

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
EMBASSY OF THE FEDERAL)		
REPUBLIC OF NIGERIA)		
3519 International Court, NW)		
Washington, DC 20008,)		
)		
Plaintiff,)		
vs.)	Civil Action No.	
)		
EPHRAIM EMEKA UGWUONYE)	PLAINTIFF DEMANDS A	
850 Sligo Avenue, Suite 400)	TRIAL BY JURY	
Silver Spring, MD 20910-4703,)		
)		
BRUCE E. FEIN)		
850 Sligo Avenue, Suite 400)		
Silver Spring, MD 20910-4703,)		
)		
MARVIN E. PERLIS)		
850 Sligo Avenue, Suite 400)		
Silver Spring, MD 20910-4703,)		
)		
ECU LAW GROUP)		
850 Sligo Avenue, Suite 400)		
Silver Spring, MD 20910-4703, and)		
)		
ECU ASSOCIATES, P.C.)		
850 Sligo Avenue, Suite 400)		
Silver Spring, MD 20910-4703,)		
)		
Defendants.)		
_____)	

COMPLAINT

Plaintiff Embassy of the Federal Republic of Nigeria (“Embassy”), through its Ambassador Adebowale Ibidapo Adefuye, and by its undersigned attorney, alleges the following for its complaint:

NATURE OF ACTION

1. Ephraim Emeka Ugwuonye (“Ugwuonye”), both individually and on behalf of the other Defendants, represented the Embassy in several real estate transactions. In one of the transactions, the Internal Revenue Service (“IRS”) withheld \$1.55 million in property taxes.

Ugwuonye obtained a full refund of the taxes from the IRS in December 2007 and promised to deliver the funds to the Embassy promptly after the refund check was negotiated. However, after depositing the funds into his account, Ugwuonye refused to deliver the money to the Embassy. Ugwuonye did not claim that the Embassy failed to pay him for his services in the real estate transactions. Rather, Ugwuonye unilaterally decided that he would keep the funds as payment for other services he allegedly rendered to the Government of the Federal Republic of Nigeria (“GON”) in matters unrelated to his engagement by the Embassy and the Embassy’s activities. The Embassy disputed Ugwuonye’s misappropriation of the funds and requested information concerning the services Ugwuonye allegedly performed for the GON. Ugwuonye refused to provide the requested information, and he refused return the funds.

PARTIES

2. The Embassy is the permanent diplomatic mission from and represents Nigeria in the United States. The Embassy’s place of business is located at 3519 International Court, NW, Washington, DC 20008.

3. Ugwuonye practices law in the District of Columbia, Maryland, New York and other jurisdictions. He is admitted to the Bars of the District of Columbia, Maryland, and New York. His business addresses include 850 Sligo Avenue, Suite 400, Silver Spring, MD 20910-4703. Ugwuonye’s current or recent business addresses also include Chevy Chase Pavilion, 5335 Wisconsin Avenue, NW, Suite 720, Washington, DC 20015. On information and belief, Ugwuonye resides in Maryland.

4. Bruce E. Fein (“Fein”) practices law in the District of Columbia, Maryland, New York and other jurisdictions. He is admitted to the Bar of the District of Columbia. His business addresses include 850 Sligo Avenue, Suite 400, Silver Spring, MD 20910-4703. Fein’s current or recent business addresses also include Chevy Chase Pavilion, 5335 Wisconsin Avenue, NW, Suite 720, Washington, DC 20015; 910 17th Street, NW, Suite 800, Washington, DC 20006; and 1025

Connecticut Ave., NW, Suite 216, Washington, DC 20036-5425. On information and belief, Fein resides in Florida.

5. Marvin E. Perlis (“Perlis”) practices law in the District of Columbia, Maryland, and other jurisdictions. He is admitted to the Bar of Maryland. His business addresses include 850 Sligo Avenue, Suite 400, Silver Spring, MD 20910-4703. Perlis’ current or recent business addresses also include Chevy Chase Pavilion, 5335 Wisconsin Avenue, NW, Suite 720, Washington, DC 20015. On information and belief, Perlis resides in Maryland.

6. ECU Law Group is a law partnership or similar professional company or association. ECU Law Group practices law in Maryland, the District of Columbia and possibly other jurisdictions. ECU Law Group’s business addresses include 850 Sligo Avenue, Suite 400, Silver Spring, MD 20910-4703. ECU Law Group’s current or recent business addresses also include Chevy Chase Pavilion, 5335 Wisconsin Avenue, NW, Suite 720, Washington, DC 20015. Ugwuonye, Perlis, and Fein are attorneys with and members of the ECU Law Group. They advertise their affiliation with ECU Law Group on the Internet at <http://www.eculaw.com> (last visited on November 9, 2010). All references herein to ECU Law Group include Ugwuonye, Perlis, and Fein as attorneys with and members of ECU Law Group.

7. ECU Associates, P.C. (a/k/a ECU & Associates, P.C.) (“ECU Associates”) is a Maryland professional corporation. ECU Associates practices law in Maryland, the District of Columbia and possibly other jurisdictions. Its business addresses include 850 Sligo Avenue, Suite 400, Silver Spring, MD 20910-4703. ECU Associates’ current or recent business addresses also include Chevy Chase Pavilion, 5335 Wisconsin Avenue, NW, Suite 720, Washington, DC 20015.

JURISDICTION AND VENUE

8. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1332(a)(4) in that the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is between a foreign state as Plaintiff and citizens of different states.

9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*

10. Venue is proper in this district under 28 U.S.C. § 1391(a), in that this is a diversity action brought in the district in which a substantial part of the events giving rise to the claim occurred.

11. Exercise of personal jurisdiction over Defendants is proper pursuant to D.C. CODE §§ 13-422, 13-423(a)(1), or 13-423(a)(2) and/or because Defendants are residents of the District of Columbia.

FACTUAL BACKGROUND

Ugwuonye's Improper Retention of the Embassy's \$1,550,000 Tax Refund

12. The Embassy retained Ugwuonye, both individually and on behalf of the other Defendants, to provide legal services relating to the sale of several properties, including its property located at 2201 M Street, NW, Washington, DC (the "Property"). Ugwuonye identified himself as acting on behalf of both ECU Law Group and ECU Associates in his correspondence with the Embassy.

13. Under the terms of his engagement, the Embassy would pay Ugwuonye an amount equal to three and one-half percent (3.5%) of the sale price of the Property as complete payment for his services. Ugwuonye would receive the proceeds from the sale and then remit those funds to the Embassy. The Embassy executed a power of attorney authorizing Ugwuonye to receive the funds on its behalf.

14. The Embassy sold the Property on November 30, 2006.

15. The Embassy paid Ugwuonye in full for his services relating to the sale of the Property.

16. In conjunction with the sale of the Property, the IRS withheld property taxes in the amount of \$1.55 million. The IRS withheld the property taxes because the necessary paperwork exempting a foreign sovereign from property taxes had not been submitted.

17. Ugwuonye, subsequently, filed the necessary paperwork for the IRS to refund the \$1.55 million tax lien.

18. Ugwuonye received the tax refund from the IRS on behalf of the Embassy.

19. Ugwuonye informed the Embassy that he would return the tax refund to it. In a letter dated December 12, 2007, Ugwuonye made the following representations and promises to the Embassy:

This is further in regard to the refund from the IRS in the amount of \$1,550,000, a copy of which check was previously made available to you. As per our discussion and our retainer agreement with the Embassy, we shall be disbursing the check to the Embassy of Nigeria promptly upon its clearance. We expect this to be completed by the 22nd day of December 2007.

20. Despite his commitment, Ugwuonye did not remit the tax refund to the Embassy or inform the Embassy why he had not done so.

21. During the many months following Ugwuonye's December 12, 2007 promise to deliver the tax refund to the Embassy, the Embassy attempted on several occasions to communicate with Ugwuonye to ascertain why he had not yet delivered the tax refund to the Embassy. Ugwuonye did not respond to the Embassy's inquiries.

22. On June 2, 2008, the Embassy's Finance Attaché informed then Ambassador Yusuf S. Abdulahi:

3. It is equally worth of note your Excellency that despite the fact that the Embassy Lawyer confirmed the receipt of the Tax amount of \$1,550,000.00 in his letter dated December 12, 2007 on page 245, this amount is yet to be received by the Mission and no reason was given by writhing to the Embassy and the Lawyer has remained incommunicado any time I try to reach him.

23. Eight months after sending his December 12, 2007 letter, Ugwuonye still had not remitted the tax refund to the Embassy or informed the Embassy why he had not done so.

24. On August 5, 2008, the Embassy wrote a letter to Ugwuonye. In the letter, the Embassy demanded that Ugwuonye deliver the \$1.55 million check plus interest within fourteen (14) business days of receiving the letter. The Embassy also expressed frustration with Ugwuonye's failure to communicate with the Embassy about this matter.

25. On August 12, 2008, Fein responded to the Embassy's August 5, 2008 letter and identified himself as Ugwuonye's attorney. Fein did not dispute that the Embassy had paid Ugwuonye in full for the services he provided to the Embassy relating to the sale of its properties. However, Fein informed the Embassy that Ugwuonye was keeping the \$1.55 million tax refund because Ugwuonye represented General Abdusalami Abubakar, a former member of the military junta that ruled Nigeria from 1993 to 1999, in litigation against Gen. Abubakar in the United States District Court for the Northern District of Illinois. That litigation is titled *Hafsat Abiola, et al., v. Gen. Abdusalami Abubakar*, Case No. 02 C 6093 (N.D. Ill.) ("*Abubakar*"). Fein informed the Embassy that Ugwuonye "paid himself what was due by the GON on his legal bill as was his right under routine contract law."

26. The GON was not a party in the *Abubakar* litigation. Fein represented that the GON made written and oral commitments to pay Ugwuonye's fees, but he neither identified who within the GON made any such commitment nor provided any evidence of written commitments. Fein enclosed a docket entry from the *Abubakar* litigation indicating that a settlement in the case was

“being funded by the government of Nigeria, which is not a party to the lawsuit.” The docket entry does not reflect who informed the Court that the GON was funding the settlement, whether any documentary support for that statement was provided to the Court, or whether the GON had agreed to fund Ugwuonye’s fees. Fein did not provide any evidence of the actual amount of Ugwuonye’s fees in the *Abubakar* case, what he had done to earn those fees, or whether he had submitted invoices to the GON. Fein stated that the GON had paid another attorney “substantial” legal fees in the *Abubakar* case, but he did not explain why the GON allegedly failed to pay Ugwuonye. Fein also did not explain why Ugwuonye never informed the Embassy that he decided not to remit the tax refund as promised.

27. Fein wrote his August 5, 2008 letter on “Bruce Fein & Associates, Inc.” letterhead. He did not disclose that he was Ugwuonye’s partner at ECU Law Group and that, on information and belief, he had a personal financial interest, either directly or indirectly, in retaining the \$1.55 million tax refund. Fein also did not disclose that he was simultaneously representing the GON as its counsel in litigation pending in the United States District Court for the Eastern District of New York titled *Azikiwe, et al. v. Nigeria Airways, Ltd., et al.*, Case No. 1:03-cv-06387-FB-CLP (E.D.N.Y.) (“*Azikiwe*”). Fein’s representation of Ugwuonye against the Embassy while Fein was simultaneously representing the GON in the *Azikiwe* litigation constituted an inherent conflict of interest under rules regulating members of the bars of the District of Columbia, Maryland, and New York.

28. The Embassy disputed Ugwuonye’s refusal to deliver its tax refund. Embassy officials met with Ugwuonye on May 15, 2009 to discuss the matter. During the meeting, the Embassy requested copies of the invoices that Ugwuonye believed were outstanding.

29. On May 29, 2009, Ugwuonye wrote a memorandum to the Embassy that included a single-page invoice for \$2,842,500, as follows:

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ECULAW GROUP
 850 Sligo Avenue, Suite 400
 Silver Spring, MD 20910, USA
 Tel: 301-588-9315
 Fax: 301-588-9318

- (1) Ndidí Azikiwe, et al. v. Federal Republic of Nigeria, et al.:
 U.S.D.C., EDNY: Case No. 1:03 CV 06387
(Case resolved/closed)

Balance outstanding = \$1,642,500

- (2) Chief MKO Abiola, et al. v. General Abdulsalami Abubakar:
 (a) United States District Court, Eastern District of Michigan
 Case No.: 01-cv-70714.
 (b) United States District Court, Northern District of Illinois:
 Case No.: No. 02-CV-06093.
 (c) United States Court of Appeals for the Seventh Circuit:
 Case No.: 03-3089 and 06-2940.
 (d) United States Supreme Court:
 Case No.: 05-788.
(Case resolved/closed)

Balance outstanding = \$1,200,000¹

Total outstanding balance = \$2,842,500.

N.B.:

This invoice is accompanied with a note dated May, 29, 2009.

¹ This figure reflects a discount by over \$500,000. All fees for services and costs incurred from January through May of 2008 are waived.

30. In his May 29, 2009 memorandum and invoice, Ugwuonye did not provide the Embassy with an itemization of any services he provided, any contract he had with the GON, copies of any invoices he had previously sent to the GON, or any explanation of why the GON allegedly failed to pay his invoices. Ugwuonye stated that the Embassy agreed that his returning the Embassy's tax refund depended on whether the GON paid Ugwuonye's outstanding bills.

31. On June 8, 2010, the Embassy wrote a letter to Ugwuonye denying any agreement that Ugwuonye's return of the \$1.55 million tax refund depended on whether the GON paid him nearly \$3 million for other allegedly outstanding fees. The Embassy requested a copy of the contract between Ugwuonye's firm and the GON relating to the allegedly outstanding fees, a description of any previous attempts to settle the matter, evidence of any payments already made to the firm, and the most recent notice to make payments. Ugwuonye failed to provide any of the requested information.

32. On September 2, 2010, the Embassy, through counsel, delivered a letter to Ugwuonye demanding that he return the Embassy's tax refund. The Embassy also demanded that Ugwuonye provide copies of documents allegedly supporting his entitlement to the tax refund, including documents evidencing any agreement by the GON to pay for his services, prior invoices, any and all correspondence relating to payment or nonpayment of prior invoices, and a detailed billing report. The Embassy also asked Ugwuonye to identify all explanations the GON had given him for not paying any prior invoices. Ugwuonye did not respond to the letter or produce any of the requested documents.

33. Ugwuonye still has not returned the Embassy's \$1.55 million tax refund.

Ugwuonye's Prior Unethical Conduct and Unauthorized Practice of Law

34. Ugwuonye has previously been disciplined by the Maryland Court of Appeals for violating the Maryland Lawyers' Rules of Professional Conduct.

35. On July 24, 2008 the Maryland Court of Appeals suspended Ugwuonye from the practice of law for 90 days – from August 23 through November 21, 2008 – because he violated MRPC 1.1, 1.3, 1.4, 1.5, 1.15, 1.16(d) and 8.4(d) and Md. Code Ann., Bus. Occ. & Prof. § 10-306. *See Attorney Grievance Comm'n v. Ugwuonye*, 405 Md. 351, 373-375 (2008).

36. The Attorney Grievance Commission of Maryland described its disciplinary action against Ugwuonye as follows:

UGWUONYE, Ephraim, Jr. - 90-day Suspension by the Court of Appeals on July 24, 2008 for failure to act with diligence and competence in representing a client by failing to respond to a notice of contemplated dismissal for lack of service. With regard to another client, he took a fee for a frivolous case and failed to return an unearned fee (which he had deposited in his operating account).

See <http://www.courts.state.md.us/attygrievance/sanctions09.html> (last visited on November 9, 2010).

37. Ugwuonye never informed the Embassy that he had been suspended from the practice of law.

38. Ugwuonye practiced law during his 90-day suspension. For example, Ugwuonye continued to represent six Defendants, including the GON, in the *Azikiwe* litigation while he was suspended from practicing law.

39. On September 9, 2008, the United States District Court for the Eastern District of New York imposed reciprocal discipline upon Ugwuonye as a result of his suspension from practicing law by the Maryland Court of Appeals. The court suspended Ugwuonye from practicing law until further order of the court. Nevertheless, Ugwuonye continued to represent Defendants in the *Azikiwe* matter pending before the court.

40. On October 30, 2008, the D.C. Court of Appeals imposed reciprocal discipline upon Ugwuonye as a result of his suspension from practicing law by the Maryland Court of Appeals. The court suspended Ugwuonye from practicing law for 90 days. The court further ordered that “for purposes of reinstatement respondent’s suspension will not begin to run until such time as he files an affidavit that fully complies with the requirements of D.C. Bar. R. XI, § 14(g).” The court has not issued an order reinstating Ugwuonye to practice law. Ugwuonye did not inform the Embassy that he had been suspended from the practice of law by the D.C. Court of Appeals.

41. On December 18, 2008, the New York Supreme Court, Appellate Division, Third Judicial Department, imposed reciprocal discipline upon Ugwuonye as a result of his suspension from practicing law by the Maryland Court of Appeals. The New York Supreme Court ordered that Ugwuonye was “suspended from the practice of law for a period of 90 days, effective immediately, and until further order of this Court.” The court also ordered that Ugwuonye was “forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority....” The court has not issued an order reinstating Ugwuonye to practice law. Ugwuonye again failed to inform the Embassy that he had been suspended from the practice of law.

42. Despite the fact that the New York Supreme Court suspended Ugwuonye from practicing law and specifically forbade him from appearing as an attorney before any court, Ugwuonye continued to represent the GON and other Defendants in the *Azikiwe* litigation before the United States District Court for the Eastern District of New York.

43. As set forth above, Fein informed the Embassy on August 12, 2008, that Ugwuonye kept the \$1.55 million tax refund to “[pay] himself what was due by the GON” for services he allegedly performed in the *Azikiwe* matter. Fein’s letter was written after the Maryland Court of Appeals suspended Ugwuonye. It is possible that Ugwuonye is purporting to charge the Embassy for services he performed while engaged in the unauthorized practice of law.

44. Although Ugwuonye is still suspended from practicing law in Washington, D.C., he is currently lead defense counsel in a case pending before the United States District Court for the District of Columbia titled *Haskins v. U.S. One Transportation, LLC, et al.*, Case No. 1:10-cv-00706-RMU (D.D.C.).

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty – All Defendants

45. Plaintiff re-alleges and incorporates the allegations set forth above as if fully set forth herein.

46. The attorney-client relationship between the Embassy and Defendants was inherently one of trust.

47. The Embassy retained Defendants to perform legal services for it and to act on its behalf.

48. The Embassy also granted a power of attorney to Ugwuonye to act on its behalf.

49. Ugwuonye, both individually and as a representative of the other Defendants, manifested his assent to this relationship by performing legal services for the Embassy and acting on the Embassy's behalf.

50. As such, Defendants owed the Embassy the fiduciary duties of both good-faith and loyalty.

51. Defendants breached these duties after promising that they would deliver the funds to the Embassy as soon as the IRS tax refund check cleared. They took possession of the Embassy's \$1,550,000 tax refund and then refused to deliver the money to the Embassy.

52. By refusing to deliver the \$1,550,000 tax refund to the Embassy, Defendants exercised unlawful control over money that was not their own.

53. By refusing to deliver the \$1,550,000 tax refund to the Embassy, Defendants denied and repudiated the Embassy's right to exercise dominion over the money.

54. Defendants' conversion of the Embassy's funds was aggravated because it was reckless, wanton, and in willful disregard of the Embassy's rights. It thus justifies the imposition of punitive damages.

55. WHEREFORE, Plaintiff demands judgment from and against Defendants in the amount of \$1,550,000 in compensatory damages, punitive damages in an amount to be determined at trial, interest from the date of the occurrence, and costs and attorneys' fees.

COUNT II

Conversion – All Defendants

56. Plaintiff re-alleges and incorporates the allegations set forth above as if fully set forth herein.

57. Defendants took possession of the Embassy's \$1,550,000 tax refund by accepting the funds from the IRS on behalf of the Embassy.

58. Defendants then refused to deliver the money to the Embassy.

59. By refusing to deliver the \$1,550,000 tax refund to the Embassy, Defendants exercised unlawful control over money that was not their own.

60. By refusing to deliver the \$1,550,000 tax refund to the Embassy, Defendants denied and repudiated the Embassy's right to exercise dominion over the money.

61. Defendants' conversion of the Embassy's funds was aggravated because it was reckless, wanton, and in willful disregard of the Embassy's rights. It thus justifies the imposition of punitive damages.

62. WHEREFORE, Plaintiff demands judgment from and against Defendants in the amount of \$1,550,000 in compensatory damages, punitive damages in an amount to be determined at trial, interest from the date of the occurrence, and costs and attorneys' fees.

COUNT III

Unjust Enrichment – All Defendants

63. Plaintiff re-alleges and incorporates the allegations set forth above as if fully set forth herein.

64. The Embassy retained Ugwuonye, both individually and on behalf of the other Defendants, to provide legal services relating to the sale of the Property.

65. The parties agreed that the Embassy would pay an amount equal to three and one-half percent (3.5%) of the sale price of the Property as complete payment for Defendants' services.

66. The Embassy paid Defendants in full for their services relating to the sale of the Property.

67. Defendants took possession of the Embassy's \$1,550,000 tax refund by accepting the funds from the IRS.

68. Defendants promised to deliver the funds to the Embassy.

69. Despite being paid in full for the services for which they were retained by the Embassy and promising to deliver the \$1,550,000 tax refund to the Embassy, Defendants did not deliver the money to the Embassy.

70. The Embassy made several requests to Defendants to remit money to it, but Defendants refused to do so.

71. Defendants also refused to respond to the Embassy's requests for documents and information that allegedly would support Defendants' claimed entitlement to the funds.

72. Defendants' refusal to deliver the money to the Embassy and to respond to requests for documents and information constitutes violations of the rules of professional conduct governing members of the bars of the District of Columbia and Maryland.

73. Under the circumstances, Defendants' retention of the \$1,550,000 is unjust.

74. WHEREFORE, Plaintiff demands judgment from and against Defendants in the amount of \$1,550,000 in compensatory damages, punitive damages in an amount to be determined at trial, interest from the date of the occurrence, and costs and attorneys' fees.

COUNT IV

Constructive Trust – All Defendants

75. Plaintiff re-alleges and incorporates the allegations set forth above as if fully set forth herein.

76. Defendants breached their fiduciary duty and converted the Embassy's \$1,550,000 tax refund by refusing to deliver the funds to the Embassy.

77. Defendants now unlawfully control \$1,550,000 that is rightfully the Embassy's, in denial or repudiation of the Embassy's rights thereto.

78. Defendants have been unjustly enriched by continued possession of the Embassy's \$1,550,000 tax refund.

79. Therefore, Defendants had an equitable duty to convey the \$1,550,000 to the Embassy, but did not do so.

80. WHEREFORE, Plaintiff demands that a constructive trust be placed on funds equal to the amount which Defendants wrongfully retained and/or used in breaching their fiduciary duty and converting the Embassy's tax refund, which amount is no less than \$1,550,000 plus interest from the date of the occurrence. The Embassy also demands that Defendants deliver a full and complete accounting of the Embassy's \$1,550,000 tax refund that they received from the IRS.

COUNT V

Declaratory Judgment – All Defendants

81. Plaintiff re-alleges and incorporates the allegations set forth above as if fully set forth herein.

82. An actual controversy has arisen between the Embassy and Defendants regarding the rights, duties, and obligations of the parties.

83. The IRS determined that the Embassy was entitled to a refund of improperly collected taxes in the amount of \$1,550,000.

84. Ugwuonye was retained by the Embassy as its attorney and agent to collect the tax refund from the IRS and deliver the funds to the Embassy.

85. Ugwuonye accepted delivery of the \$1,550,000 from the IRS. On December 12, 2007, Ugwuonye promised to deliver the funds to the Embassy.

86. Ugwuonye did not deliver the \$1,550,000 to the Embassy, and he refused or ignored multiple demands by the Embassy that he deliver the money to it.

87. Ugwuonye and Fein took the position that Ugwuonye allegedly was not obligated by law, contract or otherwise to deliver the money to the Embassy. Ugwuonye and Fein told the Embassy that Ugwuonye was entitled to retain the funds as payment for other services that he allegedly performed for the GON.

88. On September 2, 2010, the Embassy, through counsel, delivered a letter to Ugwuonye demanding immediate delivery of the \$1,550,000 tax refund, plus interest. The Embassy informed Ugwuonye that it would consider his refusal to do so – either in writing or by failing to respond to the demand – to be a final declaration by Ugwuonye of alleged entitlement to the funds constituting an actual controversy upon which to seek a declaratory judgment against him and his firm.

89. Ugwuonye did not respond to the Embassy's September 2, 2010 letter, and he did not deliver the tax refund to the Embassy.

90. WHEREFORE, Plaintiff seeks a declaration by the Court of the rights, duties and obligations of the parties, including (i) a declaration that Plaintiff is entitled to the tax refund of \$1,550,000, plus interest, and (ii) a declaration that Defendants are not entitled to withhold the tax refund from the Embassy for any reason, including any claim by Defendants that they are allegedly entitled to retain the funds as compensation for other services performed for the GON.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and a judgment against all Defendants, jointly and severally, as follows:

- A. entering judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
- B. issuing a declaration of the rights, duties and obligations of the parties, including (i) a declaration that Plaintiff is entitled to the tax refund of \$1,550,000, plus interest, and (ii) a declaration that Defendants are not entitled to withhold the tax refund from the Embassy for any reason, including any claim by Defendants that they are allegedly entitled to retain the funds as compensation for other services performed for the GON;
- C. awarding damages in favor of Plaintiff in an amount to be determined at trial but that is no less than \$1,550,000;
- D. awarding punitive damages in an amount that is no less than three times the actual damages suffered by Plaintiff;
- E. awarding pre- and post-judgment interest;
- F. entering a constructive trust on funds equal to the amount which Defendants wrongfully retained and/or used in breaching their fiduciary duty and converting the Embassy's tax refund, but that is no less than \$1,550,000 plus interest from the date of the occurrence, and requiring Defendants to deliver a full and complete accounting of the Embassy's \$1,550,000 tax refund;
- G. awarding Plaintiff its costs and reasonable attorneys' fees incurred in this action;
- H. retaining jurisdiction for the purpose of enabling Plaintiff to apply to the Court for such further orders and directions as may be necessary or appropriate for the

construction or carrying out of any orders made in this action, for the modification of any such orders, for the enforcement of compliance therewith and the punishment of any violations thereof; and

- I. awarding Plaintiff all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,



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*Counsel for Plaintiff Embassy of the
Federal Republic of Nigeria*

Date: November 9, 2010