number 26316706 held at Totalbank. The Chase Bank account was opened by Mrs. Forsyth in the name of Prohotel on 20 November 1998.

13.4. On 19 August 1999, an amount of US\$289,269.33 was transferred from an account of the Second Plaintiff with Banco de Lima Sudameris for no valuable consideration to Prohotel's Chase Bank account. Only Mr. Forsyth's co-conspirators had authorisation to conduct transactions over the said Banco de Lima Sudameris account. On 20 August 1999, this same sum was transferred from Prohotel's Chase Bank account to Mr. Forsyth's account number 26316706 held at Totalbank.

13.5. On 25 August 1999, DIPG issued a fraudulent invoice to the Second Plaintiff for US\$150,000. The invoice required funds to be paid to Prohotel's Chase Bank account. On 17 September 1999, Mr. Forsyth's co-conspirators, López-Fernández and Torres, paid this sum from the Second Plaintiff's account No. 0011-686-0100020689 with Banco Continental (Lima) to Prohotel's Chase Bank account (No. 589001449865) as required

from where it was immediately transferred to Mr Forsyth's account number 26316706 held at Totalbank.

13.6. On 24 September 1999, Mr. Forsyth's co-conspirator López-Fernández transferred US\$250,000 from account No. 001-686-0100021510 with Banco Continental (Lima) in his and Mr. Dahl's name to DIPG's account (No. 18517706) held at Totalbank for no valuable consideration. Despite the fact that account No. 001-686-0100021510 was held in the names of Mr. López-Fernández and Mr. Dahl it was only used to move funds of the Second Plaintiff, to whom the said US\$250,000 belonged.

13.7. On 22 October 1999, DIPG issued a fraudulent invoice to the Second Plaintiff for US\$375,000. The invoice required funds to be paid to DIPG's account at Totalbank. On 29 October 1999, Mr. Forsyth's co-conspirators, Dahl and López-Fernández, paid US\$200,000 from the Second Plaintiff's account No. 2346109 with Citibank (Lima) to DIPG's account at Totalbank as required, of which US\$125,000 was transferred to Mr. Forsyth's account number 26316706 held at Totalbank on 1 November 1999. On 16 December 1999, Mr. Dahl and Mr. López-Fernández paid the balance of US\$175,000 from the Second Plaintiff's account with Citibank New York (No. 36221753) to DIPG's account held at Totalbank.

13.8. On 7 December 1999, DIPG issued a fraudulent invoice to the Second Plaintiff for US\$375,000. The invoice required funds to be paid to DIPG's account at Totalbank. On 14 December 1999, Mr. Forsyth's co-conspirators, Dahl and López-Fernández, paid this sum from the Second Plaintiff's account No. 2346109 with Citibank (Lima) to DIPG's account held at Totalbank as required.

13.9. On 20 December 1999, DIPG issued a fraudulent invoice to the Second Plaintiff for US\$539,269.33 and subsequently granted the Second Plaintiff a "discount" of US\$104,980.00. The invoice required funds to be paid to

DIPG's account at Totalbank. On 11 January 2000, Mr. Forsyth's co-conspirators, López-Fernández and Torres, paid US\$392,857.14 from the Second Plaintiff's account No. 0002346117 with Citibank (Lima) to DIPG's account held at Totalbank as required.

14. None of the aforementioned invoices were legitimate invoices representing services, expenses or goods actually provided to or incurred on behalf of the Plaintiffs or with the agreement of the Plaintiffs and there was accordingly no consideration for the payments.

15. On the following dates, Mr. Forsyth gave instructions to Totalbank to transfer the following amounts from his and DIPG's account with Totalbank by wire transfer to an account numbered 3544026042001 opened in Mr. Forsyth's and/or Mrs. Forsyth's name(s) at Atlantic Security Bank, the Third Defendant:

	Totalbank Acct	Date	Amount	Recipient Bank
1	Forsyth	06.10.99	US\$555,000.00	Atlantic Security Bank
2	Forsyth	17.03.00	US\$100,000.00	Atlantic Security Bank
3	Forsyth	14.06.00	US\$35,000.00	Atlantic Security Bank
4	Forsyth	23.11.01	US\$13,000.00	Atlantic Security Bank
5	Forsyth	24.01.02	US\$342,710.00	Atlantic Security Bank
6	DIPG	06.10.99	US\$249,000.00	Atlantic Security Bank
7	DIPG	30.12.99	US\$308,000.00	Atlantic Security Bank
Total			US\$1,602,710.00	

16. To the best of the Plaintiff's knowledge and belief, the aforesaid sums totalling US\$1,602,710.00 are still held by the Third Defendant.

Claims to Funds

17. By virtue of his position as attorney-at-law for the Plaintiffs at all material times, and as legal representative and manager of the Plaintiffs from late 2000 until October 2003, Mr. Forsyth owed a duty to the Plaintiffs to act with all reasonable skill, care and diligence in the performance of his office.

18. Further, Mr. Forsyth owed a fiduciary duty to the Plaintiffs to act bona fide and in the best interests of the Plaintiffs, to exercise his powers only for proper purposes, and not at any time to act with the intention of furthering his own personal interests or the interests of any other party to the prejudice of the Plaintiffs.
19. In breach of his duties aforesaid, Mr. Forsyth failed to act in the best interests of the Plaintiffs and knowingly and fraudulently entered into the abovementioned transactions the effect of which was to deprive the Plaintiffs of the said funds.
20. Further, by submitting or causing to be submitted fraudulent invoices to the Plaintiffs for payment, Mr. Forsyth wrongfully deceived the Plaintiffs into paying funds to his nominated account(s) in breach of trust.

21. In the circumstances, property in the said funds remains with the Plaintiffs and Mr. Forsyth and Mrs. Forsyth are constructive trustees for the Plaintiffs in respect of the funds fraudulently obtained from the Plaintiffs and transferred to their account(s) with the Third Defendant.

22. By virtue of its receipt of the said funds, the Third Defendant became or will become a constructive trustee of the funds at the time that it became or becomes aware of the aforesaid facts evidencing the theft by Mr. Forsyth from the Plaintiffs or the payment of the funds to the Third Defendant in breach of Mr. Forsyth's fiduciary duties.

Evidence of Fraud

23. As evidence of the fraud perpetrated on the Plaintiffs, the Plaintiffs will rely on the fact that various employees of the Plaintiffs have been charged, convicted or penalised for their participation in the fraud:

- 23.1. Wolf-Dieter Dahl was convicted by the Stuttgart Regional Court on 9 July 2003 of eight cases of embezzlement or criminal breach of trust, sentenced to two years imprisonment on probation and ordered to make restitution.

The Stuttgart Regional Court expressly noted in the judgement the substantive involvement of Mr. Forsyth in the scheme to defraud the Plaintiffs and Züblin. A further Complaint was filed by Züblin against Mr. Dahl in the Labour Court of Duisburg on 7 July 2003 seeking damages in the sum of US\$4,831,175.50. That case is pending.

23.2. Criminal proceedings are pending in Chile against José Sánchez-Diéguéz and Saúl López-Fernández.

23.3. José Sánchez-Diéguéz was found liable by the Stuttgart Labour Court on 3 February 2006 for conspiracy to defraud and ordered to repay US\$2,306,913.30 to Züblin (for itself and as assignee of Züblin Chile). The Stuttgart Labour Court also noted Mr. Forsyth's active role in orchestrating the embezzlement scheme. The case is currently under appeal.

AND THE PLAINTIFFS claim:

As against the First and Second Defendants

1. Restitution of the sum of US\$1,602,710.00 as money had and received by the First and Second Defendants to the Plaintiffs' use; and
2. Equitable compensation;
2. Alternatively, recovery of the sum of US\$1,602,710.00 and any amounts representing the proceeds of such funds or derived from the use of such funds, including interest accrued thereon, as funds held on trust for the Plaintiffs;
3. A declaration that the Plaintiffs be entitled to trace into the US\$1,602,710 held by the Third Defendant or any proceeds of such funds or property derived from the use of such funds, in satisfaction of its claim;

4. Pre-judgment interest of US\$463,006.32 pursuant to the *Judicature Law (2004 Revision)* at the prescribed rate of interest in accordance with the Judgment Debt (Rates of Interest) Rules as amended from time to time and accruing at a daily rate of US\$318.35 from the date hereof until the date of judgment.
5. Pre and post-judgment interest pursuant to the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
6. Costs;
7. Such other relief as the Court may deem just.

As against the Third Defendant

1. An order that the Third Defendant holds the sum of US\$1,602,710.00 together with any interest accrued thereon, or any other amount representing the proceeds of such sum, on constructive trust for the Plaintiffs;
2. Costs;
3. Such other relief as the Court may deem just.

Dated the *6th* day of September 2006



APPLEBY HUNTER BAILHACHE

INDORSEMENT REGARDING INTEREST

1. The principal amount claimed is US\$1,602,710 plus interest of US\$463,006.32 as of 6 September 2006 and accruing interest at the daily rate of US\$318.35. The amount of the filing fees to commence the proceeding is CI\$6,415.69.
2. The terms upon which interest is claimed is in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
3. The interest payable at the relevant times in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules is as follows:

Amount	Interest Rate	Date period	# Days	Daily Interest	Interest Amount for period
\$804,000	7%	6 Oct 99 – 30 Dec 99	86	\$154.19	\$13,260.49
\$1,112,000	7%	31 Dec 99 – 17 Mar 00	78	\$213.26	\$16,634.30
\$1,212,000	7%	18 Mar 00 – 31 Mar 00	14	\$232.44	\$3,254.14
\$1,212,000	8%	1 Apr 00 – 14 Jun 00	75	\$265.64	\$19,923.29
\$1,247,000	8%	15 Jun 00 – 31 May 01	351	\$273.32	\$95,933.59
\$1,247,000	6 ¼%	1 Jun 01 – 23 Nov 01	176	\$213.53	\$37,580.82
\$1,260,000	6 ¼%	24 Nov 01 – 30 Nov 01	7	\$215.75	\$1,510.27
\$1,260,000	4 ¼%	1 Dec 01 – 24 Jan 02	55	\$146.71	\$8,069.18
\$1,602,710	4 ¼%	25 Jan 02 – 31 Aug 03	584	\$186.62	\$108,984.28
\$1,602,710	3%	1 Sep 03 – 30 Jun 06	1034	\$131.73	\$136,208.40
\$1,602,710	7 ¼%	1 Jul 06 – 6 Sept 06	68	\$318.35	\$21,647.56

4. If, within the time for returning the acknowledgment of service, the Defendant pays the Plaintiffs or their attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the Plaintiff or to their attorneys-at-law.

THIS WRIT was issued by Appleby Hunter Bailhache of Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. JT/11564.001), Attorneys-at Law for the Plaintiffs, whose address for service is that of their Attorneys.

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 Defendants or by the Defendants 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 Plaintiffs (or on the Plaintiffs 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 Defendants.

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 Defendants.

If the Defendants fail to serve their Defence within the appropriate time, the Plaintiffs may enter judgment against them without further notice.

3. A Stay of Execution against the Defendants' goods may be applied for where the Defendants are 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 a 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 Defendants desire 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 Defendants personally is treated as having been served on the day it was delivered to them.
3. Where the Defendant is sued in a name different from his own, the form must be completed by them 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: 370 OF 2006

B E T W E E N:

- (1) ZÜBLIN CHILE INGENIERIA Y CONSTRUCCIONES LTDA
- (2) ZÜBLIN CHILE INGENIERIA Y CONSTRUCCIONES LTDA
SUCURSAL PERU

Plaintiffs

AND

- (1) ALBERT FORSYTH (also known as ALBERT FORSYTH SOLARI)
- (2) FADIA DANERI FORSYTH SOLARI
- (3) ATLANTIC SECURITY BANK

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	Delay may result in judgment being
directions and notes for guidance	entered against the Defendants
carefully before completing this	whereby they may have to pay the
form. If any information required is	costs of applying to set it aside.
omitted or given wrongly, THIS	

FORM MAY HAVE TO BE
RETURNED.

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

2. State whether the Defendants intend to contest the proceedings (tick appropriate box)

YES

NO

3. If the claim against the Defendants is for a debt or liquidated demand, ANID they do not intend to contest the proceedings, state if the Defendants intend 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

Date:

2006

Attorneys for [First/Second/Third] Defendants

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.

Endorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Appleby Hunter Bailhache
Attorneys-at-Law
Clifton House
75 Fort Street
P.O. Box 190 GT
George Town
Grand Cayman
Ref: JT/11564.001

Endorsement by Defendants' Attorney (or by Defendants if suing in person) of his name, address and reference, if any, in the box below.