

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Rolls Building, Fetter Lane  
London EC4A 1NL

Date: 29/07/2015

**Before :**

**THE HON MRS JUSTICE ASPLIN DBE**

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**Between :**

(1) ALFRED VAN COLLEM  
(2) PETER VAN COLLEM  
(3) SOCRATES MANAGEMENT CORPORATION

**Claimants**

**- and -**

(1) STEPHAN VAN COLLEM  
(2) HELIOS MANAGEMENT & CONSULTING LTD  
(3) EURO CONTRACTING CORPORATION LTD  
(4) ALPHAGENETICS LTD  
(4) CITIZEN ENGINEERING SERVICES LTD

**Defendants**

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**Gary Blaker QC and Isabel Petrie (instructed by LSG Solicitors) for the Claimants  
The Defendants attending on 26 February 2015 and 2 March 2015 with the assistance of  
a McKenzie friend and not appearing and not being represented on 3 July 2015, 8 July  
2015, 21 July 2015 or 22 July 2015, save that the Defendants were represented by  
Charles Davey on 21 July 2015 in relation to an application to adjourn the hearing on  
that day.**

Hearing dates: 26 February 2015, 2 March 2015, 3, 8, 21 and 22 July 2015  
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**Judgment**

**Mrs Justice Asplin :**

1. As I have already mentioned in my judgment of 21 July 2015 in relation to an application to adjourn the hearing on that day, this is an unfortunate family dispute which has arisen between the First Claimant, Mr Alfred van Collem (“Alfred”) and

his younger son, the Second Claimant, Peter van Collem (“Peter”) on the one hand and Alfred’s elder son, Stephan van Collem, the First Defendant, (“Stephan”) on the other. It concerns the alleged misappropriation of funds in the region of £4m of which Alfred is the ultimate beneficial owner. The funds were removed from the bank accounts held in the name of the Third Claimant, Socrates Management Corporation, a company registered in the Seychelles (“Socrates”) which acts or acted as a nominee on behalf of Alfred in respect of bank accounts in Switzerland and Luxembourg and from Helios Finance Corporation, (“Helios F”).

2. It is alleged that the monies have been taken by Stephan to fund his lifestyle and that of his wife and that the monies have been funnelled through a series of companies which are the second to fifth defendants. In particular, it is alleged that Stephan who is a director and sole shareholder of the Second Defendant, Helios Management & Consulting Ltd, a company registered in England and Wales (“Helios”) which is in turn a director of Socrates, used Helios in order to facilitate the misappropriation of the funds and transfer them to Euro Contracting Corporation Limited (“Euro”), Alphagenetics Limited, (“Alpha”) and Citizen Engineering Services Limited (“Citizen”) the Third to Fifth Defendants respectively, all of which are companies registered in England and Wales, which were set up by Stephan and of which he is the sole or majority shareholder.
3. It is pleaded that as a director of Helios, Stephan is in breach of his fiduciary duties to further the interests of the company with undivided loyalty, to refrain from allowing his personal interests to conflict with those of the company and to refrain from taking advantage of his position as director of Helios or facilitating any course of conduct which might militate against the interests of the company. It is also pleaded that as a director of Helios, Stephan was under a statutory duty to promote the success of Helios, to exercise independent judgment and to avoid conflicts of interest with those of Helios.
4. Lastly, as a director of Socrates it is said that Helios owed statutory and fiduciary duties to further the interest of Socrates and/or Alfred and ensure that his interests did not conflict with theirs, to refrain from taking advantage of its position as director of Socrates, to exercise independent judgment and avoid conflicts of interest with those of Socrates.
5. As I have already mentioned, the Claimants contend that the monies were misappropriated to fund the lifestyle of Stephan and his wife and that the majority of the monies was transferred to a Belgian company, Ultimate 1 and thereafter in all likelihood on to another Belgian company AMC and/or to OVAB (together referred to as the “Belgian Companies”). There is a dispute as to control of the businesses conducted by those companies and whether, therefore, ultimately the monies were spent for the benefit of Stephan or for Alfred and Peter or a combination of them. Both Peter and Stephan appear to blame each other for wayward behaviour and contend that the other spent the money and/or wasted it in failed business projects.
6. This matter has had a lengthy and complicated procedural history and the trial was adjourned on four occasions. When the trial re-commenced on 3 July 2015, Stephan was not present. Having delayed the beginning of the trial and taken steps to contact Stephan, I struck out the defence pursuant to CPR 39.3. The steps taken to contact

Stephan on 3 July are described in more detail in my judgments in relation to the application to adjourn a hearing on 21 July 2015 and extend time for compliance with the directions in my order of 8 July 2015, and in my judgment in relation to Stephan's applications for an adjournment of the trial and to set aside my Order striking out the defence.

7. The defence having been struck out, I determined that it was necessary for the Claimants to prove their case by means of their Statement of Claim, confirmation of their evidence on oath by the witnesses present and by the admission of hearsay evidence. I gave permission for Civil Evidence Act notices to be served out of time in respect of the remainder of the witnesses of fact and the expert evidence in relation to which oral evidence was due to be heard over the following week. I consider that there was good reason for doing so at that stage and in all the circumstances. None of the evidence contained in those statements would be of any surprise to Stephan. They were all properly served at the appropriate time. In my judgment, it would have been wholly disproportionate in the circumstances to require each of the witnesses to attend. I directed that the hearsay notices should be served by 4pm on Tuesday 7 July 2015 and the matter should be adjourned to 10.30am on Wednesday 8 July 2015. At the hearing at 2pm on 3 July 2015, Mr Alfred van Collem and Mr Peter van Collem who were present having flown from Belgium, Mr Alfred van Collem expecting to give his evidence that day, confirmed the content of their witness statements on oath. Thereafter, the hearsay notices were served and filed in accordance with the Order in respect of the witness evidence of Bart Van Zwol dated 27 October 2014, Annick Deraedt dated 31 October 2014, Karel Versijp dated 8 September 2014, Raoul Jacobs dated 27 October 2014, Sven Greveraars dated 31 January 2015, Bernard Georges in respect of his reports dated 17 October 2014 and 20 February 2015 and Charalambos Patsalides in respect of his reports dated 16 October 2014 and 10 February 2015.
8. Thereafter, having left a voicemail with my clerk at 16.54 on Friday 3 July to say that he had been too ill to attend the hearing, on Monday 6 July 2015, I received a number of emails containing amongst other things an Application Notice seeking an adjournment of the trial and the 18<sup>th</sup> witness statement of Stephan of 6 July 2015 setting out details concerning his medical condition and present state of health. A further application dated 7 July 2015 seeking an order setting aside the order striking out the defence together with Stephan's 19<sup>th</sup> witness statement in support was received on the morning of the hearing on 8 July 2015. The full sequence of events prior to the hearing on 8 July 2015 is set out in my previous judgments in this matter. I adjourned the hearing of 8 July 2015 over until 21 July in order to give Stephan the opportunity to provide cogent medical evidence of the type he describes in paragraph 44 of his 18<sup>th</sup> witness statement and to determine how to proceed in the light of the Defence having been struck out.
9. On 21 July 2015 I heard an application to adjourn that hearing and to extend time for further medical evidence which was made by Mr Davey on Stephan's behalf. I refused the application and gave a reasoned judgment. I then heard submissions from Mr Blaker QC on behalf of the Claimants in relation to Stephan's applications of 6 and 7 July for an adjournment of the trial and/or an order setting aside the striking out of the defence pursuant to CPR 39.3. I gave a full reasoned judgment in relation to those applications which were also dismissed.

10. In the circumstances, it was for the Claimants to prove their case by reference to their Statement of Case, the evidence of Alfred and Peter confirmed on oath and the evidence admitted by way of hearsay notices.

*Relevant Background – the facts on the basis of the Statement of Claim and the Claimants’ evidence of fact and expert opinion*

11. The monies in question which it is alleged were misappropriated were part of Alfred’s savings of around £5.5m which he had amassed during his working life in the diamond trade. The monies were spread over different bank accounts in various jurisdictions and were held either in Alfred’s sole name or jointly with his wife who died in 2009. By 2004, he still had approximately £2.6m of which was deposited in a NatWest account in Jersey, 937,000 Euros in a BNP Paribas account in Zurich known as the R.V. Carolus Account, £1.8m in a Credit Suisse account also in Zurich, about 15 million Belgian Francs, equivalent to 400,000 Euros in an account with Dexia in Belgium and about £50,000 with HSBC in the United Kingdom. It is his unchallenged evidence that on his death he intended his estate to be divided equally between Stephan and Peter. A power of attorney was executed on 3 September 1997.
12. In 1995, Stephan was convicted in Belgium of fraud involving trade in mobile telephones. As a result, a claim was made against him by the Belgian state for approximately 25 million euros. Thereafter, Stephan was arrested in Belgium in 2002 in relation to allegations of manufacturing drugs and spent approximately 6 months in prison and in March 2006 he was convicted in Belgium of manufacturing illegal drugs and sentenced to 4 years imprisonment, although he has not served a custodial sentence.
13. It is Alfred’s evidence that in order to provide his son with a legitimate means of earning a living he purchased AMC for him in 2003, Ultimate 1 in 2005 and OVAB in 2007. Both Alfred and Peter say that although they were directors of the companies, they were not involved in the running of those businesses and that they were run by Stephan, for Stephan. They say that they became directors somewhat reluctantly as a result of the fact that Stephan was not suitable to be a director because of his criminal record.
14. To return to the chronology of events, in 2004, Stephan approached his father because he was concerned about the possible tax treatment of his father’s savings as a result of the EU/Swiss taxation of savings agreement. Stephan persuaded Alfred to hold the majority of his savings through an offshore company. As a result, in April 2004 Helios F was formed. Alfred was its sole shareholder. Helios F became the legal owner of Alfred’s account at NatWest Bank Jersey, the balance at that time being £2.6m. In 2005 Stephan organised the set up of Socrates and Alfred became the sole shareholder and director. Alfred stated that he believed that 4999 of the 5000 \$1 shares were unissued. Alfred’s accounts held with BNP Paribas and Credit Suisse in Zurich were transferred to Socrates and an account with Credit Suisse Luxembourg was opened.
15. At first, the bank statements in respect of the various accounts were sent to a Mr Marx in London. They were collected by Stephan and delivered to Alfred. However, Stephan ceased to deliver the bank statements at some stage in 2006. Around this

time, Stephan set up Helios, Euro and Alpha, Citizen having been formed in 1999. Alfred also states that it was around this time that Stephan began a relationship with his now wife, Anat Natan and began to spend very substantial amounts of money on computers and IVF treatment for his wife. He says that he thought that the Belgian companies were making a profit and that Stephan was funding his lifestyle through them. Despite being directors, he says that neither he nor Peter were shown the accounts. He was able to live comfortably on his UK and Belgian pension and did not check on the overseas accounts held by Socrates.

16. In 2006, Alfred says that 150,000 Euros was removed without his knowledge from an account by Stephan and paid into Euro's bank account. The money was then transferred to Ultimate 1. Later in 2008, Stephan asked for £34,000 for Ultimate 1 which Alfred had transferred. Thereafter, in proceedings in Belgium, Stephan contended that Euro was entitled to 83% in Ultimate 1 as a result of the payments.
17. In the meantime, Alfred says that Stephan persuaded him to resign as a director of Socrates and that Helios, a company of which Stephan is the sole shareholder and of which Alfred and Stephan were directors, should become a director of Socrates instead. A resolution to this effect was passed on 28 June 2006.
18. It was not until 2010 when OVAB went into receivership that Alfred and Peter say that they made full enquiries and discovered that the Belgian companies had not been profitable. As a result, Peter suggested to his father that Stephan had taken his money and enquiries were made of BNP Paribas, NatWest and Credit Suisse. They discovered that the NatWest account had been closed, and that £600,000 had been taken out of the Credit Suisse Zurich account. The BNP Paribas account had a nominal balance. It was a result of the enquiries that in December 2011, Alfred says that he discovered that there had been a share transfer in relation to Socrates shares in 2007 to which I shall refer.
19. On 29 May 2012 Alfred revoked all powers of attorney he had previously given to Stephan. Helios then resigned as a director of Socrates. An Extraordinary General Meeting was held on 1 August 2012 at which a resolution was passed appointing Peter as a director of Helios and removing Stephan from that role. In the meantime, all of the bank accounts had been frozen.

*The 2007 Letter*

20. Turning back in the chronology to 2007, the next relevant event is allegedly recorded in a letter dated 7 March 2007 and headed "Socrates Management Corporation" ("the 2007 Letter"). On its face the 2007 Letter appears to be signed by both Alfred and Stephan. Copies of both of their identity cards are at the top of the page. The letter is addressed from Mahe in the Seychelles but also includes the line "Antwerp, 7<sup>th</sup> of March 2007". The body of the letter is as follows:

"I, Alfred van Collem, hereby confirm, that the shares of Socrates Management Corporation, the total of 5000, have been transferred according to art 11, of the memorandum of

association of Socrates Management Corporation to Stephan van Collem.

He is, as from now, the sole shareholder of Socrates Management Corporation, and therefore also the sole beneficial owner of the company and all of its assets, shares, participations, and bank accounts, etc.

I hereby offer my resignation as a director, to be replaced by Stephan van Collem, at any given time of his choice.”

21. Alfred says that although the signature on the document appears to be his, he did not sign the 2007 Letter and had no knowledge of the document itself or its contents. He also says that between 2003 and 2005 Stephan asked him to sign blank documents which included photocopies of his ID card and that of Stephan. He did so in the right hand corner. He says however, that he did not sign the 2007 Letter and instead Stephan must have used the “blank” signed pieces of paper to create this document. He also points out that he certainly would not have transferred his shareholding in Socrates to Stephan, there would have been no purpose in his doing so and it would have been contrary to his intention to give his estate equally to his sons. Mr Blaker on behalf of the Claimants also points out that Alfred states that he believed that he held one share in Socrates and that the remainder had not been issued. However, the content of the 2007 Letter is on the basis that all 5000 shares had been issued. He also draws attention to the reference to Antwerp in the date. In addition, he points out that Stephan has put forward no plausible reason in his defence or witness evidence for the transfer of the shares, and in fact, no reason at all.
22. In the circumstances, Alfred’s unchallenged evidence is consistent with the 2007 Letter having been produced fraudulently without his knowledge and consent to its contents. It is also consistent with the evidence of Annick Deraedt given pursuant to a hearsay notice, to which I refer below.

### *The Belgian Companies*

23. After the 2007 Letter was produced, Stephan made numerous requests for monies to be paid from a variety of accounts over a number of years. For example: on 6 September 2007, he made an urgent request to Credit Suisse, Luxembourg for the transfer of €50,000 to Euro’s account to “*raise working capital of contracting department*”; on 15 April 2008 he made a further request to Credit Suisse for the sum of €250,000 to be transferred to Euro’s account for “*take over of company, renovations on real estate*”; a further \$15,000 was requested and said to be an “*advance payment on communications voice and data*”; in January 2009 the request was for £300,000 and was said to be for “*renovations of real estate*”; and in June 2009 the request was for £100,000 and was said to be “*investment in software development*”. The same pattern emerges in relation to requests for transfers to Alpha. For example: in October 2009 €170,000 was requested to be paid for “*investment in transport and structure*”; and in February 2010 the request was for “*investment in IT franchising and renovations building*”.

24. These monies were then transferred on either to Ultimate 1 or AMC. No explanation is given for the transfers first to the Defendant companies and thereafter to the Belgian companies save that Stephan contends in his witness evidence (which is not before the court but to which I refer in this regard for the sake of completeness) that the Belgian companies were set up and run for Alfred and in particular, for Peter's benefit. It is pleaded that Alfred sought an outlet for Peter's degenerative lifestyle and that the monies were directed to the Belgian companies to facilitate Peter's business activities in connection with a nightclub, the development of technological products and the registration of domain names. The failure of AMC, Ultimate 1 and OVAB to file accounts and their subsequent financial problems are blamed on Alfred and Peter.
25. However, Karel Versijp, AMC's accountant whose evidence was the subject of a hearsay notice, confirmed that AMC was run by Stephan and was not run for Alfred and/or Peter's benefit. He says he was not provided with access to the company's documents and was only provided with limited accounting information and that the book keeping was carried out by Anat Nathan, Stephan's wife. He also says that there was no cash register at AMC and the previous balance sheets were kept on computers which were retained by Stephan. Mr Versijp also confirms that OVAB was run by Stephan.
26. Bart Bernd van Zwol whose evidence was also the subject of a hearsay notice, has known Stephan since 1994. He worked for Stephan. He makes it clear that Alfred and Peter had no involvement in the day to day running of AMC. He suggests there was a lack of any leadership and instead of actually producing anything Stephan took trips to the United States of America, purchased expensive luggage and had use of a corporate American Express credit card. He states that by the middle of 2007 Stephan and Anat Nathan started to focus upon opening a nightclub in Edegem, a suburb of Antwerp. He was told to go out and investigate products for the nightclub and explains that he spent a minimum of €50,000 - €75,000 on electrical equipment.
27. He also gives a further example in relation to a textile business that Mr van Zwol's girlfriend was asked to set up. Annick Deraedt, whose evidence was also subject to a hearsay notice, explains that Stephan paid for her and her boyfriend to travel to Los Angeles to see how American Apparel worked. Thereafter, AMC paid for American clothing which could be re-sold. She too gives the impression of Stephan and his girlfriend/wife enjoying the trappings of a high lifestyle. Significantly, she also states that she saw blank pieces of paper which had been pre-signed by Alfred.
28. Raoul Jacobs who has a background in IT and whose evidence was also subject to a hearsay notice describes how Stephan was interested in registering domain names which were then to be registered to Citizen. He says that he was told by Stephan that he was managing the family money. He also explains that Stephan made all the decisions in respect of AMC. Sven Greveraars whose evidence is also subject to a hearsay notice, says that he became aware in 2009 that Stephan was dishonest. He says that he was told that Stephan had access to his father's bank accounts and that it was clear that Stephan was spending his father's money.

29. Mr Blaker says in his skeleton argument that there is also evidence before the court that Ultimate1 was a company controlled by Stephan and used for his benefit. The examples relied upon are of Ultimate 1 purchasing cars for Stephan.

*Discovery of misappropriation and further events*

30. OVAB went into receivership in 2010 and it was then that Alfred asked Peter to investigate what had happened. It is Alfred and Peter's evidence that it was this investigation which led to the discovery that the Belgian companies had not been making money and that therefore, Stephan's lifestyle had been funded in a different way. Alfred states that it was only in 2011 that he became aware that large sums had been taken from Socrates' accounts. In November 2011 he was informed by a bank officer that Socrates' BNP Paribas account no longer existed and the money had been paid out at the instruction of Stephan. On 30 November 2011, a Mr Merkli of Credit Suisse Zurich informed Alfred that Socrates' accounts at that bank contained £1,146,000 and that Stephan had transferred £600,000 from the account. Further, it was in December 2011, that Alfred and Peter visited Credit Suisse's offices in Zurich and were shown the 2007 Letter which they state they had never seen before. Shortly thereafter, Alfred made a statement before a Belgian lawyer in which he recorded that the 2007 Letter was a forgery.
31. Thereafter, Alfred's resignation as a director of Helios was purportedly effected on 17 January 2012, by Stephan, although it was registered at Companies House on 27 June that year. Further, the minutes of an extraordinary meeting of the board of directors of Socrates, dated 17 January 2012, at which it is stated that Helios was present and which are signed by Stephan record a resolution to issue 4999 shares to Stephan "as evidenced by the stock certificate no: "2"". The stock certificate is also signed by Stephan on behalf of Helios and is dated 17 January 2012.
32. It is Alfred's evidence that he has no knowledge of and did not give consent to his purported resignation as a director of Helios which was also purportedly effected on 17 January 2012, nor did he have any knowledge of or give his consent to the purported issue of 4999 shares in Socrates to Stephan, reference to which is made in the 2007 Letter despite it seems having taken place in January of 2012. This is another aspect of the matter in addition to Alfred's evidence upon which I place weight when coming to the conclusion that the 2007 Letter was produced fraudulently.
33. Thereafter, by a memorandum dated 28 February 2012, signed by Alfred, Alfred declared that he had transferred "all my shares in Helios company to my son, Peter van Collem. The memorandum went on: "Peter van Collem is entitled to all my shares and interests In [sic] Helios management and consulting limited, . . . from today, Wednesday February 28, 2012."
34. On 27 March 2012, Helios Finance transferred £531,974.99 from an account at NatWest in Jersey to Socrates' Credit Suisse account in Luxembourg and the Jersey account was then closed. Thereafter, on 29 May 2012, Alfred revoked all powers of attorney he had previously granted to Stephan in relation to Socrates and Helios and Peter took control of AMC and Ultimate 1. It was only at this stage that Alfred and Peter instructed lawyers to seek to protect their position.



35. In fact, it was on 2 July 2012 that Alfred as shareholder of Socrates signed a written resolution in accordance with Article 46(a) of the Articles of Association of that company removing Helios as a director with effect from the conclusion of the meeting and appointing Peter as a director in its place. On that date, Alfred also transferred his share in Socrates to Peter for \$1,000. Further and in addition, a written resolution dated 1 August 2012 signed by Alfred as “sole shareholder” records that at an extraordinary general meeting of Socrates called by Alfred on 1 August 2012, a resolution was passed appointing Peter as a director of Socrates and removing Helios from that office.

*Accountancy evidence*

36. Mr Patsalides prepared a report dated 16 October 2014. In that report he sets out at paragraph 2.3 the issues he had to address and notes that he was not provided with a “*complete transaction history in respect of the Claimants’ and Defendants’ bank accounts*”. However, he states that he reviewed Socrates’ accounts and identified where payments had been made to Euro’s and Alpha’s accounts. He then went on to identify sterling and euro payments out of Euro and Alpha’s accounts and made to Ultimate 1’s account. He concludes that €1,583,750 and £1,295,40.74 left Socrates’ account (amounting to approximately £2.5m) and very similar sums entered a combination of Euro and Alpha’s accounts. The sum of €2.25m and £405,000 then left Euro and Alpha’s accounts and were transferred to Ultimate 1’s account. There is a missing sum of approximately £265,000 which was not transferred to Ultimate 1’s account. Mr Patsalides also noted transfers to Euro’s dollar account and large cash withdrawals from Socrates’ accounts. These total in excess of £500,000. In his supplemental report dated 10 February 2015, Mr Patsalides noted an additional \$47,000 paid out of Socrates’ account in the 2008-10 period and on 27 March 2012 the sum of about £532,000 paid from Helios’ account with Nat West Jersey to Socrates’ account at Credit Suisse. A flow chart prepared by Mr Patsalides in relation to the transfer of monies between the companies is annexed to this judgment.

*Expert evidence as to Foreign Law*

37. What is the effect of the 2007 Letter having been obtained by fraud or at least not having been Alfred’s document? Mr Bernard Georges, the senior partner of Georges & Georges, Attorneys is an attorney admitted before the Supreme Court of the Seychelles where he has practised law for thirty six years. He is also a lecturer at the University of the Seychelles. He has produced a report dated 17 October 2014. For the sake of completeness I should mention that in fact, Stephan did not instruct an expert in Seychelles law. He was given the opportunity to ask questions of Mr Georges which he did on 13 February 2015 and a response was received on 20 February 2015.
38. Mr Georges confirms that the form of the 2007 Letter on the face of it is sufficient to effect a transfer of shares. However, he states that under Seychelles law, if the 2007 Letter was created as a result of a forgery or if Alfred was unaware of the contents of the document he signed transfer then the share transfer would be voidable for fraud or mistake. He also stated that under Seychelles law, a power of attorney can be revoked at any time. The revocation document dated 29 May 2012 would take effect from the

moment the recipient of the revocation receives it. Third parties may not be bound unless they have notice of the revocation.

39. Further, in Mr Georges' opinion, if the 2007 Letter is void, the transfer of a share from Alfred to Peter in July 2012 would be effective for the purposes of Seychelles law. Mr Georges also states that if Alfred's resignation as a director of Helios was procured by fraud the transaction would be voidable and that the appointment of Peter as a director of Socrates by resolution of 1 August 2012 would be considered to be valid from the moment it was passed and entered into the minute book of the company.

#### *Applicable Law*

40. In relation to the nature of fiduciary duties, Mr Blaker referred me in his written submissions to the well known passage in the judgment of Millett LJ in *Bristol & West Building Society v Mothew* [1998] Ch 1 at paragraph 18 where he stated that a fiduciary must act in good faith, must not make a profit out of his trust, must not place himself in a position where his duty and his interest may conflict and must not act for his own benefit or the benefit of a third person without the informed consent of his principal. Mr Blaker says that Stephan has failed to act in good faith, knowingly made a profit out of his trust; adopted a course of conduct which was in direct conflict to the interests of Helios, Socrates and Alfred; and acted for his own benefit without the informed consent of Alfred. Further, in breach of his statutory duty under the Companies Act 2006 ("CA 2006"), Mr Blaker contends that Stephan has:
- (i) Acted in breach of section 172 CA 2006 in failing to promote the success of Helios in that its role was to act as a director of Socrates. Instead, it said that Stephan used his role as a director of Helios to become a director of Socrates to facilitate the unlawful dissipation of Alfred's savings;
  - (ii) Acted in breach of section 173 CA 2006 in failing to exercise independent judgment. In his role as a director of Helios was unable to exercise independent judgment. He gained control over his father's savings and rather than ensuring this money was preserved used his role as a director to provide himself with a personal benefit; and
  - (iii) Acted in breach of section 175 CA 2006, in failing to avoid a conflict of interest. He had a very obvious conflict as Helios had control over the Alfred's savings via its directorship of Socrates. If the court finds that the First Defendant took funds for his own personal gain then this is a clear conflict.
41. In addition, it is said that Helios owed Alfred and Socrates fiduciary and statutory obligations and failed to act in good faith; acted in conflict with the interests of Alfred and Socrates; and failed to exercise independent judgment.
42. Further, in the alternative to the fraud/forgery claim in relation to the 2007 Letter, Mr Blaker submits that the share transfer allegedly contained in that document falls within the category of non est factum cases. This would be a defence to any claim by

Stephan that the March 2007 share transfer was a legitimate document. As put by Byles J in *Foster v Mackinnon* (1869) L.R. 4 C.P. 704 where he said:

“...it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.”

43. The Claimants seek declaratory relief that: the share transfer purportedly effected by the 2007 Letter transferring Alfred’s shares in Socrates to Stephan was procured fraudulently and is of no effect and should be set aside or alternatively that it was signed by Alfred without knowledge of its contents and is of no effect and should be set aside; that the purported resignation of Alfred as a director of Helios with purported effect from 17 January 2013 was obtained without Alfred’s knowledge and consent and is of no effect; that the document dated 17 January 2012 purporting to issue 4999 shares in Socrates at the director of Helios to Stephan was procured fraudulently and is of no effect and should be set aside; that by the transfer dated 2 July 2012, Peter holds one share in Socrates; that Peter was validly appointed a director of Socrates by the resolution dated 1 August 2012 to which I have referred; and that Stephan having fraudulently obtained control of Socrates unlawfully misappropriated Alfred and Socrates’ monies between 2006 and 2011 and used the sums for his own benefit through the Belgian Companies.
44. Further, the Claimants seek equitable compensation in respect of the sums unlawfully taken by the Defendants, namely £1,295,40.74 and 1,583,750 Euros together with equitable interest.

*Conclusion:*

45. Overall, it seems to me that in the light of the evidence of:
- (i) Mr Georges as to Seychelles law;
  - (ii) Alfred’s intentions in relation to his estate, the fact that he says he did not sign the 2007 Letter with knowledge of its contents and had provided blank documents for Stephan and that he was unaware of the other dealings in relation to shares and directorships effected by Stephan;
  - (iii) Messrs Versjip, van Zwol, Jacobs and Greveraars together with that of Annick Deraedt as to the conduct of the Belgian companies; and
  - (iv) The expert accountancy evidence
- and the applicable law, that the Claimants’ case is proved and that they are entitled to the relief sought.

Appendix 6  
 Claim No. HC13F00294  
 Funds Flow

SOCRATES MANAGEMENT CORP.  
 Credit Suisse Euro a/c  
 Funds out (2007/11)  
 €1,583,750  
 Ref A

SOCRATES MANAGEMENT CORP.  
 Credit Suisse Sterling a/c  
 Funds out (2006/11)  
 £1,295,408.74  
 Ref B

Alphagenetics Ltd  
 Barclays Euro a/c  
 Funds in (2009/11)  
 €989,883.38  
 Ref C  
 Funds out (2009/11)  
 €910,000  
 Ref G

Euro Contracting Corporation Ltd  
 Barclays Euro a/c  
 Funds in (2007/09)  
 €592,965.79  
 Ref D  
 Funds out (2007/09)  
 €582,000  
 Ref H

Alphagenetics Ltd  
 Barclays Sterling a/c  
 Funds in (20010/11)  
 £120,000  
 Ref E  
 Funds out (2010/11)  
 None noted

Euro Contracting Corporation Ltd  
 Barclays Sterling a/c  
 Funds in (2006/10)  
 £1,174,940  
 Ref F  
 Funds out (2006/10)  
 £1,005,000  
 Ref I

Belgium ING  
 Ultimate 1  
 Euro a/c  
 Funds in (2007/11)  
 €2,254,219.22  
 Ref J

£120,000 in Alpha  
 £144,970 in ECL  
 (£264,970)  
 Ref L  
 No evidence of funds being  
 transferred to other defendants'  
 bank accounts

Belgium ING  
 Ultimate 1  
 Sterling ac  
 Funds in (2006/09)  
 £405,000  
 Ref K