



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

BETWEEN:

OLIVER ALAN RING TRUST

PLAINTIFF

AND:

PERFECT HARMONY LLC

FIRST DEFENDANT

LOREN SIMKOWITZ

SECOND DEFENDANT

WRIT OF SUMMONS

TO: PERFECT HARMONY LLC, C/O Arcadia Group Ltd., Cayman Business Park, A7, Grand Cayman, Cayman Islands

LOREN SIMKOWITZ C/O Arcadia Group Ltd., Cayman Business Park, A7, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of 31 the Strand, 46 Canal Point Drive, Grand Cayman, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was filed by the Plaintiff's attorneys, Nelsons, whose address is PO Box 30069, 31 The Strand, 46 Canal Point Drive, Grand Cayman KY1-1201, Cayman Islands

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 any 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 11th day of January 2023

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2023

BETWEEN:

OLIVER ALAN RING TRUST

PLAINTIFF

AND:

PERFECT HARMONY 100 LLC

FIRST DEFENDANT

LOREN SIMKOWITZ

SECOND DEFENDANT

STATEMENT OF CLAIM

Introduction

1. These are the particulars of a Derivative Claim by Mr. Oliver Ring, (the “**Plaintiff**”) seeking relief on behalf of Perfect Harmony 100 LLC, the First Defendant, (the “**Company**”).
2. At all material times the Plaintiff was a trust and member of the Company, holding a five per of the issued shares. Mr. Oliver Ring is the trustee of the Plaintiff.

The Company

3. The Company is an Exempt Limited company (not a limited liability company, although “LLC” is included in the registered name of the company). The Company was established under the law of the Cayman Islands and incorporated on 1 November 2013 under registration number 282924.
4. The Company owns a 100’ Hargrave yacht known as “Perfect Harmony” (the “**Yacht**”). Although the objects for which the Company was established are unrestricted, the purpose of the Company is to hold the Yacht for the benefit of the members of the Company, the intention being that the members have use of the Yacht in proportion to their shareholding in the Company.

This WRIT OF SUMMONS AND STATEMENT OF CLAIM was filed by the Plaintiff’s attorneys, Nelsons, whose address is PO Box 30069, 31 The Strand, 46 Canal Point Drive, Grand Cayman KY1-1201, Cayman Islands

The Company's Director

5. The Second Defendant (the “**Mr. Simkowitz**”) is the sole Director of the Company and is also the President of Monocle Management Limited. Inc, (“**Monocle**”). Monocle is the manager of the Yacht by virtue of a Management Agreement (the “**Management Agreement**”) entered into by Mr. Simkowitz on or around 2 September 2021, executed by Mr. Simkowitz on behalf of both the Company and Monocle. The management agreement is governed by the laws of Florida.
6. In his capacity as director of the Company, Mr. Simkowitz owed the Company the duties of a fiduciary. In particular, he owed the following duties:
 - 6.1 he would act in good faith and in the best interest of the Company;
 - 6.2 he would not use any of the powers conferred on him for any improper purpose;
 - 6.3 he would discharge his duties and the powers conferred on him with reasonable care and diligence

Breach of Duties by Mr. Simkowitz

7. On or around 7 November 2022 a letter was circulated amongst members of the Company purporting to propose two choices to the members:

*“Choice 1: Sell of shares of those ho want to sell and keep those that do not.
Choice 2: Sell the yacht entirely.*

...

CHOICE 1: Continue to use the yacht as always, with the emphasis on selling the shares of those owners who want out. Shares are easier to sell than a whole boat.

CHOICE 2: The broker probably will want Perfect Harmony here in the Fort Lauderdale, Miami area to accommodate any potential showings. He will insist the yacht be maintained and have crew on board. The expenses of the yacht will continue (less the chef) plus the additional cost of dockage which is around \$10,000 monthly. No owner will be able to use the yacht.”

8. Under the terms of the Management Agreement, at clause 3(b), a decision to relinquish use of the Yacht and render it for sale requires 70% approval from the Company's members in good standing. 70% approval from the members was not forthcoming in support of choice 2, the sale of the Yacht. Further, no resolution of any kind, whether by simply majority or otherwise, was ever passed by the members in accordance with the Articles of Association supporting a sale of the Yacht. The Articles of Association require that the Director convenes a General Meeting of the members of the Company by providing at least seven days' notice to all members in accordance with Articles 44 and 45 of the Company's Articles of Association in order for any resolution to be considered.
9. By an email from Mr. Simkowitz, sent from the account of Denise McDowell of Monocle on his behalf, Mr. Simkowitz confirmed to the members that the 70% support necessary to sell the Yacht had not been reached. That email read as follows:

"Dear All,

Although we don't have a 70% margin, the percentage of "to sell" exceeds the "not to sell". At this juncture the broker and his client are flying to St. Thomas on Dec. 15 to survey the boat and presumably ratify the contract or decline.

Assuming everything goes well, the settlement won't take place until January so consequently the operating account will need to be funded with the January SCOPE payment because the operating expenses continue.

Loren"

10. Mr. Simkowitz caused the Company to enter into a contract to sell the Yacht to Burnham Partners Inc through a Purchase and Sale Agreement for Brokerage Vessel dated on or around 8 December 2022 (the "**Sale Contract**").
11. The agreed sale price for the Yacht in the Sale Contract is US\$1,050,000 with the expenses of delivery of the Yacht to the purchaser being paid for by the Company.
12. The closing date for the sale is 15 January 2022 (which it is understood was intended to state 15 January 2023) or when the yacht arrives in Fort Lauderdale. The Sale Contract contains a clause that the parties shall resolve any dispute relating to the Sale Contract by binding arbitration pursuant to the rules of the International Yacht Arbitration Council in force when the arbitration is commenced in Fort Lauderdale.

13. The Yacht is worth between US\$2,000,000 and US\$2,500,000. As such the sale of the Yacht is for undervalue. The Plaintiff was induced to buy a 5% share in the Company in or around 2 September 2021 upon the representation from Mr. Simkowitz that the value of the Yacht was between US\$2,000,000 and US\$2,500,000.
14. The Plaintiff purchased shares in the Company, as have all members, for the sole purpose of the right to use the Yacht. The Plaintiff and other members have bought shares in the Company in the legitimate expectation of using the Yacht and the Yacht is now being sold without said members having ever had an opportunity to use it.
15. On 4 January 2023 by email to loren@monocleyachts.com and on 5 January 2023 by hand to the Company's registered office, Nelsons served a letter, on behalf of the Plaintiff, seeking an undertaking from Mr. Simkowitz on behalf of the Company and Monocle, that the Yacht would not be sold or transported to any potential seller. Further, a request was made in that same correspondence for any documentation relied upon to ascertain the value of the Yacht in advance of the sale. No response was forthcoming from the Company or Mr. Simkowitz.
16. In accordance with Article 108 of the Articles of Association the Directors shall from time-to-time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, any group accounts, and such other reports and accounts as required by law. No such financial records have been laid before the Company at an AGM since at least 2 September 2021.

The Claim

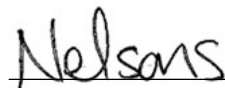
17. Mr. Simkowitz is in breach of his fiduciary duties to the Company in that:
 - (a) it is not and was not in the best interests of the Company to enter into the Sale Contract to sell the primary asset of the Company which is also the purpose for the existence of the Company;
 - (b) it was contrary to the best interests of the Company and its members to sell the Yacht at a significant undervalue;
 - (c) the decision to enter into the Sale Contract and sell the Yacht at an undervalue can not have been made in good faith for a proper purpose; and

- (d) he failed to exercise his powers with reasonable diligence and skill and cannot have rationally believed that the decision to enter into the Sale Contract was in the best interests of the Company in the face of the lack of support for the Resolution.
18. In the premises the Defendants should therefore be:
- (a) restrained from completing on the sale of the Yacht unless or until such a sale is supported by a resolution at a validly called General Meeting of at least 70% of the members of the Company in good standing as at the date of the vote; and/or
 - (b) restrained from sale of the Yacht at a price which has not been agreed by way of a resolution at a validly called General Meeting of at least 70% of the members of the Company in good standing as at the date of the vote.
19. In the alternative, if the sale of the Yacht cannot be restrained, the transaction should be unwound.
20. Further and in the alternative, if the transaction cannot be unwound, the Plaintiff claims damages from Mr. Simkowitz reflecting the fair value of the Yacht less the value received by the Company for the Yacht.
21. If, which is not accepted, the Yacht has been sold but not at an undervalue, the Plaintiff claims damages against Mr. Simkowitz for the false representations made to the Plaintiff as to the value of the Yacht at the time the Plaintiff purchased shares in the Company.
22. In accordance with Article 108 of the Articles of Association the Plaintiff requires that the Director disclose any profit and loss accounts, balance sheets, any group accounts, and such other reports and accounts as required by law as are currently in existence and if none are in existence that the such documents be produced since the date of incorporation of the Company.

AND THE PLAINTIFF CLAIMS:

1. A declaration that the Defendants shall not sell the Yacht without a resolution of at least 70% of the members in support, such resolution, or a further resolution, also fixing a minimum agreed sale price.
2. If the Yacht has been sold, an order unwinding the sale transaction.
3. In the alternative, damages from the Second Defendant for the loss incurred by the Company resulting from the sale at undervalue.
4. In the alternative damages from the Second Defendant for loss arising from the false representations made to the Plaintiff at the time of purchasing shares in the Company.
5. That any profit and loss accounts, balance sheets, any group accounts, and such other reports and accounts as required by law as are currently in existence produced to the members of the Company and if none are in existence that the such documents be produced since the date of incorporation of the Company.
6. Post-Judgment interest upon the principal amount of the Judgment with effect from the date of service of Judgment at the rate of $2^{3/8}$ % per annum and/or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision), as amended from time to time.
7. Costs.
8. Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 11th day of January



Nelsons
Attorneys for the Plaintiff

TO: The Clerk of the Grand Court
AND TO: The Defendants

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was filed by the Plaintiff's attorneys, Nelsons, whose address is PO Box 30069, 31 The Strand, 46 Canal Point Drive, Grand Cayman KY1-1201, Cayman Islands

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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BETWEEN:

OLIVER RING

PLAINTIFF

AND:

PERFECT HARMONY LLC

FIRST DEFENDANT

LOREN SIMKOWITZ

SECOND DEFENDANT

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 intend 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

Service of the Writ is acknowledged accordingly

Signed

Attorney for the 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.

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

Nelsons
Attorneys at Law
PO Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
Attn: A. Carver

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

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 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 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 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.