

NORTH CAROLINA
MECKLENBURG COUNTY

FILED

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT

MECKLENBURG COUNTY, N.C. No.: 08 CVS 2635

BY _____

IRVING EHRENHAUS, On Behalf Of Himself And
All Others Similarly Situated,

Plaintiff,

v.

JOHN D. BAKER, II, PETER C. BROWNING,
JOHN T. CASTEEN, III, JERRY GITT, WILLIAM
H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM, DONALD
M. JAMES, MACKEY J. MCDONALD, JOSEPH
NEUBAUER, TIMOTHY D. PROCTOR, ERNEST
S. RADY, VAN L. RICHEY, RUTH G. SHAW,
LANTY L. SMITH, G. KENNEDY THOMPSON,
DONA DAVIS YOUNG, WACHOVIA
CORPORATION, and WELLS FARGO &
COMPANY,

Defendants.

COMPLAINT FOR BREACH OF
FIDUCIARY DUTY

(CLASS ACTION)

Plaintiff, Irving Ehrenhaus, alleges the following on information and belief, except as to allegations specifically pertaining to plaintiff and his counsel, which are based on personal knowledge.

NATURE OF THE CASE

1. This is a class action on behalf of the public stockholders of Wachovia Corporation ("Wachovia" or the "Company") in connection with a proposed acquisition of Wachovia by Wells Fargo & Company ("Wells Fargo") in breach of defendants' fiduciary duties (the "Merger"). Plaintiff alleges that he and the other public stockholders of the Company's

common stock are entitled to enjoin the Merger, or alternatively, to recover damages in the event the Merger is consummated. Plaintiff alleges that the Merger provides Wachovia's public shareholders with inadequate consideration and is the product of a severely flawed sales process. Wachovia's Board of Directors (the "Board") has essentially disenfranchised the voters of Wachovia and locked up the vote in favor of the Merger when, in connection with the Merger Agreement, Wachovia and Wells Fargo entered into a share exchange agreement under which Wachovia is issuing Wells Fargo preferred stock that votes as a single class with Wachovia's common stock representing 39.9 percent of Wachovia's voting power.

THE PARTIES

2. Plaintiff is, and has been at all relevant times, the owner of shares of Wachovia common stock.

3. Defendant Wachovia is a North Carolina corporation with its principal executive office located in Charlotte, North Carolina. Wachovia, a financial holding company, provides commercial and retail banking services, and other financial services in the United States and internationally. Its deposit products include savings, NOW, money market, and interest-bearing checking accounts, as well as non-interest-bearing deposits and other consumer time deposits. The Company's loan portfolio comprises commercial, financial, and agricultural loans; real estate construction loans; lease financing; and real estate secured loans; student loans; and installment loans. Wachovia also offers corporate lending and commercial leasing services. In addition, the Company provides investment banking services, such as equities, merger and acquisition advisory services; provision of interest rate, leveraged finance, high grade, structured, and nondollar products; and investing in private equity securities, mezzanine securities, and funds sponsored by select private equity and venture capital groups. Further, it provides treasury

management products and services, as well as international trade services; and engages in domestic and international correspondent banking operations. Additionally, Wachovia offers wealth management services comprising private banking, personal trust, investment advisory services, charitable services, financial planning, and insurance brokerage; and capital management products and services consisting of stocks, bonds, mutual funds, fixed and variable annuities, reinsurance, asset management accounts, and other investment products and services, and asset management services comprising mutual funds, customized advisory services, and defined benefit and defined contribution retirement services.

4. Defendant Wells Fargo, through its subsidiaries, operates as a financial services company in the United States. It operates in three segments: Community Banking, Wholesale Banking, and Wells Fargo Financial. The Community Banking segment offers deposit products, including checking accounts, savings deposits, market rate accounts, retirement accounts, time deposits, and debit cards; and loan products comprising lines of credit, equity lines and loans, equipment and transportation loans, education loans, residential mortgage loans, and credit cards. This segment also provides receivables and inventory financing, equipment leases, real estate financing, small business financing, venture capital financing, cash management, payroll services, retirement plans, health savings accounts, merchant payment processing, and securities brokerage. Its Wholesale Banking segment provides a range of commercial, corporate, and real estate banking products and services, including commercial loans and lines of credit, letters of credit, asset-based lending, equipment leasing, mezzanine financing, high-yield debt, international trade facilities, foreign exchange services, treasury management, investment management, institutional fixed income sales, interest rate, commodity and equity risk management, online products, insurance, investment banking, and mortgage brokerage services.

Its Wells Fargo Financial segment comprises consumer finance operations that make direct consumer and real estate loans to individuals and purchase sales finance contracts from retail merchants; and auto finance operations, which purchase sales finance contracts directly from auto dealers and make loans secured by autos. This segment also provides credit cards and lease, and other commercial financing services. As of December 31, 2007, Wells Fargo operated 5,964 branches and 6,900 ATMs. Wells Fargo was founded in 1852 and is headquartered in San Francisco, California.

5. Defendant John D. Baker, II is, and at all relevant times has been, a Director of the Company.

6. Defendant Peter C. Browning is, and at all relevant times has been, a Director of the Company.

7. Defendant John T. Casteen, III is, and at all relevant times has been, a Director of the Company.

8. Defendant Jerry Gitt is, and at all relevant times has been, a Director of the Company.

9. Defendant William H. Goodwin, Jr. is, and at all relevant times has been, a Director of the Company.

10. Defendant Maryellen C. Herringer is, and at all relevant times has been, a Director of the Company.

11. Defendant Robert A. Ingram is, and at all relevant times has been, a Director of the Company.

12. Defendant Donald M. James is, and at all relevant times has been, a Director of the Company.

13. Defendant Mackey J. McDonald is, and at all relevant times has been, a Director of the Company.

14. Defendant Joseph Neubauer is, and at all relevant times has been, a Director of the Company.

15. Defendant Timothy D. Proctor is, and at all relevant times has been, a Director of the Company.

16. Defendant Ernest S. Rady is, and at all relevant times has been, a Director of the Company. He was also previously Chairman of Dealer Finance business and California banking business of the Company, from March 2006 to March 2007.

17. Defendant Van L. Richey is, and at all relevant times has been, a Director of the Company.

18. Defendant Ruth G. Shaw is, and at all relevant times has been, a Director of the Company.

19. Defendant Lanty L. Smith is, and at all relevant times has been, a Director of the Company.

20. Defendant G. Kennedy Thompson is, and at all relevant times has been, Chairman of the Board, President, and Chief Executive Officer of the Company.

21. Defendant Dona Davis Young is, and at all relevant times has been, a Director of the Company.

22. The Defendants described in paragraphs 5-21 are collectively referred to herein as the "Individual Defendants."

23. The Individual Defendants, as officers and/or directors, have stood in a fiduciary position relative to the Company's public shareholders and owed the public shareholders of the

Company the highest duties of good faith, fair dealing, due care, loyalty, and full and candid disclosure.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, on behalf of himself and all other stockholders of the Company and their successors in interest, who are or will be threatened with injury arising from defendants' actions as more fully described herein (the "Class"). Excluded from the Class are the defendants herein, members of their immediate families, and any subsidiary, firm, trust, corporation, or other entity related to or affiliated with any of the defendants.

25. This action is properly maintainable as a class action for the following reasons:

(a) the Class is so numerous that joinder of all members is impracticable.

While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, as of October 6, 2008, there were 2.41 billion shares of Wachovia common stock outstanding. The holders of these shares are believed to be geographically dispersed throughout the United States. The Company's common stock is listed and actively traded on the New York Stock Exchange under the ticker symbol "WB";

(b) there are questions of law and fact which are common to members of the Class and which predominate over any questions affecting only individual members. The common questions include, inter alia, the following:

(i) whether any of the Individual Defendants, as directors and/or officers of the Company and/or as significant shareholders of the Company, have breached their fiduciary duties owed to plaintiff and the other members of the Class, including their duties of loyalty, due care, and candor; and

- (ii) whether plaintiff and the other members of the Class would be irreparably damaged were defendants not enjoined from the conduct described herein;
- (c) the claims of plaintiff are typical of the claims of the other members of the Class, and plaintiff has no interests that are adverse or antagonistic to the interests of the Class;
- (d) the plaintiff is committed to prosecuting this action and has retained counsel competent and experienced in litigation of this nature. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;
- (e) the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and
- (f) defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

26. On October 3, 2008, Wachovia announced that it had entered into a definitive agreement (the “Merger Agreement”) to be acquired by Wells Fargo, in a Merger for approximately \$15.1 billion in equity value, under the terms of which Wachovia’s public stockholders will receive 0.1991 shares of Wells Fargo common stock in exchange for each share of Wachovia common stock that they own, valued at approximately \$7 per share of Wachovia common stock.

27. Wells Fargo's CEO, John Stumpf, in the Company's press release regarding the Merger issued on October 3, 2008, stated that Wells Fargo would endeavor to retain Wachovia's management and employees: "We know this has been a time of great uncertainty for Wachovia team members and many of its customers as their company has gone through a very painful and challenging time of unprecedented change in our industry. We want to assure them we'll do everything we can to make the integration of our operations as smooth as possible. An important measure of success for this integration will be our ability to retain as many of the talented Wachovia team members as possible so they can continue to provide outstanding service and financial advice to their customers and continue their careers with Wells Fargo."

28. Additionally, in connection with the Merger Agreement, Wachovia and Wells Fargo entered into a share exchange agreement under which Wachovia is issuing Wells Fargo preferred stock that votes as a single class with Wachovia's common stock and represents 39.9 percent of Wachovia's voting power.

29. Prior to the execution of the Merger Agreement, Wachovia had an agreement-in-principle with Citigroup Inc. ("Citigroup") in which Citigroup would acquire Wachovia's banking operations for \$2.16 billion in a deal hastily arranged by the Federal Deposit Insurance Corp. on Sept. 29, providing shareholders with approximately \$1 per share in value (Wachovia would have remained a public company and its shares would also have remained outstanding). Citigroup, whose deal involves substantial government assistance, has since indicated it is willing to increase the price and expand the amount of Wachovia's operations it is willing to buy.

30. After the Merger was announced, Citigroup requested and received a temporary restraining order (a "TRO") to prevent the Merger from being consummated from a New York

State lower court based on Citigroup's assertion that it had an "exclusivity agreement" which Wachovia had signed when it agreed to sell its banking business to Citigroup for \$2.1 billion on Saturday October 4, 2008. On Sunday, October 5, 2008, that TRO was overturned by a New York State appellate court.

31. According to an article published in The Wall Street Journal on Monday, October 6, 2008, "officials from the Federal Reserve were pushing for Citigroup Inc. and Wells Fargo & Co. to reach a compromise ... Under the leading plan being discussed Sunday night, Citigroup and Wells Fargo would divvy up Wachovia's network of 3,346 branches along geographic lines, with Citigroup getting Wachovia's branches in the Northeast and mid-Atlantic regions and Wells Fargo taking those in the Southeast and California, according to people familiar with the talks. Wells Fargo would also take over Wachovia's asset-management and brokerage units." No such deal has yet been reached, however.

32. A further wrinkle in Citigroup's claims that it had an exclusivity agreement results from the fact that under Section 126(c) of the Emergency Economic Stabilization Act of 2008 (the "Bailout"), passed by the U.S. House of Representatives and Senate and signed into law by President Bush on October 3, 2008, contracts involving pending acquisitions in which the FDIC is involved might not be enforceable. Since Citigroup's agreement with Wachovia was brokered by the FDIC, this may mean that the exclusivity agreement, if any, is nullified.

33. Indeed, a Mecklenburg Superior Court Judge has already issued, on October 6, 2008, a TRO to prevent Citigroup from enforcing the exclusivity agreement.

34. In violation of their fiduciary duties, the Board has impermissibly circumvented the voting process and rendered the vote on the Merger essentially redundant, thereby coercing Wachovia's shareholders to accept the Merger. The unaffiliated Wachovia shareholders have

been effectively disenfranchised, in that over 40% of the vote will almost certainly go in favor of the Merger (since Wachovia has issued or will issue before the Merger vote preferred shares that provide Wells Fargo with 39.9% of the vote, combined with the fact that the directors and officers of Wachovia hold 2.48% of the Company's common stock) and there appears to be no protection for those unaffiliated shareholders, such as a requirement that a majority of the unaffiliated shareholders vote in favor of the Merger. The Board may believe that the Merger is the best possible transaction for Wachovia's unaffiliated shareholders, but, under the current structure, any shareholder vote would be robbed of its effectiveness by the impermissible ceding of effective voting control that has predetermined the outcome of the Merger vote without regard to its merits.

35. Additionally, by contracting to issue preferred shares carrying 39.9% of the Wachovia shareholder vote to Wells Fargo, the Individual Defendants have, for all practical purposes, precluded any competing bid from being accepted by the Company without the consent of Wells Fargo, including any possible topping bid by Citigroup.

36. The 0.1991 shares of Wells Fargo common stock in exchange for each share of Wachovia common stock, valued at approximately \$7 per share of Wachovia common stock, to be provided to Class members pursuant to the Merger is unfair and inadequate because, among other things:

(a) the \$7 per share valuation of Wachovia common stock actually offers a \$3 per share discount to the Company's closing price of \$10 per share on September 26, 2008, which was prior to the initial failure in the U.S. House of Representatives on September 29, 2008 of the Bailout, as first proposed, that caused a severe and likely exaggerated sector-wide downturn in financial stock trading prices;

(b) the U.S. Senate and House of Representatives, on the second vote, did pass into law the \$700 billion Bailout on October 3, 2008, under which the federal government will purchase illiquid assets of companies such as Wachovia; thus, the Bailout should make Wachovia much more valuable in that its most poorly performing assets will likely be purchased by the government and its other remaining valuable assets, most notably its \$339 billion in Wachovia deposits and its network of more than 3,300 branches throughout the country, would solidify Wells Fargo (or any other potential acquirer) as being in the top tier of U.S. retail banking; and

(c) further, as reported in BusinessWeek on October 6, 2008, in an article entitled *Wachovia: A Split May Boost the Banking Industry* concerning the Merger and Citigroup's TRO, "Wachovia CEO Robert Steel has argued to Wall Street [that] only one-quarter of the bank's loan portfolio consists of the troubled mortgages made in its Golden West subsidiary. Excluding those mortgages—admittedly, no small feat—and a smaller portfolio of troubled construction loans, the majority of Wachovia's portfolio consists of old-fashioned consumer loans to customers with whom the bank has generally had a long relationship."

COUNT I

BREACH OF FIDUCIARY DUTY

37. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

38. The Merger is both coercive and preclusive. The Merger is not conditioned on a majority of the unaffiliated shares voting in its favor, leaving the Company's shareholders with no meaningful choice whatsoever in the face of a bloc controlling over 40% of the Company's vote locked up in favor of the Merger. Defendant Wells Fargo and the Individual Defendants,

who collectively wield a working control of the Company's stock can also defeat any competing bid and, in fact, have been opposing Citigroup's attempts to upset the Merger.

39. The unfairness of the terms of the Merger is compounded by the gross disparity between the knowledge and information possessed by the Individual Defendants by virtue of their positions of control of Wachovia and that possessed by the Company's public shareholders.

40. The inherent unfairness in the Merger's consideration is further manifest in the uncertainty and inadequacy of the purchase price.

41. By reason of the foregoing, the defendants have breached, and will continue to breach, their fiduciary duties owed to the public shareholders of Wachovia.

42. Plaintiff and the Class will suffer irreparable harm unless defendants are enjoined from breaching their fiduciary duties as set forth herein.

43. Plaintiff and the Class have been and will be damaged in that they are not and will not receive a fair proportion of the value of Wachovia's assets and business and will be prevented from benefitting from a value-maximizing transaction.

44. Plaintiff and the other Class members are immediately threatened by the acts and transactions complained of herein.

45. Plaintiff lacks an adequate remedy at law.

COUNT II

AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY

(Against Wells Fargo)

46. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

47. Because they were fiduciaries of the Company, the Individual Defendants owed duties of due care, undivided loyalty, good faith, and truthful disclosure. The Individual Defendants violated and breached these duties.

48. With the knowledge, approval, and participation of each of the Individual Defendants, as alleged herein, defendant Wells Fargo was able to, and in fact did, knowingly render aid and assistance to the Individual Defendants in their breaches of their fiduciary duties. Wells Fargo did so knowingly, or but for its gross negligence would have known, of the Individual Defendants' fiduciary breaches.

49. Wells Fargo also has obtained 39.9% of the Company's voting power, through which it intends to vote in favor the Merger, thereby rendering the vote of the Company's unaffiliated shareholders largely moot and, by withholding its support, precluding and deterring any potential opposing bid.

50. Wells Fargo has tentatively agreed to Wachovia's senior management's continued employment, thereby assuring the Board and management's agreement and cooperation in, and to, a transaction which will not maximize value for Wachovia's shareholders. Wells Fargo has so agreed to enable it to acquire Wachovia at the lowest possible price although its dealings with Wachovia's Board and management have necessarily injected personal motives into the

negotiations and compromised the undivided loyalty which fiduciaries owe to Wachovia's public shareholders.

51. As a direct and proximate result of the aiding and abetting the Individual Defendants' breaches of their fiduciary duties by Wells Fargo, plaintiff and the Class have sustained, and will continue to sustain, substantial harm.

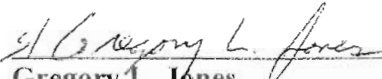
PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment, as follows:

- (1) declaring this to be a proper class action and certifying plaintiff as the Class representative and plaintiff's counsel as Class counsel;
- (2) enjoining, preliminarily and permanently, the Merger complained of herein;
- (3) to the extent, if any, that the Merger is consummated prior to the entry of this Court's final judgment, rescinding the same or awarding the Class rescissory damages;
- (4) directing that defendants pay to plaintiff and the other members of the Class all damages caused to them and account for all profits and any special benefits obtained as a result of their wrongful conduct;
- (5) awarding plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of plaintiff's attorneys and expert(s); and
- (6) granting such other further relief as the Court may deem just and proper.

Dated: October 7, 2008

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