

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 07-22071-CIV-KING

INVERPAN S.A.,

Plaintiff,

v.

AMERICAN EXPRESS BANK INTERNATIONAL,
GREGORIO ECHEVARRIA,
VESEY LIMITED,
NORMA EBANKS,
RANDALL FISHER,
BERTHA BRITTEN,
ALDRICH WERLEMAN, and
AMEX INTERNATIONAL TRUST (CAYMAN), LTD.,

Defendants.

**ORDER DENYING ARUBAN DEFENDANTS' MOTION TO DISMISS FOR
FRAUD ON THE COURT AND MOTION FOR SANCTIONS UNDER
RULE 11**

THIS CAUSE comes before the Court upon the December 22, 2008 Report and Recommendations ("R&R") of Magistrate Judge Ted E. Bandstra (D.E. #158), recommending that both the Aruban Defendants' Motion to Dismiss for Fraud on the Court and Memorandum of Law (D.E. #128) and the Aruban Defendants' Motion for Sanctions Under Rule 11 and Memorandum of Law (D.E. #141) be denied. On January 7, 2009, the Defendants Bertha Britten and Aldric Werleman

(the “Aruban Defendants”) filed, in a timely fashion, an Appeal From Report and Recommendation as Regards Sanctions Under Rule 11 (D.E. #164).

After a thorough review of the record and the objections filed by the Aruban Defendants, the undersigned concludes that the R&R contains well-reasoned recommendations. The Aruban Defendants assert that Magistrate Judge Ted E. Bandstra has incorrectly recommended that the request for sanctions be denied. They assert that this portion of the R&R is “contrary to law” and “clearly erroneous.” D.E. #164, ¶ 4 (quoting Mag. J. Rule 4(a)(1)). The undersigned disagrees.

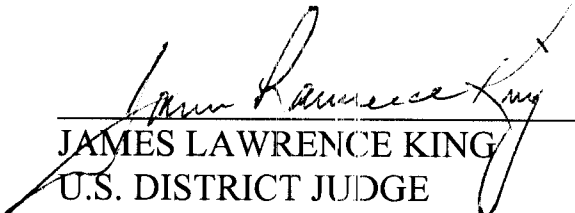
At the outset, it should be noted that the R&R was entered after Magistrate Judge Ted E. Bandstra held a hearing on the matter on December 10, 2008. *See* D.E. #153. The Aruban Defendants assert that the Plaintiff did not engage in a reasonable inquiry prior to filing the Complaint (D.E. #1) “because it is not true that Mrs. Britten ever exercised her signature authority to withdraw money from any of the accounts, ever.” D.E. #164, ¶ 9. They also assert that “bank records showed that Mr. Werleman did not have signature authority over any of the bank accounts.” *Id.* at ¶ 27. However, Magistrate Judge Ted E. Bandstra noted that the Plaintiff has a different view of the bank records . . . and den[ies] that they support [D]efendants’ position that the monetary transfers were ‘gifts.’ ” D.E. #158, pg. 6. Thus, contrary to the Aruban Defendants’ assertions, it is not dispositive that the

Plaintiff possibly possessed the relevant bank records at the time that the Complaint was drafted. Regardless of when these bank records were first possessed by the Plaintiff, the crucial point for the purposes of this matter remains the same—the meaning that should be attached to the bank records is disputed. Therefore, the undersigned agrees that more discovery should occur prior to any determination that there are undisputed facts which establish that Plaintiff's counsel did not conduct a reasonable inquiry upon which to file the Complaint. Specifically, and at the very least, the deposition of Anna Hocham should first be completed.¹ This conclusion is consistent with the overarching manner in which this Court has handled this case. For example, the undersigned previously stayed all other discovery until the deposition of Anna Hocham has been completed. *See* D.E. #78. Additionally, the Defendants' Motion to Dismiss for Lack of Jurisdiction was denied without prejudice to reasserting once the deposition of Anna Hocham has been completed. *See* D.E. #129 & #136. In sum, Magistrate Judge Ted E. Bandstra's findings and conclusions with regard to the request for sanctions are not clearly erroneous.

¹In the R&R, Magistrate Judge Ted E. Bandstra also states that, during the part of the deposition that has already occurred, "Anna Hocham [] testified that Bertha Britten wrongfully acquired Inverpan's funds which she wants back in the entire amount." D.E. #158, pg. 6. Thus, the undersigned notes that this limited deposition testimony would seemingly support a conclusion that the factual allegations of the Complaint had evidentiary support at the time of its filing.

Accordingly, the Court being otherwise fully advised, it is ORDERED, ADJUDGED, and DECREED that Magistrate Judge Ted E. Bandstra's December 22, 2008 R&R (D.E. #158) be, and the same is hereby, **AFFIRMED and ADOPTED**. The Aruban Defendants' Motion to Dismiss for Fraud on the Court (D.E. #128) is hereby **DENIED WITHOUT PREJUDICE to reasserting once the deposition of Anna Hocham has been completed**. Similarly, the Aruban Defendants' Motion for Sanctions Under Rule 11 (D.E. #141) is hereby **DENIED WITHOUT PREJUDICE to reasserting once the deposition of Anna Hocham has been completed**.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 21st day of January, 2009.



JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: **Magistrate Judge Ted E. Bandstra**

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