


IN THE GRAND COURT OF THE CAYMAN ISLANDS


CAUSE NO: 43 OF 2009

BETWEEN:

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- (1) ASESORIAS DE INGENIERIA Y CONSTRUCCIONES LTDA
  - (2) ZÜBLIN CHILE INGENIERIA Y CONSTRUCCIONES LTDA SUCURSAL PERU
  - (3) ED. ZÜBLIN AG

Plaintiff

AND

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- (1) ATLANTIC SECURITY BANK
  - (2) ALPINE TRADING CORPORATION
  - (3) WODSON CORPORATION

Defendants

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WRIT OF SUMMONS

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TO: (1) **Atlantic Security Bank** of Ugland House, PO Box 309GT, George Town, Grand Cayman, (2) **Alpine Trading Corporation** c/o Nelson & Co, attorneys, 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105, Cayman Islands and (3) **Wodson Corporation** c/o Nelson & Co, attorneys, 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105, Cayman Islands.

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

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 29<sup>th</sup> day of January 2009

**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.

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## STATEMENT OF CLAIM

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1. The First and Second Plaintiffs are plaintiffs in Cause No. 370 of 2006 (the "Forsyth Fraud Action"). The Third Plaintiff is the parent company of the First Plaintiff. Together the Plaintiffs will be collectively referred to herein as Zublin.
2. The Forsyth Fraud Action is a claim by the First and Second Plaintiffs to recover the proceeds of a fraud perpetrated on them by Mr. Albert Forsyth, their former attorney in Peru, and his wife, Fadia Daneri De Forsyth (the "Forsyths").
3. The Forsyth Fraud Action seeks recovery of \$1,602,710 paid into accounts of the Forsyths with the First Defendant, ("ASB"), together with interest thereon.
4. By an order in the Forsyth Fraud Action dated 17 September 2007 (the "Fraud Jurisdiction Order"), Mr. Justice Henderson ordered that ASB provide discovery of certain documents "in which [ASB] has reason to believe the [Forsyths] have an interest".
5. ASB believed that the Second Defendant, ("Alpine"), was a company in which the Forsyths' had an interest.
6. Alpine is a company incorporated in Panama.
7. Alpine is a company in which the Forsyths have or had an interest.
8. ASB believed that the Third Defendant, ("Wodson"), was a company in which the Forsyths' had an interest. Together Wodson and Alpine shall be referred to as the Associated Companies.

9. Wodson is a company incorporated in Panama.
10. Wodson is a company in which the Forsyths have or had an interest.
11. ASB informed Wodson that it intended to provide discovery of documents in its possession relating to Wodson pursuant to the Fraud Jurisdiction Order, (the "Wodson Documents").
12. ASB informed Alpine that it intended to provide discovery of documents in its possession relating to Alpine pursuant to the Fraud Jurisdiction Order (the "Alpine Documents").
13. In Cause 529 of 2007, Wodson objected to ASB providing discovery of the Wodson Documents.
14. In Cause 529 of 2007 Alpine objected to ASB providing discovery of the Alpine Documents.
15. The Associated Companies attended a hearing before Mrs. Justice Levers on 12 February 2008.
16. By a judgment dated 27 February 2008, Mrs. Justice Levers ruled that ASB were entitled to produce the Wodson Documents and the Alpine Documents (the "Judgment").
17. At the hearing on 12 February 2008, the attorneys representing the Associated Companies did not apply under Practice Direction No. 3 of 1997 for an order that the Judgment remain confidential after delivery.
18. At the hearing on 12 February 2008, the attorneys representing ASB did not apply under Practice Direction No. 3 of 1997 for an order that the Judgment remain confidential after delivery.

19. Upon receipt of the Judgment, the attorneys representing the Associated Companies did not apply under Practice Direction No. 3 of 1997 for an order that the Judgment remain confidential after delivery.
20. Upon receipt of the Judgment, the attorneys representing ASB did not apply under Practice Direction No. 3 of 1997 for an order that the Judgment remain confidential after delivery.
21. Between 12 February 2008 and 10 April 2008 there was no order of the Court that the Court file in Cause 529 of 2007 be sealed.
22. Between 12 February 2008 and 10 April 2008 there was no order of the Court that the Judgment be treated as confidential.
23. ASB's attorneys' note of the hearing of 12 February 2008 contained no reference to an application being made for the Court file to be sealed.
24. ASB's attorneys' note of the hearing of 12 February contained no reference to Mrs. Justice Levers ordering that the Court file be sealed.
25. By a letter dated 3 March 2008 attorneys for ASB invited Mrs. Justice Levers to seal the Court file.
26. No order was made in Cause 520 of 2006 between 3 March 2008 and 10 April 2008.
27. At all times between 27 February 2008 and 10 April the Judgment was a public document.
28. In March 2008, as was the customary practice of the Grand Court, a selection of recent judgments of the Grand Court were published and delivered to various attorneys, including representatives of the Cayman Islands Law School, a partner in Maples and Calder, the firm of attorneys representing ASB, and a partner in

Appleby, the firm of attorneys representing the First Plaintiff and Second Plaintiff in the Forsyth Fraud Action (the "Publication").

29. The purpose of the Publication, and the customary practice, was to assist the timely dissemination of recent decisions of the Grand Court.
30. The receipt of the Judgment by Appleby was not subject to any obligation of confidentiality.
31. The receipt of the Judgment by Appleby was not received as confidential information with respect to business of a professional nature within the meaning of s.3(1) of the Confidential Relationships (Preservation) law (1995 Revision).
32. On 1 April 2008 Appleby provided copies of the Judgment to Zublin and Zublin's attorneys in Germany and the United States (the "Recipients").
33. The receipt of the Judgment by the Recipients was not subject to any obligation of confidentiality.
34. The receipt of the Judgment by the Recipients was not received as confidential information with respect to business of a professional nature within the meaning of s.3(1) of the Confidential Relationships (Preservation) law (1995 Revision).
35. By reason of the publication of the Judgment, Zublin is aware of information relevant to the Forsyth Fraud Action and relevant to litigation in other jurisdictions, including Germany and the United States, involving the fraud which Zublin alleges was committed by the Forsyths.
36. The Associated Companies have alleged that Zublin, and its advisors, are not entitled to retain copies of the Judgment or use the information contained in the Judgment.

37. ASB has not confirmed that Zublin, and its advisors, are entitled to retain copies of the Judgment or use the information contained in the Judgment.
38. Despite requests the Associated Companies have failed to provide a legal basis upon which it is alleged that Zublin, or its advisors, received the Judgment on a confidential basis or in breach of any obligation of confidentiality.

AND the Plaintiffs claim

1. A declaration that the Plaintiffs and their legal advisors are entitled to retain and use the Judgment without limitation or restriction.
2. A declaration that the Judgment was a public document at all times from 27 February 2008 onwards.
3. A declaration that there was no Order of the Court sealing the Court file in Cause 520 of 2007 from 12 February 2008 to 10 April 2008.
4. A declaration that there was no Order of the Court ordering that the Judgment remain confidential.
5. Costs.

Dated the 29<sup>th</sup> day of January 2009



APPLEBY

THIS WRIT was issued by Appleby of Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. GH/11564.001), Attorneys-at Law for the Plaintiffs.

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CAUSE NO: OF 2009

B E T W E E N:

- (1) ASESORIAS DE INGENIERIA Y CONSTRUCCIONES LTDA
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- (3) ED. ZÜBLIN AG

Plaintiff

AND

- (1) ATLANTIC SECURITY BANK
- (2) ALPINE TRADING CORPORATION
- (3) WODSON CORPORATION

Defendants

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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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.

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

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

YES

NO

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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

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Service of the Writ is acknowledged accordingly

Signed \_\_\_\_\_

Attorneys for Defendant

Address for service:

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

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

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

[Empty box for Defendant's Attorney endorsement]

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, 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 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.

*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 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.