

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 22 OF 2018

BETWEEN: GEORGE ALLEN COWAN PLAINTIFF

AND:

(1) EQUIS SPECIAL L.P. (PREVIOUSLY KNOWN AS EQUIS ASIA FUND SPECIAL L.P.), ACTING BY ITS GENERAL PARTNER EQUIS SPECIAL GP

(2) EQUIS SPECIAL GP (PREVIOUSLY KNOWN AS EQUIS ASIA FUND SPECIAL GP), IN ITS CAPACITY AS GENERAL PARTNER OF EQUIS SPECIAL L.P.



DEFENDANTS



WRIT OF SUMMONS

TO: Equis Special L.P., PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands

Equis Special GP, PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, 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 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, 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 return the Acknowledgement 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 19th day of February 2018

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

The Parties

1. The First Defendant is an exempted limited partnership which was formed in the Cayman Islands under the Exempted Limited Partnership Law on 24 October 2011 with registered number LP52747. The First Defendant's principal place of business at PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands.
2. At all material times, the First Defendant acted by its General Partner, the Second Defendant.
3. The Second Defendant is a company incorporated under the laws of the Cayman Islands on 21 October 2011 with company number 263635. The Second Defendant's registered office is at PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands.
4. The Plaintiff has over 30 years of operational experience in the Asian energy and power sectors. He is a Registered Professional Engineer in Texas and is fluent in Mandarin and English.
5. At all material times, the limited partners of the First Defendant were as follows:
 - (a) The Plaintiff;
 - (b) David Charles Russell;
 - (c) Lance Michael Comes;
 - (d) Joseph Thomas Carmody;
 - (e) Adam Bernhard Ballin; and
 - (f) Paragon Holdings Limited,(together, the "**Founding Partners**").

Background

6. In 2011, the Founding Partners decided to establish an Asian energy and infrastructure private equity fund. To that end, the Founding Partners formed the First Defendant:
 - (a) To act as the founder partner and investor in Equis Asia Fund, L.P. ("**EAF I**"), a Cayman Islands limited partnership formed on 21 October 2011 with registered number 52743 and its principal place of business at PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands; and
 - (b) To provide profits for distribution to the Founding Partners.
7. The Second Defendant was incorporated to act as the First Defendant's General Partner.
8. On 18 November 2011, the Second Defendant, the Founding Partners and Equis Funds Group Holdings Limited ("**EFGH**"), a Cayman Islands incorporated company which wholly owns the Second Defendant, entered into a limited partnership agreement in respect of the First Defendant. That limited partnership agreement was amended and restated on 20 June 2013 (the "**LPA**").

Participation in the Fund Partnership, including the Parallel Funds

9. The Founding Partners intended the First Defendant would hold and benefit from an investment in EAF I and another fund, Equis Asia Fund Co Invest LP ("**EAF Co Invest**").
10. At the time the parties entered into the LPA, it was also anticipated by the Founding Partners that the First Defendant would invest in funds other than EAF I and EAF Co Invest (together, the "**Initial Funds**"). In order that the Founding Partners' rights under the LPA encompassed not only the First Defendant's investment in the Initial Funds but also any subsequent investments made by or through the First Defendant, the LPA refers to the First Defendant's investment in the "**Fund Partnership**", rather than the Initial Funds.
11. The Fund Partnership is defined in clause 1.1 of the LPA as *'[EAF I] and unless the context requires otherwise any other Parallel Funds of such partnership'*.

12. Clause 1.1 of the LPA defines "*Parallel Funds*" by reference to the limited partnership agreement for EAF I (the "**Fund Partnership Agreement**"). The Fund Partnership Agreement provides that "**Parallel Funds**" means '*any additional limited partnerships or entities established under agreements containing substantially similar commercial terms to [the Fund Partnership Agreement] (including, for the avoidance of doubt, having final closing on or prior to the [closing date for EAF I]) including, but not limited to, [EAF Co Invest]*'.
13. Following the First Defendant's investment in the Initial Funds, the First Defendant invested in:
- (a) Equis Fund II L.P. ("**EAF II**"), a Cayman Islands limited partnership with registered number 263634 and its principal place of business at PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands; and
 - (b) Equis Direct Investment Fund L.P. ("**EDIF**"), a Cayman Islands limited partnership with registered number 291073 and its principal place of business at PO Box 31106, 89 Nexus Way 2nd Floor, Camana Bay, Grand Cayman, KY1-1205, Cayman Islands,
- (together, the "**Subsequent Funds**").
14. In October 2014, around the time the First Defendant invested in the Subsequent Funds, the Plaintiff travelled to Singapore to assist in promoting such funds. The Plaintiff understood that his status as a Founding Partner would entitle him to participate in any profits of the Subsequent Funds which were to be distributed to the First Defendant. While the Plaintiff was in Singapore, he had a conversation with David Russell, Chief Executive Officer of the Equis Funds Group, who confirmed that understanding.
15. The limited partnership agreements for EAF II and EDIF, both 18 November 2014, contain substantially similar commercial terms to the Fund Partnership Agreement and accordingly are within the definition of Parallel Funds referred to Clause 1.1 of the LPA.
16. In accordance with the terms of the LPA, the Fund Partnership included not only EAF I, but also EAF Co Invest, EAF II and EDIF (together, the "**Equis Parallel Funds**").

Capital Contributions to the First Defendant

17. Clause 4.2 of the LPA provides that each of the Founding Partners agreed to advance to the First Defendant capital equal to the percentage of the First Defendant's total commitment to the Fund Partnership, which is set out in Schedule 4 of the LPA. Schedule 4 provides that each of the Founding Partners, including the Plaintiff, agreed to advance to the First Defendant 16.68 per cent of its total commitment to the Fund Partnership (the "**Participations**").
18. In accordance with the process set out in clause 4.3 of the LPA, the Second Defendant issued written drawdown notices to the Founding Partners as follows:

1. Drawdown notice date	Amount (US\$)	Amount Paid by the Plaintiff (US\$)
25 January 2012	2,334.04	2,334.04
16 April 2012	938.20	938.20
3 July 2012	3,847.62	3,847.62
19 July 2012	15,082.00	15,082.00
24 July 2012	46,517.97	46,517.97
10 September 2012	9,857.81	9,857.81
9 October 2012	4,301.81	4,301.81
21 December 2012	8,223.63	8,223.63
18 March 2013	18,484.72	18,484.72
12 April 2013	3,288.78	3,288.78
21 June 2013	2,868.85	2,868.85
2 October 2013	21,193.05	21,193.05
15 November 2013	14,131.96	14,131.96
6 December 2013	11,433.86	11,433.86

1. Drawdown notice date	Amount (US\$)	Amount Paid by the Plaintiff (US\$)
18 December 2013	11,992.57	11,992.57
12 February 2014	17,733.77	17,733.77
28 February 2014	12,200.99	12,200.99
21 March 2014	15,160.36	3,823.72
10 April 2014	21,952.93	0.00
19 May 2014	1,715.33	1,715.33
4 June 2014	43,327.67	0.00
17 July 2014	9,119.62	12,943.34
21 August 2014	9,745.49	9,745.49
13 October 2014	27,937.47	2,000.00
17 November 2014	27,117.79	0.00
28 November 2014	3,424.43	3,424.43
10 December 2014	90,167.29	0.00
9 March 2015	3,961.79	0.00
	<u>458,061.80</u>	<u>238,083.94</u>

(together, the "Drawdown Notices").

19. Those Founding Partners who were also shareholders in EFGH received payments to cover the Drawdown Notices, referred to as special dividends. The Plaintiff was not a shareholder in EFGH, did not receive any special dividends and was expected to cover the Drawdown Notices from his own resources.

20. Save as particularised in paragraph 18 above, the Plaintiff paid each of the Drawdown Notices in full, and on time, such that he made a total capital contribution to the First Defendant of US\$238,083.94.
21. On 3 February 2015, David Russell, in his capacity as Chief Executive Officer of the Equis Funds Group, sent a series of emails to the Plaintiff purporting to inform him that:
- (a) The Plaintiff would be taking up a new role as an "operational partner", focusing on the Plaintiff's technical contribution, although he would remain a member of the investment committee;
 - (b) Future capital contributions to the First Defendant would be limited to the "investment partners" who held shares in EFGH;
 - (c) The Plaintiff would not be offered shares in EFGH; and
 - (d) The Plaintiff's carry interest in the First Defendant would remain subject to change, depending on the Plaintiff's performance each year, in accordance with the LPA.
22. The terms "operational partner" and "investment partner" are not defined or referred to in the LPA and the arrangements described in David Russell's emails dated 3 February 2015 (to the extent that they were effective, which is not admitted) did not amend or vary the LPA or the rights and entitlements enjoyed by the Plaintiff thereunder.
23. On 24 February 2015, the Plaintiff resigned as a director of the following Cayman Islands incorporated companies, each of which is wholly owned by EFGH:
- (a) The Second Defendant;
 - (b) Equis Asia Fund General Partner, which acts as the general partner for the Initial Funds;
 - (c) Equis Asia Fund II General Partner, which acts as the general partner for EAF II; and
 - (d) Equis Direct Investment Fund General Partner, which acts as the general partner for EDIF.

24. On 23 March 2015, the Second Defendant informed the Plaintiff, by letter that:

- (a) The Plaintiff would not be obliged to fund any Participation from 5 March 2015 and would not be held in default if he did not meet any Drawdown Notice from that date;
- (b) The Plaintiff's future obligations would be reflected in an amendment to Schedule 4 of the LPA; and
- (c) The Plaintiff would retain all benefit accruing to any amounts previously contributed under the LPA.

Involvement in the Management of the First Defendant

25. From the formation of the First Defendant in October 2014, the Plaintiff was involved in the management of the First Defendant by:

- (a) Attending, and from time to time acting as the chairperson of, quarterly meetings of the board of directors of the Second Defendant, until 24 February 2015 when the Plaintiff resigned as a director of the Second Defendant;
- (b) Attending, along with the other Founding Partners, meetings of the investment committee, which considered projects for pre-investment approval and final investment approval; and
- (c) Attending, along with the other Founding Partners, senior management meetings.

26. On 27 July 2015, during a telephone call with a number of the Founding Partners including the Plaintiff, David Russell used obscene language directed at the Plaintiff and threatened the Plaintiff with physical violence. The threats made and words used by David Russell were not provoked by the Plaintiff, who subsequently excused himself from the telephone call.

27. Following the telephone call on 27 July 2015, the Plaintiff was entirely excluded the management of the First Defendant, including the meetings described in paragraph 25 above.

28. In the premises, the Defendants wrongfully, and in breach of contract, restricted the Plaintiff's right to participate in the management of the First Defendant and its investments.

Accounts of the First Defendant

29. Pursuant to clause 7.3 of the LPA, the Second Defendant is required to maintain separate accounts for each of the Founding Partners. Such accounts must include a capital account, an income account, a capital contribution account and, where appropriate, a loan account.

30. The Second Defendant also is also required, pursuant to clause 7.2 of the LPA, to prepare accounts of the First Defendant for each calendar year, including a balance sheet, profit and loss account, a statement of the sources and applications of funds, a statement of the amount of the income accounts and capital contributions. Such accounts must be audited and a copy provided (including the report of the auditors) to each Founding Partner as soon as reasonably possible following the end of each calendar year.

31. The accounts of the First Defendant for the year ended 31 December 2016 (the "**2016 Accounts**") were audited by KPMG on 8 June 2017. The Second Defendant failed to provide a copy to the Plaintiff in a timely manner.

32. The Plaintiff requested copies of the 2016 Accounts on 31 August 2017, 8 September 2017 and finally (through his Cayman Islands legal counsel) on 6 November 2017 from David Russell, in his capacity as a director of the Second Defendant. The Second Defendant only provided the Plaintiff with a copy of the 2016 Accounts on 5 December 2017, approximately six months after they had been audited.

Distributions to the Founding Partners

33. The First Defendant invests in each of the Equis Parallel Funds in two capacities:

- (a) As an ordinary investor in the Equis Parallel Funds ("**Investor**"); and
- (b) As a founder partner, with special rights attaching to his interest ("**Founder Partner**").

34. The accounting treatment for distributions to the First Defendant from the Equis Parallel Funds depends, in accordance with clause 7 of the LPA, on whether the distributions to the First Defendant are made in its capacity as an Investor or as a Founder Partner.
35. Clause 7.6 of the LPA provides that all cash or other proceeds or amounts received by the First Defendant from the Equis Parallel Funds shall, after payment of expenses and liabilities of the First Defendant, be distributed by the Second Defendant as soon as practicable following receipt as follows:
- (a) any amounts received by the First Defendant which are attributable to its interest in the Equis Parallel Funds as an Investor shall be paid to the Founding Partners in proportion to their Participations as at the date of the relevant allocation to which the distribution relates; and
 - (b) any amounts received by the First Defendant which are attributable to its interest in the Equis Parallel Funds as a Founder Partner shall be paid to the Founding Partners in proportion to their vested carry interest as at the date of the relevant allocation to which the distribution relates.
36. Each Founding Partner's vested carry interest is comprised of a Fixed Relevant Proportion, Long Term Relevant Proportion and Discretionary Relevant Proportion (together, the "**Relevant Proportions**"). The Relevant Proportions are adjusted from time to time, although their aggregate never exceeds 100. Further, each of the Relevant Proportions vest on different dates.
37. The Plaintiff's carry interest is 13.5 percent calculated as follows:
- (a) 5 percent Fixed Relevant Proportion, half of which vested in or around December 2012 (the "**Final Close Date**") with the balance vesting on the third anniversary of the Final Close Date; and
 - (b) 8.5 percent Long Term Relevant Proportion which, in accordance with clause 10 of schedule 2 of the LPA vests on:
 - (i) The later of the eighth anniversary of the Final Close Date and the termination of the "Fund"; or

- (ii) Such date as determined in the absolute discretion of the compensation committee created by clause 7 of schedule 2 of the LPA.

Termination of the Plaintiff's employment

38. From 5 December 2011, the Plaintiff was employed by Equis Funds Group (Hong Kong) Limited (which subsequently changed its name to Equis (Hong Kong) Ltd) ("**Equis HK**"), pursuant to an executive agreement between the Plaintiff and Equis HK.
39. Pursuant to clauses 5 and 6 of schedule 2 of the LPA, Founding Partners who cease to be an employee of Equis Funds Group Pte Ltd, the Second Defendant or an Associate (as that term is defined in the LPA) become either a "Good Retired Partner" or a "Bad Retired Partner", depending on the circumstances in which their employment ceases. Pursuant to the terms of the LPA, Good Retired Partners enjoy more favourable rights than Bad Retired Partners.
40. On 29 September 2017, Equis HK sent a letter to the Plaintiff purporting to terminate his employment with effect from 29 October 2017 (the "**Termination Letter**"), treating the Plaintiff as a "**Good Retired Partner**" as that term is defined in the LPA.
41. The Plaintiff is a Good Retired Partner.
42. Pursuant to clause 5 of schedule 2 of the LPA, if a Founding Partner becomes a Good Retired Partner, the Second Defendant must determine (and notify the Good Retired Partner) whether the Good Retired Partner will either: (a) retain his vested carry interest; or (b) sell it back to the Second Defendant or to another of the Founding Partners identified by the Second Defendant at a price to be determined in accordance with clause 1 of schedule 2 of the LPA.
43. In breach of clause 5 of schedule 2 of the LPA, the Second Defendant has failed to determine and notify the Plaintiff whether the Plaintiff will, as a Good Retired Partner, retain his vested carry interest or sell his vested carry interest to the Second Defendant or to another of the Founding Partners identified by the Second Defendant at a price to be determined in accordance with clause 1 of schedule 2 of the LPA.

44. By reason of the Second Defendant's failure as particularised above, the Plaintiff is unable to determine his rights in respect of the First Defendant and his interest is in effect frozen.

Damages

45. As a result of the matters set out above, including but not limited to the Second Defendant's breach of clause 5 of schedule 2 of the LPA, the Plaintiff has suffered loss and damage and continues to suffer loss and damage. The Plaintiff reserves the right to plead further in this regard upon discovery.

AND THE PLAINTIFF CLAIMS:

- (1) A declaration that the Plaintiff is a Good Retired Partner as defined in schedule 2 of the LPA.
- (2) A declaration that "Fund Partnership" as defined in clause 1.1 of the LPA includes the Equis Parallel Funds.
- (3) Specific performance of the Second Defendant's obligations pursuant to clause 5 of schedule 2 of the LPA.
- (4) Damages and all necessary accounts of profits and inquiries.
- (5) An order that the Defendants pay the costs of these proceedings.
- (6) Such further or other relief as the Court thinks fit.

WALKERS
Attorneys-at-law for the Plaintiff

This **WRIT OF SUMMONS** was issued by Walkers, Attorneys-at-Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands, for the Plaintiff whose address for service is care of its said Attorneys-at-Law.

**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 Courts Office, P.O. Box 495, 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 Plaintiffs (or on the Plaintiffs 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

Please complete overleaf

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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2018

BETWEEN: GEORGE ALLEN COWAN

PLAINTIFF

AND

(1) EQUIS SPECIAL L.P. (PREVIOUSLY
KNOWN AS EQUIS ASIA FUND SPECIAL
L.P.), ACTING BY ITS GENERAL PARTNER
EQUIS SPECIAL GP

(2) EQUIS SPECIAL GP (PREVIOUSLY
KNOWN AS EQUIS ASIA FUND SPECIAL GP),
IN ITS CAPACITY AS GENERAL PARTNER OF
EQUIS SPECIAL L.P.

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) _____

Attorney for

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.

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

Walkers
Attorneys at Law
190 Elgin Avenue
George Town
Grand Cayman KY1-9001

Ref: TSH/JAS/H15849

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