

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

MARY LOUISE GUTTMANN and LESLIE
M. ("BUD") BAKER, JR.,

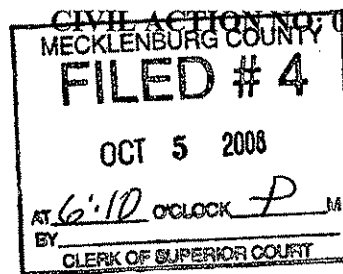
Plaintiffs,

v.

CITIGROUP, INC.

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION



COMPLAINT

Plaintiffs Mary Louise Guttman and Leslie M. ("Bud") Baker, Jr (jointly referred to herein as "Plaintiff") allege:

NATURE OF ACTION

1. Plaintiff brings this action against defendant Citigroup, Inc. ("Citigroup") to obtain a declaration that certain exclusivity provisions (the "Exclusivity Provisions") in the second full paragraph of the Letter Agreement dated September 29, 2008 (the "Letter Agreement") between Citigroup Inc. ("Citigroup") and Wachovia Corporation ("Wachovia") are invalid and unenforceable under North Carolina law. Absent prompt relief from this Court, as a result of market and public confusion caused by Citigroup's wrongful attempt to enforce the Exclusivity Provisions to thwart Wachovia's announced merger with Wells Fargo & Company ("Wells Fargo") and its misleading statements and actions in connection therewith, Wachovia faces significant negative consequences that will prevent Plaintiffs from having an opportunity to vote on the announced and proposed merger of Wachovia and Wells Fargo and that will destroy their voting franchise as a shareholder of Wachovia. This irreparable injury can only be prevented by prompt intervention by this Court in the form of (i) entry of a TRO and if necessary a

Preliminary Injunction prohibiting Citigroup from taking any action to enforce, or otherwise attempting to enforce, the invalid and unenforceable Exclusivity Provisions in the Letter Agreement.

PARTIES AND JURISDICTION

2. Plaintiff Guttman is a citizen and resident of New York, New York. Guttman is a Wachovia shareholder who owns 949 shares of Wachovia stock. Guttman has been a Wachovia shareholder at all times during the past twelve months.

3. Plaintiff Baker is a citizen and resident of North Carolina who currently owns a substantial number of shares of Wachovia stock. Baker has been a Wachovia shareholder at all times during the past twelve months.

4. Defendant Citigroup is a Delaware corporation with its principal place of business in New York.

BACKGROUND FACTS

5. On September 25, 2008, the Federal Deposit Insurance Corporation (FDIC) seized the banking assets of Washington Mutual Bank and placed it into receivership. This had the effect of eliminating its shareholder equity. Like Wachovia, Washington Mutual had significant exposure to stressed residential mortgage loans, although its capital position was not as strong as Wachovia's. On that same day, the House of Representatives failed to pass the financial "bailout" package. These two events resulted in significant downward financial pressure in the market on the price of Wachovia stock, and the perception of these developments' impact on Wachovia created uncertainty.

6. On Friday, September 26, Wachovia experienced increased pressure across its banking franchise.

7. On September 26, as a result of and in response to this pressure, Wachovia and Citigroup entered into a Confidentiality Agreement and initiated intense substantive negotiations regarding a possible acquisition of Wachovia by Citigroup. On that same date, Wachovia and Wells Fargo likewise entered a Confidentiality Agreement.

8. Both Wells Fargo and Citigroup conducted extensive due diligence investigations of Wachovia on September 27 and 28. Wachovia prepared and transmitted a draft Agreement and Plan of Merger to counsel for Wells Fargo. Wells Fargo indicated that it was interested in purchasing all of Wachovia in a stock-for-stock purchase. Representatives of Citigroup had indicated that their interest was to acquire only Wachovia's banking subsidiaries, with an FDIC guarantee and assistance.

9. On Sunday, September 28, Wells Fargo advised that it was not prepared on such a compressed timetable to offer to acquire Wachovia without substantial government assistance.

10. Uncertainty in the marketplace continued to create issues for Wachovia despite its strong capital position. Wachovia was advised by the federal banking regulators that it needed to enter into a transaction, and the FDIC had expressed an intent to provide assistance and a guarantee of certain liabilities to support a proposal from Citigroup. Accordingly, having no meaningful choice, during the early morning hours of Monday, September 29, 2008, Wachovia entered into a non-binding "agreement-in-principle" (the "Non Binding Term Sheet") that contemplated the acquisition by Citigroup of Wachovia's banking operations for approximately \$2.1 billion, or \$1 per Wachovia share (the "Proposed Citi Transaction"). Based on the conditions and circumstances at that time, the Wachovia board of directors voted to move forward with the Proposed Citi Transaction.

11. The terms of the Proposed Citi Transaction included the following:

(a) Citigroup would purchase the stock of Wachovia's bank subsidiaries "and other assets to be mutually agreed" for \$2.16 billion in cash and/or stock representing a value of approximately \$1 per share of Wachovia stock and the assumption of approximately \$53.2 billion of Wachovia's debt,; and

(b) The FDIC, pursuant to its authority under Section 13 of the FDIA (known as the "systemic risk" provision), would provide Citigroup with loss protection, so that its losses on Wachovia's \$312 billion loan portfolio would not exceed \$42 billion.

12. The Proposed Citi Transaction did not include Citigroup's acquisition of Wachovia's retail securities business (a significant portion of which is operated out of bank branches) or certain of its investment advisory businesses such as its mutual fund complex, but, rather, required the extraordinarily complicated effort of attempting to separate Wachovia's fully integrated operations.

13. Acting pursuant to its authority under Section 13 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1832, the FDIC invoked the "systemic risk" provision of the FDIA, and committed to use taxpayer money to limit Citigroup's losses on Wachovia's \$312 billion loan portfolio to \$42 billion if the transaction was consummated.

14. Wachovia entered into the Non Binding Term Sheet with respect to the Proposed Citi Transaction believing it had no other meaningful choice. This Term Sheet is not a binding agreement but instead required the parties to negotiate definitive agreements setting forth the terms under which the banking assets would be acquired. Such a definitive agreement would have required the approval of Wachovia's Board and its shareholders to become effective.

15. In addition, shortly before the public announcement of the transaction on the morning of Monday, September 29, Citigroup required Wachovia to enter into a Letter

Agreement with Wachovia, which purports, among other things, to prevent Wachovia from considering or entering into another agreement that would result in the acquisition of more than 15% of the equity or assets of Wachovia. The Letter Agreement, which has been wrongfully disclosed to the public by Citigroup, is attached hereto as Exhibit A and incorporated by reference herein. Citigroup has publicly asserted that this Agreement prohibits Wachovia from accepting a superior proposal. Although Wachovia attempted to make revisions to that Agreement when it was presented by Citigroup (including a provision requiring the parties to act reasonably and in good faith), Citigroup rejected the proposed revisions suggested by Wachovia. Again, having no meaningful choice, Wachovia executed the Letter Agreement.

16. By its terms, the Letter Agreement expires at 12:00 a.m. on Monday, October 6, 2008.

17. The Proposed Citi Transaction was announced to the public on September 29, 2008. Wachovia's shares opened on September 29 at slightly under \$2 per share and closed at slightly over \$2 per share.

18. The Letter Agreement notes that the Non-Binding Term Sheet is, in fact, "non-binding" and that Citigroup's offer constitutes only a "proposed transaction."

19. In addition, on September 29, 2008, Citigroup and Wachovia entered into a binding confidentiality agreement prohibiting each party, without the written consent of the other party, from disclosing to any other person the terms, conditions or other facts with respect to the possible transaction between the two parties (the "Confidentiality Agreement").

20. Between September 29 and October 2, 2008, Wachovia worked tirelessly around the clock to reach a final and binding agreement with Citigroup. The inherent nature of Wachovia's fully integrated organization caused the negotiations over how to split apart the

organization to be exceedingly complex. These negotiations proved extremely complicated and difficult. Citigroup insisted on certain terms and conditions that were inconsistent with the terms and conditions set forth in the Non-Binding Term Sheet, including efforts to leave with Wachovia liabilities associated with the assets Citigroup was acquiring. The likelihood of finalizing a definitive agreement with Citigroup was uncertain and numerous issues remained undecided.

21. Wachovia was under tremendous pressure from federal regulators and Citigroup to conclude a transaction with Citigroup by executing definitive agreements no later than October 6.

22. During the evening of October 2, 2008, Wachovia received a call from the FDIC advising that Wells Fargo would be making a proposal to Wachovia; the FDIC encouraged Wachovia to carefully consider this proposal. Wells Fargo presented Wachovia with an executed Agreement and Plan of Merger (the "Merger Agreement") for a stock-for-stock merger transaction on terms far superior to the Proposed Citi Transaction. In particular, the Wells Fargo Proposal (i) provided a higher offer per share of Wachovia stock (based on Wells Fargo's closing stock price on October 2, the offer represents a value of \$7 per share of Wachovia stock); (ii) offered to acquire Wachovia in its entirety; and (iii) did not contemplate or require or involve any taxpayer funding through the FDIC or any other governmental entity.

23. After execution of the Letter Agreement and prior to receipt of the Merger Agreement referenced in the prior paragraph, Wachovia did not provide any documents or information to Wells Fargo or engage in any discussions or negotiations, or other communications, with Wells Fargo.

24. Wells Fargo, in presenting its unsolicited proposal to Wachovia, indicated to Wachovia that it would go public with the proposal on the morning of Friday, October 3.

25. During the night of October 2-3, upon receiving the Merger Agreement from Wells Fargo, the Wachovia Board of Directors met and evaluated the Proposal in accordance with their fiduciary obligations. The Board determined that the Wells Fargo Agreement contained terms that were significantly more advantageous to Wachovia shareholders than the terms of the Proposed Citi Transaction, and that it was in the best interests of the shareholders, including Plaintiffs, to accept the Wells Fargo Proposal rather than risk its withdrawal.

26. Wachovia then executed the Merger Agreement early on the morning of October 3. The merger agreement was announced prior to the opening of the markets that day.

27. Shortly after the board meeting concluded, Wachovia and the FDIC contacted Citigroup's Chief Executive Officer, Vikram Pandit, to inform him that Wachovia had entered into the Merger Agreement with Wells Fargo.

28. Pandit has incorrectly stated that Citigroup and Wachovia "have nearly completed definitive agreements needed to consummate" the transaction proposed by Citigroup and asserts that the Letter Agreement prevents Wachovia from discussing, negotiating or entering into the Wachovia/Wells Fargo Merger.

29. Citigroup contends that the Letter Agreement prevents Wachovia from considering or negotiating a proposal, like the Wachovia/Wells Fargo Merger, that offers terms that are better for both Wachovia shareholders and United States taxpayers than the terms of the Proposed Citi Transaction. In his letter, Pandit stated that Citigroup would initiate litigation to prevent Wachovia from proceeding with the superior Wachovia/Wells Fargo Merger transaction, which Citigroup has in fact done.

30. Citigroup made similarly threatening announcements in the press, including threats to sue Wells Fargo for tortious interference, in an attempt to dissuade Wells Fargo from consummating the merger with Wachovia.

31. On October 3, 2008, Citigroup disclosed the Letter Agreement to the public via fax from its counsel to Bloomberg, where it was posted on Wachovia's page with a verification that the source of the document was Citigroup. This conduct is a blatant and material violation of a confidentiality agreement between Wachovia and Citigroup and is a further effort to prevent the Wachovia/Wells Fargo Merger.

32. On the afternoon of October 4, 2008, Citigroup served upon Wachovia and Wells Fargo a Verified Complaint and proposed Order to Show Cause, Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery in connection with a yet-to-be filed New York state court action. On October 4, 2008, a New York State Supreme Court justice entered an order extending the exclusivity period in the Letter Agreement. However, the justice declined to order specific performance of that agreement, and did not address its validity.

33. Citigroup has made false public statements characterizing the order entered by the New York State Judge as precluding the merger of Wachovia and Wells Fargo, when in fact it simply extends the exclusivity period under the Letter Agreement.

34. The actions taken by Citigroup will create market confusion and turmoil regarding Wachovia and the status of its merger with Wells Fargo, raising the spectre of regulatory action. Citigroup, having expressed no interest in acquiring Wachovia as a whole, has taken actions and made statements in an apparent attempt to create sufficient market turmoil which it hopes will result in Wachovia being placed into receivership so that it can attempt to acquire its banking assets cheaply directly from the FDIC.

35. Absent an immediate declaration from this Court establishing that the Exclusivity Provisions are invalid under North Carolina law, Plaintiffs will suffer irreparable injury.

36. Accordingly, Plaintiffs are entitled to a declaration that (i) the Letter Agreement relied upon by Citigroup is invalid and unenforceable and that the members of the Wachovia board are not precluded from exercising their fiduciary duties to the Wachovia shareholders, and (ii) entry of a TRO restraining Citigroup from seeking to enforce the exclusivity provisions in the Letter Agreement.

37. Unless this Court enters an order today informing the public that the exclusivity provisions in the Letter Agreement are invalid and unenforceable, Wachovia faces significant negative consequences. If those consequences materialize, Plaintiffs will suffer irreparable injury and suffer the loss of their voting franchise.

CLAIM FOR RELIEF

(declaration that Exclusivity Provisions not enforceable)

38. Plaintiffs incorporate herein by reference and realleges the allegations of each of the preceding paragraphs.

39. Under North Carolina Rule of Civil Procedure 57 and G.S. §1-253, this Court is empowered to enter judgments declaring rights, status, and other legal relations, whether or not further relief is or could be claimed.

40. As alleged above, Citigroup contends the exclusivity provisions in the Letter Agreement restrict the Wachovia Board of Directors from considering, negotiating or accepting proposals for merger or acquisition even if such proposals are more advantageous to the Wachovia shareholders than the Proposed Citi Transaction.

41. The Wells Fargo Proposal is more advantageous to the Wachovia shareholders than the Proposed Citi Transaction. It represents a value to the Wachovia shareholders of \$15 billion, as opposed the Proposed Citi Transaction, which represents a value to the Wachovia shareholders of less than \$5 billion. The Wells Fargo Proposal, which does not require any government assistance or guarantee, is also of benefit to Plaintiffs and others as taxpayers.

42. If (as Citigroup contends) the Letter Agreement restricts the Wachovia Board of Directors from considering, negotiating or approving the Wells Fargo Proposal—or any other transaction that is superior to the Proposed Citi Transaction—in accordance with the directors' fiduciary obligations, then the Letter Agreement is invalid and unenforceable under North Carolina law because it would tie the directors' hands and require them to breach their statutory (fiduciary) duties to Wachovia under G.S. §55-8-30.

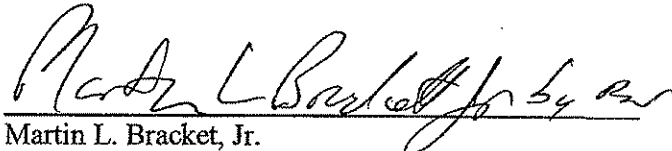
WHEREFORE, Plaintiff prays that this Court:

1. Enter a declaratory judgment that the Exclusivity Provisions in the Letter Agreement are invalid and unenforceable and do not preclude the directors of Wachovia from exercising their statutory (fiduciary) duties;

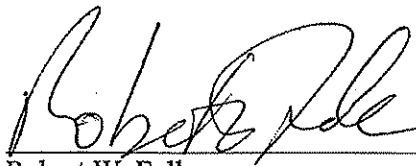
2. Enter a TRO restraining Citigroup from taking any actions to enforce, or otherwise attempting to enforce, the Exclusivity Provisions in the Letter Agreement; and

2. Award such other relief, damages, attorneys' fees, and costs as may be just and proper.

This 5th day of October, 2008.



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