



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Before the Honourable Mr Justice Andrew J. Jones QC  
In Chambers (by telephone) on 24 April 2013

CAUSE NO: FSD 158 OF 2012 (AJJ)

BETWEEN:

BBX CAPITAL ASSET MANAGEMENT LLC

Plaintiff

AND

- (1) ROYAL BANK OF CANADA TRUST COMPANY (CAYMAN) LIMITED
- (2) DANIEL CATALFUMO
- (3) SUSAN'S PASSION LIMITED

Defendants

**ORDER**

**UPON** the Summons of the First Defendant dated 12 April 2013; ("the Joinder Summons");

**AND UPON** the Summons of the Plaintiff dated 22 April 2013 ("the Amendment/Stay Summons");

**AND UPON** reading the Second Affidavit of Piers Stradling dated 16 April 2013, the Third Affidavit of Sebastian William St John Said dated 22 April 2013 and the Amended Writ of Summons, Statement of Claim and Defences of the First and Second Defendant;

**AND UPON** hearing Leading Counsel for the Plaintiff and Counsel for the Defendants and Daniel Catalfumo;

**IT IS ORDERED** as follows:

- 1 The Joinder Summons be dismissed;
- 2 The Plaintiff do have leave to serve its Statement of Claim in the terms of the attached and file and serve the Amended Statement of Claim by 4 p.m. on 29 April 2013;

- 3 The First Defendant do have leave to apply to amend its Defence, such application to be heard on 23 May 2013, and shall serve a copy of its draft amended defence on the other Parties in advance of such application;
- 4 Paragraph 5 of the Order for Directions made on 14 February 2013 be amended so as to provide for exchange of witness statements on 23 May 2013;
- 5 The Plaintiff's application to stay the proceedings against the Third Defendant, as set out in paragraph 4 of the draft order in the Amendment/Stay Summons, be adjourned to 23 May 2013;
- 6 The Plaintiff's costs of the Joinder Summons be paid by the First Defendant in any event.
- 7 The First Defendant's costs of, and occasioned by, the amendments to the Amended Statement of Claim be paid by the Plaintiff in any event.

DATED this 24<sup>th</sup> day of April 2013

FILED this 6<sup>th</sup> day of May April 2013



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**The Hon. Mr. Justice Andrew J. Jones QC**  
**JUDGE OF THE GRAND COURT**



THIS ORDER was filed by Walkers, attorneys for the First Defendant, whose address for service is 190 Elgin Avenue George Town, Grand Cayman, KY1-9001, Cayman Islands.

**AMENDED STATEMENT OF CLAIM dated this 29th day of April 2013**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE No. FSD 158 OF 2012 AJJ**

**B E T W E E N:**

**BBX CAPITAL ASSET MANAGEMENT LLC**

**Plaintiff**

**-and-**

**(1) ROYAL BANK OF CANADA TRUST COMPANY (CAYMAN) LIMITED  
(as Managing Trustee of the Firetrucks Trust dated 28/10/08)**

**(2) DANIEL CATALFUMO**

**(3) SUSAN'S PASSION LIMITED**

**Defendants**



**AMENDED STATEMENT OF CLAIM**

**The Parties**

1. The Plaintiff is a special purpose vehicle company incorporated as a wholly owned subsidiary of Bank Atlantic ("the Bank"), in connection with BB&T Corporation's purchase of the Bank's business in 2011. Following the Plaintiff's incorporation, the Bank contributed certain assets to it, including the Florida judgment against the Second Defendant that is part of the subject matter of these proceedings. The ownership of the Plaintiff was then transferred from Bank Atlantic to BBX Capital Corporation, a financial institution also based in Florida. The Plaintiff's registered office is at Bank of America Plaza 401, East Las Olas Boulevard (Suite 800), Fort Lauderdale, Florida, United States of America.
2. The First Defendant is The Royal Bank of Canada's trust company in the Cayman Islands. It has its registered office at 24, Shedden Road, Royal Bank House, 4th Floor, George Town, Grand Cayman, Cayman Islands, KY1-1110. The First Defendant is the current Managing Trustee of the Firetrucks Trust ("the Trust"). The Trust was settled by the Second Defendant with an initial amount of US\$5, is an irrevocable trust and it is governed by the Law of Nevis. The Beneficiaries of the Trust were initially the Second Defendant and his descendants living from time to time. The Royal Bank of Canada's

Jersey trust company, RBC Trustees (CI) Limited, was the initial Managing Trustee, with a Nevis trust company, Southpac Nevis Trust Limited acting as the Administrative Trustee. The First Defendant was appointed Managing Trustee of the Trust, in place of RBC Trustees (CI) Limited, pursuant to an Instrument of Appointment and Resignation dated 27 September 2010. On or around 12 October 2012, a new Trust deed was executed. One material amendment to the terms of the Trust was the inclusion of the Second Defendant's wife to the class of beneficiaries.

3. The Second Defendant is a property developer based in Florida. His principal residence is at 725 Harbour Isle Place, Palm Beach Gardens, Florida, 3341, United States of America.
4. The Third Defendant is a company incorporated and registered in the Cayman Islands, the shares in which are owned as to 10% by the Daniel S. Catalfumo Irrevocable Wealth Trust and as to 90% by The Second Defendant's wife. Its registered office, administered by SH Corporate Services Limited, is at PO Box 61, Grand Cayman, KY1-1002, Cayman Islands. The Third Defendant is the registered owner of the British registered Lazzara pleasure yacht, "*Passion*", purchased using funds provided by the Trust in 2012. The Third Defendant also purchased another boat using funds provided by the Trust.

### **The Bank Lending**

5. In the course of the Second Defendant's business he and companies in which he had an interest used banking services provided by the Bank, as well as other financial institutions.
6. The Bank provided two loans to companies in which the Second Defendant had an interest, in connection with a development known as the PGA Professional and Design Center in Palm Beach Gardens, Florida:
  - a. The first loan, provided in November 2005, was in the sum of US\$12,950,000 with the company, PGA Transportation Oriented Development, LLC, ("TOD") as counterparty (the "First Loan"). The First Loan was due to mature on 1 November 2008.
  - b. The second loan, provided in May 2006, was in the sum of US\$23,645,434 with the company, PGA Flyover Corporate Park, LLC, ("FCP") as counterparty (the "Second Loan"). The Second Loan was due to mature on 30 May 2009.
7. The Bank also entered into two promissory notes with the Second Defendant:
  - a. The first note was entered into on or around 25 July 2000, in the principal amount of \$9,000,000 plus interest (the "First Note").
  - b. The second note was entered into on or around 19 May 2008, in the principal amount of US\$5,000,000, plus interest (the "Second Note")

## **The Guarantees**

8. The Second Defendant personally guaranteed both loans, and both notes, under guarantees in favour of the Bank, entered into on or about 11 November 2005 and 1 June 2006 (in respect of the loans), and (in respect of both notes) on or about 25 July 2000, 22 October 2002, 17 July 2003, 7 February 2006 and 19 May 2008 (“the Guarantees”).

## **The Defaults**

9. On or around 1 November 2008, the maturity date for the First Loan, no repayment was made by TOD. The Bank did not declare the First Loan to be in default, but instead, on or about 25 November 2008, executed a forbearance agreement for the First Loan, which extended the maturity date to 1 January 2009.
10. Thereafter, the maturity date on the First Loan was further extended:
  - a. On 13 January 2009, to 1 March 2009;
  - b. On 4 March 2009, to 31 May 2009;
  - c. On 20 July 2009, to 14 August 2009; and
  - d. On 25 September 2009, to 31 October 2009.
11. At the 30 May 2009, the maturity date for the Second Loan, no repayment was made by TCP. Again, the Bank did not declare the Second Loan in default, but extended the maturity dates repeatedly as follows:
  - a. On 26 June 2009, to 30 June 2009.
  - b. On 23 July 2009, to 14 August 2009; and
  - c. On 25 September 2009, to 31 October 2009.
12. The First Note was renewed on 22 October 2002, 17 July 2003 and on 7 February 2006 it was bifurcated into a US\$2m note and a US\$7m note. The US\$2m note was cancelled by a forbearance letter dated 4 March 2009. The US\$7m note was renewed on 19 May 2008 and the maturity date was extended to 14 August 2009, by a forbearance letter dated 21 July 2009. The maturity date was again extended to 31 October 2009, by a forbearance letter dated 25 September 2009.
13. The maturity date of the Second Note was extended to 14 August 2009 by a forbearance letter dated 21 July 2009, and further extended to 31 October 2009 by a forbearance letter dated 25 September 2009.

### **The Transfers into the Trust**

14. Immediately prior to the missed repayment date of the First Loan, the Second Defendant settled the Trust on 28 October 2008 with US\$5 initial capital.
15. Once the Trust was established, and whilst the Bank was extending the loans, the Second Defendant made the following transfers into the Trust for no consideration (none of which were disclosed to the Bank in the forbearance or extension discussions):

(1) 04.12.08	US\$21,717,725
(2) 25.09.09	US\$1,993,797
(3) 25.09.09	US\$2,137,725

### **The Bank Calls on the Guarantees**

16. The First Loan and the Second Loan were declared in default on 4 December 2009, and the Guarantees were called upon.
17. The First Note and the Second Note were in default following the failure of the Second Defendant, in his capacity as trustee, to repay the amounts due on each note by 31 October 2009. Despite demand being made by the Bank on the debtor companies under the First Note and the Second Note, and of the Second Defendant personally under the relevant guarantees, no payment was made.
18. Following the Second Defendant's failure to pay under the Guarantees, on 14 January 2010, the Bank issued four sets of proceedings in Broward County in Florida against TOD and FCP respectively in relation to the First Loan and Second Loan and against the Second Defendant (as trustee) in relation to the First Note and Second Note; and against the Second Defendant personally in respect of the Guarantees ("the Florida Proceedings").

### **Transfers Following the Issue of Proceedings in Florida**

19. Notwithstanding that the Bank had made demand on the Guarantees, and had issued proceedings against him on the Guarantees, the Second Defendant continued to make significant transfers from his own assets and for no consideration into the Trust after the Bank's commencement of the Florida Proceedings, brought as a result of his refusal to pay on the Guarantees, the best particulars of which the Plaintiff can provide are as follows:

<u>(1A)</u>	<u>2009</u>	<u>US\$221,347</u>
(1)	2010	US\$ 11,704
(2)	24.02.10	US\$2,000,000
(3)	08.03.10	US\$599,973

(4)	17.03.10	US\$769,973
<u>(4A)</u>	<u>31.03.10</u>	<u>US\$1,931,050.09</u>
(5)	16.04.10	US\$474,973
(6)	27.05.10	US\$750,000
(7)	28.05.10	US\$4,950,000
(8)	15.06.10	US\$20,000,000
(9)	11.11.10	US\$5,000,000
(10)	06.12.10	US\$104,827
<u>(11)</u>	<u>14.07.11</u>	<u>US\$1,000,000</u>
<u>(12)</u>	<u>10.08.11</u>	<u>US\$350,000</u>
<u>(13)</u>	<u>23.08.11</u>	<u>US\$500,000</u>

### PARTICULARS

Since the Statement of Claim was served the Second Defendant has disclosed to the Plaintiff incomplete documentation relating to the transfers pleaded above. In the light of that documentation, and pending discovery in this action, the Plaintiff avers that:

- (a) as to the payment numbered (2):
- (i) the person identified as the originator in a wiring instruction to Branch Banking & Trust Company ("BB&T") dated 23 February 2010 was Catalfumo Holdings Partnership Ltd ("CHP"), the beneficiary of the payment was RBC Jersey as trustee of the Trust;
  - (ii) the wiring instruction was signed by the Second Defendant;
  - (iii) CHP is a limited partnership owned as to 98% by Daniel S. Catalfumo Revocable Trust, 1% by Catalfumo Management and Investment Inc. (a corporation wholly owned by the Second Defendant) and 1% by Catalfumo Management LLC (which is owned 100% by the Daniel S. Catalfumo Revocable Trust);
  - (iv) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by CHP to the Second Defendant which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (b) as to the payment numbered (3):
- (i) the person identified as the originator in a wiring instruction to BB&T dated 5 March 2010 in the sum of US\$600,000 was CHP, the beneficiary of the payment was RBC Jersey as trustee of the Trust;
  - (ii) the wiring instruction was signed by the Second Defendant;

- (iii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by CHP to the Second Defendant which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (c) as to the payment numbered (4):
- (i) in a confirmation dated 15 March 2010 from BB&T to CHP dated 5 March 2010 the originator of a payment in the sum of US\$770,000 was identified as CHP, the beneficiary of the payment was RBC Jersey as trustee of the Trust;
- (ii) it is believed that the wiring instruction was signed by the Second Defendant;
- (iii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by CHP to the Second Defendant which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (d) as to the transfer (comprising cash and bonds) numbered (4A):
- (i) by a letter dated 30 March 2010 the Second Defendant authorised *inter alia* the transfer of all cash (less the sum of US\$2,640.59) held in the name of Spearfisher Partners LLLP (“Spearfisher”) in account 636-777331 at Fidelity Investments (“Fidelity”) together with the following bonds valued at US\$1,921,218.05 held in the same account:
- (A) 25,000 Hillsborough Co FL Tampa Arpt AMT '08 s/f 1021 c  
**Transfer value: US\$25,985.75**
- (B) 310,000 E Baton Rouge LA SFM AMT '09 A-3 9.96yr AL 50% PSA  
**Transfer value: US\$310,886.60**
- (C) 400,000 Pima Cnty AZ IDA Metro Police Fac Clark Cnty NV le  
**Transfer value: US\$415,564**
- (D) 250,000 Illinois MunElec '07A Agency Pwr Supply System Re  
**Transfer value: US\$259,550**
- (E) 300,00 Michigan St Trunk Line Ref '09  
**Transfer value: US\$316,323**
- (F) 590,000 New Mexico MFA SFM '07E2 AMT GNMA/FNMA/FHLMC  
**Transfer value: US\$592,908.70**
- (ii) by a wire transfer request dated 31 March 2010 the Second Defendant instructed Fidelity to transfer into the Trust the sum of US\$11,689.29, being the cash balance on account 636-777331;

- (iii) At the time of the transfer, Spearfisher was a limited liability limited partnership owned as to 95% by Daniel S. Catalfumo Revocable Trust; as to 4% by the Daniel S. Catalfumo Irrevocable Wealth Trust and 1% by Spearfisher Management LLC;
  - (iv) In a Declaration of Source of Funds made to RBC Jersey dated 30 March 2010 the Second Defendant described himself as a 96% partner of Spearfisher and stated that he was the transferor of assets valued at US\$1,875,000, which represented his percentage ownership in Spearfisher, which were to be transferred into the Trust;
  - (v) the assets the subject matter of the transfer were beneficially owned by the Second Defendant and/or were a distribution made by CHP to the Second Defendant which the Second Defendant directed should be transferred to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred tax exempt bonds with a fair market value of US\$1,931,050.09 during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
  - (vi) In fact the value of the bonds and cash amounted to US\$1,932,907.34;
- (e) as to the payment numbered (5):
- (i) the person identified as the originator in a wiring instruction to BB&T dated 14 April 2010 in the sum of US\$475,000 was Spearfisher, the beneficiary of the payment was RBC Jersey as trustee of the Trust;
  - (ii) the wiring instruction was signed by the Second Defendant;
  - (iii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by Spearfisher to the Second Defendant, which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (f) as to the payment numbered (6):
- (i) the payee of the payment was OMRD Inc.;
  - (ii) it is believed that the wiring instruction was signed by the Second Defendant;
  - (iii) OMRD Inc. is a corporation wholly owned by the Second Defendant;
  - (iv) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by OMRD Inc. to the Second Defendant which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a

foreign trust, namely the Trust, and had received no consideration for the property transferred;

(g) as to the payment numbered (7):

- (i) the payee of the payment was OMRD LLC;
- (ii) the wiring instruction was signed by the Second Defendant;
- (iii) OMRD LLC is a limited liability company owned as to 75% by OMRD Inc. and as to 25% by the Daniel S. Catalfumo Irrevocable Wealth Trust;
- (iv) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by OMRD LLC to OMRD Inc. and from OMRD Inc. to the Second Defendant, which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;

(h) as to the payment numbered (8):

- (i) the person identified as the client in a wiring instruction to RBC Bank dated 10 June 2010 in the sum of US\$20,000,000 was CHP, the beneficiary of the payment was RBC Jersey as trustee of the Trust;
- (ii) the wiring instruction was signed by the Second Defendant;
- (iii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by CHP to the Second Defendant which the Second Defendant directed should be paid to RBC Jersey as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2010, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;

(i) as to the payment numbered (9):

- (i) the person identified as the client in a wiring instruction to RBC Bank dated 11 September 2010 in the sum of US\$5,000,000 was the Second Defendant, the beneficiary of the payment was the First Defendant;
- (ii) the wiring instruction was signed by the Second Defendant;
- (iii) the money the subject matter of the payment was legally and beneficially owned by the Second Defendant;

(j) as to the payment numbered (10), the Second Defendant endorsed in favour of the Firetrucks Trust a United States Treasury cheque in the sum of US\$104,827 payable to himself;

- (k) as to payment numbered (11):
- (i) the payee of the payment was Singer Island Condominiums Ltd (“Singer”);
  - (ii) Singer is a limited liability company owned as to 99% by CHP and as to 1% by Development Investors GP, LLC;
  - (iii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by Singer to CHP and from CHP to the Second Defendant, which the Second Defendant directed should be paid to the First Defendant as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2011, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (l) as to payment numbered (12):
- (i) the payee of the payment was Singer;
  - (ii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by Singer to CHP and from CHP to the Second Defendant, which the Second Defendant directed should be paid to the First Defendant as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2011, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred;
- (m) as to payment numbered (13):
- (i) the payee of the payment was OMRD LLC;
  - (ii) the money the subject matter of the payment was beneficially owned by the Second Defendant and/or was a distribution made by OMRD LLC to OMRD Inc. and from OMRD Inc. to the Second Defendant, which the Second Defendant directed should be paid to the First Defendant as trustee of the Trust; as the Second Defendant confirmed in his tax return form 3520 for 2011, having stated in that form that he was a US transferor who, directly or indirectly, had transferred that money during that tax year to a foreign trust, namely the Trust, and had received no consideration for the property transferred.

20. The total of the sums transferred by the Second Defendant into the Trust referred to above is ~~US\$60,510,697~~ US\$64,513,094.09 (“the Transfers”).

### **The Florida Judgment**

21. On 28 September 2011, in a Final Judgment of the Honourable Dale Ross, Judge of the Circuit Court of the 17<sup>th</sup> Judicial Circuit, in Broward County, Florida, judgment was entered against the Second Defendant in the sum of US\$40,993,342.95 in respect of his liability under the Guarantees in all four sets of proceedings (“the Florida Judgment”). Interest was payable on the judgment at the rate of 4.75% from the date of judgment to the date of payment. The Florida Judgment is attached hereto as Appendix 1.
22. On 13 July 2012, by way of signed written instrument, the Florida Judgment was assigned by the Bank to the Plaintiff, together with all associated rights (including the right to sue to recover the sums owing under the judgment) (“the Assignment”).
23. No sums have been paid by the Second Defendant in satisfaction or part satisfaction of the Florida Judgment, which remains owing in its entirety. Similarly no sums have been paid or recoveries made in respect of the other defendants who were jointly and severally liable under the Florida Judgment.

### **The Intention to Defraud Creditors**

24. In the circumstances, as further particularised below, the Plaintiff alleges that the Transfers constitute dispositions of the Second Defendant’s property made with an intent to defraud within the meaning of the Fraudulent Dispositions Law (1996 Revision). It is further alleged that the Plaintiff is a creditor who has been prejudiced by the Transfers and accordingly the Transfers are voidable at the Plaintiff’s instance, hereby exercised by this statement of claim.
25. The Plaintiff avers that the Second Defendant made the Transfers with an intent to wilfully defeat the obligations it owed to the Bank for the following reasons:

#### PARTICULARS OF INTENTION TO DEFRAUD CREDITORS

- a. Following the Judgment, the Florida Attorneys for the Plaintiff deposed the Second Defendant in enforcement proceedings in Florida. In the course of questioning in that deposition, the Second Defendant gave the following evidence:

*Q – And what was the purpose of establishing the Firetrucks Trust?*

*A – To establish a trust.*

*Q – Was it to protect assets from creditors?*

*A – Yes.”*

- b. The Plaintiff avers that the Second Defendant has thereby admitted an intention to defeat creditors using the Trust.
- c. Further or alternatively, as a result of:
  - i. the dates and amounts of the Transfers;

- ii. the fact that on those dates, substantial sums were owed to the Bank;
  - iii. the fact that the Second Defendant has not made any effort otherwise to pay the sums due initially to the Bank and then to the Plaintiff and does not otherwise appear to have available to him funds to satisfy the Florida Judgment in full; and
  - iv. the fact that the Trust is governed by Nevis law, which it is alleged is particularly protective of trust structures in respect of recovery attempts by creditors of the settlor; and
  - v. the fact that the Second Defendant and/or his family are beneficiaries of the Trust;
- , it is to be inferred that the Second Defendant wilfully intended to defeat the obligation owed to the Bank.

### **The Relevant Causes of Action**

26. As against the First Defendant, the Plaintiff relies on the following causes of action to set aside the Transfers:

- a. A primary Cayman law claim pursuant to The Fraudulent Dispositions Law (1996 Revision) (“the Law”):
  - i. Each of the Transfers were dispositions of property by the Second Defendant.
  - ii. Each of the Transfers were made at an undervalue as no consideration was given for them.
  - iii. In light of the facts and matters pleaded above, each of the Transfers were made by the Second Defendant with the intention wilfully to defeat obligations owed to creditors including the Bank.
  - iv. In respect of each of the Transfers, the First Defendant is a transferee within the meaning of section 2 of the Law either as the original person to whom the transfer was made, or as a successor in title pursuant to the terms of the deed of appointment and resignation whereby the First Defendant became Managing Trustee of the Trust (and the RBC Jersey trust company retired as such), pleaded above.
- b. An alternative Florida law claim pursuant to the Florida Statutes, Title XXI, Chapter 726:
  - i. Each of the Transfers were relevant transfers for the purposes of Chapter 726 as they were “*payments of money*”.
  - ii. In light of the facts and matters pleaded above, each of the Transfers was made with actual intent to hinder, delay, or defraud any creditor of the debtor pursuant to section 726.105(1)(a) or, alternatively, each of the transfers satisfy the elements of a constructive fraud pursuant to sections 726.105(1)(b) or section 726.106.

c. A secondary alternative claim pursuant to Jersey law in the form of the Pauline Action:

- i. In light of the facts and matters pleaded above, each of the Transfers was made by the Second Defendant with an intention to defeat his creditors.
- ii. The Transfers resulted in the actual defeat of the Second Defendant's creditors in that (if he was not already at the time of the Transfers, then following them) the Second Defendant is insolvent, as he is unable to pay his debts as they fall due.

27. As against the Second Defendant, the Plaintiff asks the Court to enter judgment on the basis of the Florida Judgment, together with interest on the Florida Judgment, alternatively pursuant to section 34 of the Judicature Law (2007 Revision). The Plaintiff seeks such common law enforcement of the Florida Judgment in order to seize any assets held by the Second Defendant personally in this jurisdiction. In this regard, the Plaintiff avers that:

- a. The Florida Judgment creates a debt between the Plaintiff and the Second Defendant.
- b. The Florida Judgment was entered by a court of competent jurisdiction.
- c. The Florida Judgment is final and conclusive, and has not been appealed by the Second Defendant.
- d. The Second Defendant was ordinarily resident in Florida as at the date of the commencement of the Florida proceedings.
- e. The Florida Judgment was not obtained by fraud, is not contrary to public policy and was not obtained by means which breached natural justice.

28. As against the Third Defendant, the Plaintiff:

- a. Repeats the pleading above at paragraph 26(a) to 26(c).
- b. Avers that on 13 December 2010, the Third Defendant received the sum of US\$700,000 from the First Defendant.
- c. Avers that this disposition was paid out of funds made available to the First Defendant by the Transfers.
- d. Avers that the Third Defendant is therefore a successor in title to the voidable transfers to the First Defendant.
- e. Avers that it may avoid the US\$700,000 transfer on the basis that the sums from which it was paid are avoided as a result of the facts and matters pleaded at paragraph 30.
- f. Further avers that, since the Third Defendant used funds provided by the Trust to purchase a boat, it is also entitled to avoid the Third Defendant's purchase of that boat.
- g. Avers that sometime in or around May 2012, the Third Defendant received further sums in the approximate amount of US\$1.6m from the First Defendant.
- h. Avers that this disposition was paid out of funds made available to the First Defendant by the Transfers.

- i. Avers that the Third Defendant is therefore a successor in title to the voidable transfers to the First Defendant.
  - j. Avers that it may avoid the c.US\$1.6m transfer on the basis that the sums from which it was paid are avoided as a result of the facts and matters pleaded at paragraph 30.
  - k. Further avers that, since the Third Defendant used funds provided by the Trust to purchase the yacht, "*Passion*", it is also entitled to avoid the Third Defendant's purchase of that yacht.
29. To the extent that the Plaintiff has a cause of action against the First Defendant and the Third Defendant under Florida law and/or Jersey law, on the basis set out in paragraphs 26(b) and 26(c) above, it will seek the Court's permission to adduce expert evidence of Florida and Jersey law at the trial of this action.

### **The Relief Sought by the Plaintiff**

30. The Plaintiff asks the Court to avoid the transfers made by the Second Defendant to the Trust with an intention wilfully to defeat his creditors including the Bank. The Court is invited to declare that those sums are held by the First Defendant on trust for the Plaintiff and do not form part of the Trust. The Plaintiff further seeks an order that the First Defendant do pay those sums over to the Plaintiff to the extent required to satisfy the amount then outstanding on the Florida Judgment.
31. The Plaintiff also asks the Court to avoid the transfers made to the Third Defendant (used to purchase a boat and the yacht "*Passion*") as they were made from sums transferred to the Trust with intent to wilfully defeat creditors. As those sums were used to purchase a boat and the yacht "*Passion*", the Plaintiff seeks an order setting aside those purchases and further orders that the boat and the yacht are each held on trust for the Plaintiff and the legal titles to which are to be transferred to the Plaintiff.
32. Finally, as against the Second Defendant, the Plaintiff asks for judgment to be entered in the Grand Court on the debt created by the Florida Judgment, to allow enforcement against any assets held personally by the Second Defendant in this jurisdiction.

AND the Plaintiff claims:

1. As against the First Defendant, orders:
  - a. That the Transfers be avoided.
  - b. Declaring that the Transfers do not form part of the assets of the Trust.
  - c. That the First Defendant holds the Transfers, or assets purchased with the Transfers, on trust for the Plaintiff, up to the amount of the Florida Judgment plus interest.
  - d. That the First Defendant transfer the sums held pursuant to sub-paragraph (c) to the Plaintiff within 14 days.
  - e. That the First Defendant holds the amount of the Transfers above the Florida

judgment amount plus interest, on trust for the other creditors of the Second Defendant who have been prejudiced by his actions.

2. As against the Second Defendant, an order:
  - a. That the amount owing under the Florida Judgment, be the subject of an order of this Court that the Second Defendant do pay the said amount to the Plaintiff.
  
3. As against the Third Defendant, orders:
  - a. That the US\$700,000 transfer from the Trust be avoided.
  - b. That the purchase of the boat using funds from the Trust be avoided.
  - c. That the c.US\$1.6m transfer from the Trust be avoided.
  - d. That the purchase of the yacht, "*Passion*", using funds from the Trust be avoided.
  - e. That the Third Defendant holds the boat on trust for the Plaintiff
  - f. That the Third Defendant holds the yacht "*Passion*" on trust for the Plaintiff.
  - g. That the Third Defendant registers the Plaintiff as the legal owner of the boat.
  - h. That the Third Defendant registers the yacht "*Passion*" at the Registry of British Ships, and produces a new Transcript evidencing the same, within 14 days.
  
4. As against the First and Third Defendants:
  - a. All other necessary accounts, directions and enquiries.
  - b. Further or other relief.
  - c. Costs.

**Stephen Moverley Smith QC**  
**David Herbert**  
**Sebastian Said**  
**Harney Westwood & Riegels**

~~SERVED this 17<sup>th</sup> day of December 2012, by Harney Westwood & Riegels, Attorneys-at-Law for the Plaintiff.~~

~~This Statement of Claim was served by Harney Westwood & Riegels, Attorneys-at-Law for the Plaintiff, whose address for service is 3<sup>rd</sup> Floor, Queensgate House, 113 South Church Street, P.O. Box 10240, Grand Cayman KY1-1002, Cayman Islands (REF: DWH/SWS/HAN/044217.0001).~~

RE-SERVED this 29<sup>th</sup> day of April 2013, by Harney Westwood & Riegels, Attorneys-at-Law for the Plaintiff.

This Statement of Claim was served by Harney Westwood & Riegels, Attorneys-at-Law for the Plaintiff, whose address for service is 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, P.O. Box 10240, Grand Cayman KY1-1002, Cayman Islands (REF: DWH/SWS/044217.0001).