

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

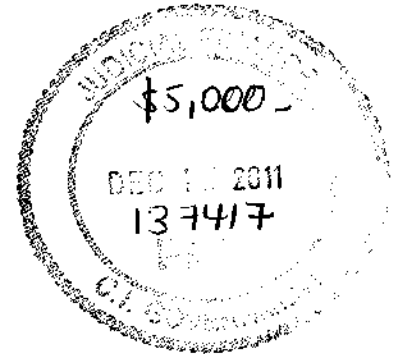
CAUSE NO. FSD 145 OF 2011

BETWEEN: SIDDHARTH GUPTA PLAINTIFF

AND: HSBG GUYERZELLER TRUST COMPANY SA DEFENDANT



WRIT OF SUMMONS



TO: HSBG GUYERZELLER TRUST COMPANY SA
Rue Alfred Vincent 5
PO Box 2019
CH-1211
Geneva 1
Switzerland

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, PO Box 495G, 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 15th day of December 2011.

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

1. Unless otherwise stated, all documents pleaded below will be referred to at trial for their full terms and true effect.

The Parties

2. The Plaintiff is a beneficiary under a trust settlement called The Lailak Settlement ("**the Settlement**").
3. The Defendant ("**the Trustee**") is a company registered under the laws of the Canton of Geneva, Switzerland, and it carries on business as a trust company. It is the sole trustee of the Settlement and these proceedings are brought against it in that capacity.
4. Mr Sudhir Sareen ("**Mr Sareen**") is the father-in-law of the Plaintiff and the Plaintiff's brother, Mr Shravan Gupta ("**Shravan Gupta**"). Mr Sareen's eldest daughter, Shilpa Gupta, is married to Shravan Gupta, whilst his younger daughter, Parul Gupta, is married to the Plaintiff.

The Settlement

5. By a Deed dated 25 October 2007 made between Mr Sareen and the Trustee, Mr Sareen established a discretionary trust settlement called The Lailak Settlement. The Trustee is the original and present trustee of the Settlement.
6. The Settlement contains the following express provisions:
 - (a) The settlor of the Settlement is defined as Mr Sareen;
 - (b) By clause 1.1(a) and Schedule II of the Settlement, the beneficiaries of the Settlement are:
 - (i) The settlor's daughter, Shilpa Gupta;

- (ii) Shravan Gupta;
 - (iii) The children and remoter issue of Shravan Gupta and Shilpa Gupta;
 - (iv) The Plaintiff;
 - (v) The children and remoter issue of the Plaintiff;
 - (vi) Any other persons (or charitable objects) that are added under clause 9.
- (c) By clause 3.1, where there are a minimum of two adult beneficiaries, the settlor has the power during his lifetime to revoke the settlement by written instrument with the written consent of all the adult beneficiaries whereupon the trust fund is held beneficially for the settlor;
- (d) By clauses 5 and 6, the Trustee holds the trust fund upon discretionary trusts as to income and capital for such one or more of the beneficiaries as it thinks fit;
- (e) By clause 9 the Trustee has the power to add beneficiaries;
- (f) By clause 18.1, the Trustee shall once a year prepare financial statements showing the assets, income and expenditure of the trust fund, and it may have them audited at the expense of the trust fund;
- (g) By clause 19.1, the governing law of the Settlement is the law of the Cayman Islands and all rights under the Settlement and its construction and effect shall be subject to the jurisdiction of and construed according to the laws of the Cayman Islands; and
- (h) By clause 19.2, the Cayman Islands shall be the forum for the administration of the trusts of the Settlement.

The Letters of Wishes

7. On or around 25 October 2007, Mr Sareen signed a letter of wishes prepared by the Trustee. The letter, which was given to the Trustee as trustee of the Settlement, stated that Mr Sareen's intention in creating the Settlement was:

"for the benefit of Shravan, Shilpa and their children and my son-in-law Siddarth Gupta...My overriding wish is that the Trustees should look to Shravan not only as the principal beneficiary during his lifetime, but also have regard to his views and wishes as to what happens thereafter. This includes matters of administration and also the distribution or accumulation of income and capital."
8. By a letter of wishes signed by Shravan Gupta on or about 25 October 2007 and given to the Trustee as trustee of the Settlement, Shravan Gupta:
 - (a) stated that his general wish was that the Trustee should look to him as the principal beneficiary during his lifetime including in matters of administration, investment and also distribution or accumulation of the income and capital; and
 - (b) further stated that after his death, he wished *inter alia* for 50% of the trust fund to be distributed to his wife absolutely; 25% of the trust fund to be distributed to his daughter absolutely upon her attaining the age of 18 years; and 25% of the trust fund to be distributed absolutely to his brother, the Plaintiff, unless in each case there were clear directions to the contrary from the person concerned.
9. These two letters of wishes will be referred to collectively as **the October 2007 Letters of Wishes**.
10. By 2009, the Plaintiff and Shravan Gupta were in hostile dispute over family businesses in which they were involved. The dispute resulted in Shravan Gupta excluding the Plaintiff and his family from the joint family home in New Delhi in which the Plaintiff, Shravan Gupta and their families lived.

11. Unknown to the Plaintiff at the time, Shravan Gupta wrote a revised letter of wishes apparently dated 23 June 2009 to the Trustee. The Plaintiff has not seen this letter and has no copy of it. However, he believes that in the letter Shravan Gupta stated that he did not wish the Trustee to benefit the Plaintiff or his issue.
12. In response, the Trustee wrote to Shravan Gupta by a letter dated 11 September 2009 stating that it was "*comfortable with the contents and rationale behind your wishes and do not see any reason why they will not be considered favourably when exercising our powers. We confirm that the trustees will not release information to anyone other than you and your wife and should we receive a request to provide information (which is not contained in a Court Order...) we will contact you to discuss how to proceed. We note that you do not wish the trustees to benefit your brother nor his issue.*"
13. Because of (i) Shravan Gupta's revised letter of wishes referred to in paragraph 12 above; (ii) a prevailing family dispute between the Plaintiff and Shravan Gupta; and (iii) Mr Sareen's perception that Shravan Gupta was purporting to gain exclusive benefit under the Settlement for himself and his family and to exclude the Plaintiff and his family from benefitting under the Settlement, Mr Sareen, as Settlor of the Settlement, wrote a further letter of wishes dated 9 October 2009 ("**October 2009 Letter of Wishes**") to the Trustee to set out his revised wishes in respect of the Settlement. In that letter, Mr Sareen stated that:
- (a) He wished the Trustee to add his younger daughter, Parul Gupta, as a beneficiary to the intent that the trust be held for the benefit of the four adult family members and their present and future children;
 - (b) He wished the Plaintiff and Parul and their children should have a one-third share in the trust fund, and Shravan Gupta and Shilpa and their children a two-thirds share therein;
 - (c) He stated that he was content for the trustee to take account of the views of each of his sons-in-law in respect of the investment and distribution of their and their wives' or children's interests but so that his sons-in-law should not be able to change or redirect the shares mentioned in the letter.

14. By a further letter of wishes dated 19 May 2010 and sent to the Trustee ("**May 2010 Letter of Wishes**"), Mr Sareen stated:
- (a) The Settlement was created by him for his two sons-in-law and their families and at no point had he authorised any beneficiary to remove any other beneficiary;
 - (b) He referred to the October 2009 Letter of Wishes that he wished "*the beneficial interests in the trust/assets/finances to be distributed in the following manner – Shравan Gupta & Family 2/3rd portion and Siddharth Gupta and Family 1/3rd portion.*"
 - (c) He stated that for the "*peace and harmony of all concerned this trust is divided in the same manner i.e. Shравan and Family 2/3rd portion and Siddharth and Family 1/3rd portion...*" and further that the best way possible to resolve the matter was "*to form two separate trusts for Shравan and Siddharth, independent of each other.*"

The Trustee's unsuitability to continue to act as trustee of the Settlement

15. However, and despite the October 2009 Letter of Wishes and the May 2010 Letter of Wishes, by a letter dated 24 March 2011 the Trustee has stated that it will be guided by the two original letters of wishes dated 25 October 2007 provided by the Settlor and Shравan Gupta and that it will not, at the present time exercise its powers to alter the present class of beneficiaries
16. By a further letter dated 22 June 2011, the Trustee stated that it had decided to continue to be guided by the original letters of wishes dated 25 October 2007 provided by the Settlor and Shравan Gupta; that it will have regard to the wishes and views of Shравan Gupta concerning the ongoing management of the trust assets; and that it will not at the present time exercise its power to alter the class of beneficiaries.
17. By reason thereof, the Trustee is threatening to act in breach of trust and/or to exercise its powers and/or discretions capriciously in that:

- (a) It is refusing to have regard to the letters of wishes given from time to time by the named settlor of the Settlement, Mr Sareen, including the October 2009 Letter of Wishes and the May 2010 Letter of Wishes;
 - (b) It is, instead, insisting on having regard only to the October 2007 Letters of Wishes, which no longer represent the wishes of the settlor, Mr Sareen, nor indeed the current wishes of Shravan Gupta for the reasons set out in paragraph 11 above;
 - (c) It is insisting on being guided by the wishes of Shravan Gupta even though Shravan Gupta is not named as a settlor in the Settlement and even though the Trustee has not confirmed that it considers Shravan Gupta to be a settlor of the Settlement or a settlor of any of the assets in the Settlement;
 - (d) It is insisting on being guided by documents that are mutually inconsistent in that Mr Sareen's letter of wishes of 25 October 2007 wishes to benefit all the beneficiaries whereas Shravan Gupta's letter of wishes of 25 October 2007 wishes to exclude the Plaintiff from benefit during Shravan Gupta's lifetime;
 - (e) It is failing to take account of the present hostile family dispute between the Plaintiff and Shravan Gupta.
18. Further, by insisting that it will be guided by the October 2007 Letters of Wishes and by the wishes and views of Shravan Gupta on the ongoing management of the trust assets at a time when the Trustee is aware that there is a hostile family dispute between the Plaintiff and Shravan Gupta:
- (a) The Trustee does not in practice intend to benefit the Plaintiff or his children during the lifetime of Shravan Gupta, to the detriment of him and his family, and despite the wishes of Mr Sareen;
 - (b) The Trustee is not thereby intending to exercise its powers and duties for the benefit of all the beneficiaries even-handedly;

- (c) Instead, the Trustee is intending to act in a way which in practice will benefit only Shravan Gupta and his family during Shravan Gupta's lifetime;
 - (d) The Trustee is thereby fettering its powers and discretion to act bona fides in the interests of all the beneficiaries and not just some of them;
 - (e) The Trustee is disregarding fundamental principles of trusts law to have regard to the wishes from time to time of the settlor, Mr Sareen, in circumstances where it has not justified why it considers it can disregard the current wishes of the settlor named in the Settlement, Mr Sareen, or why it insists on being guided by the wishes of Shravan Gupta who is not named as settlor in the Settlement;
19. The Trustee's rationale, as set out in its letter of 19 July 2011, that the October 2007 Letters of Wishes "*reflect the intention of the Settlor and the family members at the time the settlement was created*" is false. It was not and never has been the intention of the settlor, Mr Sareen, that the Plaintiff should not be entitled to benefit during the lifetime of Shravan Gupta.
20. Further, in breach of clause 18.1 of the Settlement, the Trustee has failed to prepare financial statements once a year showing the assets, income and expenditure of the Trust Fund. The Trustee has produced financial reports for the Settlement for the period 25 October 2007 to 31 December 2008 but no finalised financial reports have been produced for the years ended 31 December 2009 or 31 December 2010.
21. Further, according to the financial reports of the Settlement for the period 25 October 2007 to 31 December 2008, the Trustee does not appear to have generated any income from the trust assets and has made very small investments with a market value of US\$257.80, but it has nevertheless charged management charges of \$116,867 to the trust fund.
22. By reasons of all the matters aforesaid, the Plaintiff has lost trust and confidence in the Trustee to act fairly and even-handedly between all the beneficiaries and/or to act lawfully in accordance with its powers and duties. The Plaintiff believes that the Trustee has acted and will continue to act in a partisan way favouring Shravan Gupta.

23. By letters dated 27 July 2011 and 17 October 2011, solicitors in England acting for the Plaintiff invited the Trustee to consider retiring as trustee of the Settlement in favour of Summit Trust International SA of 6 Place des Eaux-Vives, Geneva 1207, Switzerland. The Trustees has refused to retire as trustee of the Settlement.
24. By reason of all the matters aforesaid, the Plaintiff seeks the removal of the Trustee as trustee of the Settlement and further seeks an account from it.

AND the Plaintiff claims:

- (1) Directions as to whether further parties (if any) should be joined to and/or notified of these proceedings;
- (2) Directions as to the representation of the interests of the beneficiaries of the Lailak Settlement, in particular the interests of minor and unborn beneficiaries;
- (3) An Order removing the Defendant as trustee of The Lailak Settlement;
- (4) An Order appointing Summit Trust International SA of 6 Place des Eaux-Vives, Geneva 1207, Switzerland or such other fit and proper person to be the trustee of The Lailak Settlement in place of the Defendant and all necessary orders for vesting the trust property of The Lailak Settlement in such new trustee;
- (5) All necessary accounts and inquiries against the Defendant in respect of its trusteeship of The Lailak Settlement;
- (6) A Declaration that the trustee of the Settlement should no longer take account of the two letters of wishes dated 25 October 2007 signed by Mr Sudhir Sareen and Shravan Gupta respectively;
- (7) Such further or other relief; and

(8) Costs.


APPLEBY (CAYMAN) LTD.

THIS WRIT was issued by Appleby (Cayman) Ltd. of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. CDP/GS/410548.0001), Attorneys-at-Law for the Plaintiff, whose address for service is care of its said Attorneys-at-Law.

**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.

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 "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 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.

BETWEEN: SIDDHARTH GUPTA

PLAINTIFF

AND: HSBC GUYERZELLER TRUST COMPANY SA

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 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 Plaintiff (tick box)
 YES NO
-

Service of the Writ is acknowledged accordingly

Date: [] [] 201[]

Attorneys for [Defendant]

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Appleby (Cayman) Ltd.
Attorneys-at-Law
Clifton House
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104
Ref: CDP/GS/410548.0001

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

[Empty box for defendant's attorney indorsement]