

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

CARMINE A. LOPRESTI, CV-02-6492 (SJ) (VVP)

JUL 13 2004 ★
Plaintiff,

-against-

CITIGROUP, INC., et al.,

ENTERED
★ _____ ★
REPLY AFFIDAVIT MOTION
FOR SANCTIONS RULE 11

Defendants.

-----X

I am the attorney for the plaintiff in this action and respectfully submit this reply affidavit in response to the affidavit in opposition to plaintiff's motion for sanctions under Rule 11, submitted by David Lender, Esq., on behalf of the firm of Weil, Gotshal and Manges LLP, dated July 7, 2004.

The Weil firm failed to comply with the requirements of Local Rule 7.1 of this Court, in that they did not submit a Memorandum of Law, in support of their affidavit in opposition, to plaintiff's motion under Rule 11 for sanctions. Weil's failure to comply with Local Rule 7.1, is by its terms, grounds for granting plaintiff's motion by default.

The Weil firm would have this Court sanction a potential \$190 billion financial disaster, involving the retirement plans of the 9,000,000 CITISTREET retirement plan participants, who have invested their life savings in CITISTREET.

Weil asks this Court to take the word of the Weil law firm, over the word of CITISTREET, that CITISTREET is a non existent,

and non cognizable legal entity of any sort.

CITISTREET on the other hand, asserts to the world on its website at www.citistreetonline.com, that it is alive, well, and functioning as one of largest providers of retirement benefit programs in the United States.

Sanctions against Weil are appropriate for advocating a position that is contrary to the facts set forth by CITISTREET on its website. Sanctions are also appropriate against Weil for obstructing and interfering with plaintiff's prosecution of his case.

Weil has absolutely no standing to advocate on behalf of the defendants CITISTREET or COPELAND ASSOCIATES, INC. who have deliberately defaulted, without having appeared on their behalf in this case. The deliberate defaults of CITISTREET and COPELAND ASSOCIATES, INC. are a matter of record and cannot be cured.

The world wide financial fallout, and ripple effect, that would flow from a decision by this Court agreeing with Weil, that CITISTREET is a non existent, non cognizable legal entity of any sort, is unimaginable.

Weil is advocating to this Court, to rule that despite all of the CITISTREET'S self authenticated documentation to the contrary, that CITISTREET does not exist.

CITISTREET says that it is a Joint Venture owned 50/50 by

State Street Corp and Citigroup, Inc.

Does this Court have the power to declare that a Joint Venture with \$190 billion under management; 9,000,000 plan participants; 3,000 employees and offices world wide to be non existent? Weil does not address these issues.

Would the Court's ruling in Weil's favor: extinguish 9,000,000 retirement accounts? Would 3,000 employees be out of work? Would Citigroup, Inc. and State Street Corp. become the beneficiaries of a \$190 billion windfall? Is this all part of Weil's plan to attain the foregoing results from this Court on behalf of the owners of the CITISTREET Joint Venture?

Plaintiff does not know the answers to these questions.

The Weil argument, that CITISTREET did not default herein, is most disingenuous. Weil's letters serve to establish conclusively that there is no question that they never entered an appearance in this case on behalf of CITISTREET or COPELAND ASSOCIATES, INC. The Weil firm allowed CITISTREET and COPELAND to deliberately default.

Plaintiff questions how Weil has been able to mount this monumental attempt to mislead everyone, including this Court, by saying they represent CITISTREET; have not appeared on behalf of CITISTREET; allowed CITISTREET to deliberately default; charge legal fees; create havoc with plaintiff's case; cause the plaintiff to spend money on legal fees to oppose their

opposition; and take up much of the time and energy of this Court and the Second Circuit Court of Appeals, all to have this Court rule that CITISTREET and COPELAND ASSOCIATES, INC. are non-existent and non-cognizable legal entities of any sort. Sanctions are appropriate.

CITISTREET says that they exist. The Weil law firm asks this Court and the Clerks of this Court, to ignore and contradict what CITISTREET says to the world, the media, and the CITISTREET customers? Weil cites no precedents for what it is asking this Court to establish. Sanctions are appropriate.

The Weil affidavit falsely asserts that a 'hearing' was held on July 7, 2003 before Magistrate Judge Pohorelsky.

A reading of the transcript of the July 7, 2003 proceeding reveals conclusively that no hearing of any sort was held. No witnesses were sworn, and no documentary evidence, (though offered by plaintiff), of any sort was allowed to be introduced or received in evidence by the Magistrate Judge. Even the transcript labeled the 30 minute session, to be a proceeding, not a 'hearing'.

The Magistrate however, made numerous statements, which betrayed the bias of the Magistrate Judge against the plaintiff and in favor of the defaulted defendants. The Weil affidavit misleads the Court with the citations to these quotes as bespeaking judicial resolution of the facts at issue. Comments

made by the Magistrate Judge during the proceeding were not reduced to findings of fact, recommendations, a decision or order. Those statements are not dispositive of the issues and are being improperly relied upon by Weil as a basis for their opposition to plaintiff's motion for sanctions.

The Weil reliance on the recital of these statements as being gospel, in light of the now conceded relationship between the Weil firm and the Magistrate Judge, give even more credence to the merits of plaintiff's pending motion to disqualify the Magistrate Judge.

The Weil affidavit also relies on the docket sheet of this case and the actions of the Clerks of the Court as being dispositive. Nothing can be further from the truth. It only reinforces the appearance of the apparent influence that the Weil firm has over the workings of this Court.

There is no support in law, or in the cases cited by the Weil firm for the proposition that a business organization can be both a Limited Liability Company, and a Joint Venture at the same time. An entity can only be one or the other. It is either a Joint Venture or a LLC. It can never be both at the same instant in time.

Weil's citations to the Leber and Great Lakes cases on page 8 of their affidavit are unsupportive of their arguments. These cases did not involve companies that were both Joint Ventures

and Limited Liability Companies at the same time.

Plaintiff is aware that a Joint Venture can be owned by a LLC, and that a LLC can be owned by a Joint Venture. However that is not the issue in this case.

To say that these entities have not defaulted in appearing herein is false. As seen on the Docket Sheet of this case neither CITISTREET nor COPELAND ASSOCIATES, INC. has any counsel listed as appearing for them.

The Weil claim that plaintiff's exhibits are not 'authenticated' is lame. To say that the contents of CITISTREET'S very own website are not 'authentic', is unsupportable in logic, reality, and fact. The CITISTREET website is testimonial in nature, and is not subject to rebuttal by Weil.

To paraphrase an oft quoted truism the CITISTREET website, is written by CITISTREET, of CITISTREET and for CITISTREET. It is authored, maintained, and posted by them for all the world to see. Their Press Releases state they are a Joint Venture. The CITISTREET website is the most credible refutation of the falsity of the papers that Weil has submitted in opposition hereto.

Plaintiff's exhibits are admissible in evidence under Rule 803(17) of the Federal Rules of Evidence, and they are self authenticated under Rule 902 (6)&(7) thereof. Plaintiff even unearthed the attorney who represented State Street Corp when the

Joint Venture known as CITISTREET formed.

Weil's exhibits are primarily self serving declarations by counsel, supported by an affidavit by a Mr. Dughi who is the signatory of the checks contained in Exhibits 'L' and 'M' of plaintiff's motion for sanctions.

Weil avers that these checks are signed on behalf of CITISTREET ASSOCIATES LLC, but they fail to mention the fact that the name CITISTREET appears in very large type in the upper left portion of the checks and that CITISTREET alone, is imprinted on the check stubs.

The Weil affidavit in opposition states on page 4, that Weil moved to dismiss this action as against CITISTREET and COPELAND ASSOCIATES, INC. However, Weil's Notice of Motion in regard thereto, failed to inform the plaintiff or the Court that they were making their motion to dismiss on behalf of CITISTREET and COPELAND ASSOCIATES, INC.

The names of CITISTREET and COPELAND ASSOCIATES, INC. were specifically excluded by Weil in their Notice of Motion under FRCP 12 (b) (6). They were also excluded from their affidavit in opposition hereto.

Weil cannot be heard 19 months later to claim in their affidavit in opposition hereto that they made their motion to dismiss the complaint on behalf of the deliberately defaulted defendants CITISTREET and COPELAND ASSOCIATES, INC., when they

clearly did not do this. The Weil firm did not move to dismiss this action on behalf of CITISTREET and COPELAND ASSOCIATES, INC. See Exhibit 'A' annexed hereto.

The evidentiary doctrine of *FALSUS IN UNO, FALSUS IN OMNIBUS*, is applicable to all of the Weil submissions, herein and heretofore made to this Court in this matter.

Plaintiff has been responding in the normal course to the deliberate defaults of CITISTREET and COPELAND ASSOCIATES, INC. The Weil firm may have been the architects of these defaults, which may have placed them in a position of having a conflict of interest herein. This may explain their seemingly off the cuff Footnote on page 4 that they will file an answer on behalf of CITISTREET and COPELAND ASSOCIATES, INC. if this Court '----were to somehow resolve the motion against CITISTREET and COPELAND ASSOCIATES, INC.'. (Emphasis supplied)

Their answer would be returned to them by plaintiff as being about 22 months too late, and plaintiff will continue to pursue the remedy of the default judgment that he is entitled to herein. The deliberately defaulted defendants have waived their right to file an answer herein.

In Footnote 1 Weil posits that Mr. Hageman has never certified a paper that has been challenged by plaintiff and filed with the Court. It is to be noted that Mr. Hageman's letters dated January 3, 2003 and January 29, 2003, stating that "----

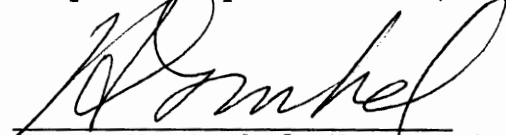
CITISTREET is not and has never been a legal entity" and that COPELAND ASSOCIATES, INC. no longer exists, have both been presented to this Court as proof of their non existence. See Exhibit 'A' of the Weil affidavit. The presentation of these letters to the Court on the Weil letterhead, are considered Representations to the Court under FRCP Rule 11(b).

Further, in Footnote 9 on the signature page of the Weil affidavit in opposition, they state that Mr. Hageman has been the lawyer who has spent the most time, (39 hours at \$450.00 per hour), in preparing the Weil opposition to the plaintiff's instant motion under Rule 11. Mr. Hageman is not exempt from the provisions of Rule 11.

For the reasons stated herein and in the moving affidavit, plaintiff respectfully requests that this Court grant plaintiff's motion for sanctions against the firm of Weil, Gotshal and Manges, LLP, their aiders and abettors herein, and deny defendants' request for costs and fees.

Dated: July 12, 2004
Freeport, New York

Respectfully submitted,



Henry M. Grubel (HG-0211)
Henry M. Grubel, P.C.
Attorney for plaintiff
37 Prospect Street
Freeport, New York 11520
516-623-4100

EXHIBIT 'A'

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action File Number: CV-02-6492 (SJ) (SP)

----- X
:
CARMINE A. LoPRESTI, Individually, and in his
fiduciary capacity under the EMPLOYEE
RETIREMENT INCOME SECURITY ACT of
1974, under the Lutheran Medical Center § 403 (b)
Tax Sheltered Annuity Plan
:

Plaintiff,
:

- against -
:

CITIGROUP INC., WENDY Z. GOLDSTEIN,
MILES H. KUCKER, ALLEN SCHECHTER,
HOWARD SMITH, WILLIAM D. MHYRE, DON
GOLDSTEIN, STATE STREET CORPORATION,
CITISTREET, CITISTREET INCORPORATED,
CITISTREET, LLC, CITISTREET ASSOCIATES,
LLC, CITISTREET EQUITIES, LLC,
CITISTREET FINANCIAL SERVICES, LLC,
TRAVELRS INSURANCE COMPANY,
LUTHERAN MEDICAL CENTER, BUCK
CONSULTANTS, BUCK CONSULTANTS, INC.,
MAYDA CASADO, JEAN DESJARDINS, JIM
WILSON, SMITH BARNEY CORPORATE
TRUST COMPANY, SALOMON SMITH
BARNEY, INC., COPELAND ASSOCIATES,
INC., SANFORD I. WEILL and DAVID A.
SPINA, each and every defendant individually, and
in their fiduciary capacities, under the EMPLOYEE
RETIREMENT INCOME SECURITY ACT of
1974, under the Lutheran Medical Center § 403(b)
Tax Sheltered Annuity Plan
:

Defendants.
:

NOTICE OF MOTION

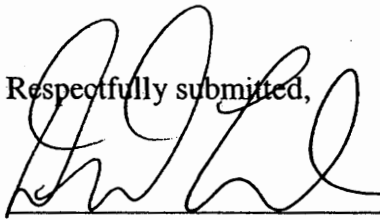
(SJ)

(SP)

Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, and Sanford I. Weill (collectively, the “Citigroup Defendants”) and State Street Corporation and David A. Spina (collectively, the “State Street Defendants”) hereby move the Court, pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing Plaintiff’s Second Amended Complaint for failure to state a claim upon which relief can be granted. In support of this motion, Defendants rely on the annexed Memorandum of Law, which is being filed concurrently with this motion.

For the reasons discussed in the accompanying Memorandum of Law, the Citigroup Defendants and the State Street Defendants respectfully request that the Court dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6) and grant such other and further relief as the Court deems appropriate.

Respectfully submitted,



David J. Lender, Esq. (DL-1554)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
(212) 310-8007 (facsimile)

*Attorneys for Defendants Citigroup, Inc.,
Don Goldstein, Citistreet, LLC, Citistreet
Associates, LLC, Citistreet Equities, LLC,
Citistreet Financial Services, LLC,
Travelers Insurance Company, Mayda
Casado, Jean Desjardins, Jim Wilson and
Smith Barney Corporate Trust Company
Salomon Smith Barney, Inc., State Street
Corporation, Sanford I. Weill and David A.
Spina*

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action File Number: CV-02-6492 (SJ) (SP)

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CITISTREET FINANCIAL SERVICES, LLC,
TRAVELERS INSURANCE COMPANY,
LUTHERAN MEDICAL CENTER, BUCK
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SPINA, each and every defendant individually, and
in their fiduciary capacities, under the EMPLOYEE
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:

Defendants.
:

**DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF THEIR**

**MOTION TO DISMISS
PLAINTIFFS' SECOND
AMENDED COMPLAINT**

(SJ)

(SP)

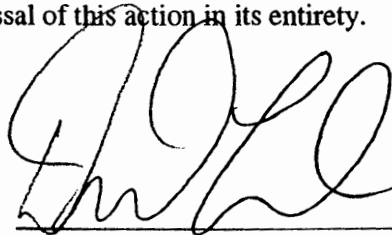
they were contributing; and how much they had accumulated in plaintiff's NANY annuities" (Compl. ¶ 297) -- was disclosed to the Defendants by the LMC employees. (Compl. ¶ 300). Accordingly, the information Plaintiff claims was protected was clearly not a trade secret.

In addition, Plaintiff has not and cannot allege that the information he claims was a trade secret was acquired through the violation of a confidence, agreement or otherwise by improper means. See, e.g., Universal Marine, 8 F. Supp. 2d at 221 (requiring the violation of a confidence, agreement or some other improper means to plead a trade secret cause of action). On the contrary, as Plaintiff concedes, the information was acquired by the Defendants from the LMC employees with their consent. Compl. ¶ 300. In sum, Plaintiff's trade secret claim should be dismissed.

CONCLUSION

Plaintiff's attempt to make a federal case of LMC's decision to implement a new retirement savings program should not be countenanced by this Court. Indeed, the numerous fundamental legal deficiencies in Plaintiff's Complaint mandate the dismissal of this action in its entirety.

Dated: April 28, 2003



David Lender (DL-1554)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Attorneys for Defendants Citigroup, Inc., Don Goldstein, Citistreet LLC, Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, Sanford I. Weill, State Street Corporation and David A. Spina

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

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PRAGUE
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WARSAW
WASHINGTON, D.C.

DAVID J. LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

August 18, 2003

BY FEDERAL EXPRESS and BY HAND

The Honorable Sterling Johnson, Jr.
The Honorable Viktor V. Pohorelsky
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: CV-02-64-92, Carmine A. LoPresti v. Citigroup, Inc., et al.

Dear Judge Johnson and Judge Pohorelsky:

This law firm represents Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Citigroup Global Markets Inc. (formerly known as Salomon Smith Barney Inc.), Smith Barney Corporate Trust Company, and Sanford I. Weill and State Street Corporation and David A. Spina in the above referenced matter. The Court will recall that on April 28, 2003, pursuant to the Local Rules and the Rules of Judge Johnson, Defendants filed in the Court a letter notifying the Court of their service of a notice of motion to dismiss the above-referenced action, a supporting memorandum of law and a certificate reflecting our service of said papers on Plaintiff ("Defendants' Motion to Dismiss"). Defendants Motion to Dismiss is now fully briefed.

Accordingly, pursuant to the Local Rules and the Rules of Judge Johnson, Defendants have enclosed in this package a courtesy copy of Defendants' Motion to Dismiss, Plaintiff's response and Defendants' reply papers. Defendants are concurrently filing these papers with the Court and serving them as a bundled set on the parties.

WEIL, GOTSHAL & MANGES LLP

The Honorable Sterling Johnson, Jr
The Honorable Viktor V. Pohorelsky
August 18, 2003
Page 2

Further, pursuant to the Rules of Judge Johnson, Defendants hereby request *oral argument* in connection with the disposition of Defendants' Motion to Dismiss. Thank you both for your attention to this matter.

Respectfully submitted,

The signature is written in cursive and includes the initials 'DMK' at the end.

David Lender

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARMINE A. LOPRESTI,

Plaintiff,

CV-02-6492 (SJ) (VVP)

-against-

CERTIFICATE OF SERVICE

CITIGROUP, INC., et. al.

Defendants.
-----X

I, Henry M. Grubel, the attorney of record for the plaintiff in this action, certify that on July 13, 2004, I personally served the plaintiff's reply affidavit for sanctions under Rule 11 by sending copies thereof via U.S. Postal Service with proper first class postage paid therefore upon the attorneys for the defendants who have appeared in this action addressed as follows:

David J. Lender, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153
Phone: 212-310-8000

Michael H. Ference, Esq.
Sichenzia, Ross, Friedman Ference, LLP
1065 Avenue of the Americas
New York, NY 10018
Phone: 212-930-9700

David Covey, Esq.
Sedgwick, Detert, Moran & Arnold
125 Broad Street, 39th Floor
New York, NY 10004
Phone: 212-422-0202

Dated: July 13, 2004
Freeport, N.Y.



HENRY M. GRUBEL (HG-3211)
HENRY M. GRUBEL, P.C.
Attorney for Plaintiff
37 Prospect Street
Freeport, New York 11520
516-623-4100