



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2010

BETWEEN: ASIA FUND LIMITED PLAINTIFF
AND: NARESH NANUBHAI DESAI DEFENDANT



WRIT OF SUMMONS

TO: NARESH DESAI
1 Tanjong Rhu Road
#05-01, Singapore
436879

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 28 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 495, Grand Cayman KY1-1106, Cayman Islands, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of August 2010.

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.

STATEMENT OF CLAIM

Parties

1. At all material times the First Plaintiff (“AFL”) was and is an exempted limited liability company registered in the Cayman Islands on 19 November 1984 carrying on the business of, inter alia, consultancy and investment services to a range of clients wishing to invest principally in India and Asia generally.
2. On 16 October 1995 the Defendant (“ND”) was appointed as a director of AFL (“Director”) and held office until 18 January 2006 when he resigned as Director. Prior to being appointed Director, ND was a senior investment banker for Barclays Bank in Hong Kong who was subsequently registered as an independent investment advisor in Singapore.

Claims Regarding Nuplas

3. In 1999, AFL incorporated a sub fund in Mauritius by the name of Nuplas Limited (“Nuplas”) which was intended to facilitate investments in India. At all material times AFL was the sole shareholder of Nuplas, however it was intended that Nuplas would issue participating shares to a variety of investors who were interested in investments in India.
4. At all material times AFL was the Investment Manager (“IM”) of Nuplas.
5. Deloitte & Touche Offshore Services Limited (“DTOS”) was the Administrator of Nuplas, but was terminated on or around 21 March 2005. DTOS was replaced as Administrator by Multiconsult Ltd (“Multiconsult”) on or around 21 March 2005.

6. In his capacity of director of AFL, ND was responsible for the investment management services provided by AFL to Nuplas. As a Director of AFL, he owed AFL certain common law and fiduciary duties as will be described in further detail below.
7. In or around 2 January 2000, ND provided funds to Nuplas for the purposes of investment by Nuplas (the "Initial Capital"). ND provided the Initial Capital directly to DTOS. No documentation was put in place with respect to the Initial Capital and as a result it was not clear on what basis the Initial Capital was provided. In particular, if it was intended to be a loan, no loan documentation was created and/or executed and if it was intended to be a capital investment, no subscription documents were completed and no participating shares were issued in Nuplas in accordance with the Memorandum and Articles of Association of Nuplas or otherwise. The proper procedure should have been adopted by ND as stated at paragraph 16 below.
8. The Initial Capital provided by ND consisted of his personal funds as well as funds which he had raised from other investors ("the other investors").
9. The other directors of AFL were aware that ND would be contributing the Initial Capital. However, they were not aware that ND did not complete any documentation as set out in paragraph 7 above. In addition they were not aware that the Initial Capital consisted of funds other than those personally belonging to ND.
10. Nuplas did not complete due diligence on the source of the Initial Capital because ND was unwilling to provide these details to Nuplas. The other directors of AFL were not aware that Nuplas had not been provided with such due diligence. During the time that DTOS was the Administrator of Nuplas, Mr. Chandra K. Gujadhur and Mr. Robert Konfotion were the directors of Nuplas. When Multiconsult were appointed as the new Administrators in or around March 2005, Mr. Louis Emmanuel NG Cheong Tin and Mr. Uday Kumar Gujadhur were appointed as directors replacing Mr.

Chandra K. Gujadhur and Mr. Robert Konfotion. In or around October 2008 Mr. Louis Emmanuel NG Cheong Tin and Uday Kumar Gujadhur both resigned as directors and in their place Mr. Abdool Azize Owasil and Mr. Devon Coopoosamy were appointed as directors of Nuplas.

11. ND, in his capacity as a director of AFL and with his extensive experience as an investment banker, was aware or ought to have been aware that the required procedure as set out in the Articles of Association of Nuplas was that all investment in Nuplas should be by way of the purchase of participating shares which called for the completion of subscription agreements and related documents. This was the *modus operandi* of Nuplas and provided for expressly in Article 19 of the Articles of Association of Nuplas. However, ND did not follow this proper procedure.
12. In addition, as a result of no participating shares being issued in Nuplas and/or loan documentation being completed, ND was in a position to personally and directly charge the other investors' fees for investing in Nuplas without involving either Nuplas or AFL and in doing so avoid subscription fees.
13. ND, in his capacity as a director of AFL which was the investment manager of Nuplas, also directly instructed DTOS in respect of the liquidation of various investments and the remittance of funds realised on the sale of investments (the "Profits").
14. ND instructed DTOS that the Profits from time to time be distributed to various bank accounts controlled by either ND or the other investors and were not consistently returned to the accounts that were the original source of the funds which were invested through Nuplas.

15. Payments of the Profits in this fashion was not in accordance with the provisions of the Memorandum and Articles of Association of Nuplas i.e., under which they should have been remitted either by way of a dividend, redemption of participating shares or the repayment of a loan.
16. The correct procedure that should have been followed by DTOS and ND in respect of any returns on Nuplas investments is that Nuplas should have declared a dividend out of the Profits and/or, acceded to a request for redemption of shares in accordance with its Memorandum and Articles of Association and/or made formal entries in the accounting records of Nuplas reflecting loan repayments, as the case may have been.
17. ND secretly profited from his position as Director in that he avoided paying the requisite subscription fees and/or redemption fees by circumventing the subscription and redemption procedures set out in the Memorandum and Articles of Association and may have made further secret profits from investment management fees received from investors which were not recorded in the books of Nuplas or AFL depriving AFL of the benefit of those fees.
18. In addition, as a result of ND's actions, third party investors who wished to invest directly in Nuplas by purchasing participating shares were not able to do so which resulted in a loss of significant fee income by AFL.

The Audit of Nuplas

19. In or around March 2001 AFL requested an audit of Nuplas (the "Audit"). Prior to the request Nuplas had not been audited.
20. During the Audit, the auditors discovered a number of irregularities in Nuplas primarily as a result of ND's failure to follow proper procedure with respect to the

introduction of the Initial Capital distribution and the Profits. The auditors raised a number of concerns with the other directors of AFL who became aware of these issues for the first time.

21. In order to provide a clean audit report, the auditors advised Nuplas that they required the accounts be regularised by making certain book entries to reflect the introduction of the Initial Capital and the distribution of the Profits. The auditors also required that Nuplas obtain due diligence on the source of the Initial Capital.
22. ND did not provide Nuplas with any due diligence on the source of the Initial Capital. In order to regularise the accounts of Nuplas, AFL agreed with the auditors of Nuplas that Nuplas and AFL would treat the Initial Capital as being loaned by ND to AFL, then remitted to Nuplas by AFL by way of a loan. Similarly, it was agreed that the Profits paid by Nuplas at the direction of ND were to be treated as being remitted by Nuplas to AFL and then from AFL to ND (the "Regularisation").
23. However, the Regularisation was further complicated by the fact that ND had already received funds from Nuplas as a result of his direct instructions to DTOS to remit funds to him and/or at his direction.
24. The Regularisation resulted in AFL taking on the risk of Nuplas' failure to undertake due diligence as to the source of the Initial Capital and made AFL liable to ND.
25. In addition, AFL incurred unnecessary costs in corresponding with the auditors and dealing with the issues raised by the auditors.
26. The irregularities caused by ND's failure to follow proper procedure also resulted in Nuplas not being in a position to offer to sell participating shares to third party

investors. This resulted in a loss of significant fee income to AFL acting as investment manager for Nuplas.

27. Nuplas had become unusable for the purposes of third party investments for the reasons set out in paragraph 29 above and subsequently entered into liquidation in 2009.

Loan Participation Note Agreement (“LPNA”)

28. As part of the Regularisation in 2004, the LPNA was entered into between ND as the Loan Participant and AFL, and was backdated to 2 January 2000. Nuplas was not a party to the LPNA.
29. It was provided in the LPNA that the Initial Capital purportedly provided to Nuplas by AFL (pursuant to the Regularisation by way of a loan) was initially supplied by ND to AFL also by way of a loan. In addition, the LPNA provided that ND would receive 95% of the gains arising from the return to AFL of the investment in loan advances to Nuplas less management fees and expenses.
30. As set out in paragraph 26 above, there was no commercial reason for AFL to enter into the LPNA, rather the LPNA was for the sole benefit of ND in order to protect his position and, along with the Regularisation, was not in the best interest of AFL.
31. Further, ND had a conflict of interest in relation to the LPNA.
32. The LPNA is governed by the laws of the Cayman Islands.
33. The Plaintiff will rely on the LPNA for its full meaning and effect. However, the relevant clauses of the LPNA are set out as follows:

a. Clause 1 – Duration of Obligations

- i. 1.1 The provisions of this Agreement shall remain in full force and effect until such time as either the Loan Participant or the Company settle in full the loan balance existing between the Loan Participant and the Company arising from the terms of the Agreement whereupon the obligations and liabilities that such determination shall be without prejudice cease and determine provided that such determination shall be without prejudice to any obligations or rights of any of the parties hereto which have accrued prior thereto.

b. Clause 3 – Loan Advances

Clause 3.3 provides that the quantum of the loan advanced to the Company by the Loan Participant shall be fully invested by the Company into Nuplas Limited.

c. Clause 4 Loan Terms

Clause 4.2 provides that the Loan Participant will be entitled to receive up to 95% of the gains arising from the return to the Company of the investment in loan advances to Nuplas Limited.

d. Clause 5 – Fees and Expenses

Clause 5.1 states that in return for being granted a return of up to 95% of the gains as referred to in 4.2 above the Loan Participant shall be liable for the following fees and expenses:

- i. 5.1.1 – Annual Management Fee

An annual management fee of between 0.5% and 1.5% will be levied

annually based on the value of loan advances received by the Company. The annual charges will be agreed between the Loan Participant and the Company.

ii. 5.1.2 – Operating and Establishing Fees

The Company will charge any direct costs incurred to the Loan Participant, however, it is anticipated that all direct costs such as brokerage, tax and accountancy services, registration fees and others expenses due to supervisory or regulatory authorities in various jurisdictions will be met by Nuplas Limited and as such will be reflected in the net realisable value of the underlying assets which provides security and loan repayment funding. Where any such further direct costs are incurred these will be advised to the Loan Participant by the Company.

e. Clause 5.2 – The Company may on application from the Loan Participant offset any fee against the Loan Repayment

f. Clause 6 – Loan Repayments

i. 6.2 – The Company reserves the right to return funds from the loan repayment sum to meet any direct costs incurred which are subject to agreement. Such funds returned will either be used to settle direct costs or repaid to the Loan Participant once agreement is reached.

ii. 6.3 – Under clause 5.2 the Company may offset any fee against the loan repayment on application from the Loan Participant.

iii. 6.4 – A schedule of loan repayments by the Company to the Loan Participant shall be prepared periodically as agreed between the Company

and the Loan Participant and such schedules will be approved by the Company and the Loan Participant as an Addendum to the Agreement under the same terms and conditions.

34. In accordance with clause 6.4 of the LPNA, AFL prepared periodic schedule of loan repayments as Addendum No. 1 dated 14 April 2004 and Addendum No. 2 dated 14 April 2004 which were submitted to ND who confirmed the receipt of the loan repayments as set out in both schedules by signing the deeds attached to both schedules.
35. Addendum No. 2 contained a letter from AFL dated 14 April 2004 advising ND that certain assets were yet to be realised by Nuplas and that upon realisation of all net assets, Addendum No. 3 would be provided after which the loan should be settled in full and the LPNA would be formally terminated.
36. On 15 April 2010, a director of AFL, Praful Patel ("PP") sent a letter to ND advising ND of the outstanding amounts due to him under the LPNA which accounted for the costs incurred by Nuplas as a result of ND's breaches as set out in a document attached to said letter entitled Calculation of Final Amount Owed by AFL to ND which showed the outstanding amount owed to ND as US\$56,523.10.
37. The agreed management fee pursuant to clause 5.1.1 of the LPNA was 1.5% and is the rate used in calculating Addendum No.2 and No. 3.
38. Further to clause 1 of the LPNA, the agreement is to remain in effect until the loan is settled and the LPNA terminated, including all the management fees. It was agreed that Management fees were to be charged in accordance with this clause and have been applied for the entire duration of the agreement.

Memorandum of Understanding

39. As set out above, the terms of the LPNA characterised the Initial Capital as a Loan from ND to AFL. This created a number of difficulties since ND had already received Profits in excess of the Initial Capital and therefore it appeared as though he had been overpaid.
40. Issues also arose with respect to the way in which the management fees and other expenses were being calculated.
41. ND therefore requested that the majority shareholder of AFL enter into an informal memorandum of understanding directly with ND which would take the place of the LPNA. However, after negotiations failed, ND reverted back to enforcing the LPNA. These negotiations also caused AFL to incur additional costs.

Writ Action

42. On 1 June 2010, ND issued a Writ of Summons in the High Court of the Republic of Singapore against AFL seeking the sum of US\$1,231,210 plus damages and interest pursuant to the LPNA (the "Singapore Claim").
43. AFL has sought to have the Singapore Claim stayed on the ground that the matter should be dealt with in the Cayman Islands.

Summary of Claims against ND

44. AFL seeks a declaration that it is not liable to ND for the amount of US\$1,231,210.00 plus damages and interest as claimed in the Singapore proceedings and that any amounts which are in fact prima facie found to be owed by AFL pursuant to the

LPNA would be reduced, diminished and/or extinguished by AFL's claims against him for the following losses resulting from the above mentioned breaches of duty:

- a. Costs of the Regularisation; and
- b. Loss of opportunity for attracting investment from a wide variety of investors as was originally intended in setting up Nuplas.

45. AFL also seeks a declaration that any profits received and benefits obtained by ND in his capacity as a director in the course of business dealings for AFL were held on constructive trust by ND for AFL.

46. AFL further seeks an account of profits by ND for any profits received and benefits obtained by him in his capacity as a director in the course of business dealings for AFL.

The Plaintiff claims

- (1) A Declaration that the Plaintiff is not liable to ND for the amount of US\$1,231,210.00 plus damages and interest as claimed in the Singapore proceedings and that any amounts which are in fact prima facie found to be owed by AFL pursuant to the LPNA would be reduced, diminished and/or extinguished by AFL's claims against him for breach of duties as set out above and/or AFL has a defence of set-off against ND's claims under the LPNA.
- (2) An account of profits by ND for any profits received and benefits obtained by him in his capacity as a director in the course of business dealings for AFL.

- (3) A Declaration that that any profits received and benefits obtained by ND in his capacity as a director in the course of business dealings for AFL were held on constructive trust by ND for AFL;
- (4) Such further and other relief;
- (5) Interest pursuant to section 34 of the Judicature Law;
- (6) Costs.

Dated the 2nd day of August 2010

Filed the day of August 2010

Campbells

CAMPBELLS
Attorneys-At-Law for the Plaintiffs

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2010

BETWEEN: ASIA FUND LIMITED PLAINTIFF

AND: NARESH NANUBHAI DESAI DEFENDANT

ACKNOWLEDGEMENT 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 name of the Defendant by whom or on whose behalf the service of this Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick the appropriate box)

No

Yes

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).

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

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 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 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:

Campbells 4 th Floor Scotia Centre PO Box 884 GT Grand Cayman KY1-1103 Ref: JRM/CM/17308

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

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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

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.