

**IN AN ARBITRATION UNDER THE RULES OF THE
SINGAPORE INTERNATIONAL ARBITRATION CENTRE**

BETWEEN:

SANUM INVESTMENTS LIMITED and LAO HOLDINGS, N.V., CLAIMANTS

AND

SAN MARCO CAPITAL PARTNERS, LLC and KELLY GASS, RESPONDENTS

NOTICE OF ARBITRATION

19 December 2017

Pursuant to Rule 3.1 of the Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC Rules**”) (6th Edition, 1 August 2016), the U.S. District Court for the District of Delaware Memorandum Opinion, dated 12 July 2017, annexed hereto as Exhibit 1, resulting from the Motion to Dismiss and Compel Arbitration, filed on 21 June 2016 by San Marco Capital Partners, LLC and Kelly Gass, accompanied by the Opening Brief in Support of said Motion to Dismiss, dated 21 June 2016, pp.2 n. 2, 6-10, annexed hereto as Exhibit 2, the Declaration of Kelly Gass, dated 21 June 2016, ¶ 29 (consenting to arbitration before SIAC in Singapore), annexed hereto as Exhibit 3, and Section 35 of the Deed of Settlement dated 15 June 2014 with attached Annexes and Side Letter (the “**Deed**,” annexed hereto as Exhibit 4) between Claimants, SANUM INVESTMENTS LIMITED (“**Sanum**”) and LAO HOLDINGS, N.V. (“**Lao Holdings**”) (together, “**Claimants**”), and the Government of the Lao People’s Democratic Republic (the “**GOL**”) that SAN MARCO CAPITAL PARTNERS, LLC (“**San Marco**”) and Kelly Gass (“**Gass**”) (together, “**Respondents**”) have contended require Claimants to arbitrate their claims against Respondents, Claimants hereby demand that the dispute with Respondents be referred to arbitration.

NAMES AND ADDRESSES OF THE PARTIES

The Claimants

1. The Claimants’ contact details are as follows:

Sanum Investments Limited c/o Jorge Menezes
FCLAW – Lawyers & Private Notaries
61 Av. de Almeida Ribeiro
13F Circle Square Bld., Macau
Telephone: +853 28330885
Email: jorge.menezes@fclaw.com.mo

Lao Holdings, N.V.
L. G. Smith Boulevard 62
Miramar Building, Suite 304
Oranjestad, Aruba

2. For the purposes of this arbitration, Claimants are represented by Deborah Deitsch-Perez and Jeffrey T. Prudhomme, address below. Claimants, therefore, request that all correspondence and communications relating to this matter be sent to:

Deborah Deitsch-Perez
Jeffrey T. Prudhomme
Lackey Hershman, LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
Telephone: +1 214 560 2201
Facsimile: +1 214 560 2203
Email: ddp@lhlaw.net
jtp@lhlaw.net

The Respondents

3. The Respondents' contact details are as follows:

San Marco Capital Partners, LLC
4575 Dean Martin Drive, Suite 1701
Las Vegas, Nevada 89103
Telephone: +1 305 297 5940
Email: kgass@sanmarcocapital.com

San Marco may be served with process through its registered agent:

Agents and Corporations, Inc.
One Commerce Center, 1201 Orange Street, Suite 600
Wilmington, Delaware 19801 USA

San Marco may also be served with process at:

San Marco Capital Partners LLC
4575 Dean Martin Drive, Suite 1701
Las Vegas, NV 89103 USA

San Marco may further be served by email delivery to kgass@sanmarcocapital.com.

Kelly Gass is a resident of the State of Florida and the President and sole owner of San Marco Capital Partners, LLC.

She may be served in person by delivery to her email addresses kgass@sanmarcocapital.com and kellyegass@gmail.com.

Ms. Gass may also be served with process at her habitual place of business:

San Marco Capital Partners LLC
4575 Dean Martin Drive, Suite 1701
Las Vegas, NV 89103 USA

Ms. Gass may further be served with process at her habitual residence:

541 San Marco Dr.
Fort Lauderdale, FL 33301

In accordance with the parties' practice in prior dealings, Claimants may also serve Respondents through their attorneys, as authorized representatives, at:

SAUL EWING LLP
James D. Taylor, Jr., Esq. (No. 4009)
Dawn Krutz Compton, Esq. (No. 5579)
1201 N. Market Street, Suite 2300
Wilmington, DE 19801
(302) 421-6800 Telephone
(302) 421-6813 Facsimile
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dcrompton@saul.com

and

LEWIS BRISBOIS BISGAARD & SMITH LLP
Kenneth J. Joyce
Stacy M. Schwartz
Andrew B. Zelman
110 S.E. 6th Street, Suite 2600
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Stacy.Schwartz@lewisbrisbois.com
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THE ARBITRATION AGREEMENT BETWEEN PARTIES

4. This Notice of Arbitration concerns a dispute arising out of and in connection with the actions and inactions of Respondents in breach of contractual and fiduciary duties owed to Claimants.

The Arbitration Clause

5. After Claimants sought justice for Respondents' various breaches in a Delaware District Court, Respondents argued that SIAC was the proper forum to hear the dispute, and expressly consented to SIAC arbitration in Singapore. *See* Ex. 3, Declaration of Kelly Gass dated 21 June 2016, ¶ 29 ("I [Kelly Gass], in my individual capacity and as the sole member and manager of San Marco, consent and submit to SIAC arbitration in Singapore, where [Claimants] agreed to arbitrate disputes pursuant to the Settlement Deed.").
6. The arbitration provisions in both Section 35 of the Deed (Ex. 4) and Section 11(i) of the Management, Sales and Marketing Agreement between the GOL and San Marco, dated 16

April 2015 (the “**Contract**,” attached hereto as Exhibit 5) refer disputes to SIAC. The Delaware District Court, before reaching any other issues, agreed with Respondents and held that SIAC arbitration was the best forum for this dispute. *See* Ex. 1, Memorandum Opinion dated 12 July 2017.

7. The District Court held that Respondents could enforce the arbitration clause in the Deed, which requires arbitration before SIAC, in Singapore, with a Singapore seat. *See* Ex. 1, Memorandum Opinion dated 12 July 2017.
8. As SIAC is evidently Claimants’ sole avenue of recourse, Claimants initiate the instant arbitration.

Rules, Seat and Language of the Arbitration

9. The Arbitration to which the Parties have consented is to be conducted in accordance with the SIAC Rules (6th Edition, 1 August 2016) with three arbitrators, seated in Singapore, and conducted in English.
10. The Governing Law is that of the State of New York, United States of America.

Nomination of Arbitrator

11. Claimants have not yet nominated an arbitrator because it will seek to engage with Respondents regarding arbitrator selection.

NATURE AND CIRCUMSTANCES OF THE DISPUTE

The Parties

12. Sanum is an enterprise established under the laws of Macau Special Administrative Region, People’s Republic of China, on 14 July 2005.
13. Lao Holdings is an enterprise established under the laws of Aruba, Netherlands, on 28 January 2011, and which acquired 100% of Sanum’s shares on 17 January 2012.
14. San Marco Capital Partners, LLC is a limited liability company organized and existing under the laws of the State of Delaware, USA. Its sole member and manager is Kelly Gass, who is a citizen of the United States of America and a resident of the State of Florida.

The General Nature of the Dispute

15. Respondents Kelly Gass and her company San Marco Capital Partners, LLC have been paid more than \$4 million¹ of Claimants’ money to faithfully serve as Claimants’ fiduciaries in managing and selling a casino and other gaming operations that Gass

¹ All references to currency are to U.S. Dollars, unless otherwise specified.

purported to know how to operate and to sell. Instead, Gass served only the GOL, a corrupt and totalitarian regime that admittedly expropriated Claimants' assets in Laos with Respondents' cooperation and assistance. The GOL is a minority shareholder in the Savan Vegas Hotel & Casino Company, Ltd. ("**Savan Vegas**"), the entity that owned most of the assets with which Respondents were entrusted.

16. In June 2014, Claimants and the GOL entered into the Deed to resolve arbitrations that Claimants had brought alleging that the GOL had violated its obligations under two bilateral investment treaties with regard to various gaming and other investments in Laos (the "**BIT Arbitrations**"). These assets included the Savan Vegas Hotel & Casino (the "**Casino**") and two slot clubs (the "**Slot Clubs**") (together, the "**Gaming Assets**"). A key provision of the Deed was that the Gaming Assets would be sold to a third party "on a basis that will maximize Sale proceeds," thereby allowing Claimants to monetize their significant investment without the risk and costs involved in obtaining and enforcing an award against the GOL.
17. However, after disputes arose regarding the GOL's obligations under the Deed, Claimants sought, in arbitration, to return Savan Vegas and the Casino to Sanum's control, or in the alternative implement Section 12 of the Deed, which provides that the parties shall jointly have the right to appoint a qualified neutral gaming operator to take over, manage, and sell the Gaming Assets in certain circumstances. It was only then that the GOL disclosed that it had already unilaterally hired Respondents to do so, despite the fact that neither had prior experience in Laos, had ever served as a manager or operator of a casino or slot clubs, or had ever been responsible for the marketing and sale of such assets.
18. The Contract between the GOL and San Marco expressly states that, in accordance with the Deed, "San Marco will . . . perform its Services for the mutual benefit and best interest of all stakeholders in the Gaming Assets," including Claimants, and further acknowledges that "with respect to the sale and the price and terms thereof, [the GOL] recognizes that San Marco has a fiduciary duty to both [the GOL] and the [Claimants], as stated in the Deed." As demonstrated by the excessive compensation paid to Respondents – \$1.8 million per year and 6% of the sale price of the multimillion-dollar Gaming Assets – it is now obvious that the GOL bought Respondents to act solely in its interest. Worse, the GOL bought Respondents with Claimants' money, seizing Sanum's assets in Laos, and allowing Respondents to pay themselves from the Casino's income, owned 80% by Sanum. When compensation so exceeds market rates, the only conclusion in these circumstances is that it is a bribe (in an amount sufficient to enable kickbacks to Respondents) to ensure that the Gaming Assets are not sold in a manner that "maximizes the sale proceeds," but instead are sold at the cheapest price possible to benefit others. If Respondents were really going to sell the Gaming Assets for their true value, they would have been paid the 1-2% that a far more qualified institutional investment banker would have charged – and in fact offered to charge.
19. Respondents did not disappoint their GOL benefactors. After being put in charge of the Gaming Assets and their sale, Respondents repeatedly and maliciously breached their fiduciary obligations to Claimants by acting, or deliberately not acting, in a manner

intended to benefit the GOL at Claimants' expense. Among the most egregious examples of such willful wrongdoing are Respondents':

- a. Refusal to communicate with Claimants regarding the management and operation of the Gaming Assets, or to respond to Claimants' repeated requests for regular and ongoing financial information;
 - b. Refusal to pay Claimants their proportionate share of gaming revenues, or to account for such revenues;
 - c. Failure to advise Claimants about efforts to market and sell the Gaming Assets at a maximum price, or to allow Claimants' input into those efforts – instead allowing the GOL to direct the sale for its own benefit;
 - d. Refusal to honor their fiduciary obligations to Claimants to maximize bidding on the Casino sale for Claimants' benefit;
 - e. Abdication of critical aspects of the sale process to counsel for the GOL;
 - f. Hindering Claimants' efforts to remove their personal property, including slot machines and parts, and allowing pillaging of Claimants' machines for use at Savan Vegas in violation of Claimants' rights to the return of the Thanaleng machines in storage;
 - g. Failure to adequately research and advocate for a fair and reasonable tax appropriate for the circumstances; and
 - h. Seizure of all funds in Claimants' banking accounts in Laos and diversion to Gass's personal control – or wrongful ceding of control to the GOL or its counsel.
20. From the outset of their appointment as manager and operator of the Gaming Assets, Respondents persistently refused to act in any way for Claimants' benefit or best interests, or to, in any way, fulfill their fiduciary duties to Claimants. Instead, they deliberately, willfully and maliciously chose to act solely in the GOL's interest, to the detriment of Claimants' rights under the Deed.
21. Indeed, Gass made this intention clear to Claimants in the first 48 hours of her tenure as manager and operator of the Gaming Assets. As Savan Vegas CFO Clay Crawford was reviewing the Casino's cash-on-hand, Gass stated that it was not enough. When Crawford pointed out that the funds were more than sufficient to cover payroll and other operating expenses, Gass responded that she had significant legal bills to pay and the funds available would not cover them. Only a few days later, Respondents caused Savan Vegas to borrow \$2 million, falsely declaring that it borrowed the money to make payroll.
22. Claimants later discovered that no money from the loan was used to cover payroll, nor any Savan Vegas expenses whatsoever. In fact, the entire amount of the loan was used to pay lawyers and consultants employed by the GOL in their defense against Claimants' arbitral claims. In short, one of Respondents' first acts as Claimants' newly-appointed fiduciaries

was to divert *Claimants' funds*² to pay the legal fees of *Claimants' litigation adversaries* and then to encumber the assets with debt to cover the resulting operating shortfall.

23. Thus, Respondents' wrongdoing not only caused direct financial injury to Claimants, but also significantly reduced the sale price of the Gaming Assets. Accordingly, Claimants sought to pursue and enforce their legal rights before the District Court of Delaware.
24. However, Respondents (as Defendants in the Delaware action) insisted that the dispute could only be heard in arbitration before a SIAC tribunal, and the Delaware District Court so ordered. Therefore, Claimants now respectfully bring these claims before SIAC to pursue and enforce their legal rights. Respondents are estopped from objecting to the competence of a SIAC Tribunal for the instant dispute. Ex. 2, Brief in Support of Motion to Dismiss, dated 21 June 2016, pp.1-15 (arguing primarily that Sanum's and Lao Holding's claims require arbitration, and that SIAC is "an adequate alternative forum" for the dispute); Ex. 3, Gass Declaration ¶ 29 (consenting to SIAC arbitration in Singapore).

CAUSES OF ACTION

25. Claimants hereby incorporate the above factual allegations, which give rise to the following causes of action.

Breach of Fiduciary Duty

26. Pursuant to the Deed, the Contract, and equitable considerations, Respondents owed fiduciary duties – including duties of good faith, loyalty, candor, and care – to Claimants with regard to the management, operation, control, marketing and sale of the Gaming Assets, and to make all efforts to obtain the maximum price for the sale of the Gaming Assets.
27. Respondents blatantly breached their fiduciary duties to Claimants by, among other things:
 - a. Acting solely in the GOL's best interests in operating and selling the Gaming Assets;
 - b. Refusing to provide Claimants with basic financial and operational information concerning the Gaming Assets;
 - c. Refusing to provide basic information to Claimants about Respondents' efforts to sell the Gaming Assets;
 - d. Failing to maximize revenue and profits at the Gaming Assets;

² Claimants were the majority-owners of the Gaming Assets, and therefore the funds.

- e. Failing to safeguard Claimants' funds, property, and gaming assets in Laos that Respondents control (or wrongfully ceded control to the GOL or others);
 - f. Misappropriating Claimants' funds;
 - g. Failing to account for, and pay, Claimants their proportionate share of net income from the Gaming Assets;
 - h. Failing to control, or account to Claimants for, expenses incurred by Respondents to conduct the sale of the Gaming Assets;
 - i. Failing to cooperate with Claimants in the marketing and sale of the Gaming Assets, or to accept input, guidance, or recommendations from Claimants regarding such marketing and sale, including as contemplated in Section 11(a) of the Contract; and
 - j. Failing to conduct the sale of the Gaming Assets in a manner that would maximize the sale price.³
28. As a direct and proximate result of Respondents' breaches of fiduciary duty, Claimants have suffered significant monetary harm in an amount to be finally determined later in the arbitration proceedings, but exceeding \$5 million, with pre-award interest along with appropriate post-award interest and the reimbursement of Claimants' legal fees and costs.
29. In addition, a fiduciary that breaches its duties is not entitled to retain, and must forfeit, the fees that it was paid for services wrongfully performed. Accordingly, Claimants are entitled in equity to disgorge all fees Respondents received under the Contract.
30. Finally, in breaching the fiduciary duties they owed to Claimants, Respondents wantonly, willfully, and/or egregiously acted with oppression and malice directed at Claimants, and Claimants are entitled to punitive damages in an amount to be finally determined later in the arbitration proceedings.

Breach of Contract

31. The Contract is a valid agreement between the GOL and San Marco.

³ Claimants recognize that the SIAC Tribunal in ARB No. 143 of 2014 (the "2014 SIAC Arbitration") found that the evidence in that arbitration was "not sufficient to support a conclusion that San Marco or Ms. Gass failed to conduct the sale process in good faith," and that "Ms. Gass [and] San Marco ... in good faith, endeavored to sell the Casino in accordance with the Deed's requirement of an expeditions sale." 2014 SIAC Arbitration Final Award ¶¶ 263-64. However, these findings do not address the issue in this arbitration of whether San Marco and Ms. Gass honored their fiduciary duties to Claimants to "perform [their] Services for the mutual benefit and best interest of all stakeholders in the Gaming Assets, including the GOL and the Investors." Respondents very well may have conducted the sale in good faith as far as their obligations to the GOL were concerned, but the GOL was interested only in a fire sale of the Gaming Assets, and not maximizing their value for all stakeholders under a proper sale. Lack of good faith is not necessary to find a breach of fiduciary duty to Claimants. Moreover, in the SIAC arbitration, over the dissent of one of the arbitrators, Claimants were denied access to evidence from San Marco and Ms. Gass, preventing any application of collateral estoppel for affected findings.

32. By its express terms, the Contract was intended to benefit Claimants as well as the GOL.
33. The benefits provided to Claimants in the Contract are clear and direct.
34. San Marco breached its contractual duties to Claimants by failing to act whatsoever to Claimants' benefit or in Claimants' best interests in managing, operating, controlling, marketing, and conducting the sale of the Gaming Assets.
35. As a direct and proximate result of San Marco's breaches of contract, Claimants have suffered significant monetary harm in an amount to be finally determined later in the arbitration proceedings, with pre-award interest.

Conversion

36. Claimants were the legal owners of, and/or had an immediate superior right of possession to, funds deposited in bank accounts in Laos in the name of Sanum, Lao Holdings, and/or their affiliates (the "**Bank Funds**"). Collectively, the five accounts contained \$135,375.76.
37. Claimants are also the legal owners of, and/or have an immediate superior right of possession to, 80% of the Casino's net revenues and 60% of the net Slot Clubs' revenues (the "**Gaming Revenues**").
38. Respondents exercised unlawful dominion over the Bank Funds and Gaming Revenues to the exclusion of Claimants' rights in that property by:
 - a. Wrongfully, and without Claimants' knowledge or permission, seizing the Bank Funds and transferring them to others' control, and failing to account for and return such funds despite Claimants' demands to do so;
 - b. Retaining the Gaming Revenues, refusing to account to Claimants for them, and refusing to pay Claimants the Gaming Revenues despite Claimants' demands to do so; and
 - c. Taking \$150,000 per month from the Gaming Revenues purportedly to market and sell the Gaming Assets in manner that "maximizes" the sale price of the Gaming Assets for Claimants, when Respondents' counsel admitted that it was actually the GOL – not Respondents – that directed and controlled that sale.
39. As a direct and proximate result of Respondents' wrongful actions, Claimants have been injured in an amount to be finally determined later in the arbitration proceedings, with pre-award interest.
40. Respondents' actions in exercising unlawful dominion over the Bank Funds and Gaming Revenues were accomplished by malice or reckless or willful disregard of Claimants' rights, such that Respondents' wrongdoing was intentional, evinced a high degree of moral turpitude, and demonstrated wanton dishonesty. Accordingly, Claimants are entitled to punitive damages in an amount to be finally determined later in the arbitration proceedings.

RELIEF REQUESTED

41. For all the foregoing reasons, Claimants seek the following relief from the Arbitral Tribunal to be appointed:
 - a. A declaration that San Marco breached the Contract;
 - b. A declaration that Respondents violated and breached their fiduciary duties – including duties of good faith, candor, and care – to Claimants with regard to the management, operation, control, marketing, and sale of the Gaming Assets and the required efforts to obtain the maximum asset sale price;
 - c. Disgorgement of fees obtained in breach of fiduciary duties and/or that constitute unjust enrichment.
 - d. An award from the Arbitral Tribunal that Respondents pay to Claimants the full amount of compensatory damages they suffered, to be proven in the arbitration, and currently estimated to be not less than \$ 5 million;
 - e. An award from the Arbitral Tribunal of all the attorney’s fees, expert’s fees, and costs incurred in proceeding with this arbitration, including the fees and expenses of the arbitrators, and the fees and expenses of Claimants’ counsel and SIAC costs;
 - f. Pre-award and post-award interest at a rate to be fixed by the Arbitral Tribunal, or, alternatively, the 9% statutory interest rate under New York law;
 - g. Any amount required to pay any applicable tax or other assessment in order to maintain the integrity of the award; and
 - h. Such further relief that counsel may advise and/or the Arbitral Tribunal deems fit.

RESERVATIONS

42. Claimants reserve the right to amend, supplement, abandon and/or add to the matters, claims, and reliefs stated above and made herein.
43. Claimants reserve the right to file and serve Respondents with its detailed Statement of Claim in due course, as envisaged in Rule 20.2 of the SIAC Rules.

SERVICE

44. A copy of this Notice of Arbitration and all its accompanying documents are today being served on Respondents electronically and by courier at the addresses set out at Paragraph 3 of this Notice.

19 December 2017



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