

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

FRANCISCO FREIRÍA

Plaintiff

v.

DEBORAH BRAUN; PATRICK ANDERSON;
EBAY INC. a/k/a EBAY MOTORS;
BANK OF AMERICA CORPORATION

Defendants

CIVIL NO.

DIVERSITY
BREACH OF CONTRACT
DAMAGES
TRIAL BY JURY

COMPLAINT

TO THE HONORABLE COURT:

NOW APPEARS plaintiff, Francisco Freiría, through the undersigned attorney, and very respectfully states, alleges and prays:

JURISDICTION AND VENUE

1. The diversity jurisdiction of this Honorable Court is invoked under the provisions of Title 28, United States Code, §1332(a)(1), and Article III, §2 of the Constitution of the United States, inasmuch as the parties are citizens of different states and the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00).
2. Venue is proper because the facts which give rise to the complaint occurred within the District of Puerto Rico.

THE PARTIES

3. The plaintiff is married, of legal age and a resident and citizen of Puerto Rico.
4. Defendant Deborah Braun (hereinafter also referred to as the Seller) upon information or knowledge is of legal age and resident and citizen of New York.
5. Defendant Patrick Anderson upon information or knowledge is of legal age and resident and citizen of New York. Mr. Anderson was Ebay's designated transaction officer.
6. Defendant Ebay Inc. a/k/a Ebay Motors (hereinafter referred to as Ebay), is a corporation organized and existing under the laws of California, which is a citizen of and has its principal place of business in a state other than Puerto Rico.
7. Defendant, Bank of America Corporation, is a corporation organized and existing under the laws of North Carolina, which is a citizen of and has its principal place of business in a state other than Puerto Rico.

FACTS

8. On March 25, 2010, plaintiff purchased from Deborah Braun through Ebay a 2006 Boston Whaler 285 Conquest with fixtures in the aggregate price of \$37,500.00.
9. Induced by Mrs. Braun's representations as seller and induced by Ebay's Vehicle Purchase Protection Program

which amongst other things guaranteed the transaction against fraud up to \$50,000.00, plaintiff proceeded with the purchase of the motor boat previously described.

10. On March 25, 2010 Plaintiff requested Banco Popular de Puerto Rico to make a bank to bank wire transfer of funds as instructed by Ebay, to co-defendant Patrick Anderson, to his account at Bank of America.

11. Mr. Patrick Anderson was Ebay's designated transaction officer as it appears from Ebay Motors Payment Invoice #8852026301297. Mr. Anderson is the person who received the funds wired by Plaintiff to Bank of America on behalf of Ebay.

12. Ebay represented to Plaintiff that they would place a lock for thirty (30) days on the funds transferred and that Plaintiff would have five (5) days to inspect the boat upon its arrival to Puerto Rico and to accept the motor boat purchased and only then they release the payment to the seller.

13. The bank to bank wire transfer was received by Bank of America and credited to the designated bank account and for reasons unknown, the funds were released without Plaintiff's express consent and contrary to what was represented in Ebay's antifraud policy.

14. Concerned by the fact that Plaintiff had transferred \$37,500.00 to Bank of America according to Ebay's instruction and by the fact that Plaintiff had not received the merchandise purchased, Plaintiff inquired Ebay about the delivery of the boat and when it should be expected.
15. On April 6, 2010 the seller represented to Plaintiff that the boat had already been shipped to Puerto Rico, no other news was ever heard from the seller.
16. On April 13, 2010 Plaintiff inquired with Ebay about the status of the shipment and alerted them about the fraud committed in the transaction and requested Ebay all information and documentation in order to make a claim.
17. Having received no answer from Ebay on April 21, 2010, Plaintiff filed an IC3 Complaint before the Federal Bureau of Investigation (FBI).
18. On April 2010 Plaintiff requested Bank of America for the reimbursement of funds released with out Plaintiff's knowledge or consent. To this date, Bank of America has not responded to Plaintiff's request.

NEGLIGENCE

19. Plaintiff realleges and incorporates by reference paragraphs 1 through 18 as if fully set forth herein.

20. Ebay and Bank of America were negligent in turning over funds which were allegedly placed on hold without Plaintiffs authorization.
21. A prudent and responsible person, rather than immediately turning over the funds, would have required Plaintiffs express consent before releasing the funds.
22. Despite all of Plaintiff's written demands to the Seller, Ebay and Bank of America for the return of the funds or the delivery of the merchandise, to this date, they have all failed to comply with either request.
23. Under article 1802 of the Civil Code of Puerto Rico, the defendants are liable to the Plaintiff for all damages proximately caused by their negligence.

BREACH OF CONTRACT

24. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 as if fully set forth herein.
25. The Seller breached the Contract entered with Plaintiff for she failed to make available the object purchased by Plaintiff, as agreed.
26. Ebay represented to Plaintiff that the transaction was covered by purchase protection against fraud and description errors. Ebay also falsely represented that on March 25, 2010 it had locked the account for 30 days time period, making the seller unable to withdraw any

money from the account, within the 30 day period without Plaintiff's approval.

27. Ebay and Bank of America breached their contractual duties of care owed to Plaintiff by releasing the funds to Mr. Anderson, for they were obligated to hold the funds for 30 days.

28. Ebay breached the contract entered into with Plaintiff whereby it was obligated to place funds on hold for 30 days and cover Plaintiff's transaction against fraud up to \$50,000.00.

29. The defendants' breach of contract has been the direct and proximate cause of Plaintiff's damage and losses.

30. The damages alleged herein were the foreseeable consequence of defendants' breach of their contractual obligations.

31. Under article 1054 of the Civil Code of Puerto Rico, the defendants are liable for all foreseeable damages proximately resulting from their breach of contract.

BREACH OF FIDUCIARY OBLIGATIONS

32. Plaintiff realleges and incorporates by reference paragraphs 1 through 31 as if fully set forth herein.

33. As a result of Ebay's and Bank of America's acceptance of the monies transferred to them by the Plaintiff, a fiduciary obligation and relationship of trust and

confidence arose between the Plaintiff and these defendants; and as a result Ebay and Bank of America undertook the obligation of preserving and protecting Plaintiff's funds until such time as the transaction with the seller was completed by delivery of the purchased merchandise.

34. Ebay and Bank of America were the Plaintiff's fiduciaries with respect to these funds.

35. Ebay and Bank of America had an obligation and duty to protect the Plaintiff's funds from fraud and breach of contract by holding such funds until the delivery and inspection of the purchased merchandise was complete.

36. Ebay and Bank of America breached their fiduciary obligations to Plaintiff by releasing the funds prior to delivery and inspection of the purchased merchandise.

37. Ebay's and Bank of America's breach of fiduciary obligations were the direct and proximate cause of Plaintiff's damages and losses.

DAMAGES AND LOSSES

38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

39. As a direct and foreseeable consequence of the actions and omissions complained of herein, the Plaintiff has suffered and continues to suffer:

- A. Loss of the purchased funds in the amount of thirty seven thousand five hundred dollars (\$37,500.00)
- B. Loss of the use of the purchase funds, in an amount to be determined at trial;
- C. Emotional distress, embarrassment, humiliation and mental anguish at having been defrauded and ignored by the defendants, despite his numerous demands and requests, and witnessing the embarrassment of his son for whom he had sought to purchase the merchandise; and at having to engage counsel and initiate legal proceedings to obtain the return of funds.

40. To the extent the defendants deny liability for the damages claimed herein, they act with obstinacy and temerity and are therefore liable for prejudgment interest, costs and attorney fees.

41. Pursuant to the Seventh Amendment and Fed.R.Civ.P. 38, plaintiff demands trial by jury of all triable issues in this case.

WHEREFORE, Plaintiff very respectfully requests the Honorable Court grant the foregoing complaint and award damages to the Plaintiff as follows:

- A. Return of the purchase funds in the amount of \$37,500.00 dollars, plus interest from March 25, 2010;

- B. Damages for loss of use of such funds in an amount no less than \$50,000.00 dollars;
- C. Damages for mental anguish and emotional distress in an amount no less than \$100,000.00.
- D. Costs and attorney fees and any further relief this Court deems equitable, just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 24th day of September 2010.

s/ CARLA ARRAIZA GONZÁLEZ, ESQ.
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