

IN THE GRAND COURT OF THE CAYMAN ISLANDS

60150
CAUSE NO: OF 2015

BETWEEN:

- (1) FELICITY FLETCHER-WILSON
 - (2) THOMAS FLETCHER-WILSON
- (as personal representatives of the estate of Philip Fletcher-Wilson)

Plaintiffs

AND:

- (1) MARIKO HIGUCHI
- (2) ASSOCIATION OF LIFE PARTNERS LIMITED
- (3) INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Defendants

WRIT OF SUMMONS

TO: Mariko Higuchi, Atago Green Hills Forest Tower, Room 2009, 2-3-1 Atago Minato-ki, Tokyo 105-002, Japan

AND TO: Association of Life Partners Limited, c/o Intertrust (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands

AND TO: Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town Grand Cayman, KY1-9005, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set-out on the next page.

Unless otherwise ordered by the Court if this Writ is served out of the jurisdiction, within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 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 return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with an action and judgment may be entered against you forthwith without further notice.

Issued: 27 August 2015

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiffs are respectively the wife and son of Philip Fletcher-Wilson (the **Deceased**) and the joint personal representatives of the Deceased's estate, having been granted Letters of Administration by the High Court of England and Wales on 19 March 2014. The Letters of Administration were re-sealed by the Grand Court of the Cayman Islands on 3 June 2014.
2. The Deceased died at Jikei University Hospital, Tokyo on 27 December 2013.
3. The Deceased was a business man who was domiciled in England but spent considerable time overseas, particularly in Japan, in pursuit of his business activities.
4. The First Defendant, Mariko Higuchi (**Miss Higuchi**), is a citizen of Japan and resides at Atago Green Hills Forest Tower, Room 2009, 2-3-1 Atago, Minato-ku, Tokyo 105-0002, Japan. Miss Higuchi was at all material times the personal assistant of the Deceased and the Country Director of the Japanese branch of the Second Defendant.
5. The Second Defendant, Association of Life Partners Limited (**ALP**) is a Cayman Islands company. ALP was incorporated on 5 April 2004 in the Cayman Islands, with its registered address at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
6. The Third Defendant, Intertrust Corporate Services (Cayman) Limited (**Intertrust**), is a Cayman Islands company which provides corporate and secretarial services to ALP. Intertrust is part of an international group called the Intertrust Group which provides a broad range of specialized administrative services to multinational corporations, financial institutions, alternative investment funds and private clients and has offices in the Americas, Europe, Asia and the Middle East. At all material times Intertrust acted as Cayman Islands' registered office and company secretary to ALP.

Facts

7. At all material times, the Deceased was the sole director and shareholder of ALP and its Chairman.
8. The Deceased became ill in Tokyo, Japan, in or around mid to late November 2013. He was admitted to Jikey University Hospital on 27 November 2013 in a hepatic coma, experienced a cardiac arrest on 30 November 2013 and was in a vegetative state until his death on 27 December 2013.
9. On 11 December 2013, with full knowledge that the Deceased was in a coma and unresponsive, Miss Higuchi transmitted electronically to Intertrust copies of the following:
 - 9.1 an instrument of transfer dated 5 November (the **Share Transfer**) and purporting to have been executed by the Deceased pursuant to which Miss Higuchi attempted to transfer the Deceased's entire interest in ALP represented by the one issued share in the capital of ALP (the **Share**) to herself for no consideration;
 - 9.2 a resignation of the Deceased as the sole director of ALP bearing the date of 5 November 2013 and purporting to have been executed by the Deceased (the **Resignation**); and
 - 9.3 a resolution bearing the date of 5 November 2013, and purporting to have been executed by the Deceased as director of ALP, purporting to accept the resignation of the Deceased as director and to appoint Miss Higuchi as director with immediate effect, and approving and registering in the books of the Company the Share Transfer for no consideration in favour of Miss Higuchi (the **Resolution**).
10. Also on 11 December 2013, Miss Higuchi instructed Intertrust to update ALP's Register of Directors and Register of Members accordingly and thus to register her as the sole director and sole shareholder of ALP respectively.

11. In accordance with Miss Higuchi's instructions to Intertrust and pursuant to the Share Transfer, the Resignation, and the Resolution, on or about 11 December 2013, Ms Higuchi was registered by Intertrust in the Register of Members of ALP as the sole shareholder of ALP and in the Register of Directors as its sole director of ALP (the **Registration**).
12. The purported transfer of the Share by the Deceased to Miss Higuchi and the Registration are void and ineffective in that:
 - 12.1 The Deceased had not at any time, either before or after the Registration on or about 11 December 2013, authorized or executed the necessary Share Transfer, Resignation or Resolution;
 - 12.2 Due to the Deceased being in a coma, he was incapable of signing the Share Transfer, the Resignation, or the Resolution, or of appointing Miss Higuchi as the director of ALP at any time after 27 November 2013;
 - 12.3 Although the Share Transfer, Resignation and Resolution all bear the date of 5 November 2013 and purport to have been executed on that date, they were created by Miss Higuchi after the Deceased was admitted to hospital and was incapable of executing the same due to his ill-health. These were then back-dated to 5 November 2013 by Miss Higuchi. This was done with Miss Higuchi's full knowledge that the Deceased was incapacitated and in a coma, for the express purpose for her to misappropriate for herself ALP, the Deceased's company.
13. Miss Higuchi forged the signature of the Deceased which appears on the Share Transfer, the Resignation, and the Resolution, in circumstances where the Deceased had not authorised or agreed to the creation or execution of such documents, so as to make herself the sole shareholder and sole director of ALP and to fraudulently appropriate to herself the Deceased's assets.
14. In support of the allegation at paragraphs 12 and 13 above, that the Transfer of the Share in ALP and subsequent registration are void and ineffective, the Plaintiffs will rely on the following matters relating to ALP:

- 14.1 Forensic analysis of the Share Transfer, the Resignation, and the Resolution by Mr Robert Radley, Registered Forensic Practitioner specializing in the examination of handwriting and documents, indicates that there is persuasive evidence to suggest that the signature of the Deceased which appears on these documents is not an original signature but rather has been transposed from another source. Mr Radley requires the provision of original documents to enable him to provide a more conclusive opinion as to the origin and authenticity of the signatures on each document. The Plaintiffs will rely on the Report of Mr Robert Radley dated 20 October 2014 confirming the same (the **Radley Report**);
- 14.2 The delay between the purported date of execution borne by the Share Transfer, the Resignation and the Resolution and the date on which Miss Higuchi submitted those documents to Intertrust, the registered office of ALP, is both contrary to ordinary and expected corporate practice and is inconsistent with the significance of the documents submitted. This delay supports the assertion that the documents are not genuine and have been backdated to appear to have been produced at a time before the Deceased was incapacitated by his ill-health. Miss Higuchi created the Share Transfer form, the Resignation and the Resolution when the Deceased was in a coma and back-dated them to 5 November 2013 before sending them to Intertrust on 11 December 2013 together with the undated Share Transfer;
- 14.3 The concurrence of the Deceased's significant and ultimately fatal ill-health with the transfer of the entirety of his interest in ALP, which demonstrates the opportunistic nature of the steps taken by Miss Higuchi in creating and submitting documents to effect the transfer of the assets and control of ALP to herself;
- 14.4 The inherent improbability of the transfer by the Deceased of his entire interest in ALP, a successful business which the Deceased founded and built up over many years and which had substantial cash assets at the time of his death, to his personal assistant and employee by way of gift, transferred for no consideration and without any commercial explanation;
- 14.5 All of the above transactions were effected at a time when Miss Higuchi knew that the Deceased was in a vegetative state and unlikely to recover and when Miss

Higuchi was either in regular contact with the Deceased's wife, the First Plaintiff, or the First Plaintiff was in Tokyo, by the Deceased's bedside and in discussions with Miss Higuchi about the business and management of ALP. Miss Higuchi made no mention of the Share Transfer, the Resignation or the Resolution to the First Plaintiff nor did she give any other indication of their existence and following the Deceased's death on 27 December 2013 Miss Higuchi even entered into discussions with his wife, the First Plaintiff, regarding her intended purchase of the business of ALP from the Deceased's estate.

15. In support of the allegation that the Transfer of the Share in ALP and subsequent registration are void and ineffective, the Plaintiffs also rely upon similar fact evidence of analogous transactions and a pattern of similar behaviour carried out by Miss Higuchi in relation to other assets owned by the Deceased in other jurisdictions. The Plaintiffs rely upon the following:

15.1 Miss Higuchi became the sole shareholder and director of another of the Deceased's companies, The Millennium Investment Corporation (**MIC**), a company registered in the Turks & Caicos Islands, on or about 16 December 2013, by means of an Instrument of Transfer (**MIC Transfer**), Letter of Resignation (**MIC Resignation**) and a Resolution of the Sole Director of the Company (**MIC Resolution**) that bore forged signatures of the Deceased and were also backdated to appear to have been signed by the Deceased prior to his having fallen into a coma:

15.1.1 Forensic analysis of the MIC Transfer, MIC Resignation and MIC Resolution by Robert Radley, Registered Forensic Practitioner, has confirmed that the signatures of the Deceased on each document have not been written by the Deceased but are instead simulations of his general signature style, all of which have been authored by the same person. The Plaintiffs will rely on the Report of Mr Robert Radley dated 20 October 2014 confirming the same;

15.1.2 The chronology of the execution of the MIC Transfer, MIC Resignation and MIC Resolution reveal that the documents could not have been signed by

the Deceased due to his ill-health, but were wrongly backdated to a date when he would have been capable of signing them:

15.1.2.1 On 2 December 2013 Miss Higuchi first requested by email that Sovereign Secretaries (TCI), the registered office for MIC, prepare the documentation necessary to change the director, shareholder and authorized signatory of MIC, at this point the Deceased was in hospital, had been in a coma for 5 days and had suffered a cardiac arrest 2 days previously;

15.1.2.2 On 11 December 2013 Sovereign Secretaries (TCI) by email forwarded unsigned copies of the MIC Resolution, MIC Resignation and MIC Transfer dated 10 December 2013 to Miss Higuchi with a request that they be executed by the relevant parties and returned;

15.1.2.3 On 11 December 2013 by email Miss Higuchi promised Sovereign Secretaries (TCI) that she would obtain the Deceased's signature, despite being aware that he had been in a coma for the past 2 weeks at this point. She also requested that the dates appearing on the documents sent be backdated to 5 November 2013 and that they be resent;

15.1.2.4 On 11 December 2013 Sovereign Secretaries (TCI) by email forwarded amended unsigned copies of the MIC Resolution and MIC Resignation with the date changed to 5 November 2013 and advised that the MIC Transfer was undated;

15.1.2.5 On 16 December 2013 Sovereign Secretaries (TCI) acknowledged receipt of signed originals of the documents from Miss Higuchi.

15.2 On 11 December 2013 Miss Higuchi procured, through similar means, the false transfer of a life assurance policy held by the Deceased with Royal

Skandia, a life assurance company, based in the Isle of Man. Miss Higuchi then instructed Royal Skandia to surrender the policy and to have the proceeds, in the amount of US\$453,883.18, paid to a bank account held by her in Jersey;

15.3 Between 3 December and 10 December 2013 Miss Higuchi withdrew JPY4 million (approximately US\$33,397.36) from the Deceased's own bank account at Citibank by using his credit and debit cards whilst he was in a vegetative state;

15.4 All of the above transactions were effected at a time when Miss Higuchi knew that the Deceased was in a vegetative state and unlikely to recover and when Miss Higuchi was either in regular contact with the Deceased's wife, the First Plaintiff, or when the First Plaintiff was in Tokyo, by the Deceased's bedside and in discussions with Miss Higuchi about the business and management of the Deceased's interests in ALP. Miss Higuchi made no mention of the above transactions to the First Plaintiff nor did she give any other indication of their existence.

16. In support of the allegation that the Transfer of the Share in ALP and subsequent registration is void and ineffective, the Plaintiffs also rely upon Miss Higuchi's conduct in subsequently dissipating the assets she purported to transfer to herself from the Deceased, as being indicative of her wrongdoing.

17. The Deceased did not authorise the transfer of the Share to Miss Higuchi and Miss Higuchi was not entitled to be registered as the owner of the Share. The Share, having been fraudulently converted by Miss Higuchi, is held by Miss Higuchi on constructive trust for the Deceased's estate.

18. The Deceased did not resign as sole director of ALP and did not execute a resolution appointing Miss Higuchi as sole director of ALP and Miss Higuchi was not therefore properly appointed and has been acting as such without due authority and in breach of her fiduciary duties.

19. The Plaintiffs reserve the right to amend this Statement of Claim as more evidence is made available.

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AND THE PLAINTIFFS CLAIM:

- (1) A declaration that the First Defendant was improperly registered as the owner of the Share and is not and never was a shareholder of the Second Defendant.
- (2) A declaration that the Share is beneficially owned by the estate of the Deceased and is held on constructive trust for the Deceased's estate.
- (3) A declaration that the First Defendant was improperly registered as a director and is not and was never a director of the Second Defendant.
- (3) An order requiring the Third Defendant to rectify the register of members and the register of directors of the Second Defendant.
- (4) An order requiring the First Defendant to account to the Plaintiffs for all dealings and transactions relating to the management of the affairs, property and assets of the Second Defendant since the First Defendant became its purported sole shareholder and director.
- (5) All necessary and consequential accounts, directions and inquiries.
- (6) Costs.

Dated: 27 August 2015



TRAVERS THORP ALBERGA
Attorneys-at-Law for the Plaintiffs

TO: The Clerk of the Court

AND TO: Mariko Higuchi, Atago Green Hills Forest Tower, Room 2009, 2-3-1 Atago Minato-ki, Tokyo 105-002, Japan

AND TO: Association of Life Partners Limited, c/o Intertrust (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands

AND TO: Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town Grand Cayman, KY1-9005, Cayman Islands

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, Grand Cayman, KY1-1106.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for Notes for Guidance

NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of ()" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as ()" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

BETWEEN:

- (1) FELICITY FLETCHER-WILSON
- (2) THOMAS FLETCHER-WILSON
- (as personal representatives of the estate of Philip Fletcher-Wilson)

Plaintiffs

AND:

- (1) MARIKO HIGUCHI
- (2) ASSOCIATION OF LIFE PARTNERS LIMITED
- (3) INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

Defendants

**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

(Signed)

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.

Travers Thorp Alberga Attorneys-at-Law P.O. Box 472 Grand Cayman, KY1-1106 Cayman Islands Phone: +1 (345) 949-0699 Facsimile: +1 (345) 949-8171 ATTN: Anna Peccarino Ref: ALP/F0470-001

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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