

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

NORTHWIND FINANCIAL CORPORATION,
BANKERS CAPITAL, LLC,
TIERRA VERDE ESCAPE, LLC,
TOW DEVELOPMENT, LLC, and
AMI INVESTMENT HOLDINGS, LLC

Plaintiffs,

Case No: 16-

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v

THE BRITTINGHAM GROUP, LLC,
CHARLES T. NOCK,
JOHN C. NOCK,
BRIAN D. BRITTSAN, and
KEVIN R. GRIFFITH

Defendants.

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PLAINTIFFS' COMPLAINT

There is no other pending civil action arising out of the
transaction or occurrence alleged in the Complaint

Plaintiffs Northwind Financial Corporation, Bankers Capital, LLC, Tierra Verde
Escape, LLC, Tow Development, LLC, and AMI Investment Holdings, LLC, by their

attorneys, Kuiper Orlebeke PC, state for their Complaint against Defendants The Brittingham Group, LLC, Charles T. Nock, John C. Nock, Brian D. Brittsan, and Kevin R. Griffith as follows:

PARTIES AND JURISDICTION

1. Plaintiff Northwind Financial Corporation (“Northwind”) is a Michigan corporation located in Grand Rapids, Michigan.
2. Plaintiff Bankers Capital, LLC (“Bankers Capital”) is a foreign limited liability company located in New Jersey, conducting business in Grand Rapids, Michigan.
3. Plaintiff Tierra Verde Escape, LLC (“Tierra Verde Escape”) is a foreign limited liability company located in Tierra Verde, Florida.
4. Plaintiff TOW Development, LLC (“TOW Development”) is a Delaware limited liability company conducting business in and with registered offices in Grand Rapids, Michigan.
5. Plaintiff AMI Investment Holdings, LLC (“AMI Investment”) is a foreign limited liability company located in Payson, Arizona.
6. Defendant The Brittingham Group, LLC is a foreign limited liability company registered and located in Fort Smith, Arkansas.
7. Defendant Charles T. Nock is an individual residing in Fort Smith Arkansas.
8. Defendant John C. Nock is an individual residing in Fayetteville, Arkansas.

9. Defendant Brian D. Brittsan is an individual residing in Del Mar, California.

10. Defendant Kevin R. Griffith is an individual residing outside the State of Michigan at an unknown address.

11. This claim is brought pursuant to a federal statute; namely, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1964, *et. seq.*

12. This case also involves claims brought under MCL 600.2919a and the common law of the State of Michigan.

13. The matter in controversy exceeds \$75,000.00 exclusive of interest and costs.

14. A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Kent County, Michigan.

15. The United States District Court for the Western District of Michigan has original jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1332 and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

16. Venue is proper in the United States District Court for the Western District of Michigan pursuant to 28 U.S.C. §1391(b)(2).

FACTS

17. Plaintiffs Northwind and Bankers Capital assist clients in securing funding for various development projects.

18. Such clients include Plaintiffs Tierra Verde Escape, TOW Development and AMI.

19. In June 2015, Defendants Brittsan and John Nock approached Plaintiffs Northwind and Bankers Capital and represented that they, through the Brittingham Group and other entities under their control, could provide investment banking services that could assist Northwind and Bankers Capital's clients.

20. Initially, Defendants Brittsan and John Nock represented that they, through the Brittingham Group and other entities under their control, would provide credit enhancement processes where they would use client funds to purchase bank instruments through HSBC, to monetize those instruments within their trading platform, and would yield profits to clients.

21. In further conversations and/or correspondence designed to solicit funds from Plaintiffs Northwind and Bankers Capital and/or their clients, Defendants Brittsan and John Nock misrepresented:

- A. That they had extensive knowledge and experience in these types of credit enhancement transactions.
- B. That they had previously worked for the family of Sam Walton (Walmart) in the capacity of similar financial money management strategies.
- C. That they had current and previous experience working with and representing the Rich Step Group Holdings Limited in similar transactions.
- D. That they and/or their companies' office(s) were physically located at 14 Wall Street in New York, New York;
- E. That they had established credit line facilities with and through HSBC Bank;

- F. That they had established credit line facilities with and through Smart Jobs Limited, a Hong Kong company;
 - G. That they had established credit line facilities with Gold Express Holdings Limited, a Hong Kong company; and
 - H. That they had established credit line facilities with Rich Step Group Holdings Limited, a Hong Kong company.
22. In an effort to solicit funds from Plaintiffs, prior to July 1, 2015, Defendants Brittsan, John Nock and/or Brittingham Group, represented:
- A. That they had an exclusive bank investment program through HSBC and their clients that would provide for the issuance of a bank instrument on their behalf;
 - B. That the bank instrument would be monetized by Brittingham and produce profits of an estimated 100% per week of the principal amount;
 - C. That the profits would be paid on a weekly basis to Plaintiff Tierra Verde Escape through Bankers Capital; and
 - D. That the initial disbursement of profits to Plaintiff Tierra Verde Escape would be paid in approximately 20 days from receipt of funds, and each week thereafter.
23. On or about July 1, 2015, Brittsan, John Nock and/or Brittingham Group reiterated many of their previous misrepresentations in writing to Plaintiff Tierra Verde Escape, though a Memorandum of Understanding.
24. In reliance upon the Representations, on June 15, 2015, Plaintiff Tierra Verde Escape wired \$50,000 to Brittingham Group's account at Bank of America.

25. On July 16, 2015, Brittsan represented through a letter and email that the depository account at HSBC Bank in the name of Gold Express Holdings Limited was under the full control of Defendant(s), and that the primary signatory on the account was Defendant Griffith, a Partner/Director of Defendant Brittingham.

26. In reliance upon all Representations thus far, on July 17, 2015, Plaintiff Tierra Verde Escape sent funds totaling \$500,000 to an HSBC account for Gold Express Holdings Limited via two separate wire transfers.

27. Throughout July and August 2015, Defendants Britsan, John Nock and/or Brittingham Group made additional misrepresentations via email and telephone that they obtained the requested bank instruments for the benefit of Plaintiffs from HSBC Bank and that they had initiated bank wire transfers of funds to Plaintiffs from HSBC Bank.

28. In an effort to solicit funds from Plaintiffs, prior to August 27, 2015, Defendants Brittsan, John Nock and/or Brittingham Group misrepresented:

- A. That they had an exclusive bank investment program through HSBC and their clients that would provide for the issuance of a bank instrument on their behalf;
- B. That the bank instrument would be monetized by Brittingham and produce profits of an estimated 100% per week of the principal amount;
- C. That the profits would be paid on a weekly basis to Plaintiff TOW Development through Bankers Capital; and
- D. That the initial disbursement of profits to Plaintiff TOW Development would be paid in approximately 20 days from receipt of funds, and each week thereafter.

29. On August 27, 2015, Defendants Brittsan, John Nock and/or Brittingham Group reiterated many of their previous misrepresentations in writing to Plaintiff TOW Development, though a Memorandum of Understanding.

30. In reliance upon the Representations, on August 28, 2015, Plaintiff TOW Development wired \$50,000 to Brittingham Group's account at Bank of America.

31. In reliance upon the Representations thus far, on August 28, 2015, Plaintiff TOW Development sent funds totaling \$500,000 to an HSBC account for Smart Jobs Limited via wire transfer.

32. In an effort to solicit funds from Plaintiffs, prior to September 9, 2015, Defendants Brittsan, John Nock and/or Brittingham Group, represented:

- A. That they had an exclusive bank investment program through HSBC and their clients that would provide for the issuance of a bank instrument on their behalf;
- B. That the bank instrument would be monetized by Brittingham and produce profits of an estimated 100% per week of the principal amount;
- C. That the profits would be paid on a weekly basis to Plaintiff AMI Investment through Bankers Capital; and
- D. That the initial disbursement of profits to Plaintiff AMI Investment would be paid in approximately 20 days from receipt of funds, and each week thereafter.

33. On September 9 2015, Defendants Brittsan, John Nock and/or Brittingham Group reiterated many of their previous misrepresentations in writing to Plaintiff AMI Investment, through a Memorandum of Understanding.

34. In reliance upon the Representations, on September 9, 2015, Plaintiff AMI Investment wired \$50,000 to Brittingham Group's account at Bank of America.

35. In reliance upon the Representations thus far, on September 9, 2015, Plaintiff AMI Investment sent funds totaling \$500,000 to an HSBC account for Smart Jobs Limited via wire transfer.

36. In total, Plaintiffs sent Defendants \$1,650,000 based on the above Representations.

37. From around the time Plaintiffs first wired any funds to Defendants, both Defendant Brittsan and Defendant Nock continued to make various misrepresentations via email, letters, and telephone, including that:

- A. Bank instruments had been issued by HSBC Bank;
- B. Bank instruments had been issued by Barclays Bank;
- C. Bank instruments had been received and monetized for the benefit of Plaintiffs;
- D. Funds from profits due to Plaintiffs had been sent via bank wire transfer;
- E. Defendants would produce wire transfer receipts substantiating their claim that wire transfers were initiated to Plaintiffs;
- F. Defendants Brittsan, John Nock and/or Griffith were in London and Singapore to personally work with the banking institutions and oversee the wire transfer of funds to Plaintiffs;
- G. Funds due Plaintiffs were being transferred by MIS Corporation Limited;
- H. Funds due Plaintiffs were being transferred by PGM Gems and Minerals Limited;

- I. Funds due Plaintiffs were being transferred from Standard Chartered Bank;
 - J. Due to the delays, Defendants had made arrangements to use their own credit lines to transmit funds to Plaintiff to meet critical deadlines on their projects; and
 - K. They would return Plaintiffs funds within a few days plus 10% interest.
38. Defendant Charles T. Nock is purportedly a principal of Brittingham Group and, as such:

- A. Had knowledge of or was recklessly indifferent toward the actions of Defendants Brittsan, John Nock, and Brittingham Group;
- B. Participated, directly or indirectly, in the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group;
- C. Benefitted financially from the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group;
- D. Ratified from the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group; and

39. Defendant Kenneth Griffith is purportedly a principal of Brittingham Group and, as such:

- A. Had knowledge of or was recklessly indifferent toward the actions of Defendants Brittsan, John Nock, and Brittingham Group;
- B. Participated, directly or indirectly, in the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group;

- C. Benefitted financially from the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group; and
- D. Ratified from the conduct and affairs of Defendants Brittsan, John Nock, and Brittingham Group;

**COUNT I – RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT**

- 40. Plaintiffs incorporate all previous allegations herein.
- 41. Defendants are or were an "enterprise[s]", as defined by 18 U.S.C. §1961(4).
- 42. Defendants participated or engaged in a pattern of racketeering activity, as defined by 18 U.S.C. §1961(1), (5), specifically:
 - a. Mail fraud in violation of 18 U.S.C. §1341; and,
 - b. Wire Fraud in violation of 18 U.S.C. §1343.
- 43. Defendants violated 18 U.S.C. §§1962(c) and (d).
- 44. As a direct and proximate result of the Defendants' actions, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs request that this Court enter a judgment in their favor and against Defendants in an amount in excess of \$75,000, together with interest, costs, attorneys' fees, and any other relief that this Court determines is fair and equitable.

COUNT II- CONVERSION

- 45. Plaintiffs incorporate all previous allegations herein.
- 46. Defendants exercised wrongful dominion and control over Plaintiffs' property.

47. Defendants' conduct constitutes an unlawful conversion and misappropriation of Plaintiffs' property.

48. As a direct and proximate result of Defendants' unlawful conversion, Plaintiffs have sustained damages.

WHEREFORE, Plaintiffs request that this Court enter a judgment in their favor and against Defendants in an amount in excess of \$75,000, together with interest, costs, attorneys' fees, and any other relief that this Court determines is fair and equitable.

COUNT III - STATUTORY CONVERSION

49. Plaintiffs incorporate all previous allegations herein.

50. Defendants converted Plaintiffs' property to his/its/their own use.

51. Defendants received, possessed, concealed and/or aided in the concealment of converted property belonging to Plaintiffs, with the knowledge that such property was converted.

52. The actions of Defendants, as alleged above, constitute statutory conversion, in violation of MCL 600.2919a.

WHEREFORE, Plaintiffs request that this Court enter a judgment in their favor and against Defendants, in an amount three (3) times Plaintiffs' actual damages, together with interest, costs, statutory attorneys' fees, and any other relief that this Court determines is fair and equitable.

COUNT IV – FRAUD/MISREPRESENTATION

53. Plaintiffs incorporate all previous allegations herein.

54. Defendants made multiple representations to Plaintiffs as set forth above (collectively "Representations").

55. The Representations were false when made.

56. Defendants knew the Representations were false when they made them, or made them recklessly, without knowledge of their truth.

57. Defendants made the Representations with the intention that Plaintiff would agree to enter into a Memorandum of Understanding and provide Funds to Defendants.

58. Plaintiffs reasonably relied upon the Representations in signing a Memorandum of Understanding and agreeing to provide Funds to Defendants.

59. As a direct result of Defendants' conduct, Plaintiffs suffered damages.

60. Any Memorandum of Understanding was obtained through fraud and is voidable.

WHEREFORE, Plaintiffs requests that this Court determine that the Memorandum of Understanding is void and enter a Judgment in Plaintiffs' favor and against Defendants in an amount in excess of \$75,000, plus interest, costs, attorneys' fees, and any other appropriate relief.

COUNT V – BREACH OF FIDUCIARY DUTY

61. Plaintiffs incorporate all previous allegations herein.

62. Defendants assumed a fiduciary duty to the Plaintiff.

63. Based on Defendants' representations of experience in providing investment banking services, Plaintiffs justifiably relied in providing funds to Defendants.

64. Defendants owed a fiduciary duty to exercise skill, knowledge and experience in financial transactions for Plaintiffs' benefit.

65. Defendants breached their fiduciary duty owed to Plaintiffs.

66. Defendants' breach of fiduciary duty proximately caused damage to Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter a judgment in their favor and against Defendants in an amount in excess of \$75,000, together with interest, costs, attorneys' fees, and any other relief that this Court determines is fair and equitable.

COUNT VI – CIVIL CONSPIRACY

67. Plaintiffs incorporate all previous allegations herein.

68. All Defendants acted in concert, and in furtherance of a civil conspiracy to accomplish a criminal or unlawful purpose and are jointly liable for the acts of each other.

69. As a result of Defendants' civil conspiracy, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs request that this Court enter a judgment in their favor and against Defendants in an amount in excess of \$75,000, together with interest, costs, attorneys' fees, and any other relief that this Court determines is fair and equitable.

COUNT VII – CONSTRUCTIVE TRUST

70. Plaintiffs incorporate all previous allegations herein.

71. Defendants caused Plaintiffs to pay funds to Defendants and others through fraud, misrepresentation, and violation of the law.

72. Defendants and others have received an unjust benefit through Defendants' fraud.

73. Imposition of a constructive trust upon all Transmitted Funds is necessary to do equity and/or prevent unjust enrichment.

WHEREFORE, Plaintiffs request that this Court declare that all Transmitted Funds are held in constructive trust for Plaintiffs and award any other relief that this Court determines is fair and equitable.

KUIPER ORLEBEKE PC

Date: January 29, 2016

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