

IN THE GRAND COURT OF THE CAYMAN ISLANDS

60355/07
CAUSE NO: OF 2007

BETWEEN:

(1) RSM CAYMAN ISLANDS (a firm)

Plaintiff

AND

(1) KENNETH KRYs

(2) CHRISTOPHER STRIDE

(3) KRYs & ASSOCIATES CAYMAN LTD
(formerly RSM CAYMAN ISLANDS LTD)

Defendants

WRIT OF SUMMONS

TO: KENNETH KRYs, whose address for service is c/o Maples and Calder, Ugland House, PO Box 309GT, George Town, Grand Cayman, CHRISTOPHER STRIDE, whose address for service is c/o Maples and Calder, Ugland House, PO Box 309GT, George Town, Grand Cayman and KRYs & ASSOCIATES CAYMAN LTD whose address for service is c/o Maples and Calder, Ugland 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 14th day of August

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

Claim Summary

1. By way of summary of the claims herein, Mr. Krys and Mr. Stride covertly sought to divert for their own benefit the business of the RSM Cayman Islands (the "Partnership") and monies belonging to the partnership. For example:
 - a. Mr. Krys and Mr. Stride paid themselves on two separate occasions monies totalling \$840,000 from the Partnership bank accounts without authority to do so;
 - b. Mr. Krys and Mr. Stride covertly set up a company with the same name as the Partnership to divert the Partnership business for their own benefit;
 - c. Mr. Krys and Mr. Stride kept their intentions hidden from the Partnership until they were found out;
 - d. Mr. Krys and Mr. Stride paid for the fitting out of the offices of the company with monies from the Partnership account;
 - e. Mr. Krys and Mr. Stride destroyed or removed computer equipment and other office equipment from the Partnership for the use of the company without paying for it.
 - f. Mr. Krys and Mr. Stride destroyed computer and other records of the Partnership.
 - g. Mr. Krys and Mr. Stride took without authority computer and office equipment from the Partnership for use in their new business and denied retaining the same despite repeated requests from the Partnership and its attorneys.

2. The Partnership seeks amongst other:

- a. Repayment of all monies taken by the Defendant;
- b. An account arising from intentional misconduct in breach of fiduciary duty;
- c. A transfer of the shares of the Krys & Associates Cayman Ltd to the Plaintiff;
- d. The appointment of a receiver over the receivables relating to work done by the Defendant;
- e. Substantial damages.

The Parties and Governing Agreements

- 3. The Partnership, is a partnership formed and operated under the laws of the Cayman Islands to carry on accounting and auditing business in the Cayman Islands.
- 4. The First Defendant, ("Mr. Krys") was an employee of the Partnership from February 2004 until July 2007.
- 5. The Second Defendant, ("Mr. Stride") was a partner in the Partnership.
- 6. RSM Robson Rhodes LLP ("RSM RR") is a partner in the Partnership.
- 7. Mr. Stride had been a partner in the Partnership from 1 May 2003 until 26 July 2007.
- 8. The Third Defendant ("NewCo") is a company incorporated on 8 June 2007 under the laws of the Cayman Islands.
- 9. NewCo was incorporated and established on the instructions of Mr. Krys provided to Nelson & Co attorneys and/or Maricorp Services Ltd on or prior to 8 June 2007.
- 10. NewCo was founded with the intention *inter alia* of providing services to Mr. Krys

and Mr. Stride in respect of the appointments listed at the Schedule appended hereto (the "Appointments").

The Agreements

11. On 16 September 2004, Mr. Stride entered into an agreement with the Second Plaintiff and McGladrey & Pullen LLP ("M&P"), (the "September 2004 Agreement"). Mr. Stride signed the September 2004 Agreement.
12. Under the September 2004 Agreement, RSM RR, M&P and Mr. Stride were acknowledged as partners in the Partnership.
13. The September 2004 Agreement appended, at Exhibit A, an agreement entitled "Partnership Agreement of RSM Cayman Islands Partnership", (the "Partnership Agreement").
14. Pursuant to Clause 2.1 of the September 2004 Agreement, it was agreed that the Partnership Agreement governed the Partnership from 1 May 2003 to 30 April 2004.
15. Pursuant to Clause 2.2 it was agreed that M&P retired as partner and ceased to be a partner in the Partnership from 30 April 2004.
16. Pursuant to Clause 2.3 of the September 2004 Agreement it was agreed that:
 - a. The Partnership was not dissolved by the retirement of M&P; and
 - b. The Partnership continued with Mr. Stride and RSM RR as partners.
17. Pursuant to Clause 2.4 of the September 2004 Agreement, it was agreed that the right to use the name "RSM Cayman Islands" remained with RSM RR.
18. Mr. Stride continued as a partner in the Partnership after 1 May 2004.

19. The Partnership was thereafter governed by the terms of the Partnership Agreement.
20. Pursuant to the Partnership Agreement and the September 2004 Agreement, RSM RR owned 100% of the financial rights in respect of the Partnership and 70% of the governance rights. Mr. Stride owned 0% of the financial rights and 30% of the governance rights.
21. In February 2004 onwards the Partnership entered into an agreement to employ Mr. Kryz.
22. In a letter dated 23 July 2007 from the Defendants' attorneys, (the "23 July Letter"), Mr. Kryz, by his attorneys, admitted "Mr. Kryz was first employed by the partnership in February 2004".
23. The terms of Mr. Kryz' employment were those set out in an offer letter addressed to Mr. Kryz dated 18 February 2004 as annotated by Mr. Kryz, save that as Mr. Kryz was employed by the Partnership rather than the putative company RSM Cayman Islands Financial Services Limited, the offer letter varied mutatis mutandis to apply between the Partnership and Mr. Kryz (the "Employment Terms")
24. The intention to apply the Employment Terms varied to reflect Mr. Kryz' appointment by the Partnership rather than the putative RSM Cayman Islands Financial Services Limited is reflected in Mr. Kryz' hand written annotations to the 18 February offer letter.
25. At the time of entering into the employment agreement with the Partnership, Mr. Kryz was a Canadian citizen.
26. From February 2004 the Partnership and Mr. Kryz acted in a manner consistent with the terms of Mr. Kryz' employment being governed by the Employment Terms.
27. Without prejudice to the generality of paragraph 27 above

- a. Mr. Krys' work permit was applied for in a manner consistent with the Employment Terms;
- b. Mr. Krys' salary was paid in a manner consistent with the Employment Terms;
- c. Mr. Krys' bonuses for the years ending 30 April 2005 and 30 April 2006 were paid in a manner consistent with the Employment Terms.

28. By reason of the matters pleaded above the parties acted in such a manner in respect of the terms of Mr. Krys' employment that to the extent that the terms were not as pleaded above, the parties acted pursuant to a convention that the terms were as pleaded above and Mr. Krys is estopped from advancing any employment terms inconsistent with the Employment Terms.

29. Clause 4.2 of the Employment Terms provided:

"You will in addition be eligible for a performance bonus. This would [sic] a payment of 10% of sales achieved over \$500,000 per annum, subject to achieving a profit on people of 35% or over. This bonus arrangement will apply for the two financial years commencing with 1st May 2004. Any payment under this arrangement will be made after the year-end and would typically be paid in August of any year. To be eligible for this bonus payment you would need to be in continuing employment and not serving notice at the payment date. However in the event that it is decided not to continue the business venture after 2 years, dependent on the circumstances, the bonus or proportion of the bonus may be payable at the board's discretion"

30. In addition to the specific obligations owed by Mr. Stride to the Partnership under the Partnership Agreement Mr. Stride owed the Partnership duties as a fiduciary.

31. In addition to the specific obligations owed by Mr. Krys to the Partnership under the Employment Terms, by reason of Mr. Krys senior position, including, but not limited to:

- a. his access to the accounts and monies of the Partnership;

- b. his position as a salaried partner;
- c. his appointment as a liquidator on liquidations with the approval and consent of the Partnership in respect of which the Partnership would provide advisory services;

Mr. Krys owed the Partnership duties as a fiduciary.

32. By reason of his employment by the Partnership Mr Krys owed the Partnership a duty of fidelity. Mr. Krys was therefore obliged at all times while an employee to act in good faith and in the interests of the Partnership.

Wrongful removal of \$840,019 from Partnership Accounts

33. For the financial years ending 30 April 2005 and 30 April 2006, Mr. Stride was paid a discretionary bonus. There was no agreement between RR UK and Mr. Stride as to the amount of Mr. Stride's bonus. Mr. Stride's bonus was calculated by RR UK unilaterally.

34. Mr. Stride's bonuses were:

Year Ended	Salary	Bonus	Date Paid
30 April 2005	\$180,000	\$25,000	10 October 2006
30 April 2006	\$180,000	\$50,000	8 December 2006

35. Mr. Krys was paid a bonus for the years ending 30 April 2005 and 30 April 2006 in an amount consistent with Clause 4.2 of the Employment Terms.

36. Mr. Krys' bonuses were:

Year Ended	Salary	Bonus	Date Paid
30 April 2005	\$300,000	\$104,843	10 September 2006
30 April 2006	\$300,000	\$216,466	10 September 2006

37. Between September 2006 and April 2007 RSM RR and Mr. Krys and Mr. Stride entered into negotiations for the basis upon which Mr. Krys and Mr. Stride would be paid a bonus for the year ending 30 April 2007.

38. As at 29 April 2007 Mr. Krys and Mr. Stride were aware:

- a. Bonuses were not generally paid until at least the August following the 30 April year end.
- b. Bonuses were not paid until agreed and approved by the Partnership. By reason of RSM RR's equity and governance rights in the Partnership the approval of RSM RR was required to approve bonuses to Mr. Krys and Mr. Stride.
- c. Bonuses had never been paid on the year end date;
- d. Bonuses could not be accurately calculated and agreed on the 30 April year end date, as they were based on computations of profit that would require the finalisation of the year end accounts, a process that would take some time in any organisation;
- e. Bonuses for Mr. Krys and Mr. Stride had not been agreed; and

- f. It was the normal custom of RSM Cayman Islands to pay bonuses only to staff that were in continuing employment and not serving notice at the payment date.
 - i. This was reflected in the contents of RSM Cayman Islands' standard offer letter to employees which stated:

"You will be eligible for a discretionary annual bonus . . . which will be assessed after the end of our financial year, April 30, and typically payable in August of any year, provided you remain in the employment of the Company on the date of payment and not serving notice"
 - ii. It was also reflect in the Employment Terms Clause 4.2 pleaded at paragraph 29 above.
 - g. All bonuses were payable at the discretion of the Partnership.
39. On 29 April 2007 Mr. Krys became aware of a press release published in a publication called Global Turnaround which stated that RSM RR was discussing a merger with Grant Thornton UK LLP ("GT").
40. As at 30 April 2007 there was no agreement between RSM RR and Mr. Krys and Mr. Stride for the basis upon which bonuses would be calculated for the year ending 30 April 2007.
41. In other litigation Mr. Krys and Mr. Stride have stated that "By 29 April 2007,....[RSM RR] had still failed to make an offer capable of acceptance to Mr. Krys and Mr. Stride in relation to the [2007 bonuses]".
42. The first banking day after becoming aware of the possible GT/RSM RR merger, on 30 April 2007 Mr. Krys and Mr. Stride removed \$690,019 from the Partnership bank accounts (the "30 April Payments"), more particularly:
- a. Mr. Stride paid himself \$188,910 by transfer from the Partnership bank

accounts (the "Stride April Payment").

b. Mr. Krys paid himself \$501,110 by transfer from the Partnership bank accounts (the "Krys April Payment").

43. Prior to transferring the 30 April Payments from the Partnership Accounts, neither Mr. Krys nor Mr. Stride informed RSM RR, and more particularly Mr. David Maxwell, the Managing Partner of RSM RR, that the 30 April Payments were being transferred from the Partnership accounts.
44. Prior to receiving the Stride April Payment from the Partnership Accounts, Mr. Stride did not inform Mr. Maxwell or RSM RR that he was receiving the Stride April Payment paid from the Partnership accounts.
45. Prior to receiving Krys April Payment from the Partnership Accounts, Mr. Krys did not inform Mr. Maxwell or RSM RR that he was receiving the Krys April Payment paid from the Partnership accounts.
46. On 30 April 2007, Mr. Krys was aware of the Stride April Payment.
47. On 30 April 2007, Mr. Stride was aware of the Krys April Payment.
48. The Stride April payment was paid prior to the year-end for the year 1 May 2006 to 30 April 2007.
49. The Krys April payment was paid prior to the year-end for the year 1 May 2006 to 30 April 2007.
50. In respect of the 30 April Payments, Mr. Krys and Mr. Stride were acting in concert.
51. By reason of the matters pleaded at paragraphs 37 to 50 above the following matters individually and cumulatively constituted a breach of fiduciary duties and contractual

duties owed by Mr. Stride to the Partnership:

- a. The removal of the 30 April Payments from the Partnership bank accounts;
- b. The removal of the Stride April Payment from the Partnership bank accounts;
- c. The removal of the Krys April Payment from the Partnership bank accounts;
- d. The receipt by Mr. Stride of the Stride April Payment.
- e. Permitting the receipt by Mr. Krys of the Krys April Payment;
- f. Failing to obtain authorisation or agreement from RSM RR prior to the 30 April Payments, the Stride April Payment and the Krys April Payment;
- g. Failing to inform RSM RR timeously of the 30 April Payments, the Stride April Payments and the Krys April Payments.
- h. Failing to inform RSM RR that Mr. Krys was acting in breach of his duties to the Partnership.
- i. Failing to prevent Mr. Krys from acting in breach of his duties to the Partnership.

52. By reason of the matters pleaded at paragraphs 37 to 50 the following matters individually and cumulatively constituted a breach of fiduciary duties and contractual duties owed by Mr. Krys to the Partnership:

- a. The removal of the 30 April Payments from the Partnership bank accounts;
- b. The removal of the Stride April Payment from the Partnership bank accounts;
- c. The removal of the Krys April Payment from the Partnership bank accounts;

- d. The receipt by Mr. Kryz of the Kryz April Payment.
- e. Permitting the receipt by Mr. Stride of the Stride April Payment;
- f. Failing to obtain authorisation or agreement from RSM RR prior to the 30 April Payments, the Stride April Payment and the Kryz April Payment.
- g. Failing to inform RSM RR timeously of the 30 April Payments, the Stride April Payments and the Kryz April Payments.
- h. Failing to inform RSM RR that Mr. Stride was acting in breach of his duties to the Partnership.
- i. Failing to prevent Mr. Stride from acting in breach of his duties to the Partnership.

53. Mr. Kryz was aware that Mr. Stride owed fiduciary duties to the Partnership.

54. Mr. Stride was aware the Mr. Kryz owed fiduciary duties to the Partnership.

55. Further Mr. Stride's conduct, knowledge and involvement in the matters pleaded at paragraphs 37 to 54 was such as to render his participation in the 30 April Payments contrary to normally acceptable standards of honest conduct.

56. Further Mr. Kryz' conduct, knowledge and involvement in the matters pleaded at paragraphs 37 to 54 was such as to render his participation in the 30 April Payments contrary to normally acceptable standards of honest conduct.

57. Further or alternatively pursuant to the Partnership Agreement, and more particularly Article 3.4 of the Partnership Agreement, the Stride April Payment constituted a loan from the Partnership to Mr. Stride. The Partnership has demanded repayment of the Stride April Payment.

58. No repayment has been made of the Stride April Payment.
59. On 27 June 2007, following his notification to the Plaintiff that he did not intend to remain with the Plaintiff, Mr. Krys diverted \$150,000 from the Partnership Accounts into his own personal bank account (the "Improper June Payment").
60. The Improper June Payment was not authorised by the Partnership, and Mr. Krys was not entitled to the Improper June Payment. Despite specific requests, Mr. Krys has refused to explain the reasons, if any, for his belief to be entitled to the Improper June Payment. In a letter dated 14 August 2007 from Mr. Krys' attorneys it was stated "our clients are not required to provide your clients with any explanation concerning the \$150,000".
61. In the premises the diversion of the Improper June Payment constituted a breach of contractual fiduciary duties owed by Mr. Krys to the Partnership.
62. Mr. Krys is liable to account for the Improper June Payment as a trustee and holds the proceeds thereof on trust for the benefit of the Partnership.
63. Further the removal of the Improper June Payment left the Partnership with insufficient funds in its bank account to meet its debts that were due and payable in its bank account. This serious reduction in the cash liquidity of the Partnership for reasons of personal gain constituted a breach of duties owed by Mr. Krys to the Partnership.
64. By reason of the reduction in the cash liquidity caused by the removal of the 30 April Payments and the Improper June Payment (together the "Wrongfully Taken Monies"), the Partnership has suffered loss and damage, namely the costs of obtaining additional financing which would not have been required had the Wrongfully Taken Monies not been paid to Mr. Krys and/or Mr. Stride.
65. Alternatively Mr. Krys received the Improper June Payment in circumstances where

the continued retention of the monies was unconscionable.

66. In the premises Mr. Krys and Mr. Stride hold the Wrongfully Taken Monies on trust for the benefit of the Partnership and are liable to account for the same.

Wrongful diversion of the Partnership's Business

67. As a result of holding positions as a partner and employee in the Partnership Mr. Stride and Mr. Krys obtained the benefit of appointments as Liquidators and/or Controllers in respect of the matters listed in Schedule A appended hereto (the "Appointments").

68. In the premises Mr. Stride and Mr. Krys are liable to account to the Partnership for any profits made as a result of their holding the Appointments.

69. From 29 April 2007 onwards, Mr. Krys and Mr. Stride agreed and intended

- a. to resign from the Partnership;
- b. to divert the benefit of the Appointments and the profits and business derived therefrom for their own personal benefit;
- c. to offer employment/consultancies to the then employees of the Partnership or those providing consulting services to the Partnership.

70. Although the precise particulars cannot be fully pleaded until after discovery in this matter, the Plaintiff relies upon the matters pleaded at paragraphs 71 to 81 below in support of the allegations at paragraph 69.

71. On or around 8 June 2007 Mr. Krys arranged the incorporation of the Third Defendant ("NewCo") in the name of RSM Cayman Islands Ltd and appointed Maricorp Services Ltd to act on behalf of NewCo.

72. Mr. Krys was the 100% shareholder of NewCo.
73. Mr. Krys and Mr. Stride contacted creditors and those acting for creditors involved in the Appointments and invited them to continue the appointments of Mr. Krys and Mr. Stride once they had left the Partnership and sought to procure the profits and business derived therefrom for their own personal benefit and/or for the benefit of NewCo.
74. In or around 8 June 2007 or shortly thereafter Mr. Krys and/or Mr. Stride applied for a Trade and Business Licence for NewCo.
75. In or around 3 April 2007 Mr. Krys and Mr. Stride entered into a lease for office premises on behalf of the Plaintiff, namely Cayman Corporate Centre, Building B, Ground Floor Unit 10, located in George Town. Since 16 July 2007 at the latest, NewCo improperly occupied these premises for NewCo's own use.
76. On dates between 11 April 2007 and 26 June 2007 Mr. Krys and/or Mr. Stride paid for expenses relating to the establishment of NewCo's business with funds from the Partnership accounts (the "Improper Establishment Funds"). While full details will be provided on discovery, by way of example:
- a. On 11 April 2007 the sum of CI\$13,961.57 was paid from the Partnership bank accounts as a deposit on furniture supplied to the Cayman Centre premises and a further CI\$2,221.50 paid as a deposit on carpeting;
 - b. On 1 June 2007 the Partnership entered into a lease with Kirk Office Equipment for office equipment located at the Cayman Centre and paid a deposit of CI\$4,800 plus the first month's rental of CI\$632;
 - c. A sum of CI\$3,374 was paid on 5 June 2007 from the Partnership bank accounts to pay for the deposit relating to the security system at the offices of NewCo;

- d. A sum of CI\$2,000 was paid on 15 June 2007 from the Partnership bank accounts to pay for NewCo's electricity deposit with Caribbean Utilities Company Ltd.;
77. Mr. Krys and Mr. Stride paid or permitted the payment of the Improper Establishment Funds in breach of duties owed to the Partnership, in breach of trust and in a manner contrary to normally acceptable standards of honest conduct, knowing the same to be a breach of duties and a breach of trust.
78. By reason of the knowledge of Mr. Krys and Mr. Stride, New Co was aware of the matters pleaded above in respect of the Improper Establishment Funds.
79. In the premises Mr. Krys, Mr. Stride and NewCo are liable to account to the Partnership for the Improper Establishment Funds as trustees.
80. Prior to 25 June 2007 neither Mr. Stride nor Mr. Krys informed Mr. Maxwell or RSM UK that Mr. Krys or Mr. Stride had formed the intention pleaded at paragraph 68 above or had taken the steps pleaded at paragraphs 70 to 77 above.
81. Mr. Stride and Mr. Krys were under an obligation to disclose to the Partnership and RSM RR immediately upon their becoming aware of :
- a. their individual and mutual intentions to set up a competitor business;
 - b. the steps taken by Mr. Krys and Mr. Stride to establish a competitor business;
 - c. their individual and mutual intentions to encourage members or staff and contractors to terminate their relationships with the Partnership and to offer them jobs at NewCo; and
 - d. their individual and mutual intention to divert and solicit business from the Partnership to NewCo.

- e. the steps taken by Mr. Krys and Mr. Stride to divert and solicit business from the Partnership to NewCo.;
82. For the avoidance of doubt, in respect of the matters pleaded at paragraph 81 above, Mr. Krys was obliged to inform the Partnership and RSM RR of his actions and intentions and the actions and intentions of Mr. Stride and Mr. Stride was obliged to inform the Partnership and RSM RR of his actions and intentions and the actions and intentions of Mr. Krys.
83. On 26 June 2007 at around 9.45am, the Plaintiff first became aware of the planned misconduct of the Defendants when the Plaintiff's attorneys became aware of NewCo's application for a Trade and Business Licence.
84. Immediately following the discovery of the existence of NewCo, the Plaintiffs, by their attorneys, made enquiries as to the register of members of NewCo pursuant to s.44 of the Companies Law. As a result of those enquiries the Defendants, and each of them, became aware the Plaintiff was aware of their plans trade using NewCo.
85. Having been found out, thereafter on 26 June 2007:
- a. Mr. Krys sent e-mails to creditors and those representing creditors in an attempt to procure for NewCo the business of the Partnership;
 - b. Mr. Krys tendered his resignation from the Partnership.
 - c. Mr. Stride purported to resign from the Partnership.
86. Thereafter the Defendants in order to further the plans and intentions pleaded at paragraph 69 above, by themselves or by giving instructions to third parties , including then employees of the Partnership:
- a. Procured the simultaneous resignations of the Partnership's employees on 16

July 2007;

- b. Removed and retained despite requests working papers, work permits and other documentation from the offices of the Partnership;
 - c. Removed and retained despite requests computers, computer equipment, cabling, personal email devices and electronic back up tapes which belonged to the Partnership;
 - d. Removed and retained despite requests office equipment and supplies owned by the Partnership;
 - e. Destroyed or removed records and documents owned by the Partnership;
 - f. Sought to divert the work previously undertaken by the Partnership to NewCo.
87. The conduct of the Mr. Kryz and Mr. Stride pleaded at paragraphs 65 to 86 above constituted a breach of fiduciary duties, breach of duties of fidelity, a breach of contract and together with NewCo constituted an actionable conspiracy.
88. Further NewCo is to be attributed with the knowledge of Mr. Kryz and Mr. Stride who were directors of NewCo and owes duties to the Partnership in a like manner as Mr. Kryz and Mr. Stride.
89. Mr. Stride holds the Stride April Payment on trust for the benefit of the Partnership and is liable to repay the Stride April Payment or the traceable proceeds of the Stride April Payment.
90. Mr. Kryz holds the Kryz April Payment on trust for the benefit of the Partnership and is liable to repay the Kryz April Payment or the traceable proceeds of the Stride April Payment.

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91. Mr. Stride is liable to account as trustee to the Partnership for the Krys April Payment.
92. Mr. Krys is liable to account as trustee to the Partnership for the Stride April Payment.
93. To the extent that NewCo has received the benefit of any monies paid from the 30 April Payment or the traceable proceeds therefrom (the "Improper NewCo Funding"), NewCo holds the Improper NewCo Funding on trust for the benefit of the Partnership or is liable to account to the Partnership as a trustee for the same.
94. Mr. Krys, Mr. Stride and New Co and each of them are liable to account as trustee for the Improper Establishment Funds.
95. Mr. Krys, Mr. Stride and NewCo hold any profits made by each of them in respect of all work done arising from the Appointments on trust for the benefit of the Partnership.
96. Mr. Krys, Mr. Stride and NewCo are liable to account as a trustee in full for all profits made by Mr. Krys, Mr. Stride and NewCo in respect of all work done arising from the Appointments.
97. Further to the extent that:
- a. the shares in NewCo held by Mr. Krys and/or Mr. Stride were purchased with the traceable proceeds of the 30 April Payments; or
 - b. the professional advice and work undertaken in order to incorporate NewCo were paid for with the traceable proceeds of the 30 April Payments; or
 - c. Monies were paid in respect of license fees for NewCo and/or corporate services in order to establish and maintain NewCo with the traceable proceeds of the 30 April Payments
 - d. NewCo was established in breach of duties owed by Mr. Krys and Mr. Stride

for the improper purpose of diverting the business of the Partnership to NewCo for the benefit of Mr. Krys and Mr. Stride:

The shares in NewCo held by Mr. Krys, Mr. Stride or their successors in title are held on trust for the benefit of the Partnership.

98. Further or alternatively by reason of the breaches of Partnership Agreement by Mr. Stride, the breaches of Employment Terms by Mr. Krys, and the wrongful conspiracy of Mr. Krys, Mr. Stride and NewCo, the Partnership has suffered loss and damage as detailed at paragraphs 100 to 108 below:
99. Further or alternatively by reason of the breaches of fiduciary duties and/or the wrongful assistance in the breaches of trust and/or the receipt of monies and/or assets in breach of trust pleaded herein Mr. Krys, Mr. Stride and NewCo are liable to compensate the Partnership in equity for the matters pleaded at paragraphs 100 to 108.
100. The Partnership has lost the benefits of the 30 April Payments.
101. The Partnership has lost the benefit of the Improper June Transfer.
102. The Partnership has lost the benefit of the Improper NewCo Funding.
103. The Partnership has lost the benefit of the business derived from the Appointments.
104. The Partnership has lost the opportunity to obtain the benefit of the business derived from the Appointments either directly or through a transfer for consideration to a third party.
105. The value of goodwill attributable to the Partnership has been reduced.
106. The Partnership has lost the benefit of the Partnership work-force.

107. The Partnership has had to expend business time and opportunity dealing with the matters pleaded herein.

108. The Partnership has had to instruct lawyers in the Cayman Islands and the United Kingdom to deal with issues arising from the matters pleaded herein and is entitled to repayment of all expenses incurred and costs related to these matters.

Wrongful removal and destruction of Partnership Records

109. Clause 11.2(a) of the Employment Terms provides:

“11.2 Upon the termination of your employment (for whatever reason and howsoever arising) you:

shall not take away, conceal or destroy but shall immediately deliver up to the Company all documents (which expression shall include but without limitation notes, memoranda, correspondence, drawings, sketches, plans, designs and any other materials upon which data or information is recorded or stored) relating to the business or affairs of the Company and its Associated Companies or any of their clients/customers, partners, shareholders, employees, officers, suppliers and agents (and you shall not be entitled to retain any copies or reproductions of any such documents) together with any other property belonging to the Company which may then be in your possession or under your control”

110. Further and in any event the removal and/or destruction of property belonging to the Partnership or conspiring with others to do the same constituted a breach of Mr. Krys and Mr. Strides fiduciary and contractual duties to the Partnership.

111. In breach of Clause 11.2(a) of the Employment Terms and in breach of fiduciary and contractual duties to the Partnership, between 1 July 2007 and 16 July 2007 Mr. Krys and Mr. Stride orchestrated the removal and/or destruction of

Partnership records and documents, including

- a. the removal of the Partnership working papers in respect of work related to the Appointments;
- b. the removal and/or destruction of the Fixed Asset Register;
- c. the removal and/or destruction of supporting evidence including but not limited to supporting invoices and purchase orders relating to the Improper Establishment Funds
- d. the removal of employee work permits
- e. the removal of detailed supporting evidence contained within the time and expense reporting system that might be necessary to substantiate claims for reimbursement submitted to creditors committees and Court for approval
- f. the removal and /or interference with, so as to reduce the possibility of their successful use, of the back up tapes for the IT system.

(Together the "Improper Removal or Destruction of Property")

112. Further the matters pleaded in respect of the Improper Removal Of Property constitute a conversion of the property of the Partnership for the use of NewCo, Mr. Krys and/or Mr. Stride.

113. By reason of the Improper Removal of Property has suffered loss and damage, including but not limited to the cost of replacing property, the costs, including management, staff and legal costs of investigating, and identifying the removed or destroyed property and the reputational harm caused to the Partnership by reason of the Defendants' misconduct.

Wrongful removal of Partnership Property

114. On or around the weekend of 14/15 July 2007, the Defendants, and in particular Mr. Krys, sought, without authority, to remove files, office equipment and computer equipment belonging to the Partnership (the "Wrongfully Taken Property"). No notice was given to the Partnership that such improper conduct was being arranged.

115. By a letter dated 16 July 2007 the Defendants, by their attorneys, stated that the Defendants "had obviously not taken accounting and other records that belong to [the Partnership]". This was not true. In fact the Defendants had wrongfully taken almost all records belonging to the Partnership, had removed computer hard drives and back up tapes and had deleted or destroyed over 200,000 electronic files the contents of which were the property of the Partnership.

116. By a letter dated 18 July 2007, the Defendants, by their attorneys, stated that the Defendants "do not believe they are using RSM Cayman Islands' IT equipment or software". During the transition period, our clients are using IT equipment recently purchased or leased by themselves or that staff personally brought in". This was not true.

117. Unhelpfully the Defendants have sought that the Partnership identify specific property which was wrongfully taken before returning it, in piece meal fashion. This has proved very difficult and time consuming as the Defendants arranged the destruction or removal of the Partnership records and removed or failed to keep a proper asset register for the Partnership.

118. Following a series of chasing letters the Defendants have to date admitted wrongfully taking a number Blackberry devices, six laptop computers, IT back up tapes and other miscellaneous office equipment.

119. Further computer and office equipment is still believed to be wrongfully retained by the Defendants. On 8 August 2007 the Defendants, by their attorneys,

promised a "complete audit" of equipment used by the Defendants. Despite several requests details of this audit has not been provided to the Partnership or its attorneys.

120. In the premises the actions of the Defendants in relation to the Wrongfully Taken Property constitute a conspiracy, a breach of fiduciary duties, a breach of contract, a breach of copyright and a conversion of the property.

121. The Partnership is entitled to damages for the same, the return of all property and a full account of the property held by the Defendants.

Mr. Kry's' Obligation To Resign From Appointments

122. Clause 11.2(b) of the Employment Terms provides:

"11.2 Upon the termination of your employment (for whatever reason and howsoever arising) you:

....

(b) shall at the request of the Board or anyone authorised by the Board immediately resign without claim for compensation from any office as a director or other officer of the Company or of any company or other organisation which appointment arose out of or in connection with your employment with the Company and you shall your best endeavours to ensure the appointment of a Director or other nominee of the Board in your place;"

123. In respect of each and every appointment held by Mr. Kry's in respect of the Appointments (the "Kry's Appointments"), the Kry's Appointments constitute an "office" within the meaning of Clause 11.2(b).

124. Following the Mr. Kry's resignation as an employee of the Partnership, the Partnership sought that Mr. Kry's resign from the Kry's Appointments.

125. In breach of Clause 11.2(b), Mr. Kry's refused to resign from the Kry's

Appointments and continues to hold and benefit from the Krys Appointments.

126. In the premises Mr. Krys is liable to pay by way of disgorgement damages all monies earned by Mr. Krys in respect of the Krys Appointments, since Mr. Krys earned said monies doing the very thing he had contracted not to do.

Mr. Stride's Obligation Not To Compete With The Partnership

127. Article 8 of the Partnership Agreement provides:

"8.1 Non-Solicitation and Noncompetition of Managing Partner. Except as otherwise agreed by the Partners, while the Managing Partner is a Partner in the Partnership and for a period of two (2) years following the Managing Partner's withdrawal or expulsion from the Partnership, for whatever reason, whether voluntary or involuntary, the Managing Partner shall not Compete with the Partnership in the Cayman Islands. The Managing Partner acknowledges that if the Manager Partner Competes with the Partnership, the Partnership would be materially and detrimentally harmed, the monetary loss from which would be difficult, if not impossible, to measure. This section 8.1 shall survive the termination of this Agreement."

128. In respect of:

- a. Each appointment of Mr. Stride listed in the Appointments in respect of a Cayman Islands company; or
- b. Each appointment for which Mr. Stride solicits work for NewCO. and
- c. Mr. Stride appointment as a Director of NewCo.

Mr. Stride's decision to provide these services and to continue to provide these services constitutes a breach Article 8 of the Partnership Agreement.

129. In the premises the Partnership is entitled to an order that:

- a. Mr. Stride resign as a Director of NewCo;
- b. Mr. Stride is enjoined from competing with the Partnership in the Cayman Islands;
- c. Mr. Stride is liable to pay by way of disgorgement damages all monies earned by Mr. Stride arising of the Appointment or in respect of providing services to NewCo, since Mr. Stride earned said monies doing the very thing he had contracted not to do.

130. Further NewCo, by its directors, was and is aware of the terms of Article 8 of the Partnership Agreement and Clause 11.2(b) of the Employment Terms and is aware that by providing services in respect of the Appointments to Mr. Krys or to employ or obtain any services from Mr. Stride it is procuring the breach of the said contractual obligations..

131. In the premises NewCo is liable to pay by way of disgorgement damages all monies earned by NewCo derived from the Appointments and/or derived from the services provided by Mr. Stride.

Interest and allocation of monies paid

132. Further in respect of all monies claimed herein, whether by way of debt, damages, disgorgement damages, equitable compensation or repayment of monies payable as a trustee, the Partnership claims interest pursuant to the Judicature Law (2004 Revision) and/or pursuant to equity and/or pursuant to the inherent jurisdiction of the Court at such rate and for such period as the Court determines appropriate.

133. On 7 August 2007 Mr. Krys paid \$150,000 to the Partnership.

134. The Partnership shall apply these monies in diminution of:

- a. The interest claimed herein;
- b. To the extent the interest assessed by the Court is less than \$150,000, the costs claimed herein;
- c. To the extent the monies payable assessed in respect of in (i) and (ii) above are less than \$150,000, the damages claimed herein.

AND the Plaintiff claims:

As against Mr. Krys:

- i) An account;
- ii) A declaration that monies and/or assets held by Mr. Krys are held on trust for the benefit of the Partnership;
- iii) An order for the transfer to the Partnership of monies and/or assets held by Mr. Krys on trust for the benefit of the Partnership;
- iv) A declaration that Mr. Krys' shareholding in Krys & Associates Cayman Ltd is held on trust for the benefit of the Partnership;
- v) All necessary orders to effect the transfer of Mr. Krys' shareholding in Krys & Associates Cayman Ltd to the Partnership and to amend Krys & Associates Cayman Ltd's share register to reflect the same;
- vi) Damages;
- vii) Disgorgement damages;
- viii) Equitable compensation;
- ix) Interest pursuant to statute or equity at such rate and for such period as the Court thinks fit;
- x) All further accounts, orders and enquiries to effect the relief sought herein;
- xi) Costs

As against Mr. Stride

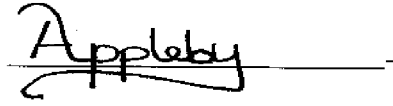
- i) An account;
- ii) A declaration that monies and/or assets held by Mr. Stride are held on trust for the benefit of the Partnership;
- iii) An order for the transfer to the Partnership of monies and/or assets held by Mr. Stride on trust for the benefit of the Partnership;
- iv) Damages;
- v) Disgorgement damages;
- vi) Equitable compensation;
- vii) An order that Mr. Stride resigns forthwith as a Director of Krys & Associates Cayman Ltd;
- viii) An order that Mr. Stride cease provide any services or advice to Krys & Associate Cayman Limited;
- ix) Interest pursuant to statute or equity at such rate and for such period as the Court thinks fit;
- x) All further accounts, orders and enquiries to effect the relief sought herein;
- xi) Costs

As against Krys & Associates Cayman Ltd

- i) The appointment of a receiver over the receivables of Krys & Associates Cayman Ltd in respect of each of the Appointments with power to distribute to the Partnership all profits earned by the Defendants and each of them in respect of the same and then to distribute any remainder to the Defendants as appropriate;
- ii) An account;
- iii) An order that Krys & Associates provide a detailed audit of all property retained by them;
- iv) A declaration that monies and/or assets held by Krys & Associates Cayman Ltd are held on trust for the benefit of the Partnership;
- v) An order for the transfer to the Partnership of monies and/or assets held by Krys & Associates Cayman Ltd on trust for the benefit of the Partnership;
- vi) Damages;
- vii) Disgorgement damages;
- viii) Equitable compensation;
- ix) Interest pursuant to statute or equity at such rate and for such period as the Court thinks fit;
- x) All further accounts, orders and enquiries to effect the relief sought herein;
- xi) Costs

Writ issued this 14th day of August 2007

Filed this 14th day of August 2007

A handwritten signature in cursive script that reads "Appleby". The signature is written over a horizontal line.

APPLEBY

Filed by Appleby, attorneys for the Plaintiff, whose address for services is PO Box 190GT, Clifton House, 75 Fort Street, George Town, Grand Cayman, Cayman Islands. (Ref: GH/11151.006)

SCHEDULE TO STATEMENT OF CLAIM

Appointments held by Ken Kryz and Chris Stride in the Cayman Islands

A. Court supervised appointments

Action No.	Appointment	Company
381 of 2004	JOLs	Citrico International Ltd
169 of 2005	JOLs	Dyoll Insurance Company Limited
125 of 2007	Controllers	Giamo Fund
61 of 2007	JOLs	Oryx Natural Resources Ltd
191 of 2005 400 of 2005	Controllers JOLs	PFA Assurance Group, Ltd
361 of 2004	JOLs	Quarry Products Limited
244 of 2005	JOLs	Segoes Holdings Ltd
205 of 2005	JOLs	Segoes Services Ltd
213 of 2006 (Consolidated Cause no. for 22 companies)	JOLs	The SPhinX Group of Companies

B. Other appointments

Type	Company
MVL	Axia Offshore Partners, Ltd
MVL	Spring Point Opportunity Offshore Fund II
MVL	Hammerman Capital Offshore, Ltd
MVL	Al Bait UK Real Estate Fund Limited
MVL	Digilog Suzaku Master Fund Limited

Appointments held by Ken Kryv and Chris Stride outside the Cayman Islands

Jurisdiction.	Action No.	Appointment	Company
Jamaica	2005 HCV 5223	JOLs	Dyoll Insurance Company Limited
BVI	171 of 2003 274 of 2005	Joint Administrator JOLs	FCS Thailand Fund Limited;
BVI	171 of 2003 275 of 2005	Joint Administrator JOLs	FCS Asian Millenium Fund Limited
BVI	171 of 2003 (Joint Administrator) 276 of 2005 (JOLs)	JOLs	Waidberg Millenium Fund Limited
Belize	7 of 2005	JOLs	Paramount Financial Ltd
Belize	14 of 2005	JOLs	Prima Holdings Limited

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 355 OF 2007

B E T W E E N:

RSM CAYMAN ISLANDS (A Firm)

Plaintiff

AND

(1) KENNETH KRY

(2) CHRISTOPHER STRIDE

(3) KRY & ASSOCIATES CAYMAN LTD
(formerly RSM CAYMAN ISLANDS LTD)

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 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 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 ☐ NO
-

Service of the Writ is acknowledged accordingly

Date:

Attorneys for Defendant(s)

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 KY1-1104 KY1-1104 where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Appleby
Attorneys-at-Law
Clifton House
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104 KY1-1104
Re: NVJ/GH/11151.006

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

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**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 Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO BOX 495, GRAND CAYMAN KY1-1106.

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 Plaintiff (or on the Plaintiff 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 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 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 Defendant desires to make for payment of the money by instalments or otherwise.

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 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 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.