

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MULTITRADE FINANCIAL CORP.,

Plaintiff

v.

CARACAS INTERNATIONAL BANKING
CORPORATION,

Defendant

CIVIL NO.

PLAINTIFF DEMANDS TRIAL BY JURY

COMPLAINT

TO THE HONORABLE COURT:

Plaintiff, MULTITRADE FINANCIAL CORPORATION (“Multitrade”), by its undersigned attorneys, for its complaint against the defendant, CARACAS INTERNATIONAL BANKING CORPORATION (“CIBC”), respectfully states and prays:

PARTIES

1. Multitrade Financial Corp. (“Multitrade”) is a corporation organized under the laws of Panama, with its principal place of business located in Caracas, Venezuela.

2. CIBC is an international banking entity organized pursuant to Act 52 of August 11 of 1989, as amended, also known as the “International Banking Center of Puerto Rico, ”duly licensed by the Office of the Commissioner of Financial Institutions of Puerto Rico and fully subject to the regulatory and oversight authority of said Office, and doing business at 221 Ponce de Leon Avenue, Suite 701, San Juan, Puerto Rico.

JURISDICTION AND VENUE

3. This action involves claims in which the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and there is complete diversity of citizenship. Therefore, this Court has original jurisdiction under 28 U.S.C. § 1332(a)(2).

4. Venue is appropriate in this Court under Title 28 of the U.S.C.S 1391, because Defendant CIBC resides in this judicial district and is subject to personal jurisdiction in this judicial district, and a substantial part of the events and omissions giving rise to this Complaint occurred in this judicial district

FACTS COMMON TO ALL CLAIMS

5. Multitrade is a Panamanian company which specializes in the purchase and sale of bonds and other securities on the open market.

6. On June 4, 2008, Multitrade opened an account and entered into a contractual relationship with CIBC (the "Contract") and opened account number MMK000021065 at CIBC (the "Account") for the purposes of conducting transactions in the ordinary course of business.

7. Since the Account was opened, and through March 25, 2009, Multitrade used the Account to hold funds related to its business.

8. At all times relevant hereto Multitrade has been the sole owner and has had exclusive control of the account.

9. CIBC was not authorized to sign checks and/or conduct wire transfers from Multitrade's account at CIBC, without the preauthorization of Multitrade's officers and/or directors.

10. In accordance with prevailing law and its own representations CIBC was prohibited from disclosing, subject to certain exceptions not applicable here, the financial records

of its customers without that customer's authorization. The account information at issue here is based on account documents and data that constitute financial records.

11. Any transaction or transfer of funds to or from Multitrade's account at CIBC required the signatures of two (2) of its officials or directors and would be subject to the terms and conditions of the Contractual relationship between Multitrade and CIBC.

12. Multitrade is neither a "casa de bolsa" nor a "casa de corretaje".

13. Multitrade has never had any connection, affiliation, association, partnership, joint venture with an individual by the name of Rama K. Vyasulu ("Vyasulu"), or any agent, partner or representative of Vyasulu, or with Rosemont Finance Corporation ("Rosemont"), or any parent, subsidiary, affiliate, or partner thereof or with any of its officers, directors and/or owner(s), stockholder(s), or trustee(s).

14. Neither Vyasulu nor Rosemont have ever been authorized by Multitrade to represent it, sign on its behalf or exercise any control, ownership interest, lien, proprietary right and/or control over funds deposited in Multitrade's account at CIBC.

15. The contractual relationship that existed between Multitrade and CIBC further provided, pursuant to law and settled principles of banking custom and practice, that CIBC owed to Multitrade:

- (a) A duty of loyalty;
- (b) A duty to exercise due diligence and due care in performing its responsibilities including the duty to honor only those court papers and documents that lawfully and clearly apply to Multitrade's accounts.
- (c) A duty to act in accordance with prevailing standards of commercial reasonableness.

(d) A duty to act in good faith toward Multitrade with respect to the conduct and operations of its account with CIBC.

(e) A duty to timely advise Multitrade in the event of any extraordinary events, irregularities or transactions concerning its account with CIBC unless prohibited by a lawful statute, regulation or court order.

16. Notwithstanding the substantial duties of loyalty and due care owed its customer Multitrade, developments unfolded that caused CIBC to ignore those responsibilities in favor of its own self-serving objectives. Indeed, more than just self-interest, CIBC's agenda became one of self-preservation and arose from, among other things, its banking relationship with Abdala Makled-Al Chaer and his brother, Walid-Makled-Garcia, whom the government alleges were involved in drug trafficking. These troubling allegations have recently been documented in papers filed by U.S. law enforcement authorities. Based on a filing by the U.S. Attorney's Office for Puerto Rico that attaches a detailed DEA declaration, the government asserted that CIBC maintained an account being utilized by Abdala Makled-Al Chaer and Walid-Makled-Garcia, whom the government alleges were involved in drug trafficking. As described in government papers:

Curacao government officials informed DEA that the Venezuelan Government provided a bank account number in Curacao for Walid MAKLED-Garcia. After checking the account in Curacao, it was determined that the account was held in Abdala's name and that \$3.4 million dollars were transferred from this Curacao account to an account in San Juan, P.R. The money was wire transferred to the CARACAS INTERNATIONAL BANKING CORPORATION (CIBC) in Avenida Ponce de Leon, Hato Rey, Puerto Rico to account number #200001723.

(Unsworn Declaration in Favor of Forfeiture Complaint, Case No. 1543 (FAB) (U.S. Dist. Ct.

P.R.), at par. 18 (hereafter "Declaration")). *See*, Exhibit 1.

17. Although at least \$3.4 million was initially lodged in Abdala Makled's account, when the DEA executed its search warrant at CIBC late last year, the vast majority of the funds were gone:

On November 26, 2008, a search and seizure warrant was issued in the District of Puerto Rico for all monies contained within account #200001723, along with any funds or accounts under the names of Walid or Abdala MAKLED, at the CIBC located on Avenida Ponce de Leon, Hato Rey, Puerto Rico. At the time of the seizure, only \$254,473.62 remained in account #200001723.

(Declaration, at par. 19.)

18. As determined by federal authorities, the funds had been internally transferred:

Documentation given to agents on December 4, 2008, during the execution of a second seizure warrant for accounts relating to Basel MAKLED-Al Chaer, showed that \$3,173,000.00 were internally transferred from an account relating to Abdala MAKLED-Al Chaer, #400000433, to a third parties account at CIBC.

(Declaration, at par. 20.)

19. Not only do these transactions by themselves raise serious questions about CIBC's conduct and purported accounts for the Makleds, whom the government alleges were involved in drug trafficking. The accompanying documentation alleges that CIBC was not truthful to federal investigators. In referring to Vice President of Operations, Gregorio D'Andrea, CIBC's principal representative concerning these issues, the U.S. Attorney and DEA said:

This documentation also contradicted the previous statements made by D'ANDREA as to where these funds had been transferred, and demonstrated D'ANDREA's willingness to mislead DEA agents during the course of this investigation.

(Declaration, at par. 20).

20. The government's papers suggest potential connections to the Makleds who are alleged to be involved in drug trafficking, more than \$3 million missing from their account, as well as the misleading of federal authorities. These are circumstances, under the government's

scenario, that would establish extremely serious issues about the conduct and potential complicity of CIBC. They also confirm that CIBC is the subject of a criminal investigation.

21. By March 2009, CIBC was facing a potentially serious exposure to federal authorities. As a result CIBC's deepening worries led to an intense desire to placate the U.S. Attorney and DEA which had the authority to consider serious criminal charges against CIBC, D'Andrea and others which could range from money laundering to obstruction and false statements. Due to the above, CIBC became willing to jettison its own duties as well as the rights of its customers, such as Plaintiff.

22. Should such an opportunity present itself, CIBC would not hesitate to betray its responsibilities to its customer, Multitrade, in order to offer up Multitrade's funds to appease the federal authorities.

The Seizure Warrant

23. On March 25, 2009, the U.S. District Court for the District of Puerto Rico authorized a seizure warrant (the "Seizure Warrant") exclusively on the basis of the affidavit of Drug Enforcement Administration ("DEA") Special Agent Eddie Rosado. A true and correct copy of the Seizure Warrant, without the affidavit, is attached hereto as Exhibit 2.

24. The U.S. Government applied for the Seizure Warrant in connection with the indictment of Vyasulu in the District of Massachusetts on March 18, 2009, and his connection to Rosemont.

25. By its terms, the Seizure Warrant only identified and covered funds and accounts held by CIBC which:

- a. Belong to, or are in the control of, Rosemont or any DBA or fictitious corporation owned by Vyasulu or Rosemont, of which Vyasulu is the president, and its affiliated entities (Rosemont);
- b. Are pending, in-transit incoming and outgoing wire transfers to any “casa de bolsa,” “casa de corretaje,” or bank account belonging to or in the control of Rosemont or any DBA or fictitious corporation owned by Rosemont or Vyasulu;
or
- c. Are “internal, in transit wire transfers related to” Rosemont, Vyasulu, or any DBA or fictitious name owned by Rosemont or Vyasulu, “to and from any ‘casa de bolsas’ controlled or managed by” CIBC.

26. The Seizure Warrant does not specifically name or otherwise mention Multitrade or its funds on deposit at CIBC.

27. Neither the funds in the total amount of \$5,075,127.11 owned exclusively by Multitrade (“Multitrade Funds”) nor its Account belong to Rosemont, Vyasulu, or any entity, whether fictitious or otherwise, owned or controlled by them, however, and neither the Multitrade Funds nor the Account was in the control of Rosemont, Vyasulu, or any entity, whether fictitious or otherwise, owned or controlled by them on March 26, 2009.

28. Neither Vyasulu nor Rosemont nor any entity owned or controlled by Rosemont or Vyasulu have ever had signatory authority on the Account.

29. On or about March 26, 2009, the DEA executed the Seizure Warrant at CIBC.

30. At the time the Seizure Warrant was executed at CIBC, the actions of CIBC were under scrutiny by the DEA. *See Declaration.*

31. Further, at the time of the seizure, the Account contained no pending incoming or outgoing in-transit wire transfers to or from any “casa de bolsa, “casa de corretaje,” or bank account which ever was or currently is owned or controlled by Rosemont, Vyasulu, or any DBA or fictitious corporation controlled by either of them.

32. Moreover, the Account did not have any in-transit, internal wire transfers related to Rosemont or Vyasulu to or from any “casa de bolsa” controlled or managed by Rosemont at the time the Multitrade Funds were seized on March 26, 2009.

33. The Multitrade Funds and the Account clearly were outside the scope of the Seizure Warrant, which fact was or should have been readily apparent to CIBC when it was served with the Seizure Warrant.

34. Upon information and belief, on March 26, 2009, during the execution of the Seizure Warrant, CIBC was not served with a court order and/or subpoena requesting information contained in the files of Multitrade.

35. In spite of the foregoing, CIBC whose actions were being questioned by DEA, without prior notice to Multitrade or consultation with any of its authorized representative voluntarily disclosed to the agent executing the Seizure Warrant that Multitrade was a “mirror company” of Multinvest, Casa de Bolsa, CA (“Multinvest”).

36. Furthermore, CIBC provided the DEA with a letter allegedly held in Multitrade’s files at CIBC, without Multitrade’s consent, a court order and/or or a lawful subpoena, in violation of its contractual and fiduciary obligations and duty of care with respect to the depositor.

37. Multinvest and Multitrade are separate corporate entities.

38. Multinvest is a Venezuelan securities brokerage company that has been duly licensed and operating in that country since 1987. Because it performs securities brokerage services, it has been and continues to be subject to the control, supervision and inspection of Venezuela's National Securities Commission.

39. Multitrade is a private Panamanian corporation organized in 2008 pursuant to the laws of that country.

40. A majority of Multitrade's ownership is held by different owners, and, in all events, they are undeniably distinct and separate corporate entities.

41. CIBC utterly ignored both these facts and its contractual and fiduciary obligations with Multitrade.

42. Basic banking principles, industry practices, the Contract, fiduciary obligations and a general duty of care required that CIBC observe respect for separate accounts and separate legal status of its depositors.

43. CIBC represented to its customers, including Multitrade, that it would comply with its obligations of confidentiality due to its customers as required by law and general banking principles.

44. In this case, CIBC, without explicit authorization from either customer, treated the funds of Multitrade and Multinvest as one and the same.

45. A prudent and responsible banker, rather than immediately turn over Multitrade's funds to an agent, would have required the agent to obtain a new warrant before releasing and delivering the funds, and, if the DEA agent exceeded the Seizure Warrant's authority demanding the turn over of Multitrade's funds, he should at best have frozen Multitrade's funds, giving Multitrade an opportunity of protecting its funds and to clarify any relevant circumstances.

46. Instead, CIBC voluntarily handed over to the DEA agent Multitrade's funds, when the seizure warrant only authorized the seizure of funds for those accounts named in the Warrant.

47. Furthermore, CIBC provided information contained within the files of Multitrade to the DEA in violation of its express representations, contractual and fiduciary obligations and duty of care.

48. Acting upon CIBC's voluntary, unauthorized disclosure, and substantiated on false information provided by CIBC, the DEA executed the Seizure Warrant against the entire Account, resulting in the seizure of Multitrade funds in the amount of \$5,075,127.11.

49. On May 21, 2009, Multitrade made written demand upon CIBC for the return of the Multitrade Funds to Multitrade, but to date, CIBC has failed to return the funds. A true and correct copy of Multitrade's May 21, 2009 letter to CIBC is attached hereto as Exhibit 3.

Impact of the Seizure of the Multitrade Funds on Multitrade

50. The Government has seized nearly all of Multitrade's cash assets, which are critical for Multitrade's business to function.

51. If Multitrade cannot gain access to the Multitrade Funds in the immediate future, Multitrade's ability to operate, which is now severely compromised, will very likely be destroyed.

52. Multitrade potentially faces potential tremendous legal liability as a result of its inability to meet its business obligations.

53. Seizure of the Multitrade Funds has severely damaged the reputation of Multitrade, and its officers, directors, and employees.

54. All conditions precedent to bringing this action have been fulfilled or excused.

COUNT I – NEGLIGENCE

55. Multitrade realleges and incorporates by reference paragraphs 1 through 54 as if fully set forth herein.

56. CIBC had a duty to care required of a prudent banker to conform to a certain standard of conduct with respect to the privacy of Multitrade's account and to safeguard the funds deposited therein from misappropriation by third parties, including but not limited to the execution of a Seizure Warrant by DEA agents that did not specify the seizure of Multitrade's funds.

57. Specifically, CIBC owed Multitrade a duty to hold the Multitrade Funds and to not transmit the Multitrade Funds to any third parties absent specific instructions from Multitrade or an applicable court order requiring the seizure of those funds.

58. CIBC breached the duties of care owed to Multitrade by releasing its Funds on deposit to the U.S. Government even though neither the Multitrade Funds nor the Account were identified or even mentioned within the scope of the Seizure Warrant.

59. CIBC also breached its duties of confidentiality by providing information contained within the files of Multitrade without its consent and/or a court order or lawful subpoena.

60. CIBC's breach of the duties of care owed to Multitrade was the direct and proximate cause of Multitrade's damage and losses.

61. Multitrade has sustained and continues to sustain damages and losses resulting from CIBC's negligent acts or omissions.

WHEREFORE, Multitrade demands judgment against CIBC in the amount \$5,075,127.11, consequential damages, interest from March 25, 2009, plus costs and attorney fees and any further relief this Court deems equitable, just and proper.

COUNT II – BREACH OF CONTRACT

62. Multitrade realleges and incorporates by reference paragraphs 1 through 61 as if fully set forth herein.

63. Multitrade and CIBC entered into the Contract, under which CIBC was obligated to hold the Multitrade Funds in the Account.

64. CIBC breached the Contract by (1) providing the Multitrade Funds to the U.S. Government even though the Account and the Multitrade Funds were outside the scope of the Seizure Warrant and (2) failing to make available the Multitrade Funds to Multitrade upon Multitrade's demand.

65. As a result of CIBC's breach, Multitrade has suffered damages.

WHEREFORE, Multitrade demands judgment against CIBC in the amount of \$5,075,127.11, consequential damages, interest from March 25, 2009, plus costs and attorney fees and any further relief this Court deems equitable, just and proper.

COUNT III – BREACH OF FIDUCIARY OBLIGATIONS

66. Multitrade realleges and incorporates by reference paragraphs 1 through 65 as if fully set forth herein.

67. As a result of the Contract and acceptance of deposits, a fiduciary obligation and relationship of trust and confidence arose between CIBC and Multitrade, and as a result CIBC undertook the obligation of preserving and protecting Multitrade's financial privacy and funds from illegal seizure by DEA agents.

68. CIBC was Multitrade's fiduciary with respect to the Account and the Multitrade Funds.

69. As a result of the DEA's execution of the Seizure Warrant, CIBC became involved in a transaction involving Multitrade from which CIBC benefited at Multitrade's expense.

70. Because CIBC was Multitrade's fiduciary, CIBC had an obligation and duty to disclose facts material to the Seizure Warrant, which were peculiarly within CIBC's knowledge and not within Multitrade's knowledge, to Multitrade.

71. CIBC breached its fiduciary obligations duties to Multitrade by, among other things, (1) failing to inform Multitrade of its legal jeopardy and the resulting unwillingness to adhere to its duties of loyalty and confidentiality to a customer, (2) failing to alert Multitrade at the time the Seizure Warrant was executed at CIBC and/or on the Account and Multitrade Funds, (3) transferring the Multitrade Funds from the Account to the U.S. Government without Multitrade's consent, and (4) disclosing information contained within Multitrade's files without its consent or in accordance with law.

72. CIBC's breach of the fiduciary obligations owed to Multitrade was the direct and proximate cause of Multitrade's damages and losses.

WHEREFORE, Multitrade demands judgment against CIBC in the amount of \$5,075,127.11, consequential damages, interest from March 25, 2009, plus costs and attorney fees and any further relief this Court deems equitable, just and proper.

DEMAND FOR JURY TRIAL

Multitrade demands a trial by jury on all issues so triable by a jury.

Dated this 9th day of September, 2009.

Respectfully submitted,

McCONNELL VALDÉS LLC
Attorneys for Multitrade
270 Muñoz Rivera Avenue
Hato Rey, PR 00918
PO Box 364225
San Juan, Puerto Rico 00936-4225
Telephone: (787) 250-2628, (787) 759-9292
Fax: (787) 474-9231
www.mcvpr.com

s/Sonia Torres
By: Sonia Torres-Pabón, Esq.
USDC-PR No. 209310
st@mcvpr.com

OF COUNSEL:

Kendall Coffey, Esq.
(*pro hac vice* admission to be sought)
Florida Bar No. 259861
COFFEY BURLINGTON
Attorneys for Multitrade
2699 South Bayshore Drive
Miami, Fl 33133
Telephone: (305) 858-2900
Fax (305) 858-5261

I hereby certify that on September 9, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/Sonia Torres