

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



Cause No FSD 30 of 2013

BETWEEN:

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

Plaintiff

and-

- (1) BANK OF BERMUDA (CAYMAN) LIMITED
(2) HSBC SECURITIES SERVICES (LUXEMBOURG) SA

Defendants

WRIT OF SUMMONS

TO: Bank of Bermuda (Cayman) Limited
PO Box 513 KY1-1106, Strathvale House,
90 North Church Street, George Town,
Grand Cayman, Cayman Islands

AND: HSBC Securities Services (Luxembourg) SA
16, boulevard d'Avranches
L-1160 Luxembourg



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 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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

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

Issued this 20th day of February 2013.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

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GENERAL INDORSEMENT

The Plaintiff claims:

1. As against the First Defendant;

Damages for breach of contract on the part of the First Defendant in respect of the period during which the First Defendant acted as administrator to the Plaintiff. Such breaches relate in particular to the following: -

- (1) the determinations of the Plaintiff's Net Asset Value undertaken by the First Defendant were very substantially incorrect;
- (2) the First Defendant did not exercise reasonable care and skill in determining the Plaintiff's Net Asset Value;
- (3) the First Defendant did not take reasonable steps to ensure that the information provided as to the value of the Plaintiff's investments was accurate; and
- (4) the First Defendant did not advise the Plaintiff that it was unable properly to discharge its duties under the administration agreements.

2. As against the Second Defendant;

Damages for breach of contract on the part of the Second Defendant in respect of the period during which the Second Defendant acted as custodian to the Plaintiff. Such breaches relate in particular to the following: -

- (1) the Second Defendant failed to keep safe the Plaintiff's securities which were deposited with the Second Defendant and which were in turn deposited with Bernard L Madoff Investment Securities LLC ("BLMIS") as sub-custodian;
- (2) the Second Defendant failed to use due care and diligence in the appointment of BLMIS as sub-custodian;
- (3) the Second Defendant did not have objectively reasonable grounds to enable it to be satisfied as to the ongoing suitability of BLMIS to provide custodial services;
- (4) the Second Defendant failed to require BLMIS, the sub-custodian, to implement the most effective safeguards available under the laws and commercial practices of BLMIS's jurisdictions in order to ensure the most effective protection of the Plaintiff's assets; and
- (5) the Second Defendant failed to advise the Plaintiff that it was unable to discharge properly its duties under the custodian agreement.

3. As against the First Defendant and/or the Second Defendant;

A declaration that the First and/or Second Defendant are liable to compensate the Plaintiff in damages to compensate the Plaintiff for loss and damage it has suffered as a result of being under a liability, if any, to the Trustee for the Liquidation of BLMIS appointed under the United States Securities Investor Protection Act for the recovery of transfers made to the Plaintiff (directly or indirectly) from BLMIS.

4. Interest pursuant to section 34 of the Judicature Law (2007 Revision) on such damages as may be awarded to it at such rate and for such period as the Court thinks fit.
5. Such further or other relief as this Honourable Court thinks fit.
6. Costs.

Dated this 20th day of February 2013

Mourant Ozannes

Mourant Ozannes
Attorneys-at-law for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgment 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 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment 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 "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 Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, 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

NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 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.

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Plaintiff

-and-

(1) BANK OF BERMUDA (CAYMAN) LIMITED
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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

(Signed)

..... [Attorneys for the Defendant]

Address for service: (*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 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.

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

Mourant Ozannes
Attorneys at Law
94 Solaris Avenue
Camana Bay
PO Box 1348
Grand Cayman KY1-1108

ref: 8000613/56647741/1.

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