

JUDGE SWAIN

12 CIV 4764

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**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK**

 ALEJANDRO BARROS ALDUNATE,

Plaintiff,

v.

 UBS FINANCIAL SERVICES, INC.,

Defendant.



2012 Civ. 4764 - LTS

ECF Case

COMPLAINT

Plaintiff, Alejandro Barros Aldunate (“Plaintiff” or “Alejandro”), by and through his undersigned counsel, as and for his Complaint against defendant UBS Financial Services, Inc. (“UBS” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment and for injunctive relief (1) requiring identification of any and all of Defendant UBS’s bank accounts belonging to Holt Corporation, accounts belonging to any other entities of which Plaintiff’s father, decedent Fernando Barros Freire (the “Decedent”) is a beneficial owner, and/or any personal accounts belonging to the Decedent (the “UBS Accounts”); (2) declaring that the funds in the UBS Accounts are subject to probate by a court of competent jurisdiction as an asset of Decedent’s estate; and (3) freezing the UBS Accounts and stopping any withdrawals or transfers of funds from these accounts. The

UBS Accounts are believed to contain at least \$17 million in assets belonging to Decedent's estate, the distribution of which is in dispute, and these assets are at risk of immediate dissipation by Fernando Barros Aldunate ("Fernando Jr."), who, upon information and belief, has power of attorney over the UBS Accounts. Plaintiff has a legal right to a portion of these assets as he is entitled, at a minimum, to treatment as a "forced heir" under Chilean law and thus as a beneficiary of Decedent's estate.

PARTIES

2. Plaintiff Alejandro Barros Aldunate is a citizen of Chile and has an address of Via Roja 4793 casa 1, Vitacura, Santiago Chile.

3. Defendant UBS Financial Services ("UBS") is a Delaware corporation with a principal place of business at 1285 Avenue of the Americas, New York, New York 10020.

JURISDICTION AND VENUE

4. This Court has jurisdiction of the claims asserted herein pursuant to 28 U.S.C. § 1332 because there exists complete diversity of citizenship between all plaintiffs and all defendants, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

5. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391 based on the fact that Defendant UBS has a principal place of business located in this district, and the funds in the UBS Accounts are deemed situated in this district.

FACTS

6. The Decedent Fernando Barros Freire was a citizen of and domiciled in Chile and the father of Plaintiff Alejandro Barros Aldunate. The decedent died on or about June 2, 2012.

7. Decedent has four children: Plaintiff Alejandro Barros Aldunate, Fernando, Jr., Isabel Barros Aldunate, and Maria Emilia Barros Aldunate.

8. Under Chilean law, Plaintiff Alejandro Barros Aldunate , as a direct descendant of Decedent Fernando Barros Freire, is entitled, at a minimum, to treatment as a “forced heir” and is therefore entitled, at a minimum, to a certain percentage distribution from the estate of Fernando Barros Freire, regardless of the provisions of any will of the Decedent.

9. The Decedent’s other three (3) children are also entitled to treatment as “forced heirs” as direct descendants of the Decedent under Chilean law.

10. Prior to his death, Decedent Fernando Barros Freire was the beneficial owner, through one or more entities that he controlled, of Holt Corporation.

11. Holt Corporation is a corporation organized under the law of the British Virgin Islands with an office located at Vanterpool Plaza, 2d Floor, Wickham’s Cay 1, Road Town, Tortola, British Virgin Islands.

12. Holt Corporation, at all times relevant hereto, was a holding company which did not engage in the operation of any business. Rather, Holt Corporation only held assets, including a bank account at UBS (the “UBS Account”) and an interest in a company which owns a farm.

13. To the extent that Holt Corporation may be alleged to be required to be joined if feasible, Holt Corporation is not being joined herein because joining Holt Corporation may deprive the Court of subject matter jurisdiction. A judgment freezing the assets in the UBS Accounts will not unduly prejudice Holt Corporation as those assets will remain available to distribution upon a determination of the rights of the parties, and the relief granted can be tailored to minimize any impact on Holt Corporation.

14. On information and belief, at the time of the death of Decedent Fernando Barros Freire, the UBS Account held in excess of \$17 million U.S. dollars.

15. On or about August 7, 2002, Richard L. Herrmann executed a power of attorney on behalf of Holt Corporation (the “2002 Power of Attorney”) authorizing Decedent Fernando Barros Freire, Plaintiff Alejandro Barros Aldunate, and Jorge Barros Freire, the brother of

Decedent Fernando Barros Freire, to act on behalf of Holt Corporation, including with respect to banking transactions.

16. UBS has recently informed counsel to Plaintiff Alejandro Barros Aldunate that it is in possession of a later power of attorney (the "2009 Power of Attorney") which authorizes one or more individuals to act on behalf of Holt Corporation.

17. Plaintiff Alejandro Barros Aldunate, through his counsel, has requested a copy of the 2009 Power of Attorney from UBS, but UBS has refused to provide a copy or disclose the contents of the 2009 Power of Attorney, citing privacy concerns.

18. Under the 2009 Power of Attorney, upon information and belief, Decedent's son, Fernando, Jr., was granted power of attorney with respect to the UBS Accounts. It is also believed that Fernando, Jr. presently retains power of attorney over the UBS Accounts.

19. A dispute currently exists between the Plaintiff and the other heirs of the Decedent's estate regarding the assets comprising the Decedent's estate and the legal distribution of the estate's assets.

20. Because the Decedent was the 100% beneficial owner of the Holt Corporation, and hence the 100% beneficial owner of all Holt Corporation assets held in the UBS Accounts, the Holt Corporation assets held in the UBS Accounts are property of the Decedent's estate.

21. Upon information and belief, the Decedent is the 100% beneficial owner of all assets held in the UBS accounts by any other entities formerly controlled by the Decedent.

22. Since no later than June 7, 2012, after being informed that the Decedent had died and that a dispute had arisen over the assets belonging to the Decedent's estate, Defendant UBS has refused to freeze the assets in the UBS Accounts absent a court order directing that the assets be frozen.

23. Plaintiff will suffer irreparable harm unless Defendant UBS is enjoined from releasing any of the funds or other assets held in the UBS Accounts and must freeze those accounts in order to adequately protect these assets from immediate dissipation.

COUNT I
(DECLARATORY JUDGMENT)

24. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth herein.

25. This claim is asserted pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201, which provides in relevant part: “In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

26. Plaintiff is an interested party seeking a declaration that the UBS Accounts are the property of Decedent’s estate, subject to probate by a court of competent jurisdiction as an asset of Decedent’s estate.

27. An actual, substantial and immediate controversy exists between the parties concerning the identity of the assets comprising Decedent’s estate and the legitimate beneficiaries of the estate.

28. The instant controversy is adequately developed for judicial review and is not speculative or remote.

29. Judicial intervention at this time will be a practical help in resolving the controversy between the parties.

30. Absent declaratory relief at this time, there will be substantial, unresolved issues concerning the parties’ obligations and rights with respect to the UBS Accounts and potential dissipation of assets.

WHEREFORE, Plaintiff, Alejandro Barros Aldunate, respectfully requests judgment in his favor and against Defendant, UBS Financial Services, Inc, was follows:

- (a) Requiring identification of any and all of the UBS Accounts belonging to Holt Corporation, or any other entities in which Fernando Barros Freire is a beneficial owner, and/or any personal accounts belonging to Fernando Barros Freire;
- (b) Declaring that the funds in the UBS Accounts shall be frozen until the rights of the heirs of the Decedent are determined by a court of competent jurisdiction;
- (c) Enjoining on a preliminary and permanent basis all withdrawals or transfers of funds or other assets from these accounts until such time as the rights of the heirs of Decedent have been determined by a court of competent jurisdiction; and
- (d) Awarding Plaintiff any other relief that the Court deems just and proper.

COUNT II
PRELIMINARY AND PERMANENT INJUNCTION

31. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth herein.

32. Plaintiff is entitled to preliminary and permanent injunctive relief to protect the assets in the UBS Accounts until such time as rights in such assets can be determined.

33. There is a substantial likelihood of success by the Plaintiff on the merits of the action.

34. Plaintiff faces a substantial threat of irreparable damage or injury if the injunction is not granted, as the funds in the UBS Accounts may be dissipated absent the injunction.

35. The balance of harms weigh in favor of the Plaintiff, as Plaintiff seeks only to preserve the status quo until a determination can be made of the rights in the assets.

36. The grant of an injunction would serve the public interest, as it is in the public interest for the funds to be preserved until such time as a determination can be made of the rights in the assets.

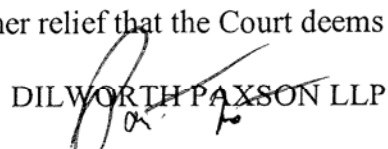
WHEREFORE, Plaintiff, Alejandro Barros Aldunate, respectfully requests judgment in his favor and against Defendant, UBS Financial Services, Inc., as follows:

- (a) Requiring identification of any and all of the UBS Accounts;
- (b) Declaring that the funds in the UBS Accounts shall be frozen until the rights of the heirs of the Decedent are determined by a court of competent jurisdiction;
- (c) Enjoining on a preliminary and permanent basis all withdrawals or transfers of funds or other assets from these accounts until such time as the rights of the heirs of Decedent have been determined by a court of competent jurisdiction; and
- (d) Awarding Plaintiff any other relief that the Court deems just and proper.

Dated: Philadelphia, PA
June 18, 2012

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