From: Daniel Sabba [redacted]
Sent: 5/27/2015 5:43:54 PM
To: Paul Morris [redacted]; Stewart Oldfield [redacted]
CC: Chip Packard [redacted]; Todd Stevens [redacted]
Subject: JE follow-up - past litigation with Citi. [SC]

Classification: **Strictly Confidential**

Paul – were you aware JE sued Citi? You mentioned today you assessed the likelihood of JE being a litigious client negligible, so would like to get more clarity on the lawsuit below. Many thanks, Daniel

FINANCIAL TRUST CO., INC. v. CITIBANK N.A. NO. CIV.2002-108

268 F.Supp.2d 561 (2003)

FINANCIAL TRUST COMPANY, INC. and Jeffrey E. Epstein, Plaintiffs, v. CITIBANK, N.A. and Citigroup, Inc. d/b/a "Citigroup," Defendants.

District Court, Virgin Islands, D. St. Thomas and St. John.

June 19, 2003.

Maria Tankenson Hodge, Hodge & Francois, St. Thomas, VI, for the plaintiffs.

Gregory H. Hodges, Dudley, Topper and Feuerzeig, LLP, St. Thomas, VI, for the defendants.

MEMORANDUM OPINION

MOORE, District Judge.

After careful consideration of the parties' written and oral arguments, I will deny the defendants' motions to dismiss for lack of personal jurisdiction and to transfer this case to New York. Further, I find that the amended complaint adequately states claims of breach of fiduciary duty and negligent misrepresentation. Finally, I will grant the defendants' motion to dismiss Counts I, II, III, and VI for failure to meet Federal Rule of Civil Procedure 9(b)'s heightened pleading requirement for fraud, but I will grant leave for the plaintiffs to amend their pleadings.

I. FACTUAL AND PROCEDURAL BACKGROUND

In their amended complaint, Jeffrey E. Epstein ["Epstein"] and Financial Trust Company, Inc. ["FTC"] [collectively "plaintiffs"] allege that Citibank, N.A. ["Citibank"] and Citigroup, Inc. ["Citigroup"] [collectively "defendants"] misrepresented facts and fraudulently induced them to borrow $10 million to invest in a venture managed by AIG Global Investment Corporation ["AIG"]. The plaintiffs allege that the defendants failed to disclose information and negligently and fraudulently misrepresented facts concerning their relationship with AIG (Counts I, II, III, IV and VI), that the plaintiffs detrimentally relied on these misrepresentations (Counts I, II, III, and VI), and that the defendants breached their fiduciary duty to the plaintiffs (Count V). The plaintiffs seek rescission of the promissory note and punitive damages (Counts VI and VII). (Am. Compl. ¶¶ 45-68.)

In April 1999, Dsyle Davison ["Davison"], Vice President of Citibank in New York and Epstein's private banker, and other Citibank employees telephoned Epstein while he was in the Virgin Islands and recommended that the plaintiffs invest through placement agent Salomon Smith Barney ["SSB"], a "subsidiary or affiliate" of the defendants, in a collateralized bond obligation transaction managed by AIG. (Compl. ¶¶ 12, 24; Epstein Decl. ¶¶ 8-10; Davison Aff. ¶¶ 1, 102-18.) According to the plaintiffs, during the negotiations of this deal Davison represented to Epstein that he was "virtually assured of receiving an 18-20% return on [his] investment, with a possible return of as much as 30%" and assured him that Citibank was going to remain actively involved in the investment. (Epstein Decl. ¶ 11.)

After further discussion between Epstein and Davison, Citibank offered to loan Epstein $10 million on the express condition that the money be used exclusively to fund FTC's investment in the AIG-managed venture. *(Id.* ¶¶ 12-13.) On August 2, 1999, Epstein exesuted a promissory note in favor of Citibank in the amount of $10 million [the "1999 Note"]. (Pis.' Mem. Of Law in Opp'n to Mot. To Dismiss, Epstein Decl. ¶ 15; Mem. Of Law in Support of Defs.' Mot. To Dismiss, Ex. A.) In addition, Citibank and FTC entered into a hypothecation agreement. (Mem. Of Law in Support of Defs.' Mot. to Dismiss, Ex. B at 7.)

On June 15, 2000, Epstein executed and delivered to Citibank an amended and restated promissory note ["the Amended 1999 Note"] that superseded the 1999 Note. The Amended 1999 Note extended the maturity date of the 1999 Note to