

main purpose is to protect AIG's interests in its dealing with Epstein and FTC. The agreement discusses at length the process by which AIG, through its agent, Citibank, will deliver income notes to Epstein, the purchaser. The Subscription Agreement contains a clause stating that neither AIG, SSB, nor Citibank

is acting as a fiduciary or financial or investment adviser for the Purchaser and the Purchaser is not relying on any written or oral advice, counsel or representations of the Company, the Investment Manager, the Placement Agent [SSB], the Agent or any of their respective affiliates . . . [and that] [t]he Purchaser has consulted with its own legal, regulatory, tax, business investment financial, and accounting advisers to the extent it has deemed necessary, and has made its own investment decisions based upon its own judgments and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Company, the Investment Manager, the Placement Agent, the Agent or any of their respective affiliates.

(Mem. In Supp. of Defs.' Mot. To Dismiss, Ex. C. at 10-11, ¶ i.) Although this document alludes to Citibank's role in this one transaction, the agreement does not speak to the fifteen-year relationship between the defendants and the plaintiffs that is the gravamen of the amended complaint. Moreover, Citibank is not a party to nor did it sign the Subscription Agreement. I find, therefore, that the Subscription Agreement does not dispose of the plaintiffs' breach of fiduciary duty claim as a matter of law.

B. THE AMENDED COMPLAINT ADEQUATELY STATES A CLAIM OF NEGLIGENT MISREPRESENTATION

In the Virgin Islands, the elements of negligent misrepresentation are:

[o]ne who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

RESTATEMENT (SECOND) OF TORTS § 552 (1977). Count IV of the amended complaint alleges that the defendants, negligently failed to disclose that they or their affiliates had a pecuniary interest in the AIG investment and that the plaintiffs relied upon the information and advice provided by the defendants to their detriment. (Am.Compl.¶¶ 55-56.) I find that Count IV thus adequately states a claim of negligent misrepresentation.

6. THE RESCISSION AND PUNITIVE DAMAGES COUNTS ARE NOT CAUSES OF ACTION

The defendants contend that this Court should dismiss Counts VI and VII—for rescission of the note and for punitive damages—because each claim seeks specific relief without asserting any claim for relief. (Mem. Of Law in Supp. of Defs.' Mot. to Dismiss at 51-52.) Whereas the plaintiffs, in their amended complaint, have set out their request for rescission of the Amended 1999 Note and punitive damages in the form of additional causes of action, I will require them to reframe them as part of the *ad damnum* clause.

D. COUNTS I, II, III, AND VI OF THE PLAINTIFFS' AMENDED COMPLAINT FAIL TO MEET FEDERAL RULE OF CIVIL PROCEDURE 9(B)'S HEIGHTENED PLEADING STANDARD FOR CLAIMS OF FRAUD

Finally, the defendants argue that Counts I, II, III, and VI should be dismissed due to the plaintiffs' failure to plead fraud with the requisite particularity as required under Federal Rule of Civil Procedure 9(b). They aver that the amended complaint is "rife with sweeping conclusory allegations but fatally short on detail" and that the fraud claims fail to explicitly reference Citigroup, do not state any dates on which the alleged conduct occurred, and do not name any specific employees of the defendants. The defendants contend that the complaint simply does not put them on notice of what exactly each is accused. (Mem. of Law in Supp. of Mot. to Dismiss at 32-35.) The plaintiffs counter that, although the amended complaint does not specify who within Citigroup or Citibank recommended the AIG investment, the defendants are aware of which of their employees are implicated in this matter. Moreover, the plaintiffs submit that the defendants are responsible for the "universal fungibility" of the Citigroup and Citibank names. The plaintiffs ask that this Court find that the amended complaint meets Rule 9(b)'s requirements, or, alternatively, permit them to replead their allegations of fraud under Federal Rule 15(a). (Pis.' Mem. Of Law in Opp'n to Mot. To Dismiss at 30-32, 39-41.)

Federal Rule of Civil Procedure 9(b) requires parties alleging fraud to describe the circumstances constituting fraud "with particularity." Rule 9(b) requires that the plaintiff "give[] defendants notice of the claims against them, provide[] an increased measure of protection for their reputations, and reduce[] the number of frivolous suits brought solely to extract settlements." *In re Rockefeller Ctr. Props., Inc.*, 311 F.3d at 215 (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d at 1418). "Rule 9(b) requires a plaintiff to plead (1) a specific false representation of material fact; (2) knowledge by the person who made it that it was false; (3) ignorance of its falsity by the person to whom it was made; (4) the intention that it should be acted upon; and (5) that the plaintiff acted upon it to his damage." *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 284 (3d Cir.1992). Although the rule does not require a recitation of "every material detail" of the alleged fraud, it does require, at a minimum, "that plaintiffs support their allegations of fraud with all of the essential factual background