

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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| In re:  | ) |   |
| SEA CONTAINERS LTD., <i>et al.</i> , <sup>1</sup> | ) | Chapter 11                              |
| Debtors.  | ) | Case No. 06-11156 (KJC)                 |
|   | ) | Jointly Administered                    |
| SEA CONTAINERS LTD.,                              | ) |   |
| Plaintiff,  | ) | Adversary Proceeding No. 08- ____ (KJC) |
| v.  | ) |   |
| JAMES B. SHERWOOD,                                | ) |   |
| Defendant.  | ) |   |

**COMPLAINT TO (I) AVOID AND RECOVER TRANSFERS PURSUANT TO  
SECTIONS 547, 548, AND 550 OF THE BANKRUPTCY CODE AND (II) DISALLOW  
CLAIM PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE**

Sea Containers Ltd. ("Plaintiff"), a debtor and debtor in possession in the above-referenced chapter 11 case along with its debtor-subsidiaries Sea Containers Services Ltd. and Sea Containers Caribbean Inc. (collectively, the "Debtors"), by its counsel, hereby complains against James B. Sherwood ("Defendant") and alleges as follows upon its own knowledge and, otherwise, upon information and belief:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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<sup>1</sup> The Debtors in these chapter 11 cases are Sea Containers Caribbean Inc. ("SCC"), Sea Containers Ltd. ("SCL"), and Sea Containers Services Ltd ("SCSL").

2. Venue for this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought herein are sections 502, 547, 548, and 550 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), as supplemented by Rules 3007 and 7001(1) of the Federal Rules of Bankruptcy Procedure.

### **Parties**

4. Plaintiff Sea Containers Ltd. is a company organized under the laws of Bermuda, with its principal place of business at Sea Containers House, 20 Upper Ground, London, England.

5. Defendant James B. Sherwood is a former officer and director of the Plaintiff, with his principal residence at 24 The Boltons, London, England.

### **Background**

6. On March 20, 2006, Plaintiff entered into a letter agreement with Defendant which purported to entitle Defendant to payments from the Plaintiff of \$200,000.00 per year for ten years, for a total of \$2,000,000.00, in connection with the termination of his employment with the Debtors (the "Agreement"). The Agreement is included in Exhibit A to this Complaint.

7. At the time Plaintiff and Defendant entered into the Agreement, Defendant was an officer and/or director of Plaintiff.

8. On October 1, 2006, pursuant to the Agreement, Plaintiff made a certain avoidable transfer to Defendant in the amount of \$116,667.00 (the "Transfer").

9. On October 15, 2006 (the "Petition Date"), the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

10. Defendant has filed a single proof of claim with this Court, Claim No. 63, in the amount of \$1,833,333 (the "Claim"). The Claim is attached to this Complaint as Exhibit A.

11. Other than the Claim, Defendant has filed no other proofs of claim against the Debtors' estates.

12. Other than the Claim, Defendant has no other claims against the Debtors' estates.

13. Plaintiff brings this adversary proceeding to: (a) avoid the Agreement and the Transfer; (b) direct the return of the Transfer; and (c) disallow the Claim.

**Count I**  
**Avoidance and Recovery of Preferential Transfers Pursuant to**  
**§§ 547(b) and 550(a) of the Bankruptcy Code**

14. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 13 of this Complaint as though set forth at length herein.

15. Plaintiff made the Transfer, or caused the Transfer to be made, to Defendant on or within ninety days prior to the Petition Date.

16. The Transfer constituted a transfer of an interest in Plaintiff's property.

17. At the time of the Transfer, Defendant was a creditor of Plaintiff.

18. Plaintiff made the Transfer, or caused the Transfer to be made, for, or on account of, an antecedent debt owed by Plaintiff to Defendant before such transfer was made (the "Debt").

19. At the time of the Transfer, Plaintiff was insolvent.

20. The Transfer enabled Defendant to receive more than he would have received if the Debtors' bankruptcy cases were administered under chapter 7 of the Bankruptcy Code, the Transfer had not been made, and Defendant had received payment of the Debt to the extent provided by the Bankruptcy Code.

21. Plaintiff may avoid the Transfer pursuant to section 547(b) of the Bankruptcy Code.

22. Plaintiff may recover, for the benefit of the Debtors' estates, the Transfer, or its value, from Defendant as the party that received the Transfer as described in this Complaint pursuant to section 550(a) of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: avoiding the Transfer pursuant to section 547(b) of the Bankruptcy Code; ordering the return and recovery of the Transfer or entering a judgment against Defendant in the amount of the Transfer pursuant to section 550(a) of the Bankruptcy Code; entering a judgment against Defendant for pre- and post-judgment interest, costs and attorneys' fees and expenses; and granting such other equitable relief as may be just and proper.

**Count II**  
**Avoidance and Recovery of Fraudulent Transfer Pursuant to**  
**§§ 548(a)(1)(B) and 550(a) of the Bankruptcy Code**

23. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 22 of this Complaint as though set forth at length herein.

24. The Transfer was a transfer of an interest in Plaintiff's property to or for the benefit of Defendant within 2 years before the Petition Date.

25. Plaintiff received less than reasonably equivalent value in exchange for the Transfer and:

- (a) was insolvent on the date the Transfer was made, or became insolvent as a result of the Transfer;
- (b) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with Plaintiff was an unreasonably small capital; or
- (c) intended to incur, or believed that Plaintiff would incur, debts that would be beyond Plaintiff's ability to pay as such debts matured.

26. Plaintiff may avoid the Transfer pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

27. Plaintiff may recover, for the benefit of the Debtors' estates, the Transfer, or its value, from Defendant as the party that received the Transfer as described in this Complaint pursuant to section 550(a) of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: avoiding the Transfer pursuant to section 548(a)(1)(B) of the Bankruptcy Code; ordering the return and recovery of the Transfer or entering a judgment against Defendant in the amount of the Transfer pursuant to section 550(a) of the Bankruptcy Code; entering a judgment against Defendant for pre- and post-judgment interest, costs and attorneys' fees and expenses; and granting such other equitable relief as may be just and proper.

**Count III**

**Avoidance of Fraudulent Obligation and Disallowance of Claim Pursuant to  
§§ 548(a)(1)(B) of the Bankruptcy Code**

28. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 27 of this Complaint as though set forth at length herein.

29. The Agreement is an obligation to or for the benefit of Defendant incurred by Plaintiff within 2 years before the Petition Date.

30. Defendant was an insider of Plaintiff at the time the Agreement was made.

31. Plaintiff received less than reasonably equivalent value in exchange for the Agreement and:

(a) was insolvent on the date the Agreement was made, or became insolvent as a result of the Agreement;

- (b) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with Plaintiff was an unreasonably small capital;
- (c) intended to incur, or believed that Plaintiff would incur, debts that would be beyond Plaintiff's ability to pay as such debts matured; or
- (d) made the Agreement to or for the benefit of Defendant, an insider, under an employment contract and not in the ordinary course of business.

32. Plaintiff may avoid the Agreement pursuant to section 548(a)(1)(B) of the Bankruptcy Code.

33. The Agreement is the sole basis for the Claim.

34. To the extent that the Agreement is avoided, the Claim is unenforceable against the Debtors and must be disallowed pursuant to section 502(b)(1) of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: avoiding the Agreement pursuant to section 548(a)(1)(B) of the Bankruptcy Code; disallowing the Claim pursuant to section 502(b)(1) of the Bankruptcy Code; entering a judgment against Defendant for costs and attorneys' fees and expenses; and granting such other equitable relief as may be just and proper.

**Count IV**  
**Disallowance of Claim Pursuant to**  
**§ 502(d) of the Bankruptcy Code**

35. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 34 of this Complaint as though set forth at length herein.

36. Defendant is the recipient of the Transfer, which is recoverable under section 550 and avoidable under sections 547 and 548 of the Bankruptcy Code.

37. Defendant has not returned the Transfer to Plaintiff.

38. The Claim must be disallowed unless and until Defendant returns the Transfer to Plaintiff pursuant to section 502(d) of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: disallowing the Claim unless and until Defendant returns the Transfer to Plaintiff pursuant to section 502(d) of the Bankruptcy Code; entering a judgment against Defendant for costs and attorneys' fees and expenses; and granting such other equitable relief as may be just and proper.

**Count V**  
**Disallowance of Claim Pursuant to**  
**§ 502(b) of the Bankruptcy Code**

39. Plaintiff repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 38 of this Complaint as though set forth at length herein.

40. The Claim is based upon Defendant's right to receive a stream of payments over ten years beginning in 2006.

41. Pursuant to section 502(b) the Claim may only be allowed in an amount determined by this Court in lawful currency of the United States as of the Petition Date.

42. The Claim overstates the value of the Defendant's claim as of the Petition Date because it fails to discount the Claim adequately to reflect its net present value as of the Petition Date.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: determining the appropriate discount rate to reduce the Claim to its net present value as of the Petition Date, taking into account Defendant's risk of non-payment of the Claim at the time the Agreement was made; calculating the net present value of the Claim as of the Petition Date (the "Claim's Net Present Value"); allowing the Claim in an amount not to exceed the Claim's Net Present Value;

entering a judgment against Defendant for costs and attorneys' fees and expenses; and granting such other equitable relief as may be just and proper.

Dated: Wilmington, Delaware  
October 13, 2008

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

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