

ONTARIO
Superior Court of Justice

Plaintiff's Claim

Form 7A Ont. Reg. No.: 258/98

SC-17-114502



Richmond Hill

Small Claims Court

**8500 Leslie Street, Suite 395
 Markham, Ontario L3T 7M8**

Address

905-731-2664

Phone number

Claim No.

Plaintiff No. 1

Additional plaintiff(s) listed on attached Form 1A.

Under 18 years of age.

Last name, or name of company GRISEL ALONSO, AS RECEIVER FOR ELM TREE INVESTMENT ADVISORS, LLC, ELM TREE INVESTMENT FUND, LP, ELM TREE 'e' CONOMY FUND, LP, ELM TREE MOTION OPPORTUNITY, LP, and ETOPIA, LP		
First name	Second name	Also known as
Address (street number, apt., unit) 1883 MARINA MILE BOULEVARD, SUITE 106		
City/Town FORT LAUDERDALE	Province FLORIDA	Phone no.
Postal code 33315	Fax no.	
Representative MALCOLM N. RUBY/MATTHEW DOAK		LSUC # 25970G/65867W
Address (street number, apt., unit) 100 KING STREET WEST, SUITE 1600		
City/Town TORONTO	Province ONTARIO	Phone no. 416.862.7525
Postal code M5X 1G5	Fax no. 416.862.7661	

Defendant No. 1

Additional defendant(s) listed on attached Form 1A.

Under 18 years of age.

Last name, or name of company DELMAR		
First name ARMAND	Second name	Also known as
Address (street number, apt., unit) 264 JUDITH AVENUE		
City/Town THORNHILL	Province ONTARIO	Phone no.
Postal code L4J 7C7	Fax no.	
Representative		LSUC #
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code	Fax no.	

REASONS FOR CLAIM AND DETAILS

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

If you are relying on any documents, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

What happened? See Schedule "A".
Where?
When?

How much? \$ 6,753.57 USD
(Principal amount claimed)

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.

The plaintiff also claims pre-judgment interest from 26 MAY 2017 under:
(Date)

(Check only one box) the Courts of Justice Act
 an agreement at the rate of _____ % per year

and post-judgment interest, and court costs.

Prepared on: September 15, 2017, 20 17

[Handwritten Signature]

(Signature of plaintiff or representative)

Issued on: SEP 28 2017, 20 _____

J. SOLISIZZI

[Handwritten Signature]

(Signature of clerk)

CAUTION TO DEFENDANT: IF YOU DO NOT FILE A DEFENCE (Form 9A) and an Affidavit of Service (Form 8A) with the court within twenty (20) calendar days after you have been served with this Plaintiff's Claim, judgment may be obtained without notice and enforced against you. Forms and self-help materials are available at the Small Claims Court and on the following website: www.ontariocourtforms.on.ca.

CAUTION TO PARTIES: Unless the court orders or the rules provide otherwise, **THIS ACTION WILL BE AUTOMATICALLY DISMISSED** if it has not been disposed of by order or otherwise two (2) years after it was commenced and a trial date or assessment under subrule 11.03(2) has not been requested.



For information on accessibility of court services for people with disability-related needs, contact:



Telephone: 416-326-2220 / 1-800-518-7901 TTY: 416-326-4012 / 1-877-425-0575

Schedule "A"

1. Grisel Alonso acts in her capacity as court-appointed Receiver ("Receiver") for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and ETOPIA, LP and claims against Defendant, Armand Delmar ("Delmar") for:

- (a) Recognition and enforcement of a judgment ("U.S. Judgment") granted against Delmar on 26 May 2017, in the United States District Court for the Southern District of Florida, Fort Lauderdale Division ("U.S. District Court") for US\$6,753.57 payable in Canadian dollars under s. 121 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (b) Pre-judgment and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) Costs of this action, plus all applicable taxes; and
- (d) Such further and other relief as to this Honourable Court may seem just.

PARTIES

2. The Receiver was appointed by the U.S. District Court to act on behalf of Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund, LP ("ETIF"), Elm Tree 'e'conomy Fund, LP ("ETEF"), Elm Tree Motion Opportunity, LP, ("ETMO") and ETOPIA, LP ("ETOPIA") (ETIA, ETIF, ETEF, ETMO, and ETOPIA are collectively the "Receivership Entities"). The Receivership Order was issued on 16 January 2015 by U.S. District Judge William P. Dimitrouloas following a motion by the United States Securities and Exchange

Commission. The Receiver is the Director of Receivership and Fiduciary Services at Michael Moecker & Associates, Inc. located at 1883 Marina Mile Boulevard, Suite 106, Fort Lauderdale, Florida.

3. Defendant Delmar resides in Thornhill, Ontario.

RECOGNITION AND ENFORCEMENT OF U.S. JUDGMENT

4. On 15 November 2016, the Receiver filed an Amended Complaint (“Complaint”) against Delmar and others in the U.S. District Court relating to his participation in, and receipt of funds from, an illegal Ponzi scheme. The Complaint included allegations that:

(a) Frederic Elm f/k/a Frederic Elmaleh (“Elm”) and the Receivership Entities engaged in a fraudulent Ponzi scheme through the offer and sale of fraudulent investments and securities to investors;

(b) Elm was the ultimate owner of the Receivership Entities, which were used to perpetrate the scheme and funnel investor money to himself and his family members;

(c) The scheme raised more than \$17 million from more than 50 investors through the sale of securities in ETIF, ETEF, ETMO, and ETOPIA (the “Elm Tree Funds”);

(d) Investors sent funds to Elm for investment into the Elm Tree Funds, but the funds did not generate a profit;

(e) A small portion of funds provided by investors were actually invested, while the vast majority of funds were actually used to repay other investors and fund personal expenses for Elm and his family;

(f) Like all Ponzi pyramid schemes, the money provided to “winners” came out of investments made by “losers”, rather than from legitimate business profits;

(g) The majority of investors in the Elm Tree Funds: received no distributions from the purported trading or investment profits; received a distribution less than the amount invested; and suffered net losses;

(h) Certain investors, including the Defendant, are “net winners” who recouped more than they originally invested into the scheme;

(i) Funds paid to net winners were wrongfully misappropriated by Elm in furtherance of the scheme, comprise assets improperly diverted from the Elm Tree Funds, and are assets the Receiver was appointed to marshal for the benefit of defrauded investors;

(j) Allowing net winners to keep funds would be inequitable and unjust;

(k) On 21 July 2014, Delmar transferred funds in the amount of \$29,985.00 via wire to ETMO. On 29 October 2014, ETIF transferred funds in the amount of \$36,000.00 via cashier’s check to Delmar.

(l) Funds transferred to Delmar were derived from the fraudulent Ponzi scheme; and

(m) The Receivership Entities did not receive reasonably equivalent value from Delmar in exchange for transfers to him.

5. On 6 December 2016, Delmar was properly served with the Complaint in the proceedings before the U.S. District Court but chose not appear or answer the Complaint. On 14 April 2017, the Clerk of the U.S. District Court entered a default against him for failing to appear, answer, or otherwise plead to the Complaint within the required time.

6. On 2 May 2017, the Receiver filed a motion for Default Final Judgment against Delmar.
7. On 9 May 2017, the U.S. District Court entered an Order to Show Cause Why the Court Should Not Grant Motions for Final Default Judgment. Delmar did not file a response to that Order, and the time for responding has expired.
8. On 26 May 2017, the Receiver obtained Default Final Judgment against Delmar from the U.S. Court for US\$6,015.00, and US\$738.57 in pre-judgment interest from 29 October 2014. A copy of the U.S. Judgment is attached as Exhibit "1".
9. The total balance due and owing by Delmar is US\$6,753.57, which under section 121 of the *Courts of Justice Act* must be paid:
 - (a) In an amount of Canadian currency sufficient to purchase US\$6,753.57 at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada) ("bank"); and
 - (b) Based upon the exchange rate applicable for Canadian dollar purchases of U.S. currency quoted by the bank at the close of business on the day before payment of the obligation is made to the Receiver.
10. To date, Delmar has failed to make any payment under the U.S. Judgment.
11. The U.S. District Court is a court of competent jurisdiction and the U.S. Judgment should be recognized and enforced according to its terms.
12. The Receiver proposes that this action be tried in Toronto.

This is Exhibit "1" referred to in the Schedule "A" of the
Plaintiff's Claim



Commissioner for Taking Affidavits (or as may be)

Rhonda Gail Borneman, a Commissioner, etc.,
Province of Ontario, for Gowling WLG (Canada) LLP,
Barristers and Solicitors.
Expires March 9, 2019.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'Conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,
NGU INVESTORS, LLC, a Florida limited
liability company; JEAN BENVENUTO, an
individual, SURJIT WALIA, an individual,
S.W. EQUITIES CORP., a New York corporation,
TIMOTHY HARTMANN, an individual,
ALEXANDER BUKHSHTABER, an individual,
MVS MEDIA GROUP, LLC, a Florida limited
liability company, HARRY TAWIL, an individual,
EDUARDO DOS SANTOS, an individual,
FILOMENA CALABRIA, an individual,
JOSE ROFFE, an individual, MIREILLE ROFFE,
an individual, SOMESWARI NUKALA, an individual,
Yael TAPIERO, an individual, LAAS W. TURNBULL,
an individual, OMRI TINTPULVER, an individual,
CONSTANTINO DOS SANTOS, an individual,
ARMAND DELMAR, an individual, AHMAD NAQVI,
an individual, MERCEDES ELMALEH, an individual,
ELIA BLUMIN, an individual, TED GREENWALD,
an individual, ALINA TALSKY, an individual,
ELVIS PERVAN, an individual,
ANGELO ISMIRNIOGLOU, an individual, and
JONATHAN VERK, an individual.

Defendants.

FINAL DEFAULT JUDGMENT AWARDING DAMAGES
AS TO DEFENDANT ARMAND DELMAR

THIS MATTER came before the Court upon Plaintiff's Motion for Default Final Judgment (the "Motion") against Armand Delmar ("Defendant") [DE 99], filed herein on May 2,

2017. The Court on May 9, 2017 entered an Order to Show Cause Why the Court Should Not Grant Motions for Final Default Judgment [DE 108]. Defendant did not file a response and the time in which to do so has passed.

On April 14, 2017, the Clerk of Court entered a default against Defendant [DE 82] for failure to appear, answer, or otherwise plead to the complaint filed herein within the time required by law. Plaintiff has filed a sworn declaration with the Court as to the amount due from Defendant.

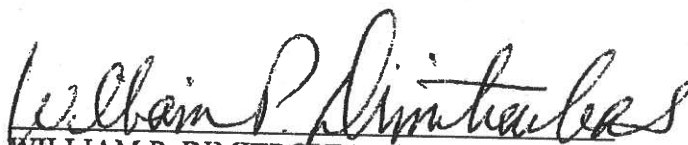
UPON CONSIDERATION of the Motion [DE 99], and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Default Final Judgment [DE 99] is GRANTED.
2. Final Judgment is hereby entered in favor of Plaintiff Grisel Alonso, as Receiver for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, and Elm Tree Motion Opportunity, LP, 1883 Marina Mile Boulevard, Suite 106, Fort Lauderdale, FL 33315, and against Defendant Armand Delmar, 264 Judith Avenue, Thornhill, ON L4J 7C7 Canada.

1. Plaintiff shall recover from Defendant the sum of \$6,015.00 in damages, and \$738.57 as pre-judgment interest from October 29, 2014, for a total of \$6,753.57, that shall bear interest at the prevailing statutory legal rate of interest, for which let execution issue forthwith.

2. Plaintiff shall file a separate motion as to an award of costs associated with this Defendant.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida this 26th day of May, 2017.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record

Armand Delmar
264 Judith Avenue
Thornhill, ON
L4J 7C7, Canada