

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

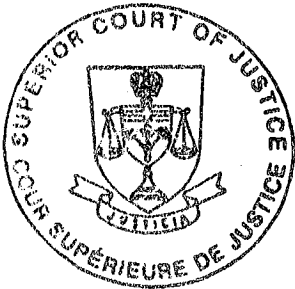
GRISEL ALONSO, AS RECEIVER FOR ELM TREE INVESTMENT
ADVISORS, LLC, ELM TREE INVESTMENT FUND, LP, ELM TREE 'e'
CONOMY FUND, LP, ELM TREE MOTION OPPORTUNITY, LP, and
ETOPIA, LP

Plaintiff

and

MERCEDES ELMMALEH

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

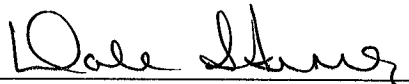
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Sept 19 2017 Issued by 
Local Registrar

Address of Superior Court of Justice
court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: Mercedes Elmaleh
59 McCabe Crescent
Thornhill, ON L4J 2S6

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

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, Mercedes Elmaleh (“Elmaleh”) for:

- (a) Recognition and enforcement of a judgment (“U.S. Judgment”) granted against Elmaleh 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\$49,627.19 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 Elmaleh resides in Thornhill, Ontario.

RECOGNITION AND ENFORCEMENT OF U.S. JUDGMENT

4. On 15 November 2016, the Receiver filed an Amended Complaint (“Complaint”) against Elmaleh and others in the U.S. District Court relating to her 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 individuals, including the Defendant, received transfers of funds from the Receivership Entities without making any investment (the “non-investors”);
- (i) Funds paid to the non-investors 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 non-investors to keep funds would be inequitable and unjust;

- (k) Between 3 December 2013 and 28 April 2014, a total of US\$43,275.87 was transferred from ETIA, Elm, and his family to the Defendant - who is also a family member - via two separate wire transfers and two checks;
- (l) Funds transferred to Elmaleh were derived from the fraudulent Ponzi scheme; and
- (m) The Receivership Entities did not receive reasonably equivalent value from Elmaleh in exchange for transfers to her.

5. On 8 December 2016, Elmaleh 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 her 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 Elmaleh.

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. Elmaleh 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 Elmaleh from the U.S. Court for US\$43,275.87, and US\$6,351.32 in pre-judgment interest from April 28, 2014.

9. The total balance due and owing by Elmaleh is US\$49,627.19, which under section 121 of the *Courts of Justice Act* must be paid:

(a) In an amount of Canadian currency sufficient to purchase US\$49,627.19 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, Elmaleh 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.

(Date of issue)

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GRISEL ALONSO, AS RECEIVER FOR ELM TREE
INVESTMENT ADVISORTS, LLC, ELM TREE INVESTMENT
FUND, LP,
Plaintiff

-and- MERCEDES ELMALEH

Defendant

CV-17-582924

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for Plaintiff

File Number: T1007900