

CAUSE NO. 2008-66714

**BUCKLEY, WHITE, CASTANEDA
& HOWELL, L.L.P.,**

Plaintiff,

VS.

CITIBANK, N.A.,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

61st JUDICIAL DISTRICT

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PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Buckley, White, Castaneda & Howell, L.L.P. ("BWCH"), and files this its First Amended Petition against Citibank, N.A. ("Citibank"), and for such cause of action would respectfully show unto this honorable Court as follows:

DISCOVERY CONTROL PLAN

- 1. This is a Level 2 case and is governed by Rule 190.3, Tex.R.Civ.P.

JURISDICTION AND VENUE

- 2. This action involves claims for negligence and negligent misrepresentation. Plaintiff is seeking its actual damages, pre and post judgment interest, and all costs of court. Jurisdiction is proper in Harris County, Texas because suit arises under the laws of the State of Texas and Plaintiff has suffered damages within the jurisdictional limits of the Court. Venue is proper in Harris County, Texas. Specifically, all or part of the cause of action occurred in Texas. Defendant has multiple branch locations in and around Harris County, Texas.

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PLAINTIFF

3. Plaintiff, Buckley, White, Castaneda & Howell, L.L.P., is a Limited Liability Partnership with its primary place of business located in Houston, Harris County, Texas.

DEFENDANT

4. Defendant, Citibank, N.A., is a national bank, and has appeared and answered herein. Citibank may be served by serving its attorney of record, Ms. Yasman Atasi, Winstead P.C., 600 Travis Street, Suite 1100, Houston, Texas 77002.

FACTUAL BACKGROUND

5. Plaintiff BWCH was retained by a Japanese company, Techno Design Industry, to pursue collection of \$3,600,000.00 against four (4) of its United States customers. BWCH executed an attorneys' fee contract with Techno Design Industry to represent it on a contingency basis. Prior to filing the suit, Techno Design Industry advised that one of its United States customers desired to make partial payment of the outstanding amount due and owing.

6. On October 7, 2008, BWCH received Citibank Official Check number 310086829 in the amount of \$367,500.00. BWCH deposited the Citibank Official Check into its IOLTA trust account at Sterling Bank on October 7, 2008. A BWCH employee telephoned Citibank and verified that check number 310086829 in the amount of \$367,500.00 was paid. BWCH relied on this unconditional representation in allowing a \$182,500.00 wire transfer to a supplier of Techno Design Industry in Hong Kong. On October 10, 2008, despite Citibank's unconditional representation that its Official Check number 310086829 in the amount of \$367,500.00 had been paid, Sterling Bank informed BWCH that the check had been returned as a counterfeit. Sterling Bank set off over \$100,000.00 of BWCH's clients' money in its IOLTA account and took over \$77,000.00 from BWCH's operating account and moved it into the IOLTA account thus giving

BWCH's IOLTA account a zero balance after paying the \$182,550.00 wire transfer and charging back the \$367,500.00 Citibank Official Check.

CAUSES OF ACTION
NEGLIGENCE

7. Plaintiff BWCH reasserts and incorporates herein by reference all allegations contained in paragraphs 1-6 above as if set forth herein verbatim.

8. Defendant Citibank's actions constitute negligence, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances. The negligence of Defendant Citibank was the proximate cause of Plaintiff's actual damages of at least \$182,500.00, exclusive of prejudgment and post-judgment interest, and costs of court.

NEGLIGENT
MISREPRESENTATION

9. Plaintiff BWCH reasserts and incorporates herein by reference all allegations contained in paragraphs 1-8 above as if set forth herein verbatim.

10. The cause of action for negligent misrepresentation contains the same elements as fraud except there is no knowing element contained in negligent misrepresentation. Defendant has made false and misleading material representations upon which Plaintiff BWCH has relied. Specifically, Citibank unconditionally represented and verified to BWCH that its Official Check No. 3100876829 in the amount of \$367,500.00 was paid. The representations were false when they were made to Plaintiff BWCH. The representations were material and as a direct or proximate cause of the negligent misrepresentations, Plaintiff BWCH has suffered actual

damages of at least \$182,500.00, exclusive of prejudgment and post-judgment interest, and costs of court.

EXEMPLARY DAMAGES

11. Plaintiff BWCH represents and incorporates herein by reference all allegations continued in paragraphs 1-10 above as if set forth herein verbatim.

12. Plaintiff seeks exemplary damages for the acts which were grossly negligent. The acts were in conscious indifference to the rights, safety and welfare of Plaintiff, were carried out with flagrant disregard for the rights of Plaintiff, and were with actual awareness that such action would, in all reasonable probability, result in substantial damages to Plaintiff. Plaintiff seeks exemplary damages from Defendant for the torts maliciously committed in the amount of at least \$365,000.00.

INTEREST AND COSTS

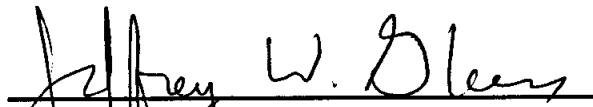
13. Plaintiff BWCH reasserts and incorporates herein by reference all allegations contained in paragraphs 1-12 above as if set forth herein verbatim.

14. Plaintiff BWCH is entitled to recover prejudgment and post-judgment interest at the highest rates allowed by law, as well as all costs of court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Buckley, White, Castaneda & Howell, L.L.P., respectfully prays that it have judgment against Defendant, Citibank, N.A., in the amounts described hereinabove, for its actual damages, exemplary damages, plus interest, collection costs, costs of court, and for such other and further relief, both general and special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

JEFFREY W. GLASS, P.C.



JEFFREY W. GLASS

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**ATTORNEY FOR PLAINTIFF,
BUCKLEY, WHITE, CASTANEDA & HOWELL, L.L.P.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been duly served upon all known counsel as referenced below by Certified Mail, Return Receipt Requested and/or facsimile transmission, on this 23 day of December, 2008.

Ms. Yasman Atasi
Winstead P.C.
600 Travis Street, Suite 1100
Houston, Texas 77002

Via Hand Delivery



JEFFREY W. GLASS

Unofficial Copy Office of Martin Burgess District Clerk