

IN THE GRAND COURT OF THE CAYMAN ISLANDS

G-0080/07

#2000 -

CAUSE NO. 80 OF 2007

BETWEEN:

TASARRUF MEVDUATI SIGNORTA FONDS

Plaintiff

AND

- (1) MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED
- (2) KAFFEE LIMITED
- (3) BARLA FINANCE LIMITED
- (4) CONUR CASH LIMITED
- (5) MEDRO LIMITED
- (6) YAHYA MURAT DEMIREL

Defendants

WRIT OF SUMMONS

TO: (1) MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED, (2) KAFFEE LIMITED, (3) BARLA FINANCE LIMITED, (4) CUNUR CASH LIMITED and (5) MEDRO LIMITED, the registered office for all of which is PO Box 1164 GT, 4th Floor Harbour Centre, North Church Street, George Town, Grand Cayman, and (6) YAHYA MURAL DEMIREL.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out herein.

Within 21 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 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

Issued this 23 February 2007.

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

IMPORTANT

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

STATEMENT OF CLAIM

1. The Plaintiff ("TMSF") is the Turkish state's insurer of banks and was formerly a division of Bankacilik Düzenleme Ve Denetleme Kurumu ("BDDK"). BDDK was established on 23 June 1999 as a public legal entity to supervise and regulate the Turkish banking sector. TMSF ceased to be a division of BDDK on 26 December 2003 when it became henceforth independent under the Turkish Bank Act of 12 December 2003, No 5020.
2. Under Article 3 of Turkey's "Provisional Articles and the Effective Date and Enforcement articles of the Bank Act, No. 5020" dated 12 December 2003 ("Article 3"), TMSF is entitled to bring in its own name and receive the proceeds of all proceedings issued against third parties to recover losses or property sustained by banks whose shareholding rights (except for the rights of dividend) and/or management and supervision have been transferred to TMSF.
3. On 25 October 1998 (pursuant to Ministerial Approval of the same date, number 71581), the Turkish Treasury transferred the management and supervision of Bank Ekspres AS ("Bank Ekspres"), a Turkish Bank, to TMSF.
4. Accordingly TMSF is the appropriate plaintiff to recover the money misappropriated from Bank Ekspres in the manner particularised below.

Appropriation of moneys from Bank Ekspres

5. In September 1998 Egebank AS ("Egebank"), a Turkish bank, was controlled by one Yahya Murat Demirel ("Demirel").

6. At the same time Bank Ekspres was controlled by one Korkmaz Yiğit ("Yiğit"), who was also a director of Bank Ekspres.
7. As a director of Bank Ekspres, Yiğit owed a fiduciary duty to Bank Ekspres to apply or authorise or cause the application of Bank Ekspres's money only to purposes that were so far as Yiğit was aware in the best interest of Bank Ekspres ("Yiğit's Fiduciary Duty").
8. It is to be inferred that at some time prior to 9 September 1998 Yiğit and Demirel entered into a dishonest conspiracy ("the Conspiracy") by which they agreed as follows:
 - (1) that in about September 1998 Yiğit would cause companies controlled by him, namely Kare Insaat AS ("Kare"); Boyut İc Ve Dis Ticaret AS ("Boyut"); Uçgen Insaat Malzemeleri Ticaret AS ("Üçgen"); and Kelebek Turistik Tesisleri AS ("Kelebek") (together, "the Yiğit Companies") to apply to Egebank for loans totaling US\$ 30 million in value, ostensibly for the purpose of raising export trade finance;
 - (2) that Demirel would use his authority and/or influence within Egebank to ensure that the aforesaid applications were approved;
 - (3) that at approximately the same time Demirel would cause companies controlled by him, namely Dempanel Entegre Orman Ürünleri Sanayi Ticaret AS ("Dempanel"); Dempanel Demser Nakliye Ve Depo İşletmeciliği AS ("Demser"); Demyapi İnsaat Ve Pazarlama AS ("Demyapi"); and Demeks İhracat Ticaret AS ("Demeks") (together, "the Demirel Companies") to apply to Bank Ekspres for loans also totalling US\$ 30 million in value, also ostensibly for the purpose of raising export trade finance;

- (4) that Yiğit would in breach of Yiğit's Fiduciary Duty use his authority and/or influence within Bank Ekspres to ensure that these applications were approved;
- (5) that neither the payments made by Egebank further to the loan applications from the Yiğit Companies, nor the payments made by Bank Ekspres further to the loan applications from the Demirel Companies, would be repaid;
- (6) that the Yiğit Companies and the Demirel Companies would all be shell companies with no assets against which any liability resulting from their receipt of the payments could be enforced;
- (7) that the proceeds of the payments made by Egebank to the Yiğit Companies would be diverted to Yiğit personally; and
- (8) that the proceeds of the payments made by Bank Ekspres to the Demirel Companies would be diverted to Demirel personally.
9. Thereafter Demirel and Yiğit executed the Conspiracy, in that applications for finance were made by the Demirel Companies and the Yiğit Companies to Egebank and Bank Ekspres as agreed.
10. On 9 September 1998 the Board of Directors of Egebank having received the aforesaid applications from the Yiğit Companies, approved the following payments to them which were made on the following dates and in the following Turkish Lire equivalent amounts:

Company	Date payment made	Amount
Karc	22 September 1998	US\$ 8,000,000
Boyut	22 September 1998	US\$ 7,000,000

Ucgen	22 September 1998	US\$ 9,000,000
Kelebek	22 September 1998	US\$ 6,000,000
		US\$ 30,000,000

11. On 22 September 1998 Bank Ekspres, having received the aforesaid applications from the Demirel Companies, approved the following payments to them which were made on the following dates and in the following amounts ("the Bank Ekspres pseudo-loans"):

Company	Date "loan" made	Amount
Dempanel	22 September 1998	US\$ 8,000,000
Demser	22 September 1998	US\$ 7,500,000
Demyapi	22 September 1998	US\$ 7,500,000
Demeks	22 September 1998	US\$ 7,000,000
		US\$ 30,000,000

12. As Demirel at all times well knew, the Bank Ekspres pseudo-loans were payments of Bank Ekspres's money that were procured by Yiğit in his capacity as a director of Bank Ekspres in breach of Yiğit's Fiduciary Duty.

Particulars of breach

- (1) Yiğit knew that the Bank Ekspres pseudo-loans were not being made for any proper commercial purpose and that the stated purpose, that they were for export trade finance, was not the true purpose.
- (2) Yiğit also knew at all material times that the Bank Ekspres pseudo-loans were not being made for the benefit of Bank Ekspres in any way, but for his

own benefit in that they were Demirel's reward for procuring the payment of US\$30 million of Egebank's money to Yiğit himself.

(3) Yiğit knew at all times that the Bank Ekspres pseudo-loans were nothing more than a means of appropriating money (namely the US\$ 30 million thus removed) from Bank Ekspres and that the loan documentation was wholly a sham.

(4) Yiğit knew, in short, that the sole purpose of the Bank Ekspres pseudo-loans was to further the Conspiracy but procured them to be made in any event.

13. It is to be inferred from the facts that the Demirel Companies:

(1) were not bona fide trading entities; and/or

(2) had no legitimate purpose to which the pseudo-loans could be put; and/or

(3) were at all times vehicles for Demirel's personal purposes; and/or

(4) operated entirely under Demirel's direction and control and were aware through Demirel of the facts and matters pleaded at paragraphs 5 to 12 above at the time when they received the Bank Ekspres pseudo-loans.

14. Therefore, none of the Demirel Companies could conscionably retain the benefit of the pseudo-loans for any period.

15. Accordingly, from the moment when the pseudo-loans were received by the Demirel companies, that portion of the Bank Ekspres pseudo-loans that each of the Demirel Companies received was held by it on constructive trust for the money's true owner, Bank Ekspres.

16. On 22 September 1998, the very day on which the Bank Ekspres pseudo-loans were made available to them, each of the four Demirel Companies instructed Bank Ekspres to convert the sum lent into Turkish Lire and thereafter to pay it into the same company's account at Egebank.
17. This instruction was complied with on the same day. Sums in Turkish Lire were paid into the accounts of the Demirel Companies at Egebank on 22 September 1998 as follows:

Company	Sum (Turkish Lire)
Dempanel	2,212,000,000,000
Demser	2,073,750,000,000
Demyapi	2,073,750,000,000
Demeks	1,935,500,000,000

18. These sums were the proceeds of property held on constructive trust for Bank Ekspres and accordingly were themselves subject to constructive trusts in favour of Bank Ekspres, the money's true owner.
19. Thereafter, on 24 September 1998, each of the Demirel Companies instructed Egebank to transfer the same sum in Turkish Lire from its account to the account at Ekspres Bank of another company controlled by Demirel, Demyon Holding AS ("Demyon").
20. Egebank complied with this instruction on 24 September 1998 by making electronic funds transfers of the sums referred to in paragraph 17 above from each of the accounts of the respective Demirel Companies to the account of Demyon at Bank Ekspres.

21. Thereafter between 25 and 29 September 1998 the moneys paid into Demyon's account at Bank Ekspres together with all accrued interest thereon were withdrawn in cash by Egebank's cashier, Gökmen Altuntas, and paid into Demirel's personal account at the central branch of Egebank as follows:

Sums withdrawn in cash on 25 September 1998 (TL)	1,215,000,000,000 861,000,000,000 224,000,000,000
Sums withdrawn in cash on 28 September 1998 (TL)	3,000,000,000,000
Sums withdraw in cash on 29 September 1998 (TL)	3,052,635,000,000
Total	8,352,000,000,000

22. The money paid into Demirel's personal account represented the proceeds of trust property and was therefore itself subject to a constructive trust in favour of Bank Ekspres, the money's true owner.

The Defendants

23. The First Defendant is trustee of a trust created in 1997 and of a further two trusts created in 1999 of which Demirel was the settlor ("the Trusts"). Two of the Trusts were referred to as between the First Defendant and Demirel as The Dolphin Trust and The Mana Trust.
24. At the request of Demirel, the First Defendant in about 1997 or 1999 formed or acquired some companies (the precise number whereof is unknown to TMSF) the shares of which were held by the First Defendant on trust for Demirel on one or more of the Trusts.
25. Among these companies were the Second to Fifth Defendants, which are incorporated in the Cayman Islands and whose registered address is in every case given as "Merrill Lynch Bank and Trust Company (Cayman) Limited, PO Box

1164 GT, 4th Floor, Harbour Centre, North Church Street, Grand Cayman", which is the address of the First Defendant.

26. The Second to Fifth Defendants were formed or acquired by the First Defendant for the intended purpose (such intention being possessed by the First Defendant and by Demirel) of holding assets that were the proceeds of money provided by Demirel.
27. After the Second to Fifth Defendants had been acquired by the First Defendant and the shares in them held on the Trusts for Demirel, Demirel paid and/or caused to be paid large sums of money to the Second to Fifth Defendants.
28. TMSF does not know what sums were paid overall, but documentation obtained by TMSF shows that as at 29 September 1999 the Second Defendant's account with Merrill Lynch International Bank, no. M002-11059, was in credit to the extent of US\$5,042,595.36. On the same date the Fifth Defendant's account with the same Merrill Lynch entity, no. M002-16527, contained US\$ 4,292,360.40. No data were available for the accounts of the Third or Fourth Defendants but it is clear that the sole reason for their existence was and is to hold money and/or other assets.
29. It is to be inferred that:
 - (1) all the money ever received by the Second to Fifth Defendants was ultimately received from Demirel; and
 - (2) the moneys so received were, and/or were the proceeds of, the sums paid into Demirel's account at the central branch of Egebank on 25 to 29 September 1998 as pleaded in paragraph 21 hereof; and
 - (3) the moneys and assets presently held by the Second to Fifth Defendants are, and/or are the proceeds of, the moneys so received.

30. Accordingly:

- (1) the moneys and assets of the Second to Fifth Defendants are held on trust for their true owner TMSF, which demands that all such money and assets be made over to it in accordance with the relief claimed herein; and
- (2) to the extent that any money or other assets are held subject to any of the Trusts by the First Defendant, having received the same from Demirel or being the proceeds of money or assets received from Demirel, it is to be inferred that such money or assets are, or are the proceeds of, the money paid to Demirel's account at the central branch of Egebank between 25 and 29 September 1998, and are accordingly subject to a constructive trust in favour of TMSF, which demands that all such money and assets be made over to it in accordance with the relief claimed herein.

31. Further, Demirel's purpose in creating the Trusts and in causing the First Defendant to create and/or acquire and retain the Second to Fifth Defendants was to prevent the proceeds of the unlawfully misappropriated trust moneys paid to Demirel from being recovered by Bank Ekspres and/or TMSF.

32. As a result of its assuming the status and functions as trustee of the Trusts, and of creating and/or acquiring and maintaining the Second to Fifth Defendants, and of receiving money and other assets from Demirel and transferring them for the Second to Fifth defendants and/or holding them itself, the First Defendant has (albeit unknowingly) assisted in Demirel's attempts to achieve that purpose.

33. TMSF has obtained in the Turkish courts an in personam judgment against Demirel (decision no. 2001/1461) in the sum of US\$30,000,000, ("the Judgment") which was given on 20 November 2001 in a claim arising out of the appropriation of US\$30,000,000 as is particularized herein.

34. The Judgment awarded to TMSF (in addition to the US\$30,000,000) a sum for attorney fees in the amount of TL 18,589,040,000 and costs of TL 1,529,900,000.

35. TMSF is entitled to interest on the attorney fees and costs as follows: 60% from 20 November 2001 to 30 June 2002; 55% from 1 July 2002 to 30 June 2003; 50% from 1 July 2003 to 31 December 2003; 43% from 1 January 2004 to 31 December 2004; 38% from 1 January 2005 to 30 April 2005; 12% from 1 May 2005 to 31 December 2005; 9% from 1 January 2006 to 30 January 2007 and 9% thereafter.
36. On 1 January 2005 the currency TL was replaced with New Turkish Lira, YTL, at an exchange rate of TL 1,000,000 per YTL 1. Accordingly, the outstanding attorney fees owed by Demirel to TMSF are YTL 18,589.04 and the outstanding costs owed by Demirel to TMSF are YTL 1,529.90, together with interest on these amounts in the amount of YTL 38,778.14 as of 30 January 2007, and accruing at 9% thereafter.
37. At the time when the proceedings that gave rise to the Judgment were served on Demirel, Demirel was voluntarily present in Turkey, and was a Turkish resident. Accordingly, the Turkish Courts had jurisdiction and were competent to hear and judge the claim against Demirel.
38. Further or alternatively, the Judgment was given after a trial on the merits of the claim at which Demirel was professionally represented and argued through his representatives that he was not liable in respect of the claim upon which the Judgment was given against him. Accordingly, Demirel submitted to the Turkish courts in respect of each of the claims giving rise to the Judgments, which are binding on him.
39. The Judgment is final and conclusive, and for a sum certain as aforesaid.
40. TMSF has been unable to satisfy any part of the Judgment, which remains wholly unpaid.
41. In the premises, TMSF is entitled to costs against Demirel on an indemnity basis for all steps in these proceedings.

42. The Second to Fifth Defendants are mere repositories for the Sixth Defendant's assets. In the premises, the assets held by the Second to Fifth Defendants, and assets held by or in the name of or on behalf of the First Defendant for the account of the Second to Fifth Defendants, are beneficially owned by alternatively are or should be made available for execution in satisfaction of judgments obtained against the Sixth Defendant.
43. Pursuant to the Judgment, the Plaintiff is entitled to interest on the Judgment from Demirel at the rate of 6.0% per annum from 20 November 2001 up to the date of payment. In the alternative, TMSF claims compound and/or simple interest on all sums found to be due to it pursuant to the equitable jurisdiction of the court at such rates and/or pursuant to Section 34 of the Judicature Law (2004 Revision) at the rate of 7.25% per annum or at such rate and for such period and with such rests as the court thinks fit.

AND the Plaintiff claims from the First Defendant:

- 1 A declaration that all sums together with all interest thereon and all other assets held by it subject to the Trusts are held on constructive trust for the Plaintiff; alternatively the assets held by the Second to Fifth Defendants, and assets held by or in the name of or on behalf of the First Defendant for the account of the Second to Fifth Defendants, are beneficially owned by alternatively are or should be made available for execution in satisfaction of judgments obtained against the Sixth Defendant.

AND the Plaintiff claims from the Second, Third, Fourth, Fifth and Sixth Defendants:

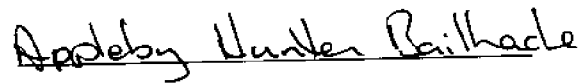
- 2 A declaration that all sums together with all interest thereon and other assets held by them are held on constructive trust for the Plaintiff; alternatively the assets held by the Second to Fifth Defendants, and assets held by or in the name of or on behalf of the First Defendant for the account of the Second to Fifth Defendants, are beneficially owned by alternatively are or should be made available for execution in satisfaction of judgments obtained against the Sixth Defendant.

- 3 Payment of all such sums and interest thereon as claimed in the body of this pleading, together with delivery up of all other such assets.

AND the Plaintiff claims from the Sixth Defendant:

- 4 Judgment in the amount of US\$30,000,000.00 plus the USD equivalent prevailing at the date of judgment of the attorney fees and costs owed by Demirel to TMSF in the sums of YTL 18,589.04 and YTL 1,529.90 respectively.
- 5 Compound or simple interest on the Judgment (plus the awarded attorney fees and costs as aforesaid) calculated in accordance with the rates set out herein; alternatively, compound or simple interest pursuant to the equitable jurisdiction of the court or section 34 of the *Judicature Law* of the Cayman Islands, on such amounts and at such rates and for such periods and with such rests as the Court thinks fit.
- 6 Costs on an indemnity basis.
- 7 Such further and other relief as the Court thinks fit.

Dated the 23 February 2007.


APPLEBY HUNTER BAILHACHE

FILED by Appleby Hunter Bailhache of Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. JW/ML/11586.001), Attorneys-at Law for the Plaintiff, whose address for service is that of its attorneys.