

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 28 OF 2019

BETWEEN:

- (1) DAVID JAMES BENNETT
- (2) TSZ NGA GEORGIA CHOW
- (3) GRANT THORNTON DIRECTORSHIP SERVICES LIMITED
- (4) DORSEY VENTURES LIMITED

AND:

ATHENE (XIANG) LI



PLAINTIFFS

DEFENDANT

AMENDED WRIT OF SUMMONS

(Amended 13th May 2019 pursuant to O.20,r.3 of the Grand Court Rules)

TO: Athene (Xiang) Li
International Commerce Centre
Suite 1506b
1 Austin Road West
Kowloon
Hong Kong



THIS AMENDED 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 _____ 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this ~~22nd~~25th day of February 2019

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.

AMENDED STATEMENT OF CLAIM

(Amended 13th May 2019 pursuant to O.20,r.3 of the Grand Court Rules)

1. At all material times:
 - (i) The First Plaintiff was the Managing Director of the Third Plaintiff and a Director of the Fourth Plaintiff.
 - (ii) The Second Plaintiff was a Director of the Third Plaintiff and a Director of the Fourth Plaintiff. The First and Second Plaintiffs are hereafter referred to as the **Directors**.
 - (iii) The Third Plaintiff, hereinafter referred to as **GTDS**, was a private company limited by shares and incorporated in Hong Kong with company registry number 2436058.
 - (iv) The Fourth Plaintiff, hereinafter referred to as **Dorsey**, was a Cayman Islands exempted company with registration number 289766 and the sole limited partner in XiO Fund I LP, a Cayman Islands Exempted Limited Partnership whose general partner is XiO GP Limited (**XiO GP**).
 - (v) The Defendant (**Ms Li**) was:
 - a. the sole registered shareholder of Dorsey; and
 - b. the sole registered shareholder and a director of XiO GP.
2. The Directors were appointed to the board of Dorsey by a written resolution of Ms Li, in her capacity as Dorsey's sole registered shareholder, dated 11 August 2017.
3. On or about 14 August 2017:

- (i) the Directors, Ms Li and Mr Xie Zhikun (**Mr Xie**) entered into a protocol agreement concerning *inter alia* the basis on which the Directors were to be appointed to Dorsey (the **Protocol Agreement**); and
 - (ii) the Directors, Dorsey, GTDS, Ms Li and Mr Xie agreed and entered into a director services agreement (the **DSA**), which provided for the terms and conditions upon which the Directors were to be engaged as directors of Dorsey.
4. Clause 10 of the Protocol Agreement provides that the Directors will be remunerated in accordance with the terms of the DSA.
5. The DSA, the full terms and effect of which will be relied upon at trial, also included, *inter alia*, the following terms:
- (i) the Directors are entitled to charge Dorsey fees for their services and works carried out by them and their delegates on a time spent basis at the hourly rates set out in Schedule 1 to the DSA less a discount of 10% (the **Directorship Fees**) (Clauses 3.2, 5.4 and 6.2);
 - (ii) the Directors shall issue an invoice for the Directorship Fees addressed to Dorsey on a monthly basis. Each of Ms Li and Mr Xie, as Guarantors (as defined in the DSA) each agree to bear 50% of the Directorship Fees. The Guarantors may request to be invoiced directly for their 50% share (Clause 3.6);
 - (iii) the Directorship Fees are payable within 14 days from presentation of an invoice (Clause 3.6);
 - (iv) interest on overdue amounts may be charged at the Directors' discretion at a rate of 8% per annum (Clause 3.6);
 - (v) in addition to the Directorship Fees, Dorsey shall reimburse to GTDS all reasonable expenses incurred by it and/or the Directors in the course of carrying out their duties and obligations (the **Expenses**) (Clause 4.1);

- (vi) the Directors and GTDS may vary the Directorship Fees and Expenses payable to them by giving notice of not less than one month to the Guarantors. The variation will be effective on the expiry of the notice of variation given by the Directors (Clause 3.7);
 - (vii) the Guarantors shall guarantee the payment of all sums due to GTDS and/or the Directors in respect of Expenses, upon being provided with reasonable proof of expenditure, and shall do so within 14 days thereof (Clause 4.2); and
 - (viii) disbursements of legal counsel appointed by the Directors and/or Dorsey are an Expense within the meaning of Clause 4 of the DSA (Clauses 4.3, 5.5).
6. In accordance with the Protocol Agreement and the DSA, by a letter dated 3 July 2018, the Directors gave notice to Mr Xie and Ms Li of an increase in GTDS's hourly rates by 5%.
 7. In accordance with the Protocol Agreement and the DSA, the Directors have carried out services and works pertaining to Dorsey and have invoiced Ms Li and Mr Xie on a monthly basis for the same.
 8. In accordance with the Protocol Agreement and the DSA, Mr Xie has made payment of his 50% portion of the Directorship Fees and Expenses **up to and inclusive of the January invoiced amounts. Mr Xie is outstanding and overdue in respect of his 50% portion of the Directorship Fees and Expenses for the February and March invoiced amounts as particularised in paragraph 15 below (in the sum of US\$485,953.20).**
 9. As particularised below, pursuant to the terms of the Protocol Agreement and the DSA, invoices for the work done by the Directors were presented to Ms Li for payment.
 10. In breach of Ms Li's obligations pursuant to the Protocol Agreement and the DSA, she has failed to render payment on the invoices (the **Outstanding Invoices**) such that a principal sum **US\$1,039,750.99** pertaining to Directorship Fees and Expenses remains outstanding.

11. By letter dated 2 January 2019, the Directors and GTDS made a demand on Ms Li for payment of the Outstanding Invoices ~~then due, totalling US\$237,493.04 (as at 2 January 2019)~~ (the Demand).
12. Despite the Demand, Ms Li has failed to pay the Outstanding Invoices.
13. Further, ~~invoices were on 22 January 2019, a further invoice in the sum of US\$94,569.76 was sent to Ms Li for Directorship Fees and Expenses incurred by the Directors for work and services rendered pursuant to the terms of the Protocol Agreement and the DSA, as follows: This invoice was due for payment on 5 February 2019.~~
- (i) on 22 January 2019, a further invoice in the sum of US\$94,569.76, due for payment on 5 February 2019;
- (ii) on 22 February 2019, a further invoice in the sum of US\$221,734.99, due for payment on 8 March 2019;
- (iii) on 6 March 2019, a further invoice in the sum of US\$375,125.73, due for payment on 20 March 2019; and
- (iv) on 9 April 2019, a further invoice in the sum of US\$110,827.47, due for payment on 23 April 2019.
14. In further breach of her obligations under the Protocol Agreement and the DSA, Ms Li has failed to render payment in relation to this additional Outstanding Invoice.
15. Accordingly, as particularised below, the principal sum of ~~US\$332,062.80~~ US\$1,039,750.99 is owed by Ms Li and she remains in breach of the terms of the Protocol Agreement and the DSA until such time as those sums are paid.

PARTICULARS

Month	Amount	Issued on	Due by
October	US\$43,122.44	13 November 2018	27 November 2018
November	US\$194,370.60	7 December 2018	21 December 2018

January	US\$94,569.76	22 January 2019	5 February 2019
January	US\$221,734.99	22 February 2019	8 March 2019
February	US\$375,125.73	6 March 2019	20 March 2019
March	US\$110,827.47	9 April 2019	23 April 2019
TOTAL	US\$1,039,750.99	-	-

16. Further, the Plaintiffs are entitled to and claim interest at the rate of 8% per annum pursuant to Clause 3.6 of the DSA as and from the due date of each Outstanding Invoice. In the alternative, the Plaintiffs claim interest pursuant to section 34 of the Judicature Law (2017 Revision) and/or the inherent jurisdiction of the Court at such rate as the Court in its discretion considers appropriate.
17. There is due and owing from Ms Li to the Plaintiffs the sum of ~~US\$332,062.80~~ US\$1,039,750.99 plus interest in the amount of ~~\$3,618.48~~-US\$9,295.39 as at the date of this Amended Statement of Claim and continuing to accrue at a rate of US\$227.89 per day.
18. The Plaintiffs are continuing to issue invoices to the Plaintiff for Directorship Fees and Expenses incurred by the Directors for work and services rendered pursuant to the terms of the Protocol Agreement and the DSA. These invoices are being issued on a monthly and ongoing basis. The Plaintiffs intend to provide particulars of any future invoices issued that are not paid by the due date in accordance with Clause 3.6 of the DSA prior to the hearing of this action.
19. Further, pursuant to clause 9 of the DSA, Ms Li, as a Guarantor, is jointly and severally obliged to indemnify *inter alia* the Directors and GTDS in respect of, among other things, all costs and expenses incurred by them in connection with the DSA. These proceedings fall within the ambit of clause 9 of the DSA and, accordingly, Ms Li is obliged to indemnify the Directors and GTDS in respect of all costs and other expenses associated with the conduct of them and a claim is made accordingly.
20. The Plaintiffs are in the process of quantifying such costs and expenses. However, as these costs and expenses are being incurred on an ongoing basis, particulars will be provided in due course.

AND THE PLAINTIFFS CLAIM:

- (1) ~~US\$1,039,750.99~~ ~~US\$332,062.80~~ as a debt due and owing.
- (2) Simple interest at the rate of 8% calculated in accordance with Clause 3.6 of the DSA. In the alternative, interest pursuant to section 34 of the *Judicature Law* and/or the inherent jurisdiction of the Court.
- (3) Costs and expenses owed by the Defendant pursuant to the indemnity contained in clause 9 of the DSA.
- (4) Costs of and incidental to this action on an indemnity basis.



MOURANT OZANNES
ATTORNEYS FOR THE PLAINTIFFS

This **Writ and Statement of Claim** is filed by Mourant Ozannes, Attorneys-at-Law for the Plaintiffs whose address for service is PO Box 1348, 4th Floor, 94 Solaris Avenue, Camana Bay, Grand Cayman KY1-1108 (Ref: 8031825/75453455/1)

**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

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.

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.

Mourant Ozannes
94 Solaris Ave
Camana Bay
PO Box 1348
Grand Cayman KY1-1108

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