

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0206 OF 2015 (AJJ)

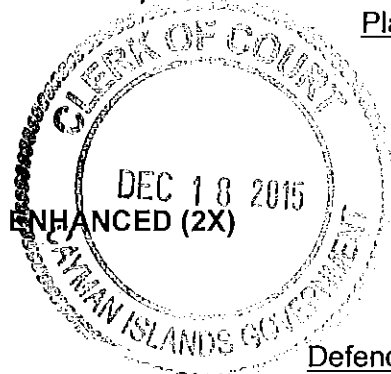
BETWEEN:

LIONGATE SPC (FOR AND ON BEHALF OF ITS SOLE SEGREGATED
PORTFOLIO, LIONGATE MULTI-STRATEGY FUND)

Plaintiff

AND

- (1) RANDALL WAYNE DILLARD
- (2) JEFFERY SCOTT HOLLAND
- (3) LIONGATE MULTI-STRATEGY FUND ENHANCED (2X)
- (4) RSD SECURITIES LIMITED
- (5) BENJAMIN FUNK
- (6) EDUARD ONDERKA



Defendants

WRIT OF SUMMONS

- TO:
- (1) **RANDALL WAYNE DILLARD** of Liongate House, 23 Great Pulteney Street, London, W1F 9NH, United Kingdom
 - (2) **JEFFERY SCOTT HOLLAND** of 34 Egerton Crescent, London SW3 2EB, United Kingdom
 - (3) **LIONGATE MULTI-STRATEGY FUND ENHANCED (2X)** of PO Box 2636, Strathvale House, George Town, Grand Cayman, Cayman Islands
 - (4) **RSD SECURITIES LIMITED** of 204A Tower Road, Sliema SLM1602, Malta and 171 Old Bakery Street, Valletta VLT 1455, Malta
 - (5) **BENJAMIN FUNK** of 13 Northumberland Place, London, W2 5BS, United Kingdom
 - (6) **EDUARD ONDERKA** of Smolikova 993/2, 161 00 Prague, Czech Republic

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 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, PO Box 495 GT, George Town, Grand Cayman, the

accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 18th day of December 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

Summary

- 1 These claims arise as a result of the First and Second Defendants (respectively, "**Dillard**" and "**Holland**"), in breach of their fiduciary duties owed to the Plaintiff ("**LMSF**"), having caused LMSF to enter into transactions that were not in the best interests of LMSF and were intended to benefit the Defendants or their related entities personally, at the expense of LMSF. As a result, LMSF was left with an illiquid investment in Liongate Select Fund ("**LSF**"), which has diminished in value and which if fully disclosed to the independent directors of LMSF would never have been authorised.
- 2 On or about 1 February 2013, Dillard and Holland, each of whom was then a director of LMSF, caused LMSF to borrow US\$18.5m and make a subscription in the same amount for shares in LSF, for whom Dillard and Holland also served as directors. The subscription monies were then used to pay a cash redemption of US\$18.5m to Dillard's and Holland's investment management entity, and were subsequently on-paid to the Third Defendant ("**2X**"), which is controlled by Dillard and Holland and is a knowing recipient of the money.
- 3 2X is majority owned by the Fourth Defendant ("**RSD**"), which in turn is beneficially owned by Dillard and Holland. The Fifth Defendant ("**Funk**") and Sixth Defendant ("**Onderka**") hold minority interests in 2X. RSD, Funk and Onderka are also knowing recipients.

Parties

The Plaintiff

- 4 LMSF is an open ended segregated portfolio company incorporated in the Cayman Islands on 18 March 2004 with limited liability. LMSF's registered office is at Ugland House, South Church Street, Grand Cayman, Cayman Islands and it is registered with the Cayman Islands Monetary Authority ("**CIMA**").

- 5 At all material times, LMSF had one segregated portfolio, Liongate Multi-Strategy Fund.
- 6 At all times material to the claims against them, Dillard and Holland were directors of LMSF together with three independent non-executive directors, Peter Huber, Tammy Jennissen and Christopher LeBeau (the "**Independent Directors**"). Dillard and Holland ceased to be directors, respectively, on 11 September and 6 May 2015.

Service providers

- 7 At all material times Liongate Capital Management (Cayman) Limited ("**LCMC**") provided investment management services to LMSF pursuant to a Management Agreement entered into between LMSF and LCMC dated 31 March 2004. LCMC was formerly called Dillard & Holland Capital (Cayman) Limited. LCMC is an exempted company incorporated with limited liability in the Cayman Islands on 18 March 2004.
- 8 At all material times, the investment sub-manager of LMSF was Liongate Capital Management LLP (the "**UK Advisor**"), appointed pursuant to a Sub-Management Agreement dated 31 March 2004 between LCMC and the UK Advisor. At the date of that Sub-Management Agreement, the UK Advisor's name was Dillard & Holland Capital LLP. The UK Advisor is a limited liability partnership registered in England and Wales on 28 March 2003 and is regulated by the Financial Conduct Authority. At all times material to the claims against them, Dillard and Holland controlled and collectively held significant majority beneficial interests in the UK Advisor and LCMC.
- 9 At all material times, Citco Global Custody NV (the "**Citco Custodian**") provided custody services to LMSF pursuant to Brokerage and Custody Agreements dated 28 September 2005, 15 October 2007 and 9 May 2008, each entered into between LMSF, the Citco Custodian and Citco Bank Nederland NV Dublin Branch (the "**Citco Broker**").
- 10 At all material times, Citco Fund Services (Europe) BV (the "**Citco Administrator**") acted as administrator to LMSF pursuant to an Administration Agreement dated 7 September 2006 entered into between LMSF and the Citco Administrator.
- 11 At all material times, LCMC, the UK Advisor, Citco Custodian and Citco Administrator also provided services of a substantial similar nature to both LSF and 2X.

Dillard and Holland

12 At all times material to the claims against them Dillard and Holland:

12.1 Were directors of LMSF, LSF and LCMC;

12.2 Have been and continue to be amongst the ultimate beneficial owners of RSD.

13 At all times material to the claims against him, Dillard was also a director of 2X. Dillard resigned as a director of 2X on 23 October 2015 in favour of Onderka.

2X

14 2X is an exempted company incorporated with limited liability in the Cayman Islands on 11 January 2008 with its registered office situated at Turners Management Ltd., Strathvale House, George Town, Grand Cayman, Cayman Islands. 2X is registered with CIMA.

15 From on or around September 2014, the sole shareholder of 2X was RSD, until on or about 29 November 2015 when RSD transferred certain shares in 2X worth approximately US\$2.5m and US\$800,000 to Funk and Onderka, respectively.

RSD

16 RSD was incorporated in Malta on 5 December 2012 as a private limited liability company.

17 Until around 18 January 2013, RSD's majority shareholder was Liongate Capital Holdings Limited, with one nominal share held by Alicia Barbara, an employee of Liongate Capital Management Limited, also incorporated in Malta.

18 On or around 18 January 2013, Liongate Capital Holdings Limited transferred its shareholding in RSD to Onderka.

Funk

19 Funk is a former colleague and known associate of Dillard and Holland, who until his resignation in late 2013 was a member of the investment team for the UK Advisor and held a beneficial interest in the UK Advisor.

20 As at the date of this Statement of Claim, Funk holds shares in 2X worth approximately US\$2.5m, which shares were transferred to him by RSD on or around 29 November 2015. On or around 3 December 2015, Funk submitted redemption requests for the entirety of his shareholding in 2X.

Onderka

21 Onderka is a former colleague and/or employee and known associate of Dillard and Holland, who was appointed the sole director of 2X on 23 October 2015. As at the date of this Statement of Claim, all of RSD's participating shares are held by Onderka, who holds such shares on trust for Dillard and Holland, and he remains RSD's sole director.

22 As at the date of this Statement of Claim, Onderka holds shares in 2X worth approximately US\$800,000, which shares were transferred to him by RSD on or around 29 November 2015. On or around 3 December 2015, Onderka submitted redemption requests for the entirety of his shareholding in 2X.

Transactions in breach of fiduciary duty

23 On or around 31 January 2013, LCMC submitted a redemption request to LSF, a Cayman Islands incorporated company also regulated by CIMA. The redemption request was accepted by a UK Advisor employee, Mr Hobbs, acting on behalf of LSF, and the redemption proceeds were subsequently paid by LSF to LCMC's nominee, 2X, in the amount of US\$18.5m.

Particulars

23.1 A document headed "Redemption Application Form" was sent to the Citco Administrator on behalf of LSF.

23.2 The Redemption Application Form was signed by Mr Hobbs, purportedly as "Chief Financial Officer" of LCMC, despite Mr Hobbs being neither an employee nor director of LCMC.

- 23.3 The Redemption Application Form listed a bank account name and number for LCMC to receive the redemption proceeds, but contained a manuscript amendment directing the Citco Administrator for LSF to pay the redemption proceeds to 2X.
- 23.4 The redemption proceeds in the total amount of US\$18.5m were duly paid to 2X as pleaded in paragraph [24.8] below.
- 23.5 The redemption paid by LSF was not made in accordance with its constitutional documents, which required 45 days' notice in writing prior to the first business day of the calendar quarter, and it is averred that no dispensation for such notice or early redemption was provided by LSF's directors.
- 24 LCMC's cash redemption proceeds were sourced from borrowing by LMSF, which was then used to subscribe for shares in LSF.

Particulars

- 24.1 LMSF held an existing credit facility with Société Générale and Lexington Parker Capital Company, LLC pursuant to a Credit Agreement dated 3 October 2005.
- 24.2 Holland signed a document headed "Form of Loan Notice" purportedly dated 1 February 2013 and requesting a loan of US\$18.5m to be paid on 5 February 2013, which was addressed and sent to Société Générale.
- 24.3 A "Fax Payment Order" dated 5 February 2013 bears the signatures of Dillard and Holland, and directs the payment of US\$18.5m to the Citco Broker for the account of LMSF.
- 24.4 The loan by LMSF from Société Générale was not authorised by any resolution of LMSF's board of directors or undertaken with the knowledge of the Independent Directors, but was instead instigated by Dillard and Holland without authority. Nor was the loan authorised by any resolution of LCMC's board of directors or undertaken with the knowledge or approval of the majority independent directors of the LCMC board as investment manager for LMSF.

24.5 By a document headed "Short Form Subscription Agreement" dated 4 February 2013 and addressed to the Citco Administrator, LMSF effected a subscription for US\$18.5m worth of Class P (USD) shares in LSF.

24.6 The Short Form Subscription Agreement was signed by Mr Hobbs purportedly on behalf of a custodian for LMSF referred to as "*CGC – REF ACF Liongate Multi-Strategy Fund Account ID 41-006878*".

24.7 LMSF's subscription into LSF via the Citco Custodian:

(a) Was not authorised by any resolution of LMSF's board of directors or undertaken with the knowledge of the Independent Directors. Nor was the subscription authorised by any resolution of LCMC's board of directors or undertaken with the knowledge or approval of the majority independent directors of the LCMC board as investment manager for LMSF; and

(b) Breached its own investment restrictions contained in LMSF's Offering Memorandum dated 8 September 2011 whereby LMSF was prohibited from obtaining "*legal or management control*" of an issuer of its underlying investments, which occurred as a result of the subscription for US\$18.5m shares in LSF.

24.8 On 11 March and 18 April 2013, transfers of US\$17.5m and US\$1m, respectively, were made by LSF to 2X on account of the redemption by LCMC from LSF pleaded at paragraph [23] above. The payment was made in satisfaction of the subscription price paid for 24,757.44 Class A (USD) shares in 2X (the "**2X Shares**") made by LCMC.

25 As a result of the above pleaded series of transactions, the 2X Shares were owned, legally and/or beneficially by RSD, after being transferred to it by Liongate Limited, which had previously acquired the 2X Shares following a dividend paid to it in specie by LCMC.

26 As pleaded at paragraphs [20 and 22] above, on or about 29 November 2015, RSD transferred certain shares in 2X worth approximately US\$2.5m to Funk and shares in 2X worth approximately US\$800,000 to Onderka.

27 2X continues to hold, in cash, all or substantially all of the subscription monies originally paid by LCMC for the 2X Shares, which monies were originally sourced from LMSF.

Breach of fiduciary duty by Dillard and Holland

28 At all material times, Dillard and Holland owed LMSF the following fiduciary duties:

28.1 To act in good faith in the best interests of LMSF;

28.2 To exercise the powers vested in them for a proper purpose and not for a collateral purpose;

28.3 Not to fetter the exercise of their discretion; and

28.4 Not to place themselves in a position in which there was a conflict between their duty to LMSF and their personal interests or the interests of other companies for which they served as directors.

29 In causing LMSF to borrow US\$18.5m from Société Générale and apply these monies by way of subscription for US\$18.5m worth of mostly illiquid shares in LSF in order to fund a full-cash redemption of US\$18.5m to an entity owned and controlled by Dillard and Holland, Dillard and Holland breached their fiduciary duties to LMSF.

Particulars

29.1 Dillard and Holland did not consider the interests of LMSF properly, or at all, when causing LMSF to borrow US\$18.5m and then to use those monies to subscribe for shares in LSF in order to fund a full-cash redemption of US\$18.5m to an entity owned and controlled by Dillard and Holland.

29.2 Dillard and Holland acted for an improper and/or collateral purpose, namely in their own interests and/or in the interests of LCMC, 2X, RSD, Funk, Onderka and/or others they represented or controlled.

29.3 LMSF will refer to and rely on the following:

- (a) Both the loan from Société Générale and corresponding subscription into LSF were made without the knowledge or approval of the Independent Directors and without resolutions of the LMSF board of directors approving the transactions.
- (b) Both the loan and subscription were also made without the knowledge or approval of the majority independent directors of LCMC's board of directors.
- (c) The subscription into LSF:
 - (i) Breached LMSF's own investment restrictions;
 - (ii) Exposed LMSF to illiquid investments in LSF of uncertain value;
 - (iii) Was not made *bona fide* for investment purposes but only for the purpose of facilitating LCMC's cash redemption from LSF; and
 - (iv) Would not, in the circumstances, if fully disclosed to the Independent Directors, have been authorised by the LMSF board of directors, nor authorised by the independent directors of LCMC;
- (d) The ultimate beneficiaries of LMSF's subscription into LSF and consequential redemption from LSF by LCMC were entities owned and/or indirectly controlled by Dillard and/or Holland.

30 But for Dillard's and Holland's breaches of fiduciary duty, the drawdown by, and subsequent transfer from, LMSF of US\$18.5m would never have occurred. LMSF's subscription into LSF exposed LMSF to illiquid investments of uncertain value. Dillard and Holland would have been aware that certain of the investments:

30.1 Would be written down in value shortly after the investment in LSF; and

30.2 Would not be readily realisable for the cash value nominally attributed to them.

31 Following LMSF's subscription into LSF, the value of LMSF's investment therein has fallen materially as a result of the exposure to the illiquid investments mentioned above, which

have been subsequently written down in value and/or sold and the balance of which remains both illiquid and difficult to value.

- 32 Dillard and Holland are liable, jointly and severally, to account to LMSF in equity for such losses.

Knowing receipt

- 33 Each of LCMC (whilst under the ownership and control of Dillard and Holland), 2X, RSD, Funk and Onderka had knowledge of the facts giving rise to the breach of fiduciary duty pleaded above and/or knew of the breach of fiduciary duty and/or turned a blind eye to those facts and it is unconscionable for 2X, RSD, Funk and Onderka, as appropriate, to retain the benefit of the transfer of US\$18.5m (or the remaining balance of such fund) or of the 2X Shares.

Particulars

- 33.1 At all times material to the claims against him, Dillard was a director of 2X.
- 33.2 At all times material to the claims against them, Dillard and Holland were directors of LMSF, LSF and LCMC.
- 33.3 Dillard and Holland knew of their breaches of fiduciary duty and/or had knowledge of the facts giving rise to their breaches of fiduciary duty to LMSF, which knowledge is to be imputed to the companies for which they acted as director and/or which they otherwise controlled.
- 33.4 Funk and Onderka knew of Dillard's and Holland's breaches of fiduciary duty and/or had knowledge of the facts giving rise to their breaches of fiduciary duty to LMSF.
- 34 2X, RSD, Funk and Onderka are liable to account to LMSF for, as appropriate, US\$18.5m (or the remaining balance of such fund) or for the 2X Shares as constructive trustee on the ground of knowing receipt.
- 35 Further or alternatively, LMSF is entitled to follow and/or trace in equity and accordingly claims equitable title to:

35.1 The US\$18.5m (or the remaining balance of such fund) in cash currently held by 2X; alternatively

35.2 The 2X Shares held by RSD, Funk and Onderka.

And LMSF claims:

(1) Against Dillard and Holland:

1.1 Damages and/or equitable compensation.

1.2 A declaration that each is jointly and severally liable to account to LMSF for US\$18.5m or such other amount as the Court thinks fit.

1.3 An order that Dillard and Holland pay to LMSF US\$18.5m or such other amount as the Court thinks fit.

(2) Against 2X:

2.1 Damages and/or equitable compensation.

2.2 A declaration that 2X is liable to account to LMSF for US\$18.5m or such other amount as the Court thinks fit on the ground of knowing receipt.

2.3 A declaration that LMSF is entitled to follow the US\$18.5m paid over to 2X and holds equitable title to the US\$18.5m held in cash by 2X (or the remaining balance of such fund).

2.4 An order that 2X deliver up such fund to LMSF.

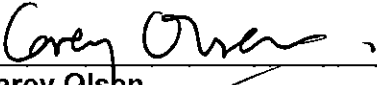
(3) Alternatively against RSD, Funk and Onderka:

3.1 Damages and/or equitable compensation.

3.2 A declaration that RSD, Funk and Onderka are liable to account to LMSF for US\$18.5m or such other amount as the Court thinks fit on the ground of knowing receipt.

- 3.3 A declaration that LMSF is entitled to trace the US\$18.5m to the 2X Shares and holds equitable title to such shares which RSD, Funk and Onderka hold on trust for LMSF.
- 3.4 An order that RSD, Funk and Onderka deliver up the 2X Shares to LMSF.
- (4) Interest, whether or not compounded, on all sums found to be due to LMSF at such rates as the Court thinks fit pursuant to the Court's equitable jurisdiction and/or section 34 of the Judicature Law (2013 Revision).
- (5) Such further or other relief as may be just.
- (6) Costs.

DATED this 18th day of December 2015



Carey Olsen
Attorneys-at-law for the Plaintiff

**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, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 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 Plaintiffs 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 overleaf for Notes for Guidance

Notes for Guidance

- 4 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
- 5 For the purpose of calculating the period of [x] 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.
- 6 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)".
- 7 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.
- 8 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.
- 9 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized 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.
- 10 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
- 11 A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0206 OF 2015 (AJJ)

BETWEEN:

(1) LIONGATE MULTI-STRATEGY FUND SEGREGATED PORTFOLIO (A
SEGREGATED PORTFOLIO OF LIONGATE SPC)

Plaintiff

AND

(1) RANDALL DILLARD
(2) JEFF HOLLAND
(3) LIONGATE MULTI-STRATEGY FUND ENHANCED (2X)
(4) RSD SECURITIES LIMITED
(5) BENJAMIN FUNK
(6) EDUARD ONDERKA

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

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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
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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

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.

Carey Olsen PO Box 10008 Willow House, Cricket Square Grand Cayman KY1-1001 Cayman Islands (ref: JG/PS/1059433).

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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