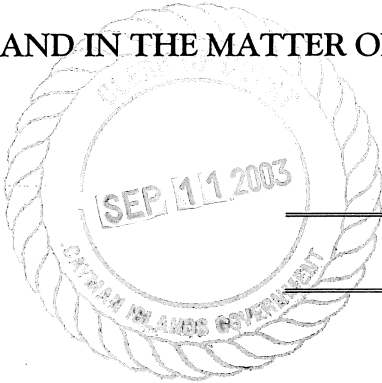


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 594 OF 2003

IN THE MATTER OF THE COMPANIES LAW (2003 REVISION)

AND IN THE MATTER OF SAMOYED LTD



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PETITION

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TO THE GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of Gloria Ann Smith of 8572 Sweet Magnolia Place, Seminole, Florida 33777, U.S.A. (the "Petitioner") shows that:

**Details of Parties**

1. Samoyed Ltd. (the "Company") is a company incorporated as an exempted company under the Companies Law on 24 May 1989, with an authorised share capital of US\$50,000 divided into 50,000 ordinary shares of US\$1 each. The Company has one share issued and outstanding.
2. The Company's registered office is situated at PWC Corporate Services Limited, P.O. Box 219 GT, George Town, Cayman Islands.
3. The Petitioner is an adult female ordinarily resident at 8572 Sweet Magnolia Place, Seminole, Florida 33777, U.S.A. The Petitioner makes this Petition for the winding up of the Company for the reasons and on the facts stated below.

4. The Petitioner is a contributory of the Company, as defined by Section 89 of the Companies Law (2003 Revision), and has jurisdiction to bring this Petition for a winding up of the Company by virtue of her interest and entitlement to the payment of surplus funds on the dissolution of the Company. The Petitioner has held shares in the Company since the date of the Company's incorporation on 24 May 1989. The Petitioner is presently the joint owner, with RoseAnn Smith (the Petitioner's mother), of the three issued shares of the Company.
5. The Company has at all times been a family company whose main business is to hold assets and investments in the Cayman Islands for its shareholders, members of the Smith family. The Company's cash and securities are its only assets and greatly outweigh any liabilities. There is accordingly no dispute as to the solvency of the Company.

## **Background**

6. On its incorporation on 24 May 1989, the Company had three subscribers, Lawrence Smith, RoseAnn Smith and the Petitioner (respectively father, mother and daughter) who each held one ordinary share of the Company. These same three individuals were the directors of the Company.
7. On 30 December 1993, the three individual shares were transferred to the single joint estate of Lawrence Smith, RoseAnn Smith and the Petitioner, with rights of survivorship. The Company accordingly had three shares outstanding at this time.
8. On the death of Lawrence Smith on 4 December 2001, RoseAnn Smith and the Petitioner continued to jointly hold the three issued shares of the

Company. In December 2001, the joint estate was amended to reflect the sole joint owners being RoseAnn Smith and the Petitioner. Accordingly, from 4 December 2001, RoseAnn Smith and the Petitioner were sole equal owners of the Company. RoseAnn Smith and the Petitioner continued as sole directors.

### **Shareholder conflict**

9. In or about December 2002, as a result of the Petitioner's desire to regularise her tax affairs with the United States Internal Revenue Service ("IRS"), a conflict arose between the Petitioner and RoseAnn Smith. On advice, the Petitioner sought to withdraw her share of the Company's assets to meet her anticipated tax liability and to terminate her ownership in the Company to avoid ongoing adverse income tax consequences.
10. The cooperation of both directors and shareholders of the Company is required to liquidate a substantial share of the Company's assets. Due to the conflict between the Petitioner and RoseAnn Smith, such cooperation was not forthcoming. After initial discussions proved fruitless, the Petitioner instructed an attorney to represent her in this exercise. Around this time, the Company's bankers became aware of the dispute between the directors and shareholders (together the "Parties") and refused to allow further dealings with the Company's bank accounts pending resolution of the dispute. The Company's bank accounts remain frozen to this time.
11. Despite ongoing attempts to settle the dispute, the relationship between the Parties worsened. In March 2003, the Petitioner instructed Cayman attorneys to force a division of the Company's assets. From about this time, the Petitioner and RoseAnn Smith ceased corresponding directly and further communications were conducted through their attorneys.

12. On 4 April 2003, RoseAnn Smith's attorneys produced a draft settlement agreement to reflect an offer of compromise that had been reached in principle between the Parties. However, due to various points of principle that could not be agreed despite concerted efforts over several months to do so, the proposed settlement has foundered.

### **Grounds for relief**

13. By virtue of disagreement between the Parties on the terms on which the Petitioner is to exit the Company, a deadlock has arisen and subsisted between the Parties for a period of over eight months and has proved incapable of resolution despite ongoing negotiations. Since neither of the Parties has a majority vote, decisions concerning the Company's business have been frustrated, causing ongoing harm to the Company.
14. Due to the deadlock, the Petitioner is presently unable to liquidate or withdraw funds from the Company representing the value attributable to her half share of the Company's net assets. Nor is the Petitioner able to pass a resolution placing the Company into voluntary liquidation. Under Section 105 of the Companies Law (2003 Revision), the Court is given the discretion to have regard to the wishes of creditors and contributories as to all matters relating to the winding up of a company. Where, as here, 50% of the members of a company require it to be wound up, the wishes of the members/contributories are strongly persuasive.
15. In the circumstances, the Petitioner submits that it is just and equitable to wind up the Company on the grounds that:

- 15.1 The Company is jointly owned and the dissolution of all ties between the Parties is the most desirable and effective means of resolving the shareholder and management deadlock.
- 15.2 There is no other effective means of allowing the Petitioner to exit from the Company with her share of the Company's assets.
- 15.3 Since the Company assets are liquid and consist almost entirely of traded stock, bonds and cash, the remaining shareholder, RoseAnn Smith, will not suffer any loss of value from a liquidation of the Company's assets.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS** as follows:

1. That the Company be wound up by the Court in accordance with the provisions of the Companies Law (2003 Revision).
2. That Richard Fogerly of E & Y Restructuring Limited, 4<sup>th</sup> Floor, Bermuda House, British American Centre, Dr. Roy's Drive, George Town, Grand Cayman be appointed Official Liquidator of the Company.
3. That the Official Liquidator be at liberty to exercise any of the powers contained within Section 109 of the Companies Law (2003 Revision) without the further sanction of this Honourable Court.
4. That the Official Liquidator do file with the Clerk of the Court a report in writing of the position of and the progress made with the winding up of the Company and with the realisation of the assets thereof and as to any other matters connected to

the winding up of the Company, every twelve calendar months or as the Court may from time to time direct.

5. That the Official Liquidator be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in performance of their duties and on such terms as they may think fit.

6. That the Official Liquidator and his staff be remunerated at the expense of the Company at the following hourly rates:

|       |                                     |            |
|-------|-------------------------------------|------------|
| (i)   | Partner                             | US\$450.00 |
| (ii)  | Director                            | US\$385.00 |
| (iii) | Assistant Director (Senior Manager) | US\$330.00 |
| (iv)  | Senior Executive (Manager)          | US\$280.00 |
| (v)   | Executive (Senior Accountant)       | US\$185.00 |
| (vi)  | Administrative Assistant            | US\$ 95.00 |

7. That the Official Liquidator be authorised to pay out of the assets of the company, invoices rendered in the Liquidation by the Official Liquidator or his attorneys, counsel and professional advisors as and when these invoices become payable; provided that the Shareholders' approval of the fees and expenses will be required on a bi-annual basis, and in the event that any such invoice or part of an invoice is not allowed, the Official Liquidator will refund the full amount relating to that invoice or part of an invoice within 7 days of the Court's determination.

8. That the costs of the Petitioner and of the Petition be paid out of the assets of the Company.
9. Such further and/or other relief as this Honourable Court deems appropriate.

NOTE: This petition is intended to be served on the Company and the Registrar of Companies.

*Hunter & Hunter*

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**HUNTER & HUNTER**

Attorneys for the Petitioner

#### Notice of Hearing

This Petition having been presented to the Court to the            day of            2003 will be heard at the Court House, George Town, Grand Cayman on the            day of            2003 at 10:00 o'clock in the forenoon or as soon thereafter as the Petition can be heard.

THIS PETITION is filed by Hunter & Hunter, Attorneys-at-Law for the Petitioner, whose address for service is that of its said Attorneys-at-Law, 75 Fort Street, P.O. Box 190GT, Grand Cayman (Ref: JST/09703.001)