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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JES SOLAR CO., LTD., a South Korean Corporation; AIRPARK CO., LTD., a South Korean Corporation; and HANKOOK TECHNOLOGY, INC., a South Korean Corporation,

Plaintiffs,

v.

**JENNIFER J. CHUNG
1201 Fitzwater St., Unit 408
Philadelphia, PA 19147-1848,**

Defendant.

Civil Action No.

COMPLAINT

17

3024

**COMPLAINT SEEKING A PERSONAL
JUDGMENT AGAINST FRAUDULENT TRANSFEREE**

Plaintiffs, Jes Solar Co., Ltd. (“Jes Solar”), a South Korean Corporation, Airpark Co., Ltd. (“Airpark”), a South Korean Corporation, and Hankook Technology, Inc. (“Hankook”), a South Korean Corporation (collectively, “Plaintiffs”), through their counsel and pursuant to the provisions of the Pennsylvania’s version of the Uniform Fraudulent Transfer Act (“PUFTA”), 12 Pa. Cons. Stat. §§ 5101 through 5110, as and for their Complaint against Jennifer J. Chung (“Defendant” or “Ms. Chung”), state and allege as follows:

NATURE OF THE ACTION

1. This is a diversity action to seek a personal judgment against Defendant as insider beneficiary transferee of certain assets that her father, a debtor of

Plaintiffs, has transferred, transfer of each of which assets constitutes a fraudulent transfer under the PUFTA, 12 Pa. Cons. Stat. §§ 5101 et seq. Each of these transfers was made by Mr. Tong Soo Chung (the “Debtor”) to Ms. Chung, the Debtor’s daughter, after Plaintiffs’ claim against the Debtor arose in December 2010, or Plaintiffs commenced a lawsuit against the Debtor in the United States District Court for the District of Arizona in August 2012 (the “Arizona Litigation”). Thus, in this action, Plaintiffs seek to obtain a monetary judgment against Defendant for an amount equal to the value of the assets fraudulently transferred to Defendant from the Debtor.

PARTIES

2. Jes Solar is a South Korean Corporation duly organized and existing under the laws of the Republic of Korea. Currently, Jes Solar closed its business and thus is an inactive corporation.

3. Airpark (new company name of which is Pacific Bio Co., Ltd. since July 2015) is a South Korean Corporation duly organized and existing under the laws of the Republic of Korea, with its principal offices located in Seoul, South Korea.

4. Hankook (formerly known as K& Company Co., Ltd.) is a South Korean Corporation duly organized and existing under the laws of the Republic of Korea, with its principal offices located in Seoul, South Korea.

5. Non-party Tong Soo Chung, the Debtor, is Defendant’s father. No relief is sought herein against the Debtor. He is included in this Complaint primarily to present factual allegations.

6. Non-party Katie Chung (“Mrs. Chung”) (together with the Debtor, the “Chungs”) is Defendant’s mother. No relief is sought herein against Mrs. Chung. She

is included in this Complaint primarily to present factual allegations.

7. Defendant Jennifer J. Chung is the Debtor's daughter and thus an insider of the Debtor within the meaning of the PUFTA. Defendant is a citizen of the Commonwealth of Pennsylvania with an address at 1201 Fitzwater St., Unit 408, Philadelphia, PA 19147-1848.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendant, and the amount in controversy exceeds \$75,000.00.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, among other things, Defendant resides in this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

FACTUAL ALLEGATIONS

10. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

The Arizona Litigation

11. The underlying claim that gives rise to Plaintiffs' claims in this action concerns a bogus solar power plant construction project in California, Nevada and Arizona (the "Matinee Project"), wherein Plaintiffs primarily assert they were fraudulently induced to enter into contracts with defendants in that action. In particular, defendants in the Arizona Litigation, including the Debtor, represented to Plaintiffs that Matinee Energy, Inc., was developing one of the world's largest solar

power plant construction projects in the United States with a project budget of more than \$5 billion, funded by a U.S. government subsidy and secured financing from JP Morgan Chase in the amounts of \$1.3 billion and \$3.6 billion, respectively. At the same time, defendants proposed additional participation by Plaintiffs as EPC (Engineering, Procurement and Construction) contractor in the project, on the condition that Plaintiffs make advance fee payments to their designated agent. In reliance on the representation described above and defendants' promise to pay a highly profitable 7% margin on such huge construction budget, Plaintiffs entered into several agreements with defendants and paid such advance fees. Plaintiffs also diligently prepared for the project construction, incurring substantial expenses or making expenditures necessary for the implementation of the Matinee Project on Plaintiffs' part. Thereafter, Plaintiffs discovered the Matinee Project was a complete fraud scheme.

12. On August 20, 2012, Jes Solar filed a lawsuit against the Debtor, the Chief Executive Officer of Matinee East-Asia region, where Plaintiffs are located, and other defendants in the United States District Court for the District of Arizona, bearing docket number 12-cv-00626, seeking money damages in the amount of \$4 million for breach of contract, fraudulent inducement and other causes of action, for which defendants are jointly and severally liable.

13. On November 19, 2012, Airpark (seeking a joint relief with Jes Solar as a member company of Jes Solar/Airpark Consortium which participated in the Matinee Project) and Hankook joined as additional plaintiff in the Arizona Litigation, which increased the amount of monetary damages sought to \$5 million from \$4

million.

14. Because all defendants in that case failed to file a responsive pleading or otherwise defend that action, default was entered against all defendants on December 11, 2012.

15. On March 12, 2013, the Debtor and certain other defendants appeared and filed a joint motion to set aside default entered against them.

16. On July 25, 2013, the court in that action denied the motion to set aside default described above.

17. For two days commencing on November 17, 2015, a default damages bench trial was held. Based on the evidence submitted by both parties during the bench trial, the district court found, *inter alia*, that Hankook's claim against defendants including the Debtor arose near the end of December 2010 when Hankook ceased involvement with the Matinee Project, discovering that the project was a fraudulent scheme. Thus, the district court found that expenses incurred after Hankook ceased involvement with the Matinee Project were not recoverable.

18. Following the bench trial described above and several amendments of judgment, on August 17, 2016, the final judgment (the "Judgment") was entered for Hankook in the amount of \$852,723.17 and Jes Solar and Airpark, jointly, in the amount of \$2,169,650.88, with defendants including the Debtor to be jointly and severally liable in the total amount of \$3,022,374.05. A correct and true copy of the Judgment is attached hereto as **Exhibit A**.

The Chungs' Wrongful Asset Protection Scheme

19. Plaintiffs incorporate by reference the allegations set forth above as if

fully set forth herein.

20. Upon information and belief, after Hankook's claim against the Debtor arose in December 2010 as the fraudulent nature of the Matinee Project was uncovered by Hankook as described in paragraph 17, the Chungs grew gravely concerned about their financial wellbeing as the Debtor faced a very real prospect of multi-million dollar lawsuits by Hankook and other companies which were similarly induced to participate in the fraudulent scheme by the Debtor and other defendants named in the Arizona Litigation. Upon information and belief, those concerns led the Chungs to contrive to place the Debtor's assets beyond the reach of such present or future creditors of the Debtor—assets that would have been available to the creditors at some point in time, but for the conveyances.

21. As part of this wrongful asset protection plan described above, starting from 2011, the Debtor has acted to conceal and re-title his assets, including his ownership interest in real properties in Seoul, South Korea, in order to evade his obligations he owes to his creditors, like Plaintiffs. Mrs. Chung has participated in these efforts by assisting in and receiving conveyances of the Debtor's assets for no or less than adequate consideration, thereby placing them beyond the reach of creditors of the Debtor.

22. To fulfill the same purpose of the wrongful asset protection plan, the Chungs have transferred the Debtor's funds or assets to Ms. Chung for no consideration.

23. During her deposition, conducted on June 23, 2014, in the Arizona Litigation, Ms. Chung conceded that she had been receiving funds or assets of the

Debtor although she refused to disclose specific transactions involving such funds or assets, or the total sum or value of such funds or assets that her parents transferred to her. These funds or assets include the purchase money of a condominium where she currently resides. A correct and true copy of pertinent part of Ms. Chung's deposition transcript that indicates such transfers of funds is attached hereto as **Exhibit B**. Plaintiffs' internet search also produced information concerning the purchase of the condominium which indicates that said purchase transaction commenced on July 4, 2013 and was consummated on July 10, 2013: "July 10, 2013 Sold (MLS) (Sold), July 4, 2013 Pending (Under Contract)." A correct and true copy of a print-out from redfin.com that contains said information is attached hereto as **Exhibit C**.

24. In the Arizona Litigation, the Debtor freely admitted that he had a negative net worth due to the Arizona Litigation, meaning that he did not own enough assets to pay the damages Plaintiffs were seeking in the litigation. For instance, the Debtor presented, during a settlement conference in the Arizona Litigation which was held before Magistrate Judge Bruce G. Macdonald on October 5 and 6, 2015, that he had insufficient assets to pay the damages Plaintiffs were seeking in the action. Furthermore, during a bench trial in the Arizona Litigation held on November 18, 2015, counsel for Mr. S. Chin Kim ("Mr. Kim"), a co-defendant in the action, stated, with the Debtor present at the bench trial, "[The Debtor and Mr. Kim] have now been financially ruined" due to the Arizona Litigation. A correct and true copy of the Arizona Litigation bench trial transcript, page 147, line 9, dated November 18, 2015, is attached hereto as **Exhibit D**.

25. As indicated above, under the PUFTA, the Debtor was insolvent at the

times of the transfers (either direct or indirect) of his funds or assets to Ms. Chung because “at fair valuations, the sum of the [D]ebtor’s debts is greater than all of the [D]ebtor’s assets.” 12 Pa. Cons. Stat. § 5102. Taking into account Plaintiffs’ claims against the Debtor that arose from the Matinee Project, it is indisputable that the Debtor was insolvent at the times of the transfer of funds or assets made by the Debtor to Defendant. “Debt” means liability on “a claim,” which in turn means “[a] right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 12 Pa. Cons. Stat. § 5101.

26. Upon information and belief, the Debtor’s main strategy employed in the wrongful asset protection scheme is that the Debtor avoids the possession of assets or cash that would be available to satisfy the obligations owed to his creditors like Plaintiffs. As such, during the Arizona Litigation and in anticipation of Plaintiffs receiving a judgment in their favor and against the Debtor, and thereafter as an ongoing part of the wrongful asset protection scheme, upon information and belief, the Debtor has been continually transferring for no or less than adequate consideration substantially all of his assets to his family members; as relevant in this action, to Ms. Chung, funds or assets—other than those identified in paragraph 23—which will be identified in the course of discovery in this action.

FIRST COUNT

(Actual Fraudulent Transfer Pursuant to 12 Pa. Cons. Stat. § 5104(a)(1))

27. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

28. Any and all direct or indirect transfers of the Debtor's funds or assets to Defendant as alleged in the preceding paragraphs (the "Transfers") are avoidable as an actual fraud pursuant to 12 Pa. Cons. Stat. § 5104(a)(1).

29. The Transfers were made with actual intent to hinder, delay or defraud creditors of the Debtor such as Plaintiffs.

30. The Transfers were made to an insider of the Debtor.

31. Before each of the Transfers was made, the Debtor had been sued by or threatened by creditors of the Debtor including Plaintiffs.

32. Upon information and belief, the Debtor was insolvent at the times of the Transfers.

33. The effect of the Transfers was removing the Debtor's funds or asserts from the Debtor's estate. Had the Debtor not transferred such funds or assets to Defendant, those would have been sources of recovery for the Debtor's unsecured creditors such as Plaintiffs.

34. Upon information and belief, the Debtor did not receive reasonably equivalent value in exchange for each of the Transfers.

35. The Transfers occurred shortly after a substantial debt was incurred.

36. As set forth above, sufficient "badges of fraud" listed in 12 Pa. Cons. Stat. § 5104(b) were present in the Transfers.

37. Accordingly, the Transfers are avoidable as fraudulent transfers as to Plaintiffs under 12 Pa. Cons. Stat. § 5104(a)(1).

38. As a result, Plaintiffs are entitled to judgment against Defendant pursuant to 12 Pa. Cons. Stat. § 5108(b).

SECOND COUNT

(Constructive Fraudulent Transfer Pursuant to 12 Pa. Cons. Stat. § 5105)

39. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

40. The Transfers are avoidable as a constructive fraud as to present creditors like Plaintiffs pursuant to 12 Pa. Cons. Stat. § 5105. Plaintiffs' claims against the Debtor arose before the Transfers were made. As such, Plaintiffs have the status of present creditor, "whose claim arose before the transfer was made[.]" Id.

41. Upon information and belief, the Debtor received less than reasonably equivalent value in exchange for each of the Transfers.

42. Upon information and belief, at the times of the Transfers, the Debtor was insolvent.

43. Accordingly, the Transfers are avoidable as fraudulent transfers as to Plaintiffs under 12 Pa. Cons. Stat. § 5105.

44. As a result, Plaintiffs are entitled to judgment against Defendant pursuant to 12 Pa. Cons. Stat. § 5108(b).

WHEREFORE, Plaintiffs, pray for both temporary relief and permanent relief on both causes of action as follows:

TEMPORARY RELIEF

- A. Entry of an order requiring Defendant to immediately furnish Plaintiffs with a documented accounting of all assets of Defendant, all transactions with, and all monies or other properties conveyed from the Debtor or the Chungs since

December 2010 when Plaintiffs' claim against the Debtor arose;
and

- B. Entry of an order granting Plaintiffs expedited discovery of Defendant and any others who are believed by Plaintiffs to have knowledge of any and all transfers which Plaintiffs complain about in this action.

PERMANENT RELIEF

- A. A declaratory judgment that the subject transfers are actual fraudulent transfers pursuant to 12 Pa. Cons. Stat. § 5104(a)(1) (First Cause of Action);
- B. A decretory judgment that the subject transfers are constructive fraudulent transfers pursuant to 12 Pa. Cons. Stat. § 5105 (Second Cause of Action);
- C. Judgment awarding compensatory damages in favor of Plaintiffs and against Defendant in an amount, which exceeds \$75,000.00, to be determined at trial (Both Causes of Action);
- D. Awarding the costs and attorneys' fees incurred in the commencement and prosecution of this action; and
- E. Any other and further relief which the Court may deem just and proper.

RESERVATION OF RIGHTS

Plaintiffs reserve their right to amend this original complaint, upon completion of their investigation and discovery, to assert any additional claims for relief against

Defendant or other parties as may be warranted under the circumstances and as allowed by law.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

RESPECTFULLY SUBMITTED,


/s/ Kay Kyungsun Yu

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