

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *0000* OF 2008

BETWEEN:

FINBARR TIMOTHY O'CONNOR

Plaintiff

-AND-

FORTELLUS SPECIAL SITUATIONS FUND LTD

Defendant

WRIT OF SUMMONS

DEC 23 2008

FORTELLUS SPECIAL SITUATIONS FUND LTD

TO:

M&C Corporate Services Limited, Ugland House
PO Box 309, George Town,
Grand Cayman, Cayman Islands

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

Within fourteen (14) days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, Grand Cayman, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 23rd day of December 2008

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is an individual whose address is 4 Ridgebrook Road, Greenwich Connecticut, USA. The Plaintiff is a former director of the Defendant and Fortelus Special Situations Master Fund Ltd (the "Master Fund").
2. The Defendant (hereinafter the "Fund") is an exempted company incorporated in the Cayman Islands as an investment company whose registered office is care of M&C Corporate Services Limited, Ugland House, PO Box 309, George Town, Grand Cayman, Cayman Islands.
3. The Fund is registered as a regulated mutual fund with the Cayman Islands Monetary Authority. By way of subscriptions the Fund provides its investors with different classes of shares in exchange for their investments in the Fund. The Fund in turn invests in the Master Fund.
4. On March 29, May 30 and June 30 2007 the Plaintiff successfully subscribed for Class E US\$ Management Shares in the Fund. In subscribing for Class E US\$ Management Shares the Plaintiff did not elect to opt out of participation in Special Situation Investments ("SSIs") as defined in the Prospectus of the Fund. As a result of his participation in SSIs the Plaintiff acquired Class A shares. As at September 30, 2008 the Plaintiff's shareholding was as follows:

<u>Share Class</u>	<u>Shares</u>
Class A USD-Series SP2 D	15,8649
Class A USD-Series SP4 F	8,7965
Class A USD-Series SP5 J	249,1298
Class E USD-Management Shares	2,003,1186
5. The terms of the Plaintiff's shareholding were governed by and subject to the terms of the Subscription Agreements dated March 29, May 30, and June 30 2007 the Prospectus of the Fund, and the Articles of Association of the Fund (collectively referred to hereinafter as the "Investment Agreement").
6. On or about the 29th of April 2008, the Plaintiff requested a redemption of all of his Class E USD-Management Shares.
7. On or about the 21st of May 2008, the Plaintiff resigned as a director of the Fund, the Master Fund and other related entities.

8. The Fund redeemed the Plaintiff's Class E USD-Management Shares and on or about November 12th 2008 provided the Plaintiff with 95% of the Class E USD-Management Shares redemption proceeds.
9. The Plaintiff wrote the Fund on several occasions demanding payment of the entirety of the redemption proceeds pursuant to the terms of the Investment Agreement.
10. Despite the several demands of the Plaintiff the Fund has refused to pay the Plaintiff the remaining 5% of the Class E USD-Management Shares redemption proceeds. The Defendant in response to the Plaintiff's demand stated through its attorneys by way of letter dated 24th of November 2008 that it held back 5% of the Plaintiff's redeemed Class E USD-Management Shares investment to cover any anticipated future liabilities in relation to the Plaintiff's Class A Shares.
11. The Investment Agreement does not permit the Fund to retain redemption proceeds to cover anticipated future liabilities in relation to Class A Shares.
12. There being no lawful justification for the hold back of redemption proceeds the Plaintiff accordingly seeks the immediate payment of the remaining redemption proceeds amounting to US\$ 109,444.85.
13. The Plaintiff seeks interests on the above from the 12th of November 2008 pursuant to the Judicature Law and Rates of Interest in the amount of 7 1/4% from the 12th of November 2008 until judgment and thereafter until paid in full.

AND THE PLAINTIFF claims against the Defendant:

- (1) The sum of US\$109,444.85 (the "Principal Sum");
- (2) Interest on the above Principal Sum in the amount of US\$ 913.08 as at the 23rd of December 2008 and increasing at the daily rate of US\$ 21.74 per day until the Principal Sum is paid in full;
- (3) Costs.
- (4) Such further or other relief as the Court thinks just.

Dated the 23rd day of December 2008


Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is filed by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands.

INDORSEMENT

The amount claimed in respect of the debt is US\$ 109,444.85 as principal and US\$ 913.08 as interest as of December 23, 2008 for a total amount of US\$ 110,357.93 and increasing at a daily rate of US\$ 21.74. If within the time for returning the Acknowledgement of Service, the Defendants pay the Plaintiff or its Attorneys-at-Law the total amount claimed in principal and interest, the ad valorem fees, its legal costs and service and filing fees further proceedings will be stayed. The money must be paid to the Plaintiff or to its Attorneys-at-Law.

STATEMENT REGARDING INTEREST

1. Pre-judgment and post judgment interest upon the said Principal Sum is claimed pursuant to the Judicature Law (1995 Revision). The applicable rate is 7 ¼%
2. The date at which the interest became payable was from November 12, 2008;
3. The total interest claimed as of December 23, 2008 is US\$ 913.08. The said interest is increasing at a per diem rate of US\$ 21.74;

**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, 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 Plaintiff (or on the Plaintiff if acting in person).
If a Statement of Claim is endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (14) days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for fourteen (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 fourteen (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.
Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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FINBARR TIMOTHY O'CONNOR

Plaintiff

-AND-

FORTELLUS SPECIAL SITUATIONS FUND LTD

Defendant

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.

- State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

- State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
Yes [] No []

- If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)
Yes []

Service of the Writ is acknowledged accordingly

(Signed) _____

[Attorney] for

[Defendant in Person]

Address for service: _____

Please see overleaf.....

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

BROADHURST BARRISTERS
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST
INDIES

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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