

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COFACE NORTH AMERICA)	
INSURANCE COMPANY,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	FILE NO.
)	
JAMES WENDELL DAVIS, III, and)	
JOHN DOES 1-50,)	
)	
Defendants.)	
_____)	

VERIFIED COMPLAINT

COMES NOW Coface North America Insurance Company (“Plaintiff” or “Coface”), by and through undersigned counsel, and brings this action against Defendants James Wendell Davis, III (“Davis”) and John Does 1-50 (the “Doe Defendants”) (collectively, “Defendants”) as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Coface is a corporation organized and existing under the laws of the Commonwealth of Massachusetts. Coface maintains its principal place of business in the State of New Jersey.

2. Defendant Davis an individual citizen of the state of Georgia residing in Douglas County, Georgia. Upon information and belief, Davis may be served at his residence located at 9505 East Tyson Road, Villa Rica, Georgia 30180 or at his place of business located at 214 Maple Street, Villa Rica, Georgia 30180.

3. The Doe Defendants are persons and entities whose identities are not yet known and who acted in relation to and/or in concert with Davis to produce the damages described herein.

4. This Court has subject matter jurisdiction over this case pursuant to 22 U.S.C. § 1332. There is complete diversity of citizenship between Coface and Defendants. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. The Court has personal jurisdiction over Davis because he is a citizen and resident of the State of Georgia.

6. The Court has personal jurisdiction over the Doe Defendants because they conspired with Davis to perpetuate the fraudulent scheme against Coface, as more fully described in this Complaint. *See Cold Smoke Capital, LLC v. Gross*, 2012 WL 3612626, at *6 (N.D. Ga. Aug. 21, 2012) (“Georgia law recognizes ‘conspiracy jurisdiction,’ a doctrine under which jurisdiction is conferred over a non-resident defendant not by its own actions, but by the actions of a co-

conspirator. (citing *Hyperdynamics Corp. v. Southridge Capital Mgmt., LLC*, 205 Ga. App. 283 (2010)).

7. Venue is proper in this District under 28 U.S.C. § 1391.

BACKGROUND FACTS

8. Coface, together with its affiliates, is a worldwide leader in commercial trade credit insurance, helping companies manage and protect their accounts receivable against the risk of non-payment. Commercial trade credit insurance protects businesses from bad debt caused by a customer's insolvency or payment default and, thus, safeguards a business' cash flow.

9. In or around December 2018, Coface agreed to pay to one of its policyholders \$3,093,085.50 in connection with a claim made under a commercial trade credit insurance policy.

10. On December 18, 2018, a representative of Coface (the "Coface Representative") requested payment instructions from its policyholder's insurance brokers. Later that day, a representative for Coface's policyholder sent payment instructions to Coface's Representative via e-mail, including specific wire transfer information for an account in the policyholder's name held at Citibank N.A.

Defendants' Fraudulent Scheme

11. The next day, on December 19, 2018, Defendants, acting in concert and in aid of each other, impersonated Coface's policyholder (the "Imposter(s)") and sent Coface's Representative an e-mail that purported to be from the same policyholder representative and appeared to be in reply to the original December 18, 2018 message. The text of the original December 18, 2018 e-mail was included as part of the chain.

12. The December 19, 2018 e-mail stated "Please disregard the below bank details i [sic] sent you and check attached Letter of authorization [sic] with our updated bank details for payment."

13. Attached to the December 19, 2018 e-mail was a "LETTER OF AUTHORIZATION AND DECLARATION, which purported to be sent by Coface's policyholder and stated that "our bank account details which was [sic] provided for payment yesterday is undergoing its yearly audit and we cannot receive any payment with that account at the moment[.] Below is our ATTORNEY bank details for payment." The letter then set out new wiring instructions – this time to a specifically identified Wells Fargo account in the name "J. Davis – Attorney at Law IOLTA" (the "Davis IOLTA"). (The December 19, 2018 e-mail

and the accompanying “LETTER OF AUTHORIZATION AND DECLARATION” will hereafter be referred to as the “Fraudulent Transmission.”)

14. The LETTER OF AUTHORIZATION AND DECLARATION contained the logo used by the policyholder in connection with its business. The LETTER OF AUTHORIZATION AND DECLARATION also included what purported to be the signatures of the policyholder’s President/CEO as well as those of two other individuals believed to be representatives of the policyholder.

15. In response to the December 19, 2018 e-mail, Coface’s Representative requested that the “policyholder” provide Coface with a W-9 for Defendant Davis, whose IOLTA account was specifically identified in the Fraudulent Transmission. The Imposter(s) provided a W-9 in the name of “James Wendell Davis III” to Coface on December 20, 2018, which contained Davis’ business address and EIN.

16. On December 21, 2018, in reliance on the Fraudulent Transmission, Coface transferred \$3,093,085.50 by wire to the Davis IOLTA.

17. Thereafter, on December 21, 24, and 27, 2018, the Imposter(s) made inquiries with Coface’s Representative regarding the status of the wire transfer. Coface responded that the wire had been sent as directed.

18. On December 31, 2018, the Imposter(s) emailed Coface's Representative again, stating that their attorney (Davis) had informed them that the payment had been received.

19. That same day, Coface was informed that the emails with the policyholder had been compromised and that, sometime after December 18, emails were being received from and directed to an email address that was identical in all respects to the email address of the actual policyholder representative, with the exception that ".com" had been replaced with ".cf".

20. On January 1, 2019, Coface was informed that its representative had also been impersonated. Specifically, the Imposter(s) sent an email purporting to be from Coface's Representative to the actual policyholder in response to its inquiries regarding the status of payment and in a clear effort to delay discovery of their fraudulent scheme. The message stated "Please note that we have received information from our account department that due to the holiday the payment will have some delay and it's going to be received in your [*sic*] on the 4th of January."

Coface's Response Following Discovery of Defendants' Fraudulent Scheme

21. On January 1 and 2, 2019, respectively, Coface reported the incident to its bank, CitiBank, and the Federal Bureau of Investigation. Upon information and belief, the incident remains under investigation by both entities.

22. Further, Coface, through counsel, sent a cease and desist letter to Davis on January 3, 2019, informing him that Coface had discovered the fraudulent scheme and demanded that he return to Coface immediately the approximately \$3.1 million obtained by fraud. (A true and correct copy of the January 3, 2019 letter is attached hereto as Exhibit “A” and incorporated herein by reference.)

23. Coface was subsequently informed by its bank that Wells Fargo had credited \$2,540,319.30 to Coface’s account from the Davis IOLTA, leaving a balance of \$552,766.20 unaccounted for (the “Missing Funds”).

24. Accordingly, on January 7, 2019, counsel for Coface attempted to contact Davis concerning the whereabouts of the Missing Funds and left a voicemail message to that effect.

25. That evening, Davis emailed counsel for Coface in response to the voicemail. (A true and correct copy of the January 7, 2019 email is attached hereto as Exhibit “B,” and is incorporated herein by reference.) In his January 7, 2019 email, Davis indicated that the \$2,540,319.30 returned to Coface was done at his direction and that such funds constituted the “balance left in the [Davis IOLTA].” He further contended that “about \$3,500 of the money belonged to other clients.” Coface was never a client of Davis and, upon information and belief, neither was Coface’s policyholder.

26. Davis did not offer any explanation as to what had happened to the Missing Funds or why the Davis IOLTA would allegedly also be missing funds belonging to his clients. It appears Defendants have also misused or misappropriated funds belonging to Davis' clients or other persons.

27. Accordingly, on January 8, 2019, counsel for Coface sent a letter to Davis demanding a "full accounting" of the Missing Funds. Specifically, Coface demanded Davis provide it with: (1) the date(s) on which any of the Missing Funds were transferred to other accounts; (2) the amount of the Missing Funds transferred; (3) the account(s) to which the money was transferred, including routing and account numbers; (4) the purpose of such transfers; and (5) to the extent any transfers were made to accounts owned or controlled by Davis, the current account balance(s). Coface provided a deadline of 3:00 PM the following day and indicated that legal action would result from a failure to comply. (A true and correct copy of the January 8, 2019 correspondence is attached hereto as Exhibit "C," and is incorporated herein by reference.)

28. To date, Davis has refused to respond to Coface's demand for a full accounting. Further, Davis has refused to return any of the Missing Funds to Coface despite its demand for the same.

29. Coface has no knowledge as to whether any of the Missing Funds remain in the custody or control of one or more Defendants.

COUNT I – Conversion

(All Defendants)

30. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

31. Coface has a legal right of possession to a minimum of \$552,766.20 as part of a payment that was made to Defendants by way of the Davis IOLTA as a result of Defendants' fraudulent scheme.

32. Defendants have no legal claim to any of the \$3,093,085.50 transferred by Coface through fraud in the Davis IOLTA, as such funds were intended for payment to Coface's policyholder, with whom Defendants have no connection.

33. Although \$2,540,319.30 of the funds have been returned to Coface following its discovery of Defendants' fraudulent scheme, allegedly at the direction of Davis, Defendants have failed to return the Missing Funds (\$552,766.20).

34. Coface has made a demand for the return of the converted property, but the Defendants have failed to provide the Missing Funds.

35. Defendants acted willfully and maliciously in an effort to defraud Coface of millions of dollars, and may now retain possession over the Missing Funds.

36. As a result of this illegal conversion, Coface has been harmed by at least \$552,766.20.

COUNT II – Money Had and Received

(All Defendants)

37. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

38. Defendants received \$3,093,085.50 from Coface as a result of the fraudulent scheme described above.

39. Although \$2,540,319.30 of the funds have been returned to Coface following its discovery of Defendants' fraudulent scheme, allegedly at the direction of Davis, Defendants have failed to return the Missing Funds (\$552,766.20).

40. Coface has made a demand for the return of the Missing Funds, but the Defendants have refused to return the money had and received.

41. Accordingly, equity and good conscience mandate the return \$552,766.20 to Coface.

COUNT III – Common Law Fraud

(All Defendants)

42. Coface reasserts the allegations set forth above as though fully set forth herein.

43. As part of their fraudulent scheme, Defendants, acting in concert and in aid of each other, repeatedly misrepresented to Coface that they were a representative of Coface's policyholder.

44. Further, by impersonating Coface's policyholder, Defendants provided Coface with false payment instructions in an effort to have \$3,093,085.50 wired into the Davis IOLTA – an account controlled by one or more Defendants.

45. Defendants intended for Coface to rely on their misrepresentations and fraudulent communications to induce Coface into wiring funds into the Davis IOLTA.

46. Coface's reliance on Defendants' misrepresentations was reasonable under the circumstances.

47. Coface has been damaged and continues to suffer damages as a result of Defendants' actions, including but not limited to, Defendants refusal to return the Missing Funds to Coface.

COUNT IV: Violation of Georgia Civil RICO Act

(All Defendants)

48. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

49. Defendants each constitute a “person” as defined under Georgia’s RICO statute. O.C.G.A. § 16-1-3(12).

50. Defendants engaged in a pattern of racketeering activity through engaging in at least two incidents of fraud and theft, which incidents were violations of, among other things, O.C.G.A. §§ 16-14-2(5)(A)(xix), 16-14-3(5)(C), and 18 U.S.C. § 1028. Specifically, and as set forth in more detail elsewhere in this Complaint, Defendants falsely represented on several occasions that they were a representative of Coface’s policyholder and, pursuant to that misrepresentation, directed \$3,093,085.50 to be paid by wire into the Davis IOLTA, an account controlled by one or more Defendants. Defendants continually misrepresented themselves in seeking the status of the payment. Defendants made these false representations knowingly, intentionally, and with malicious intent to induce Coface to rely on these misrepresentations and remit payment to Defendants.

51. Through their fraudulent scheme, Defendants have misused, misappropriated and/or stolen \$552,766.20 belonging to Coface. Approximately

\$3,500 of money allegedly belonging to a client of Davis has also been misused, misappropriated and/or stolen through Defendants' fraud and misrepresentation, demonstrating a pattern of racketeering activity.

52. Each Defendant – including Davis – agreed to and did participate in the enterprise and the illegal activity of the enterprise directly through, among other things, the creation and transmission of emails containing misrepresentations, fraudulently directing payment of money into the Davis IOLTA without legal right to do so, and refusing to return the property of Coface and others upon demand.

53. Coface did in fact rely on Defendants' misrepresentations and remit payment as induced by Defendants through Davis.

54. The pattern of racketeering continued, as Davis advised Coface that he returned \$2,540,319.30 of the funds to Coface upon its discovery of the fraud. Nonetheless, Davis concealed the remaining \$552,766.20.

55. On information and belief, Davis intentionally misuses and misappropriates funds in furtherance of the Defendants' enterprise.

56. All of these acts occurred after July 1, 1980.

57. Defendants' continued commission of the above-referenced predicate acts related to fraud and civil theft constitute a pattern of racketeering behavior.

58. Defendants collectively were an enterprise, and each of the Defendants is individually an enterprise.

59. Davis, individually, engaged in a pattern of racketeering activity for the purpose of fraudulently obtaining, and later wrongfully retaining, the funds that belong to Coface.

60. Defendants acted willfully and maliciously and ultimately succeeded in their scheme to defraud Coface through a pattern of racketeering activity to acquire or gain control of Coface's personal property, including money.

61. As a direct and proximate result of Defendants' racketeering activity, Plaintiff suffered actual damages of at least \$552,766.20.

COUNT V: Violation of the Georgia Computer Fraud and Abuse Act,
O.C.G.A. § 16-9-93.1

(All Defendants)

62. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

63. Defendants misrepresented their affiliation with Coface's policyholder for the purpose of perpetuating their scheme to defraud Coface.

64. Doe Defendants knowingly transferred data through computer networks in Georgia for the purpose of falsely identifying themselves as Coface's policyholder to further their scheme to defraud Coface.

65. Davis knowingly transferred data through computer networks in Georgia for the purpose of falsely associating himself with Coface's policyholder to further Defendants' scheme to defraud Coface.

66. No Defendant had authorization from Coface's policyholder to impersonate or associate themselves with the policyholder.

67. Accordingly, Coface has been damaged by Defendants' violation of O.C.G.A. § 16-9-93.1 in an amount no less than \$552,766.20.

COUNT VI: Civil Conspiracy

(All Defendants)

68. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

69. An agreement and conspiracy existed and continues to exist between and among Defendants and other co-conspirators to fraudulently obtain and convert funds belonging to Coface and violate the Georgia Computer Fraud and Abuse Act, among other things.

70. Each Defendant knowingly agreed to engage, and did engage, in one or more overt acts in pursuit of the conspiracy as set forth with more particularity in this Complaint.

71. Coface has been proximately damaged by the conspiracy and Defendants' actions in furtherance thereof in an amount not less than \$552,766.20.

COUNT VII – Expenses of Litigation Pursuant to O.C.G.A. § 13-6-11

(All Defendants)

72. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

73. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Coface unnecessary trouble and expense.

74. Coface is thus entitled to its expenses of this litigation, including attorneys' fees, due to Defendants' conduct in the underlying transaction.

COUNT VIII: Preliminary Injunction

(Against Davis)

75. Coface realleges and incorporates by reference each and every allegation in the preceding paragraphs as if set forth fully herein.

76. To date, \$552,766.20 of Coface's funds that at issue in this case remain within Davis' dominion.

77. Further, upon information and belief, Davis has engaged in other fraudulent activity by misappropriating funds contained in the Davis IOLTA.

Specifically, but not exclusively, Davis has admitted to misappropriating at least \$3,500 of a client's funds.

78. Based upon Davis' penchant for concealing funds from various entities, including his own clients, extraordinary relief is warranted to prevent Davis from further concealing and transferring funds, such that his misconduct would ultimately deprive Coface from its ability to recover its funds that are wrongfully held by Davis.

79. Georgia law recognizes an exception to the general rule against allowing injunctive relief in a case for damages where injunctive relief is warranted to prevent the fraudulent concealment or transfer of funds necessary to award damages. *See Mitchell v. Hayden, Stone, Inc.*, 225 Ga. 711, 714 (1969) (approving trial court's issuance of a preliminary injunction preventing defendant from disposing of assets, including those fraudulently obtained, where defendant would have been "unable to respond to a judgment in the sum of one million dollars": "An exception to the general rule is where . . . property is obtained by fraudulent representation."); *see also Kennedy v. W.M. Sheppard Lumber Co., Inc.*, 261 Ga. 145, 146 n.2 (1991) (citing *Mitchell*).

80. Without injunctive relief, Coface will be left with no adequate remedy at law because Davis will be able to fraudulently dispose of assets and funds to prevent Coface's recovery of its property, specifically the Missing Funds.

81. Accordingly, Coface requests that the Court preliminarily enjoin Davis from disposing of any of his assets or substantial sums of money, in order that he would be able to pay an ultimate judgment of at least \$552,766.20.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Coface respectfully prays for relief as follows:

- a. Judgment in favor of Plaintiff and against Defendants with respect to all claims alleged herein;
- b. Judgment in an amount equal to three times the actual damages pursuant to O.C.G.A. 16-14-6(c);
- c. Judgment entered ordering Defendants to pay punitive damages to Plaintiff for their willful and wanton misconduct, fraud, and that entire want of care which would raise the presumption of conscious indifference to consequences;
- d. Consequential damages and interest pursuant to Plaintiff's conversion claim;

- e. Attorneys' fees and costs of investigation and litigation reasonably incurred; and
- f. An award of any such other relief as this Court deems just and proper.

Respectfully submitted this 14th day of January, 2019.

CARLTON FIELDS JORDEN BURT, P.A.

/s/ Christopher B. Freeman

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***Attorneys for Plaintiff Coface North
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VERIFICATION

STATE OF NEW JERSEY
COUNTY OF SOMERSET

Before me, the undersigned authority, personally appeared ALETHEA STENNETT, as ^{REGULATORY PRACTICE MANAGER} [TITLE] of Coface North America Insurance Company ("Coface"), who states that he/she has read the foregoing Verified Complaint and that based upon his/her personal knowledge, or upon his review of records kept in the ordinary course of business by Coface, by or from information transmitted by a person with knowledge of the events described therein, at or near the time of the events described, whose regular practice is to keep such records, and the fact that he/she has access to such records, consults them regularly, and relies upon their accuracy in the course of performing his/her duties for Coface, the allegations made in the foregoing Verified Complaint are true and correct. Further, he/she is authorized to execute and delivery this verification on behalf of Coface, as plaintiff in this action.

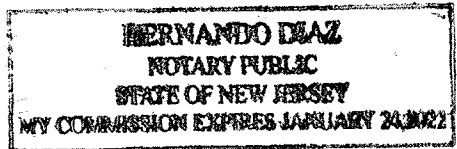
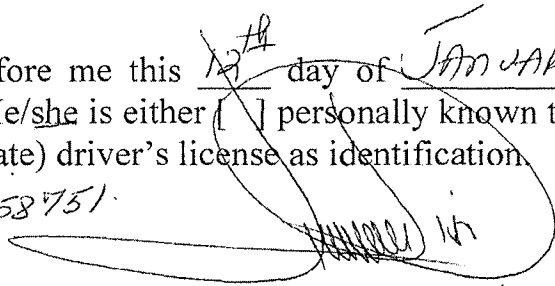


AFFIANT
Printed Name:
ALETHEA STENNETT

SWORN TO AND SUBSCRIBED before me this 12th day of JANUARY, 2019, by ALETHEA R. STENNETT. He/she is either personally known to me or produced his/her NEW JERSEY (state) driver's license as identification.

DRIVER'S LICENSE
58215 01879 58751

[STAMP/SEAL]



NOTARY PUBLIC, STATE OF NEW JERSEY
HERNANDO DIAZ COMM EXP 01/24/2022
(Print, Type or Stamp Commissioned Name of Notary Public)