

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 436 OF 2010

B E T W E E N:

KTC

AND

- (1) RODRIC DAVID
- (2) NIKOLAOS MAVROMANOLAKIS
- (3) NAVEEN DAVID SINGH
- (4) SINGH INVESTMENTS LIMITED
- (5) EMERGENT CAPITAL LIMITED



Defendants

WRIT OF SUMMONS



- TO: (1) RODRIC DAVID of Apt 2601, 168 Kent Street, Sydney, New South Wales, Australia.
- AND TO: (2) NIKOLAOS MAVROMANOLAKIS of Al Sufouh Road, Dubai 26500, United Arab Emirates.
- AND TO: (3) NAVEEN DAVID SINGH of Walsh Bay Apartments, 21a Hicksons Road, Walsh Bay, Sydney, New South Wales, Australia.
- AND TO: (4) SINGH INVESTMENTS LIMITED of Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.
- AND TO: (5) EMERGENT CAPITAL LIMITED of Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out herein.

Within 14 days, or, in the case of a Defendant in relation to which the Court has granted leave to serve out of the jurisdiction, such time as may be fixed by the Court, 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 GT, George Town, Grand Cayman, the accompanying Acknowledgement 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 26th day of November 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

The Parties

1. The Plaintiff (KTC):
 - a. is an exempt company incorporated on 4 September 2008 pursuant to the laws of the Cayman Islands; and
 - b. has its registered office at Walkers Corporate Services Ltd, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.
2. Charif Kazal (Charif Kazal) and Tarek Kazal (Tony Kazal) are the directors of KTC.
3. The First Defendant (Rodric David) is an individual residing in New South Wales, Australia, and a director of both the Fifth Defendant and RAAL Limited (an exempt company incorporated on 4 September 2008 pursuant to the laws of the Cayman Islands) (RAAL).
4. The Second Defendant (Mavro) is an individual residing at Al Sufouh Road, Dubai, United Arab Emirates, and at all material times was entered on the Register of Directors of the Fifth Defendant as a director of the Fifth Defendant.
5. KTC disputes that Mavro at all material times was a lawfully appointed director of the Fifth Defendant.
6. The Third Defendant (Singh) is an individual residing in New South Wales, Australia, and a director of the Fourth Defendant.
7. The Fourth Defendant (SIL):
 - a. is an exempt company incorporated on 18 December 2008 pursuant to the laws of the Cayman Islands; and

b. has its registered office at Walkers Corporate Services Ltd, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.

8. The Fifth Defendant (ECL):

a. is an exempt company incorporated on 4 September 2008 pursuant to the laws of the Cayman Islands; and

b. has its registered office at Walkers Corporate Services Ltd, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.

ECL

9. In or about 2008, Charif Kazal and Rodric David discussed and orally agreed to work together jointly in partnership to investigate and undertake investment opportunities pertaining to waste management in Australia and the Middle East/Africa.

10. To reflect the agreed equal partnership between Charif Kazal and Rodric David, ECL was incorporated as a typical quasi-partnership company which had the following features:

a. The share capital of ECL is US\$50,000 divided into 50,000 ordinary shares with a par value of US\$1.00 each.

b. On incorporation, KTC and RAAL (being holding companies incorporated by Charif Kazal and Rodric David respectively) were each allotted 50 ordinary shares in ECL.

c. The Board of Directors of ECL comprised Charif Kazal, Tony Kazal, and Rodric David. To ensure equality in the management of ECL, Charif Kazal and Tony Kazal jointly held one directorial vote between them, Rodric David solely held one directorial vote.

- d. A draft shareholders agreement between KTC and RAAL, although never executed, contained all of the hallmark clauses associated with a company representing an equal quasi partnership, and was acted upon by KTC and RAAL as if it was executed (**the Adopted Shareholders Agreement**).
 - e. KTC incorporates into this Statement of Claim, and relies upon, the terms and conditions contained in the Adopted Shareholders Agreement.
11. The principal object for which ECL was established was to undertake, through its subsidiaries, ventures in connection with waste management in Australia and the Middle East/Africa.
12. The shareholders of ECL as currently entered on its Register of Members are:
- a. RAAL 49,950 ordinary shares.
 - b. KTC 50 ordinary shares.
13. KTC disputes RAAL's shareholding in ECL and states that KTC and RAAL ought properly be entered on the Register of Members of ECL as each owning 50 ordinary shares in ECL.

The Eastern Creek Facility

14. On 18 December 2008, Charif Kazal and Rodric David caused Global Renewables Limited (**GRL**) to be incorporated pursuant to the laws of the Cayman Islands.
15. In consideration for Singh agreeing to participate in the management of the Eastern Creek Facility, Charif Kazal and Rodric David agreed to:
- a. Issue shares in GRL such that the issued shares of GRL were owned as to 80 ordinary shares by ECL and 20 ordinary shares by SIL.
 - b. Install Singh as a director of GRL.

16. On incorporation, Rodric David and Singh were installed as directors of GRL.
17. The shareholding of GRL was as follows:
 - a. ECL 80 ordinary shares.
 - b. SIL 20 ordinary shares.
18. In January 2009, Charif Kazal and Rodric David caused GRL, through its wholly owned subsidiary, Global Renewables Australia Pty Limited (GRA), to acquire a waste management facility at Eastern Creek in New South Wales, Australia (the Eastern Creek Facility) which provided waste management services to the State of New South Wales through a statutory State owned corporation, WSN Environmental Solutions (WSN).

Deterioration of Relationship Between Charif Kazal and Rodric David

Loan Accounts

19. For the purposes of providing capital for the operation of the Eastern Creek Facility, Charif Kazal's brother, Karl Kazal:
 - a. provided a personal guarantee in January 2009 in the amount of AUD\$2 million to GRA to partially secure a loan facility from the Commonwealth Bank of Australia for approximately AUD\$35 million secured on the Eastern Creek Facility; and
 - b. loaned a total of AUD\$600,000 to ECL in September and October 2009 for the purpose of paying creditors of GRA with respect to the Eastern Creek Facility.

Particulars

The following payments were made from ECL to GRA from the loan funds provided by Karl:

11 September 2009	AUD\$99,050
18 September 2009	AUD\$100,050
2 October 2009	AUD\$100,000
2 October 2009	AUD\$100,000
13 October 2009	AUD\$100,000
29 October 2009	AUD\$100,000

20. RAAL contributed loan funds to ECL allegedly for the purposes of the Eastern Creek Facility and a joint venture in the Middle East (which failed).
21. At all material times, the true amount of funds loaned by RAAL to ECL or any of its subsidiaries was not divulged by Rodric David and was unknown to Charif Kazal, Tony Kazal, or KTC.
22. On or about 17 June 2009, Rodric David presented to Charif Kazal a Memorandum of Understanding stipulating alleged funding provided by RAAL and Rodric David for the purposes of the Eastern Creek Facility, and requiring that KTC agree to RAAL receiving a transfer of 80% of ECL's shares in GRL in lieu of receiving repayment of the loans.
23. There was no documentation provided by Rodric David to support the amount of the alleged loans and KTC therefore refused to sign the agreement.

Nikolaos Mavromanolakis

24. On or about 18 August 2009, Rodric David, in his capacity as a director of ECL, proposed to appoint Mavro as a director of ECL.

Particulars

The proposal was contained in an email from Rodric David to Charif Kazal dated 18 August 2009.

25. To validly appoint Mavro as a director of ECL, a resolution to that effect was required to be approved by a majority vote of the directors of ECL, namely Charif Kazal, Tony Kazal, and Rodric David.
26. At no time did Charif Kazal or Tony Kazal, as Directors of ECL, agree to, or vote in favour of a resolution approving, the appointment of Mavro as a director of ECL.
27. According to the Register of Directors of ECL, Mavro was appointed a director of ECL on 13 November 2009.
28. Mavro was never lawfully appointed as a director of ECL by resolution of its directors.
29. Mavro is not a lawfully appointed director of ECL and never has been.

ECL Meeting on 13 November 2009

30. On 13 November 2009, Rodric David purported to convene a meeting of the directors and shareholders of ECL in Abu Dhabi, UAE (the **13 November Meeting**).
31. The 13 November Meeting was not a duly convened meeting of the shareholders of ECL.

Particulars

- a. No formal notice of, or agenda for, the 13 November Meeting was provided by Rodric David to Charif Kazal, Tony Kazal, or KTC.
 - b. Attendees at the 13 November Meeting included Singh and Mavro who were neither directors nor shareholders of ECL.
32. No resolution was presented at the 13 November Meeting (or at all) for the appointment of Mavro as a director of ECL.
33. At the 13 November Meeting, attended by Rodric David, Charif Kazal, Tony Kazal, Singh, and Mavro, inter alia:
- a. Rodric David requested that Charif Kazal and Tony Kazal agree to him receiving payments from ECL on account of a salary and housing allowance. Charif Kazal and Tony Kazal refused the request.
 - b. Rodric David requested Charif Kazal to cause KTC to contribute loan funds to ECL in an amount equal to the loan funds Rodric David claimed had been contributed to ECL by himself and RAAL.
 - c. Charif Kazal agreed to cause KTC to contribute the requested loan funds upon independent confirmation of the amount of the loan funds contributed by Rodric David and RAAL.
 - d. It was resolved by the Board that an independent auditor would be engaged to determine the balance sheet of ECL, and thereby, quantify the loan contributions to ECL made by Rodric David and RAAL.
34. Draft minutes of the 13 November Meeting were prepared and circulated by Mavro. KTC does not admit the accuracy of those Minutes, and specifically denies:

- a. That there was any agreement concerning a shareholders agreement between ECL and SIL in relation to their respective interests in GRL; or
- b. That any resolution was put to the meeting to appoint Mavro as a director of ECL.

ECL Meeting on 10 December 2009

35. On 10 December 2009, a meeting of the directors of ECL was convened in Sydney, Australia (the 10 December Meeting).
36. Present at the 10 December Meeting were Charif Kazal, Rodric David, Tony Kazal, Karl Kazal, and Mavro.
37. Charif Kazal objected to the attendance of Mavro at the meeting because Mavro was not a director of ECL. Rodric David confirmed that Mavro was in attendance as his personal advisor and not a director.
38. At the 10 December Meeting, inter alia:
 - a. Mavro presented a set of unaudited accounts for ECL prepared by an accounting firm, MGI.
 - b. Charif Kazal rejected the accounts presented by Mavro on the basis that they were not independently audited.
 - c. Robust discussion took place concerning the shareholding and level of investment in GRL.
 - d. Rodric David confirmed that the original deal and the expectations of the Kazal family as regards the position and shareholding of Singh and SIL in GRL would be met.

39. Charif Kazal did not regard MGI as an independent accounting firm because they were:
 - a. the existing accountants for ECL and its subsidiaries; and
 - b. one of the firms of accountants used by Rodric David's family.
40. The expectation of Charif Kazal, Tony Kazal, and the Kazal family was at all material times that SIL would hold 20% of the issued shares in GRL, and ECL would hold the remaining 80% of the issued shares.
41. Draft minutes of the 10 December Meeting were prepared and circulated by Mavro. KTC does not admit the accuracy of those Minutes.
42. Charif Kazal disputed the accuracy of the draft minutes of the 13 November Meeting and the 10 December Meeting by letter to Rodric David dated 22 December 2009. KTC will rely on this letter at trial for its full terms and effect.

Shareholders Agreement between ECL and SIL

43. On 1 March 2009, a draft shareholders deed between ECL and SIL, setting out the respective parties' interests in GRL, was sent by Rodric David to Charif Kazal asking for comment.
44. On 14 November 2009, a draft shareholders deed between ECL and SIL dated April 2009 regarding their respective interests in GRL was provided by Singh to Charif Kazal.
45. On 24 November 2009, ECL and SIL entered into a shareholders agreement in relation to their respective shareholdings in GRL (SHA1).
46. SHA1 was executed by Rodric David for and on behalf of ECL.

47. SHA1 was:
- a. Not tabled before a meeting of directors of ECL for discussion and approval.
 - b. Different to the earlier shareholder agreements that had previously been provided to Charif Kazal;
 - c. Not shown to Charif Kazal or Tony Kazal prior to its execution; and
 - d. Entered into by Rodric David, for and on behalf of ECL, without the knowledge or consent of Charif Kazal or Tony Kazal.

Dilution of KTC's Shareholding

48. On 22 January 2010, Charif Kazal received, by email from Mavro, a Notice of Meeting for a meeting of the directors of ECL to be convened on 28 January 2010 (**the 28 January Meeting**). The sole agenda item in the Notice of Meeting was "to discuss and resolve certain matters relating to the capital structure of the company". KTC will rely on the Notice of Meeting at trial for its full terms and effect.
49. On 27 January 2010, by email from Charif Kazal to Rodric David, Charif Kazal disputed, inter alia, the validity of the Notice of Meeting for the 28 January Meeting, and the capacity of Mavro to act on behalf of ECL. KTC will rely on the email dated 27 January 2010 at trial for its full terms and effect.
50. On 28 January 2010, the 28 January Meeting was held.
51. Neither Charif Kazal nor Tony Kazal attended the 28 January Meeting.
52. Walkers, the attorneys for ECL, provided Charif Kazal with the Minutes of the 28 January Meeting on 18 March 2010. The Minutes recite:
- a. The attendees at the meeting were Rodric David and Mavro.

- b. Rodric David declared his interest in the transactions to be proposed at the meeting.
 - c. The directors had received a letter from RAAL demanding payment of its outstanding loan amount exceeding AUD\$5 million including compound interest.
 - d. RAAL is amenable to receiving 49,900 fully paid shares in ECL in lieu of requiring immediate payment of its loans.
 - e. RAAL had applied to be issued 49,900 ordinary shares in ECL by letter dated 28 January 2010.
 - f. If RAAL's proposal was accepted by ECL, its shareholder loans would be reduced by the amount of AUD\$49,900.
 - g. It was unanimously resolved to issue 49,900 ordinary shares in ECL to RAAL on the terms and conditions proposed by RAAL.
53. Neither Charif Kazal, Tony Kazal, nor KTC received any letter, or had any knowledge, concerning RAAL demanding payment of its alleged outstanding loan amount.
54. The effect of the purported issue of 49,900 ordinary shares in ECL to RAAL was to dilute KTC's shareholding in ECL from 50% to 0.01% in breach of the agreement between Rodric David and Charif Kazal that they would be equal partners in ECL.
55. The issuance of 49,900 ordinary shares in ECL to RAAL pursuant to the resolution of directors purportedly passed at the 28 January Meeting was invalid.

Particulars

- a. The Notice of Meeting was required by law to disclose the purpose of the 10 January Meeting fairly, not mislead those to whom it was addressed, and be clear, open, and free from trickiness.
 - b. The Notice of Meeting, on any interpretation, cannot be construed as even remotely contemplating the events which occurred – that is, for KTC's shareholding in ECL to be diluted from 50% to 0.01%.
 - c. The description of the business proposed for the 28 January Meeting was vague, and a request from Charif Kazal to Rodric David in the letter dated 27 January 2010 seeking clarification on the intent of the meeting went unanswered.
 - d. The 28 January Meeting was not called in compliance with the terms of the Adopted Shareholders Agreement in that Charif Kazal and Tony Kazal were not provided with 7 days notice of the meeting.
 - e. There was no quorum for the 28 January Meeting because only one director of ECL (Rodric David) was in attendance, or if Mavro was a validly appointed director (which is denied by KTC), Rodric David and Mavro were joint directors holding one vote between them, and such joint directorship was not effective to constitute a quorum.
56. Rodric David concealed from Charif Kazal, Tony Kazal, and KTC the purported issuance of 49,900 ordinary shares in ECL to RAAL, and it was only by the receipt of the letter from Walkers dated 18 March 2010 that the share issue was discovered.

Fiduciary Duties Owed by Rodric David to ECL

57. Rodric David was a director of ECL from the time of its incorporation to the present day.

58. In his capacity as director, Rodric David owed ECL fiduciary duties, including:
- a. a duty to exercise his powers bona fide for the interests of ECL and for a proper purpose;
 - b. a duty not to prefer the interests of himself, his related parties or any other party, over those of ECL;
 - c. a duty not to act so as to place himself in a position in which his personal interests did or might conflict with the interests of ECL; and
 - d. a duty not to use his position for personal profit.

Breach of Rodric David's Fiduciary Duties to ECL – the allotment to RAAL

59. By effecting the share allotment by ECL to RAAL, Rodric David breached his fiduciary duties to ECL as pleaded above because the resolution to allot the said shares was made in circumstances where:
- a. he preferred his interests and RAAL's interests over those of ECL;
 - b. he placed himself in a position in which his personal interests did or might conflict with the interests of ECL;
 - c. he used his position for personal profit; and
 - d. he did not act in a way which was bona fide in the interests of ECL as a whole or for a proper purpose.

RAAL's Knowing Receipt

60. In acquiring the said shares, RAAL was not a bona fide acquirer for value without notice of the foregoing breaches of fiduciary duty to ECL by Rodric David.

Removal of Charif Kazal and Tony Kazal as Directors

61. On 18 March 2010, Charif Kazal issued a Notice of Meeting to Rodric David and Tony Kazal by email convening a meeting of the directors of ECL on 29 March 2010 "in order to discuss and resolve the issue of the urgent provision of detailed accounting and other information relating to the Company" (the 29 March Meeting). KTC will rely on the Notice of Meeting at trial for its full terms and effect.
62. The 29 March Meeting was held in Sydney, Australia, and was attended by Rodric David, Mavro, Charif Kazal, and Tony Kazal.
63. At the 29 March Meeting, Rodric David called on the shareholders of ECL to vote on a resolution to remove Charif Kazal and Tony Kazal as directors of ECL. RAAL purported to pass the resolution using its disputed 99.9% shareholding in ECL.
64. The purported removal of Charif Kazal and Tony Kazal as directors of ECL by the shareholders of ECL was invalid and of no effect.

Particulars

- a. The 29 March Meeting was convened as a meeting of the directors of ECL and not a meeting of its shareholders.
- b. The convening of a meeting of the shareholders of ECL without notice is not permitted under the terms of the Adopted Shareholders Agreement.
- c. No notice was given to Charif Kazal or Tony Kazal that an agenda item for the meeting was for their removal as directors of ECL.
- d. In any event, RAAL did not lawfully hold 99.9% of the issued shares of ECL, and as such, was unable to pass any shareholder resolution of ECL without concurrence from KTC.

65. KTC will rely on the minutes of the 29 March Meeting prepared by Rodric David and Mavro at trial for its full terms and effect, save that KTC disputes the meeting was a meeting of the shareholders of ECL.

Winding up Petition

66. On 21 May 2010, KTC presented a petition to the Grand Court of the Cayman Islands for a winding up order against ECL. The petition sought to wind up ECL on the just and equitable ground on the basis that:
- a. As a result of Rodric David's conduct, the relationship of trust and confidence between Charif Kazal and Rodric David had completely and irreparably broken down.
 - b. Further, Charif Kazal had been unjustifiably excluded from participating in the management of ECL contrary to his legitimate expectation of participating in that management.
 - c. Further or in the alternative, the substratum of ECL had failed in that it was unable to carry on the function for which was formed, that is, to be a special purpose vehicle for the equal partnership between Charif Kazal and Rodric David.

Fiduciary Duties of Rodric David and Singh to GRL

67. Rodric David was a director of GRL from the time of its incorporation to the present day.
68. In their capacities as directors, each of Rodric David and Singh owed GRL fiduciary duties, including:
- a. a duty to exercise his powers bona fide in the interests of GRL and for a proper purpose;

- b. a duty not to prefer the interests of himself, his related parties or any other party, over those of GRL;
- c. a duty not to act so as to place himself in a position in which his personal interests did or might conflict with the interests of GRL; and
- d. a duty not to use his position for personal profit.

Fiduciary Duties Owed by Mavro to ECL

69. The Plaintiff repeats paragraphs 24-29 above.
70. In purporting to act as a director, Mavro owed ECL the same fiduciary duties described as being owed by Rodric David in paragraph 58 above.
71. In the alternative, if Mavro was a validly appointed director of ECL (which is denied by KTC), he owed ECL the same fiduciary duties described as being owed by Rodric David in paragraph 58 above.

Further Breaches of Fiduciary Duties by Rodric David

GRL's share allotment to SIL

72. On 22 April 2010, the directors of GRL, Rodric David and Singh, resolved to allot 60 ordinary shares in GRL to SIL, and the shares were thereupon allotted to SIL.
73. The said allotment was made without the knowledge or fully informed consent of Charif Kazal, Tony Kazal, KTC or ECL.
74. The effect of the said allotment of 60 ordinary shares to SIL was as follows:
 - a. SIL's shareholding in GRL increased to 80 ordinary shares which equated to 50% of the issued shares of GRL; and

- b. ECL's shareholding in GRL remained at 80 ordinary shares, thereby reducing its interest in GRL from 80% to 50% and losing control of GRL.
75. SIL furnished no consideration for receiving 60 additional ordinary shares in GRL.
 76. If (which the Plaintiff denies) SIL did furnish consideration for receiving 60 additional ordinary shares in GRL, such consideration was insufficient as being minimal or negligible.
 77. As at 23 April 2010, the only significant asset held by ECL was its interest in the Eastern Creek Facility which had a value of at least AUD\$30 million.
 78. By causing GRL to allot the said shares to SIL, Rodric David divested ECL of an asset valued at approximately AUD\$9 million in circumstances where no tangible benefit accrued to ECL from the transaction.
 79. As a result of Rodric David's conduct in causing GRL to allot the said shares to SIL:
 - a. ECL has suffered loss and damage in the sum of approximately AUD\$9 million; and
 - b. Rodric David is liable to account to ECL for such loss and damage on the ground of his breach of fiduciary duty and/or breach of trust.

Second Shareholders Agreement with SIL

80. On 23 April 2010, Rodric David, as a director of ECL caused ECL to enter into a second shareholders agreement with SIL to replace SHA1 (SHA2). The parties to SHA2 were ECL, SIL, Singh and GRL.
81. The entry into SHA2 by ECL was without the knowledge or consent of Charif Kazal, Tony Kazal, or KTC.

82. It was a term of SHA2 that if an Insolvency Event occurred in relation to ECL:
- a. all rights attached to ECL's shares in GRL would be suspended;
 - b. the director appointed by ECL is taken to have been removed by ECL and all Director appointment rights of ECL are suspended;
 - c. these suspensions continue until ECL's shares in GRL are sold to SIL or the director of GRL appointed by SIL resolves to remove such suspensions;
 - d. SIL may appoint an Auditor to determine the purchase price of ECL's shares in GRL (to be valued in accordance with SHA2); and
 - e. after the Auditor issues an Auditor's Certificate, SIL has the option to acquire ECL's shares at the value determined in accordance with SHA2.

Particulars

Refer sub-clauses 14.3-14.9 of SHA2.

KTC will rely on SHA2 at trial for its full terms and effect.

Side Agreement between Rodric David, SIL and Singh

83. On the same day that SHA2 was executed, and without the knowledge or consent of Charif Kazal, Tony Kazal or KTC, Rodric David, SIL and Singh entered into a side agreement. (**the Side Agreement**).
84. The Side Agreement provides that if ECL is subject to an Insolvency Event such as an administration or liquidation and SIL acquires ECL's shares in GRL pursuant to SHA2, then SIL will grant to Rodric David an option to buy those shares from SIL for the price paid by SIL to acquire them from ECL.

Particulars

KTC will rely on the Side Agreement at trial for its full terms and effect.

85. By reason of:
- a. GRL's share allotment to SIL resolved by GRL's directors, Singh and Rodric David;
 - b. SHA2; and
 - c. The Side Agreement

(all three referred to herein as "The Transaction"), Rodric David and SIL obtained the following benefits:

- d. Rodric David obtained the right to acquire from SIL the latter's shares in GRL, previously owned by ECL (which SIL was entitled to acquire from ECL);
 - e. SIL obtained an increase in its shareholding in GRL from 20% to 50%.
86. Given the complete breakdown in trust and confidence between Charif Kazal and Rodric David, the only remedy reasonably and predictably available to Charif Kazal to address the wrongs perpetrated by Rodric David and RAAL, was to petition to wind up ECL on the just and equitable ground.
87. The Side Agreement was entered into and executed by Rodric David, SIL, and Singh in contemplation of KTC commencing winding up proceedings against ECL.
88. The purpose and effect of the Side Agreement is to cause control of GRL, and ECL's interest in GRL, to vest in Rodric David personally should KTC pursue the only practical and reasonable remedy available to it.

89. The entering into of the Side Agreement by Rodric David was for the sole benefit of Rodric David and not in the best interests of ECL since its purpose and effect is to divest ECL of its only significant asset, and reconstitute ownership of that asset in Rodric David, upon a certain contingency occurring.
90. The Side Agreement was entered into without the fully informed consent of ECL in breach of fiduciary duties owed to ECL by Rodric David and is accordingly void, or alternatively, voidable at the instance of ECL.
91. By resolving (with Singh) that GRL issue shares to SIL and by effecting the Transaction, Rodric David in breach of his fiduciary duties to ECL and GRL:
 - a. made a personal gain in connection with his fiduciary position as director of ECL and as director of GRL;
 - b. obtained a benefit in circumstances where there was a conflict between his duty as a director of ECL and his own personal interest;
 - c. obtained a benefit in circumstances where there was a conflict between his duty as a director of GRL and his own personal interest;
 - d. did not exercise his authority as director of GRL bona fide in the best interests of GRL and for a proper purpose.

Breach of Fiduciary Duties by Singh

92. By resolving (with Rodric David) that GRL issue shares to SIL and by effecting the Transaction, Singh:
 - a. made a personal gain in connection with his fiduciary position as director of GRL;
 - b. obtained a benefit in circumstances where there was a conflict between his duty as a director of GRL and his own personal interest;

- c. did not exercise his authority as director of GRL bona fide in the best interests of GRL and for a proper purpose.

Sale to Ironbridge

93. On or about 7 September 2010, ECL and SIL received an indicative offer from Ironbridge Capital Pty Limited (Ironbridge) to acquire the shares of ECL and SIL in GRL (the Ironbridge Indicative Offer).
94. Salient terms of the Ironbridge Indicative Offer were as follows:
 - a. The offer was expressed to be a non-binding indicative offer to purchase the entire shareholding in GRL for AUD\$25 million.
 - b. Funding for the transaction would be provided and underwritten by funds managed and advised by Ironbridge.
 - c. The offer was subject to the following conditions:
 - i. completion by Ironbridge of satisfactory due diligence including accounting, legal, tax, commercial and insurance;
 - ii. Ironbridge obtaining final approval from its Internal Investment Committee;
 - iii. SIL agreeing to reinvest its entire proceeds from the sale of its 50% shareholding and repayment of its shareholder loan into NewCo and entering into a Shareholders Agreement between Ironbridge and NewCo;
 - iv. Singh agreeing to enter into a Service Agreement with NewCo;
 - v. the Commonwealth Bank of Australia consenting to the current senior debt facility of circa \$35m remaining in place;

- vi. a waiver from the Commonwealth Bank of Australia of any potential historical breach of its loan facility;
 - vii. WSN agreeing to the change in control of GRL;
 - viii. the business being sold with sufficient working capital;
 - ix. capital expenditure being kept up to date and all equipment being properly maintained;
 - x. completion of satisfactory legal documentation on commercial terms typical for a transaction of this nature; and
 - xi. ECL and SIL entering into a Sale and Purchase Agreement to sell their shareholding as well as their respective shareholder loans (or accept repayment of it in full) for the Offer Price immediately the above conditions are satisfied or waived by Ironbridge.
95. On 3 October 2010, by letter from KTC's attorneys to GRL, KTC made an indicative offer to acquire the shares of ECL and SIL in GRL (the **KTC Indicative Offer**). KTC will rely on the letter of 3 October 2010 at trial for its full terms and effect.
96. The KTC Indicative Offer was, mutatis mutandis, on the same terms and conditions as the Ironbridge Indicative Offer save that:
- a. The Offer Price was AUD\$25.5 million.
 - b. The Libyan Investment Authority would be funding the purchase.
 - c. The condition concerning SIL agreeing to reinvest all or any of its proceeds from the sale and repayment of its shareholder loan into NewCo was deleted.

- d. The condition concerning Singh agreeing to enter into a Service Agreement with NewCo was deleted.
 - e. KTC's due diligence team would be Lonergan Edwards (valuers) and Robinson Legal (legal).
 - f. Acceptance of the non-binding offer by ECL (if it elected to do so) would be expressed by ECL to be without admission that SIL is a 50% shareholder in GRL.
 - g. ECL agreed to promptly do all acts and things and take all reasonable steps necessary to obtain the consent of SIL, or an order of the Court, requiring SIL to deposit into an interest bearing account in the joint names of KTC and SIL 60% of the proceeds to be received by SIL from the sale.
 - h. The 60% proportion of the proceeds to be received by SIL would be held in the joint account until such time as the Court could determine SIL's legitimate shareholding in GRL, provided that if such an application was not filed in the Court by or on behalf of ECL within 30 days from settlement of the sale, then the proceeds (including any interest accrued thereon) would forthwith be released to SIL.
97. On 4 October 2010, the Grand Court of the Cayman Islands sanctioned ECL selling its shares in GRL to either Ironbridge or KTC.
98. On 5 October 2010, by letter from KTC's attorneys to Rodric David's attorney, KTC proposed that should SIL refuse to accept the KTC Indicative Offer, then KTC makes a non-binding indicative offer to acquire ECL's shares in GRL for AUD\$15 million on the following terms (**KTC's Final Offer**):
- a. Subject to satisfactory due diligence being completed by KTC within 28 days;

- b. The due diligence inquiries to be undertaken by KTC would be those inquiries stipulated in the Ironbridge Indicative Offer and would be completed within 28 days;
- c. KTC would engage Lonergan Edwards for the purposes of the due diligence;
- d. In the event that KTC's due diligence inquiries were satisfactory, KTC and ECL would enter into a contract for KTC to purchase ECL's shares in GRL for AUD\$15 million with settlement of that contract stipulated to be within 7 days; and
- e. On settlement of the contract, the sale proceeds would be held in a joint account in the names of the attorneys for KTC and RAAL, on trust for KTC and RAAL, until such time as KTC's petition for the winding up of ECL was finalised.

KTC will rely on the letter of 5 October 2010 at trial for its full terms and effect.

- 99. By letter dated 5 October 2010 from KTC's attorneys to Rodric David's attorneys, evidence of finance approval from the Libyan Investment Authority for the purposes of KTC's Final Offer was provided to Rodric David.
- 100. KTC's Final Offer contained substantially better terms than the Ironbridge Indicative Offer, and would have resulted in AUD\$15 million flowing into ECL rather than AUD\$12.5 million.
- 101. In a letter from ECL to KTC dated 9 October 2010, KTC was informed that Rodric David had caused ECL to accept the Ironbridge Indicative Offer for the following stated reasons:
 - a. Clause 8 of SHA2 prohibits ECL from dealing with its shares in GRL prior to 23 April 2011, except with the written consent of the SIL (which consent may be withheld in SIL's absolute discretion).

- b. On 6 October 2010, ECL sought SIL's consent to sell its GRL shares to KTC in accordance with KTC's Final Offer. SIL refused to provide that consent.
 - c. On 6 October 2010, ECL sought SIL's consent to sell its GRL shares to Ironbridge in accordance with the Ironbridge Indicative Offer. SIL consented to the sale.
102. Given SIL's purported refusal to permit ECL to sell its shares in GRL to KTC, KTC's Final Offer of AUD\$15 million was activated and became capable of acceptance by ECL.
103. It was in ECL's best interests for Rodric David to accept KTC's Final Offer which was plainly on more favourable terms than the Ironbridge Indicative Offer.

Further Breaches of Fiduciary Duties by Rodric David – acceptance of the Ironbridge Indicative Offer

104. By resolving to accept the Ironbridge Indicative Offer and by effecting the acceptance of that offer by ECL, Rodric David, in breach of his fiduciary duties to ECL:
- a. did not exercise his authority as director of ECL bona fide in the interests of ECL and for a proper purpose; and
 - b. conferred a benefit on SIL at the expense of ECL.
105. Further or in the alternative, Rodric David's decision to accept the Ironbridge Indicative Offer was in bad faith in that it was motivated by:
- a. Rodric David's intense dislike of Charif Kazal as a result of allegations raised by Charif Kazal in the context of the winding up petition against ECL presented by KTC; and

- b. Rodric David's desire to provide a benefit to Singh and/or SIL at the expense of ECL.
106. In accepting the Ironbridge Indicative Offer, Rodric David acted in breach of his fiduciary duties owed to ECL.
 107. Rodric David cannot justify his actions by relying on the terms of SHA2, the entering into of which was itself a breach of Rodric David's fiduciary duties to ECL and a breach of trust.
 108. As a result of Rodric David's conduct in causing ECL to accept the Ironbridge Offer in breach of his fiduciary duties, ECL has suffered loss and damage in the amount of AUD\$2.5 million, being the difference between the Ironbridge Indicative Offer price and KTC's Final Offer price.

Negligence by Rodric David

109. In determining whether ECL should accept the Ironbridge Indicative Offer or KTC's Final Offer, Rodric David was under a duty to exercise all due care and skill in considering the terms of each offer in the context of acting in ECL's best interests.
110. In accepting the Ironbridge Indicative Offer, Rodric David acted in breach of his duty of care to ECL in that he:
 - a. Failed to properly and commercially consider the terms and conditions of KTC's Final Offer.
 - b. Failed to appreciate that the conditions precedent attached KTC's Final Offer were less onerous (or no more onerous) than the conditions precedent attached to the Ironbridge Indicative Offer, and consequently, KTC's Final Offer was more likely (or just as likely) to result in a sale of ECL's shares in GRL as the Ironbridge Indicative Offer.

- c. Failed to take into account that the purchase price for ECL's shares in GRL under KTC's Final Offer was significantly higher than the purchase price under the Ironbridge Indicative Offer.
111. In properly exercising his duty of care, Rodric David should have caused ECL to accept KTC's Final Offer.
 112. In the premises, as a result of Rodric David's negligence in accepting the Ironbridge Indicative Offer, ECL has suffered loss and damage in the amount of AUD\$2.5 million being the difference between the Ironbridge Indicative Offer price and KTC's Final Offer price.

Breach of Fiduciary Duties by Mavro

113. KTC repeats and relies upon the matters in paragraphs 24 to 56, and claims that Mavro:
 - a. was aware of the conduct of Rodric David referred to in paragraphs 24 to 56 and either
 - b. acted in concert with Rodric David; or
 - c. in the alternative, acquiesced to such conduct by Rodric David.
114. To the extent that Mavro is, and at all material times was, a director of ECL (which KTC denies) or purported to act as a director of ECL, Mavro is in breach of his fiduciary duties to ECL in that he:
 - a. did not exercise powers as director (the existence of which the Plaintiff denies) bona fide in the interests of ECL and for a proper purpose; and
 - b. conferred a benefit upon SIL and/or Singh at the expense of ECL, by:
 - i. resolving to make the share allotment by ECL to RAAL;

ii. approving or acquiescing to GRL's share allotment to SIL,

and is thereby liable to account to ECL for loss and damage in the sum of AUD\$9 million on the grounds of his breach of fiduciary duty and/or breach of trust.

Conspiracy by Rodric David and Singh against ECL

115. Further, or in the alternative, on or about 23 April 2010, Rodric David, Singh and SIL combined or agreed together to perform acts with the predominant purpose of injuring ECL.

116. Pursuant to and in furtherance of the conspiracy pleaded above, Rodric David and Singh were parties to and effected the Transaction.

117. The sole or predominant purpose of GRL's share allotment to SIL was to vest in SIL, for no or insufficient consideration, a 30% interest in GRL valued at approximately AUD\$9 million which was previously held by ECL.

118. The sole or predominant purpose of the Side Agreement was to vest in Rodric David the balance of ECL's primary asset, namely its shares in GRL, to SIL and Rodric David.

119. Rodric David and Singh concealed the matters set out in paragraphs 121 - 124 from Charif Kazal, Tony Kazal, and KTC.

120. By reason of the matters pleaded in paragraphs 121 - 124, ECL has suffered loss and damage.

Claim against SIL for Knowing Receipt – GRL's share allotment to SIL

121. The Plaintiff repeats paragraph 115 - 120 above.

122. In acquiring the 60 ordinary shares, SIL was not a bona fide purchaser for value without notice of the foregoing breaches of fiduciary duty by Rodric David.

Particulars

- a. SIL, through Singh, knew there was a substantial dispute between Rodric David and Charif Kazal concerning ECL.
 - b. SIL, through Singh, knew that the effect of the Transaction was to confer a benefit upon Rodric David personally and upon SIL, without conferring any benefit on GRL or ECL, and to the detriment of ECL.
 - c. SIL, through Singh, knew that SIL had furnished no or insufficient consideration for the issuance to it of an additional 60 ordinary shares in GRL.
123. The state of mind of SIL was that of Singh, and given SIL's state of mind, it is unconscionable for SIL to retain the benefit of the receipt of the 60 ordinary shares in GRL.
124. SIL therefore holds 60 ordinary shares in GRL as a constructive trustee for ECL on the grounds of knowing receipt.

Claim against SIL and Singh for Dishonest Assistance – GRL's share allotment to SIL

125. SIL and Singh knew that the Transaction, including the share allotment, was one in which SIL could not honestly participate.
126. Further, or in the alternative, the state of mind of SIL and Singh consisted of suspicion that they could not honestly participate in the Transaction combined with a conscious decision not to make inquiries which would lead to knowledge.
127. By reason of the above matters, SIL and Singh dishonestly assisted in a breach of Rodric David's fiduciary obligations to ECL and GRL.

Claim against SIL and Singh for Dishonest Assistance – the Ironbridge Indicative Offer

128. The Plaintiff repeats paragraphs 93-108 above.

129. The Ironbridge Indicative offer was only capable of being accepted by both ECL and SIL.

130. SIL and Singh knew that the Ironbridge Indicative Offer was a transaction in which SIL could not honestly participate.

131. Further, or in the alternative, the state of mind of SIL and Singh consisted of suspicion that they could not honestly participate in the said transaction combined with a conscious decision not to make inquiries which would lead to knowledge.

132. By reason of the above matters, SIL and Singh dishonestly assisted in a breach of Rodric David's fiduciary obligations to ECL.

Liability of SIL as constructive trustee with respect to the proceeds of sale of its shares in GRL pursuant to the Ironbridge Indicative Offer.

133. The Plaintiff repeats paragraphs 93-108 and 128-132 above.

134. Further or in the alternative, SIL is liable to account to ECL for 60% of the amount to be received by it from the settlement of the Ironbridge Indicative Offer, being the amount of the sale price attributable to 60 shares in GRL, as a constructive trustee for ECL on the grounds of:

a. knowing receipt;

b. further, or in the alternative, dishonest assistance.

135. Further or in the alternative, ECL is entitled to trace the proceeds from the sale of the 60 ordinary shares of GRL referred above into the shares in NewCo which SIL

will receive under the Ironbridge Indicative Offer on the grounds of knowing receipt.

Claim Against Mavro for Breach of Fiduciary Duties

136. The Plaintiff repeats paragraphs 24-58, 61-65, 69-82 and 85-91 above.

137. Mavro knew that:

- a. ECL's share allotment to RAAL; and
- b. The Transaction (both directly and through GRL);

were transactions in which Mavro could not honestly participate.

138. Alternatively, the state of mind of Mavro consisted of suspicion that he could not honestly participate in these transactions combined with a conscious decision not to make inquiries which would lead to knowledge.

139. By reason of the above matters, Mavro dishonestly assisted in breaches of Rodric David's fiduciary obligations to ECL.

Derivative Action

140. KTC is a shareholder in ECL and does not have the requisite shareholding or authority to cause ECL to issue the present claims.

141. ECL is the beneficial owner of 80%, or alternatively, 50% of the issued shares in GRL.

142. Rodric David is in control of ECL, and despite request, ECL has neglected or refused to pursue the present claims.

143. Rodric David and Singh are in control of GRL, and despite request, GRL has neglected or refused to pursue the present claims.
144. ECL has a prima facie case against Rodric David, Mavro, Singh, and SIL for the present claims.
145. GRL has a prima facie case against Rodric David, Singh and SIL.
146. The present claims are being brought on behalf of and in the interests of ECL, subject to KTC obtaining the leave of the Court.

AND THE PLAINTIFF CLAIMS:

1. **As against Rodric David:**
 - a. A declaration that Rodric David is liable to account to ECL for the sum of AUD\$9 million for breach of fiduciary duty and/or breach of trust in causing ECL to issue 60 ordinary shares in GRL to SIL.
 - b. An order that Rodric David pay to ECL the sum of AUD\$9 million.
 - c. In the alternative, damages in the amount of AUD\$9 million.
 - d. A declaration that Rodric David is liable to account to ECL for the sum of AUD\$2.5 million for breach of fiduciary duty and/or breach of trust and/or negligence in causing ECL to accept the Ironbridge Indicative Offer.
 - e. In the alternative to (d), an order that Rodric David pay to ECL damages in the sum of AUD\$2.5 million.
2. **As against Mavro:**
 - a. An order that Mavro pay to ECL the sum of AUD\$9 million.

3. As against Singh:
 - a. Damages in the amount of AUD\$9 million.

4. As against SIL:
 - a. A declaration that SIL is liable to account to ECL for the sum of AUD\$9 million, being the value of the 60 ordinary shares in GRL received by SIL, as constructive trustee.

 - b. An order that SIL pay to ECL the sum of AUD\$9 million.

 - c. Further or in the alternative, a declaration that ECL is entitled to trace the proceeds from the sale by SIL to Ironbridge of 60 ordinary shares of GRL held by SIL into the shares in NewCo which SIL will receive under the Ironbridge Indicative Offer.

 - d. Further, or in the alternative, an order setting aside the allotment of shares by GRL to SIL made on or about 22 April 2010.

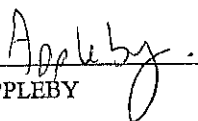
5. Orders setting aside SHA2 and the Side Agreement.

6. Interest

7. Costs.

8. Such further or other relief as the Court may deem just.

Dated the 26th day of November 2010



APPLEBY

THIS WRIT is issued by Appleby, Attorneys-at-Law for the Plaintiff, whose address for service is that of its said Attorneys, namely Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref: AB/JNW/319313.001)

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgement 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, PO BOX 495G, George Town, Grand Cayman KY1-1106.

2. A Defendant who states in his Acknowledgement 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 of "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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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 Acknowledgement 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 Write 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.

B E T W E E N:

KTC

Plaintiff

AND

- (1) RODRIC DAVID
- (2) NIKOLAOS MAVROMANOLAKIS
- (3) NAVEEN DAVID SINGH
- (4) SINGH INVESTMENTS LIMITED
- (5) EMERGENT CAPITAL LIMITED

Defendants

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 intends 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 Second Plaintiff (tick box)

YES

Service of the Writ is acknowledged accordingly

Attorneys for Defendant

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.

Appleby Attorneys-at-Law Clifton House 75 Fort Street P.O. Box 190 GT George Town Grand Cayman Ref: AB/JNW/319313.001
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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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THIS WRIT is issued by Appleby, Attorneys-at-Law for the Plaintiff, whose address for service is that of its said Attorneys, namely Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref.: AB/JNW/319313.001