

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

FIREFLY FINANCIAL LIMITED,)	
)	
Plaintiff,)	
v.)	
)	Civil Action No. _____
BENJAMIN SCOTT TERRY,)	
)	
and)	
)	
BENJAMIN SCOTT TERRY, Trustee of the)	
BST 2011 Irrevocable Trust,)	
)	
and)	
)	
TEMPUS INTERMEDIATE HOLDINGS,)	
LLC,)	
)	
Defendants.)	
)	

VERIFIED COMPLAINT

Firefly Financial Limited (“Firefly”) by counsel, states as follows for its Complaint against Benjamin Scott Terry, individually and as trustee of the BST 2011 Irrevocable Trust (“Terry”), and Tempus Intermediate Holdings, LLC (“TIH”):

Nature of the Case

1. This is an action for breach of contract, a temporary restraining order (“TRO”), and injunctive relief arising from TIH and Terry’s repudiation and anticipatory breach of Membership Interest Pledge Agreements whereby Terry, individually, and as trustee of the BST 2011 Irrevocable Trust (the “BST Trust”) pledged membership interest units in TIH to Firefly as security for the obligations of Tempus Jets, Inc. to Firefly. As described herein, Terry and TIH are engaged in the process of wasting and distributing assets of TIH to Terry’s long standing

business partner, John G. Gulbin, in violation of the Membership Interest Pledge Agreements. Terry is insolvent and if permitted to waste and distribute the assets of TIH in violation of the Membership Interest Pledge Agreements, Firefly's security will be compromised. Because of Terry's insolvency, Firefly has no adequate remedy at law because Terry has no means to compensate Firefly. Accordingly, damages are not an adequate remedy, and a TRO and injunctive relief are appropriate and necessary to prevent Firefly's immediate and irreparable injury and harm.

The Parties

2. Firefly is a company formed under the laws of The British Virgin Islands, with an office in the Isle of Man.

3. TIH is a Delaware limited liability company, with an office address in Williamsburg, Virginia. The members of TIH are residents of Virginia, Colorado, South Carolina, and Arizona.

4. Terry is a natural person and a resident of Williamsburg, Virginia and a manager of TIH.

5. The BST 2011 Irrevocable Trust, on information and belief is a trust with Terry as its Trustee and beneficiary.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(2-3), as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of a state or different states and citizens or subjects of a foreign state.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District

of Virginia, and because all named defendants are subject to personal jurisdiction within the United States District Court for the Eastern District of Virginia.

Facts

8. Pursuant to a Membership Interest Pledge Agreement dated as of June 20, 2016, (the “the TIH Terry Membership Interest Pledge Agreement”) Terry pledged his 445,867 membership interest units in TIH to Firefly. A copy of the TIH Terry Membership Interest Pledge Agreement is attached as **Exhibit 1**.

9. Pursuant to Membership Interest Pledge Agreement dated as of June 20, 2016, (TIH BST Trust Membership Interest Pledge Agreement”) Terry, as trustee of the BST Trust, pledged the BST Trust’s 63,745 membership interest units in TIH to Firefly. A copy of the TIH BST Trust Membership Interest Pledge Agreement is attached as **Exhibit 2**.¹

10. The members and managers of TIH have given their written consent to the pledges made by Terry, individually, and as trustee of the BST Trust, as evidenced by the Unanimous Consent of the Members and Managers in Lieu of Special Meeting, attached as **Exhibit 3**.

11. The Membership Interest Pledge Agreements provide that the pledges given by Terry, individually and as trustee of the BST Trust are to secure, among other things, the obligations of Tempus Jets Inc. to Firefly pursuant to a lease of that certain aircraft, FAA registration No. N618WF, (the “Lease”) and, The Loan A Note in the original principal amount of \$5,091,297.80, and the Loan B Note, in the maximum principal amount of \$500,000.

¹ The TIH Terry Membership Interest Pledge Agreement and the TIH BST Trust Membership Interest Pledge Agreement are referred to herein collectively as the “Membership Interest Pledge Agreements”

12. Tempus Jets, Inc. is currently in default of its obligations under the Lease, and has failed to pay the amounts due under the Loan A Note and the Loan B Note, each of which has matured.

13. Terry has personally guaranteed the obligations of Tempus to Firefly, as well as other obligations to affiliated entities of Firefly, which obligations in total are in excess of \$26,000,000.00. A copy of a notice of default and demand for payment by Terry of the obligations due pursuant to his personal guaranty is attached as **Exhibit 4**.

14. Terry and the BST Trust own 50.96% of the membership interests in TIH.

15. On information and belief, the BST Trust holds no assets other than its TIH Membership Interests Units pledged to Firefly.

16. On information and belief, Terry is insolvent and Firefly has no adequate remedy at law if its security in the pledged TIH Membership Interests is lost.

17. John G. Gulbin ("Gulbin") and the JGG 2011 Irrevocable Trust (the "JGG Trust") collectively own 48.37% of the membership interests in TIH.

18. On Tuesday, January 31, 2017, Firefly sent Terry, individually and as Trustee of the BST Trust notices that Terry and the BST Trust were in default of the Membership Interest Pledge Agreements and demanding that they cure said defaults within ten days. Copies of the default notices are attached hereto as **Exhibit 5**.

19. On Wednesday, February 1, 2017, Terry's counsel, Roy M. Terry, informed counsel for Firefly, and Johan Eliasch, the beneficial owner of Firefly, that Terry and Gulbin are in the process of separating their business interests and intend to distribute certain assets of TIH amongst themselves. Specifically, Roy M. Terry has explained that Tempus Aircraft Sales & Service, LLC ("TASS"), will be distributed to Gulbin, and the remaining assets of TIH with

some exceptions, will be distributed to Terry. On information and belief, TASS operates a Pilatus Aircraft dealership and is a substantial asset of TIH, with an estimated value of \$15 million according to Terry.

20. As set forth in the Restructuring Agreement Dated as of July 15, 2014, a copy of which is attached hereto as **Exhibit 6**, the BST Trust and the JGG Trust each contributed a 50% interest in TASS to TIH in exchange for a 6.37% Membership interest in TIH, and TASS became a wholly owned subsidiary of, and therefore an asset of, TIH.

21. Pursuant to the Membership Interest Pledge Agreements, TIH covenanted that so long as any amounts were due to Firefly, it would not, without Firefly's prior written consent (a) redeem or repurchase any of the Membership Interests, or issue or commit to issue any additional membership interests of any class or any options, rights, warrant or subscriptions with respect thereto; (b) engage in any transaction that is not in the ordinary course of its business; (c) incur any indebtedness other than trade credit in the ordinary course of business; (e) pay dividends or make any other distributions to the Pledgor; (f) permit any amendment or change to be made in its organizational documents, including but not limited to its operating agreement, or its company or fictitious name, jurisdiction of incorporation, company structure or identity; (g) waive any right of substantial value; (h) merge with or into any other entity or agree to do any of the foregoing; (i) sell, assign, transfer, pledge or encumber any material part of its assets or agree to do any of the foregoing.

22. Pursuant to the Membership Interest Pledge Agreements, Terry, individually and as Trustee of the BST Trust, covenanted and agreed that they shall take all action necessary to preserve and defend the rights of Firefly to the Membership Interests against third parties; and until Firefly delivers to the Pledgor a written release of his obligations, the Pledgor will not sell,

convey or otherwise dispose of any of the Membership Interests or any interest therein or create, incur or permit to exist any limitation, restriction (including restriction on transfer), obligation, pledge, mortgage, lien, charge, encumbrance, or any security interest whatsoever in or with respect to any of the Membership Interests or the proceeds thereof, other than that created by the Membership Interest Pledge Agreements.

23. Firefly has not consented and does not consent to any transfers of the assets of TIH, or to distribution of any kind to its members, including but not limited to Terry, the BST Trust, Gulbin, or the JGG Trust.

24. Any transaction by which Terry and Gulbin would acquire for themselves the assets of TIH would be a breach of the covenants and agreements of TIH, Terry, and the BST Trust under the Membership Interest Pledge Agreements, and would jeopardize Firefly's collateral.

25. Due to Terry's insolvency, Firefly has no adequate remedy at law and its security in the Membership Interests pledged by Terry, individually and as trustee of the BST Trust should be preserved in order to maintain the status quo and prevent immediate and irreparable harm to Firefly

**COUNT ONE - ANTICIPATORY BREACH OF CONTRACT AND
SPECIFIC PERFORMANCE**

26. Firefly restates and incorporates all of the foregoing paragraphs herein.

27. The Membership Interest Pledge Agreements are valid and enforceable agreements between Firefly Terry, The BST Trust, and TIH.

28. The BST Trust and Terry are in the process of conveying, or are preparing to convey the substantial and material assets of TIH, including but not limited to TASS and/or its assets, to Gulbin and to Terry in breach of the Membership Interest Pledge Agreements.

29. The intended conveyance and transfer of TASS, and intent to otherwise distribute the interests and assets of TIH amongst Gulbin and Terry, and the communication of that intent to Firefly by the defendants constitutes an anticipatory breach and repudiation of the Membership Interest Pledge Agreements.

30. TIH, Terry, individually and as trustee of the BST Trust should be compelled to specifically perform their obligations under the Membership Interest Pledge Agreements, and enjoined from taking any action that would violate the Membership Interest Pledge Agreements, including, but not limited to, refraining from engaging in any transaction that is not in the ordinary course of TIH's business; incurring any indebtedness other than trade credit in the ordinary course of business; paying dividends or making any other distributions to the Terry or the BST Trust or other members of TIH; permitting any amendment or change to be made in TIH's organizational documents, including but not limited to its operating agreement, or its company or fictitious name, jurisdiction of incorporation, company structure or identity; waiving any right of substantial value; merging with or into any other entity or agree to do any of the foregoing; selling, assigning, transferring, pledging or encumbering any material part of TIH's assets, including but not limited to TASS, or agreeing to do any of the foregoing; or conveying or otherwise disposing of any of the Membership Interests or any interest therein.

COUNT TWO – TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTIVE RELIEF

31. Firefly restates and incorporates all of the foregoing paragraphs herein.

32. Firefly will be immediately and irreparably harmed if Terry, TIH and the BST Trust are not immediately restrained and enjoined from selling, assigning, transferring, pledging or encumbering any material part of TIH's assets, including but limited to TIH's wholly owned subsidiary, TASS.

33. Firefly is likely to succeed on the merits in this action because it holds a valid and enforceable pledge of the interest in TIH held by Terry, individually, and as trustee of the BST Trust.

34. Firefly is likely to suffer irreparable harm in the absence of preliminary relief because Terry is insolvent and Terry and the BST Trust cannot perform and fulfil the obligations secured by the Membership Interest Pledge Agreements.

35. The balance of equities tips in Firefly's favor because Firefly will suffer immediate and irreparable harm if its security is lost by Terry's proposed transfer of TIH assets to Gulbin. Moreover, Firefly requests that Defendants merely be compelled to comply with their contractual obligations under the Membership Interest Pledge Agreements. Defendants will not be harmed by the granting of a temporary restraining order or an injunction because the relief sought herein does not preclude them from continuing day to day operations in the ordinary course of their business, but instead only seeks to preserve the collateral pledged to Firefly as security for obligations that Defendants have no other means to satisfy.

36. A temporary restraining order and a preliminary injunction are in the public interest because the public interest is furthered by enforcing contractual obligations, and upholding pledges and security agreements that are necessary in order to support the lending and borrowing of funds for legitimate business activities.

37. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure an Affidavit of Johan Eliasch is attached hereto verifying the allegations of this Complaint.

38. Pursuant to Rule 65(b) The undersigned counsel for Firefly certifies that notice of this Verified Complaint and Firefly's Motion for Temporary Restraining Order has been hand

delivered and emailed to Terry's counsel, Roy M. Terry, and has also been emailed to Terry's counsel, Stuart Spirn.

WHEREFORE, Firefly prays that this Court enter an Order (i) compelling TIH, The BST Trust, Terry, individually and as trustee of the BST Trust to comply with the Membership Pledge Agreements; and (ii) entering a temporary restraining order for a period of 14 days, and a preliminary injunction prohibiting and restraining Terry, TIH and the BST Trust from selling, assigning, transferring, pledging or encumbering any material part of TIH's assets, including but limited to TIH's wholly owned subsidiary, TASS and/or its assets.

February 2, 2017

Respectfully submitted,

FIREFLY FINANCIAL, LIMITED

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