

p.r. FILED DISTRICT COURT DISTRICT OF KANSAS

08 MAY 13 PH 3: 12

TIMOTHY M. O'BRIEN CLERK 8Y - [Signature] DEPUTY AT KANSAS CITY, KS

IN THE UNITED STATES COURT DISTRICT OF KANSAS

SAMUEL K. LIPARI, )
Plaintiff, )
v. ) Case No. 2:07-cv-02146-CM
U.S. BAN CORP and )
U.S. BANK NATIONAL ASSOCIATION, )
Defendants. )

SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Comes now the plaintiff Samuel K. Lipari and brings attention to the court and the defendants of the discovery of additional authority on Missouri law applicable to issues raised by the defendants in their second motion to dismiss. The plaintiff also brings notice of a Supreme Court of South Dakota decision recognizing an earlier decision of this court in the litigation between the parties and its effect on related contract claims.

I. CONFIDENTIAL RELATIONSHIP EXCEPTION TO FRAUD

The defendants have asserted that under Missouri law, fraud cannot be based on a fraudulent misrepresentation of the law and that the know your customer provision of the USA PATRIOT Act. The plaintiff has argued that is complaint does not allege misrepresentation of the law but instead deliberate use of the know your customer provision of the USA PATRIOT Act as a false pretext to prevent the plaintiff from entering the market for hospital supplies.

The plaintiff has discovered that Missouri law recognizes the existence of a confidential relationship bears on the issue raised by the defendants:

"The defendants concede the existence of the general rule that an action for fraud (and also an affirmative defense of fraudulent misrepresentation) cannot be based on misrepresentations of law. MeMullin v. Community Savings Service Corp, 762 S.W.2d 462, 464 (Mo.App.1988). That rule is based on the principle that everyone is presumed to know the law and is bound to take notice of the law and, therefore, in legal contemplation, cannot be deceived by representations concerning the law or permitted to say he has been misled. Fredrick v. Bensen Aircraft Corp., 436 S.W.2d 765, 770 (Mo.App.1968).

However, the defendants claim the trial court erred in its findings because of two recognized exceptions to the general rule, namely: (1) the rule does not apply when the parties stand in a confidential relationship, and (2) the rule does not apply when one party is possessed of superior knowledge of the law or claims to be possessed of such superior knowledge and takes advantage of the other party's ignorance to mislead him. While v. Mulvania, 575 S.W.2d 184, 192 (Mo. bane 1978); Mullen v. Fridley, 600 S.W.2d 125, 128 (Mo.App.1980).

Confidential relationship exception. Cases cited by the defendants enunciate the general rule, in one form or another, that a confidential relationship exists when one relies on and trusts another in

regard to handling of property and business affairs, thus creating some fiduciary obligations. *Rhoades v. Chambers*, 759 S.W.2d 398,409 (Mo.App.1988); *Estate of Brown v. Fulp*; 718 S.W.2d 588, 595 (Mo.App.1986); *Mckeehon v. Willets*, 508 S.W.2d 277,280 (Mo.App 1974). "A confidential relationship is usually found when 'the person in whom confidence is reposed had either control or influence over at least a portion of the transferor's property, finances or business affairs.' " *Kay v. Kay*, 763 S.W.2d 712, 714 (Mo.App.1989), quoting *Crane v. Centerre Bank of Columbia*, 691 S.W.2d 423, 429 (Mo.App.1985). The question presented is always whether trust is reposed and that is a fact issue to be decided by the trier of fact. *Rhoades*, 759 S.W.2d at409; *McKeehan*, 508 S.W.2d at 280."

*Lucas v. Enkvetchakul*, 812 S.W.2d 256 at pg. 260 (Mo. App. S.D., 1991).

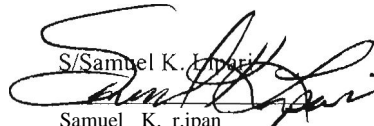
## II. APPLICATION OF USA PATRIOT ACT TO CONTRACT CLAIM

The defendants have not raised the USA PATRIOT Act as an affirmative defense to the plaintiffs contract based claims. However, the Supreme Court of South Dakota has cited this court's prior ruling in the litigation between the parties and differentiated the safe harbor provision from related contract based claims:

"Cor Trust also contends there is no private cause of action permitted under the BSA, citing *Med. Supply Chain, Inc. v. Neoforma, Inc.*, 419 FSupp2d 1316 (DKan 2006), *Martinez Colon v. San/onder Nat'l Bank*, 4 FSupp2d 53 (DPuerto Rico 1998), and *Baker v. Wilmington TruSI Co.*, 320 FSupp2d 196 (DDeI2004). Those cases are inapposite because they did not involve a former employee suing an employer for state law retaliatory discharge as a result of the employee's conduct, which was allegedly required by the BSA. Rather, those cases involved either: (1) employees who were terminated for violating the BSA; or (2) employees and customers who sued because SARs were filed against them. Tiede's suit does not involve such acts or omissions. Her claim is for the state law tort of retaliatory discharge, and she alleges a breach of the public policy duty to refrain from retaliating against employees for compliance with federal banking laws involving criminal sanctions."

*Tiede v. Cortrust Bank, N.A.*, 2008 SD 31 at pg. 13-14 (S.D. 4116/2008),2008 SD 31 (SD 2008).

Respectively submitted,



S/Samuel K. ripan  
Samuel K. ripan  
297 NE Bayview  
Lee's Summit, MO 64064  
816-365-1306

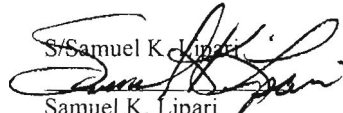
sam I@medicalsupplychain.com

Pro se

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 13th day of May, 2008, by-mail to:

Jay E. Heidrick, Shughart Thomson & Kilroy, P.e. 32 Corporate Woods, Suite 1100  
9225 Indian Creek Parkway Overland Park, Kansas 66210

  
S/Samuel K. Lipari  
Samuel K. Lipari  
*Pro se*

FILED  
U.S. DISTRICT COURT  
DISTRICT OF KANSAS

08 MAY 13 PM 3: 12

IN THE UNITED STATES COURT  
DISTRICT OF KANSAS

SAMUEL K. LIPARI,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 2:07-cv-02146-CM
	)	
U.S. BANCORP and	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
<i>Defendants.</i>	)	

TIMOTHY M. O'BRIEN  
CLERK  
BY   tja   DEPUTY  
AT KANSAS CITY, KS

**SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

Comes now the plaintiff Samuel K. Lipari and brings attention to the court and the defendants of the discovery of additional authority on Missouri law applicable to issues raised by the defendants in their second motion to dismiss. The plaintiff also brings notice of a Supreme Court of South Dakota decision recognizing an earlier decision of this court in the litigation between the parties and its effect on related contract claims.

**I. CONFIDENTIAL RELATIONSHIP EXCEPTION TO FRAUD**

The defendants have asserted that under Missouri law, fraud cannot be based on a fraudulent misrepresentation of the law and that the know your customer provision of the USA PATRIOT Act. The plaintiff has argued that is complaint does not allege misrepresentation of the law but instead deliberate use of the know your customer provision of the USA PATRIOT Act as a false pretext to prevent the plaintiff from entering the market for hospital supplies.

The plaintiff has discovered that Missouri law recognizes the existence of a confidential relationship bears on the issue raised by the defendants:

“The defendants concede the existence of the general rule that an action for fraud (and also an affirmative defense of fraudulent misrepresentation) cannot be based on misrepresentations of law. *McMullin v. Community Savings Service Corp.*, 762 S.W.2d 462, 464 (Mo.App.1988). That rule is based on the principle that everyone is presumed to know the law and is bound to take notice of the law and, therefore, in legal contemplation, cannot be deceived by representations concerning the law or permitted to say he has been misled. *Fredrick v. Bensen Aircraft Corp.*, 436 S.W.2d 765, 770 (Mo.App.1968).

However, the defendants claim the trial court erred in its findings because of two recognized exceptions to the general rule, namely: (1) the rule does not apply when the parties stand in a confidential relationship, and (2) the rule does not apply when one party is possessed of superior knowledge of the law or claims to be possessed of such superior knowledge and takes advantage of the other party's ignorance to mislead him. *White v. Mulvania*, 575 S.W.2d 184, 192 (Mo. banc 1978); *Mullen v. Fridley*, 600 S.W.2d 125, 128 (Mo.App.1980).

Confidential relationship exception. Cases cited by the defendants enunciate the general rule, in one form or another, that a confidential relationship exists when one relies on and trusts another in

regard to handling of property and business affairs, thus creating some fiduciary obligations. *Rhoades v. Chambers*, 759 S.W.2d 398, 409 (Mo.App.1988); *Estate of Brown v. Fulp*, 718 S.W.2d 588, 595 (Mo.App.1986); *McKeehan v. Wiuels*, 508 S.W.2d 277, 280 (Mo.App.1974). "A confidential relationship is usually found when 'the person in whom confidence is reposed had either control or influence over at least a portion of the transferor's property, finances or business affairs.'" *Kay v. Kay*, 763 S.W.2d 712, 714 (Mo.App.1989), quoting *Crane v. Centerre Bank of Columbia*, 691 S.W.2d 423, 429 (Mo.App.1985). The question presented is always whether trust is reposed and that is a fact issue to be decided by the trier of fact. *Rhoades*, 759 S.W.2d at 409; *McKeehan*, 508 S.W.2d at 280."

*Lucas v. Enkvetchakul*, 812 S.W.2d 256 at pg. 260 (Mo. App. S.D., 1991).

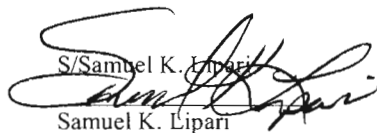
## II. APPLICATION OF USA PATRIOT ACT TO CONTRACT CLAIM

The defendants have not raised the USA PATRIOT Act as an affirmative defense to the plaintiff's contract based claims. However, the Supreme Court of South Dakota has cited this court's prior ruling in the litigation between the parties and differentiated the safe harbor provision from related contract based claims:

"CorTrust also contends there is no private cause of action permitted under the BSA, citing *Med. Supply Chain, Inc. v. Neoforma, Inc.*, 419 FSupp2d 1316 (DKan 2006), *Martinez Colon v. Santander Nat'l Bank*, 4 FSupp2d 53 (DPuerto Rico 1998), and *Baker v. Wilmington Trust Co.*, 320 FSupp2d 196 (DDel 2004). Those cases are inapposite because they did not involve a former employee suing an employer for state law retaliatory discharge as a result of the employee's conduct, which was allegedly required by the BSA. Rather, those cases involved either: (1) employees who were terminated for violating the BSA; or (2) employees and customers who sued because SARs were filed against them. Tiede's suit does not involve such acts or omissions. Her claim is for the state law tort of retaliatory discharge, and she alleges a breach of the public policy duty to refrain from retaliating against employees for compliance with federal banking laws involving criminal sanctions."

*Tiede v. Cortrust Bank, N.A.*, 2008 SD 31 at pg. 13-14 (S.D. 4/16/2008), 2008 SD 31 (SD 2008).

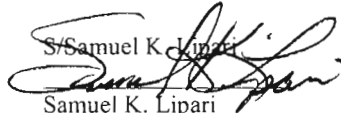
Respectively submitted,

  
S/Samuel K. Lipari  
Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, MO 64064  
816-365-1306  
saml@medicalsupplychain.com  
Pro se

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 13th day of May, 2008, by e-mail to:

Jay E. Heidrick, Shughart Thomson & Kilroy, P.C. 32 Corporate Woods, Suite 1100  
9225 Indian Creek Parkway Overland Park, Kansas 66210

  
S/ Samuel K. Lipari  
Samuel K. Lipari  
*Pro se*