GT GreenbergTraurig



October 21, 2010

By Facsimile to (212) 805-6382

Judge Victor Marrero
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Anwar, et al. v. Fairfield Greenwich Limited, et. al.*, Master File No. 09-CV-00118 (VM)(THK)

Dear Judge Marrero:

I write on behalf of Defendants Carlos Gadala-Maria, Raul Mas, Robert Friedman, Rodolfo Pages and John Dutkowski in the action styled *Headway Investment Corp. v. American Express Bank Ltd., et al.* and Defendant Luisa Serena in the action styled *Valladolid v. American Express Bank Ltd., et al.*

Yesterday, the Court requested and convened a conference call in the above-referenced matters. I was unable to participate in the call due to a previously scheduled deposition that was already in progress at the time the Court requested the teleconference with the parties. I understand from counsel to Standard Chartered that the Court granted the Motion for Reconsideration filed by Headway Investment Corp. on Monday, October 18. I further understand that plaintiff Valladolid filed a joinder to the Headway motion for reconsideration.

Headway's motion sought reconsideration of two elements of the Court's October 4, 2010 Order: the dismissal of Headway's negligence claim against the Standard Chartered Defendants and the dismissal of all of Headway's claims against the individual defendants. I am informed, however, that the Court did not specifically address the claims against the individual defendants during yesterday's conference. I therefore write to respectfully request that the Court clarify its ruling to confirm whether the claims

against the individual defendants in *Headway* and *Valladolid* have been reinstated by the Court.

In the event the Court has in fact reinstated the claims against the individual defendants, I respectfully request that the Court reconsider its ruling or, at a minimum, provide the individual defendants with an opportunity to respond to Headway's motion and Valladolid's joinder in that motion, as provided by Local Civil Rules 6.3 and 6.1(a).

Yesterday's conference was convened with less than three hours' notice, concerning a motion that had been filed less than 48 hours earlier and an untimely motion that was not filed until after conference was completed. Although prior to the call I informed counsel to Standard Chartered that I did not object to the conference proceeding in my absence, if I had any indication that the Court intended to issue a ruling that would prejudice my clients without their having any opportunity to be heard, I would have requested that the Court briefly delay that conference so that I could participate.

Moreover, Headway's motion makes clear that the Court's prior ruling with respect to the individual defendants was correct and should stand. (*See* Order at 5-6.) Headway concedes that "the Individual Defendants were not specifically identified in the Plaintiffs' Unified Response," but argues that they should nevertheless remain in the case because the complaint collectively defined the Standard Chartered entity defendants and the Standard Chartered individual defendants as the "Private Bank Defendants." (Mot. for Reconsideration at 7.) Headway's argument misses the point. The Court's Order is not premised on a finding that Headway or Valladolid failed to adequately name the individual defendants in the complaint. Rather, the Court's Order is premised on a finding that the individual defendants filed a motion to dismiss to which Headway and Valladolid failed to respond to. Plaintiffs' Unified Response to the motion to dismiss did not even do the bare minimum to address the claims against the individual defendants. As the Court pointed out in its Order, plaintiffs' opposition "frames all claims as being against 'Standard Chartered,' which does not encompass any of the Individual Defendants . . . ." (Order at 6.) The failure to respond to an argument in a motion to dismiss constitutes an abandonment of the claim. *Adams v. N.Y. State Educ. Dep't*, 2010 WL 3306910, at *18 n.32 (S.D.N.Y. 2010) (holding that plaintiff had abandoned claims where plaintiff "failed to respond (or even mention)" them in her opposition to defendants' motions to dismiss); *Brandon v. City of N.Y.*, 705 F. Supp. 2d 261, 268 (S.D.N.Y. 2010) (holding that plaintiffs' failure to raise arguments opposing defendant's motion for judgment on the pleadings constituted abandonment of unopposed claims); *Katz v. Image Innovations Holdings, Inc.*, 542 F. Supp. 2d 269, 275 (S.D.N.Y. 2008) (holding that plaintiffs had abandoned control person liability claim with respect to two of six defendants where plaintiffs' response to the motion to dismiss did not discuss those defendants).

Dismissal of the claims against the individual defendants would not unfairly prejudice Headway and Valladolid. Their failure to respond to the motions to dismiss by the individual defendants is indicative of the lack of specific allegations of wrongdoing by the individual defendants in the complaints. As Headway concedes, "Headway's Complaint collectively defined the two Standard Chartered entities ... with the Individual Defendants as the 'Private Bank Defendants.'" (Mot. for Reconsideration at 7.) It would not work an unfairness on Headway and Valladolid to dismiss claims that lack support in the complaint when Headway and Valladolid entirely fail to address those claims in their response to a motion to dismiss.

Sincerely,

Ricardo A. Gonzalez

cc: Counsel for all parties (by e-mail)

The individual defendants in the actions referred to in this letter are directed to respond by 11-5-10, by letter not to exceed 3 pages, to the motions for reconsideration made by plaintiffs regarding the Court's Order dated 10-4-10

SO ORDERED:

10-25-10
DATE VICTOR MARRERO, U.S.D.J.