

MINUTE ORDER

Strauss v. Credit Lyonnais, 06cv00702 (CPS)(MDG)
Wolf v. Credit Lyonnais, 07cv00914 (CPS) (MDG)

This order elaborates on the summary ruling made on the record at a conference on July 29, 2009 with respect to the plaintiffs' renewed motions to compel (ct. doc. 214 in Strauss and 119 in Wolf) seeking reconsideration of certain orders made at a conference on April 23, 2009 with respect to plaintiffs' earlier motions to compel and defendant's related motion for a protective order. See Strauss (ct. docs. 205, 207) and Wolf (ct. docs. 113, 115).

In their initial motion to compel, plaintiffs sought disclosure of documents relating to two individuals and one entity involved in transactions blocked by defendant: Mohammad Zia, a/k/a Zia, Ahmad ("Zia"), Abdul Majeed, a/k/a NOOR MUHAMMAD, a/k/a NORRO MOHAMMAD, a/k/a Abdul Majid, a/k/a NOOR MUHAMMED, a/k/a Abdul Majid ("Majeed"), and SUPERBA S.A. ("Superba"). See ct. docs. 207 (Strauss), 115 (Wolf). Credit Lyonnais ("CL") blocked these transactions because of suspicions that Zia, Majeed and Superba were involved in terrorism financing transactions. Plaintiffs argued, inter alia, that the documents pertaining to the three blocked transfers could "shed light on CL's contrasting treatment of its customer CBSP" with respect to a blocked transfer of \$25,100 from CBSP to El-Wafa Charitable Society ("El-Wafa"), particularly because of an absence of records and deficient recollections of employees. As noted in a minute order summarizing rulings made at the April 23rd conference (the "prior order"), this Court found the documents sought not relevant to the issues in this case. Similarly, this Court denied for lack of relevance plaintiffs' motions to compel disclosure of documents pertaining to Al Shamal Bank, whose account had been closed by CL following news reports that Al Shamal had ties to Osama Bin Laden.

After reviewing the submissions, plaintiffs' renewed motions to compel are denied. What is critical in this case is whether Credit Lyonnais ("CL"), in providing financial services to CBSP and other organizations, knew or had reason to know that those customers supported or had connections to HAMAS, the terrorist organization responsible for the attacks giving rise to the claims in this action. As plaintiffs acknowledge, Zia and Majeed, who are named on a U.S. OFAC list, are alleged to have ties only to Al Qaeda, not HAMAS. Superba is mentioned solely for its role in an attempted transfer to Zia. Nor are the three alleged to have any connection or relationship with CBSP. The two blocked transactions were, in fact, among 20 transactions originating from or destined to CL France that CL Americas blocked between 2000 and 2003 because one of the transacting

parties was on an OFAC list. In addition, at the time of the blocking, El Wafa had a name similar but not identical to the name of an entity on an OFAC list and CBSP was not added to the OFAC list until 2003.

This Court previously denied the motion to compel because of critical dissimilarities between the transaction involving CBSP and the other blocked transactions. Notwithstanding the plaintiffs' dissatisfaction with the limited records available and the deposition testimonies of CL employees or former employees, this Court remains unpersuaded that the documents regarding the other blocked transactions and participants involved would be probative of CL's knowledge of CBSP's terrorist connections or would be likely to lead to admissible evidence regarding the defendant's state of mind or what it had reason to know.

This Court also does not agree with plaintiffs' argument that disclosure is warranted because the defendant provided false and misleading statements in the declaration of Joseph Virgilio that defendant previously submitted in opposition to plaintiffs' original motions to compel. As noted, Mr. Virgilio did not contradict statements in his declaration when he testified at his deposition.¹ Contrary to plaintiffs' claim that Mr. Virgilio testified he had no independent recollection of his involvement in blocking the El Wafa transaction, he only testified he had not specific recollection whether he had called OFAC.

Although Al Shamal Bank was not on the OFAC list, unlike Majeed and Zia, it was identified in published reports as also being linked to Al Qaeda, not HAMAS. Irrespective of the nature of the relationship that CL had with Al Shamal, whether as a depositor or correspondent bank, how CL acted with respect to Al Shamal in terminating the relationship is too attenuated from what CL knew or should have known about CBSP.

Last, as noted on the record, notwithstanding denial of plaintiffs' motion, this Court finds from reviewing plaintiffs' request for sanctions that the defendant has not fully complied with Judge Matsumoto's order directing CL to produce documents that it previously provided law enforcement agencies. Its claim that it has already produced the pertinent documents in the

¹ However, this Court does find that the statement in ¶ 3 in Mr. Virgilio's declaration that "OFAC had stated that it had listed [Wafa Humanitarian Organization] based on a finding that it is a Saudi charity and Pakistan-based organization involved in funding Al Qaeda" to be somewhat misleading. In the context of the sentence, it suggests that Mr. Virgilio obtained the information directly from OFAC when he, in fact, learned that fact from information on the Treasury Department's website that defense counsel had provided. In any event, this Court did not rely on this statement in making the prior ruling.

