

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

05-61903 CIV-MARRA

MAGISTRATE JUDGE
SELTZER

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

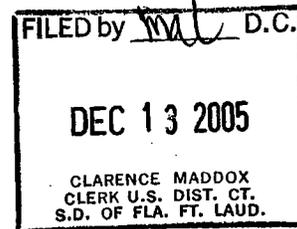
CARLOS ALEJANDRO LIBERA SAUME,
ASESORIA INVERTRUST C.A.,
FORINEX INVESTMENT CORP., and
INVERTRUST, INC.,

Defendants.

FILED UNDER SEAL

CASE NO.

STATUTORY EX PARTE
RESTRAINING ORDER FREEZING
ASSETS, PRESERVING BOOKS
AND RECORDS, ALLOWING
ACCESS TO BOOKS AND
RECORDS, AND ORDER TO
CONDUCT EXPEDITED
DISCOVERY



Plaintiff United States Commodity Futures Trading Commission ("CFTC") has filed a complaint for permanent injunction and other relief, and moved (1) pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1, for a statutory *ex parte* restraining order freezing assets, preserving books and records, and allowing access to books and records; and (2) an *ex parte* order authorizing the CFTC to conduct expedited discovery in advance of the date specified in Federal Rule of Civil Procedure 26(f) and Local Rule 26.1 and the date specified in Federal Rule of Civil Procedure 30(a) and (b).

The Court having considered the pleadings, declarations, exhibits, and memorandum filed in support of the CFTC's motion, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e).
3. There is good cause to believe that the defendants have engaged, are engaging in, and are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. § 1 *et seq.*, and the CFTC's Regulations, 17 C.F.R. § 1.1 *et seq.*
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for investors in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by defendants of assets or records unless they are immediately restrained and enjoined by order of the Court.
5. Good cause exists for freezing defendants' assets and for entry of an order prohibiting them from destroying records and denying agents of the CFTC access to inspect and copy records.
6. Weighing the equities and considering the CFTC's likelihood of success in its claims for relief, the entry of a statutory restraining order is in the public interest.
7. The entry of a statutory restraining order will help preserve the status quo during the pendency of this action, help protect public customers from loss and damage, and enable the CFTC to fulfill its statutory duties.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

1. The term "assets" means any legal or equitable interest in, right to, claim to, or control over, either directly or indirectly, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other

deliveries, inventory, checks, notes, accounts, credits, receivables, lines of credit, contracts, insurance policies, and all cash, wherever located.

2. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

3. The term "defendants" means Carlos Alejandro Libera Saume ("Libera"), Asesoria Invertrust C.A. ("Asesoria Invertrust"), a corporation that has been registered in Venezuela since March 9, 1999 and doing business in Florida since that time, Forinex Investment Corp ("Forinex") incorporated in the British Virgin Islands on July 30, 2001 and doing business in Florida since that time, and Invertrust, Inc. ("Invertrust"), incorporated in Florida on August 20, 2001 and doing business in Florida since that time, and also any successor, or other entity controlled by any of these entities or individuals. The term defendants also means any person or entity insofar as they are acting in the capacity of a principal, director, officer, or agent of Asesoria Invertrust, Forinex, or Invertrust, and any person or entity who receives actual notice of this Order by personal service or otherwise insofar as they are acting in concert or participation with Libera, Asesoria Invertrust, Forinex, or Invertrust.

RELIEF GRANTED

I.

Prohibition Against Transfer, Dissipation, or Disposal of Assets

IT IS HEREBY ORDERED that defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly:

- A. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held by or on behalf of the defendants within or outside the United States, and including both existing assets and assets acquired after the effective date of this Order; and
- B. Opening or causing to be opened any safe deposit boxes titled in the name of or subject to access by any of the defendants.

II.

Directives to Financial Institutions and Others

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of any defendant, or has held, controlled, or maintained custody of any account or asset of any defendant at any time since December 21, 2000, shall:

- A. Prohibit defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;
- B. Deny defendants and all other persons access to any safe deposit box that is:
 - 1. Titled in the name of any defendant, either individually or jointly; or

2. Otherwise subject to access by any defendant.
- C. Provide counsel for the CFTC, within two (2) business days of receiving a copy of this Order, with a statement setting forth:
1. The identification number of each account or asset titled in the name of any defendant, individually or jointly, on behalf, or for the benefit, of any defendant;
 2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 3. The identification of any safe deposit box that is either titled in the name of any of the defendants, individually or jointly, or is otherwise subject to access by any of the defendants; and
- D. Upon request by the CFTC, promptly provide the CFTC with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

III.

Repatriation of Funds and Assets

IT IS FURTHER ORDERED that within ~~TWO (2)~~ ^{THREE (3)} business days following the service of this Order, defendants shall:

- A. Provide the CFTC with a full accounting of all funds, documents, and assets outside of the United States which are held by them, for their benefit, or under their direct or indirect control, whether jointly or singly; and

B. Transfer to the territory of the United States to a location designated by the CFTC all funds, documents, and assets located in foreign countries which are held by defendants, for their benefit, or under their direct or indirect control, whether jointly or singly;

C. Provide the CFTC access to all records of each and every defendant held by financial institutions located outside the territorial United States; and

D. Sign and otherwise execute unconditional written consents prepared by the CFTC providing for the immediate transfer of funds and assets located in foreign bank accounts which are held by defendants, for their benefit, or under their direct or indirect control, whether jointly or singly.

IV.

Accounting

IT IS FURTHER ORDERED that within ^{FIVE (5) KA} ~~three (3)~~ business days following the service of this Order, defendants shall provide the CFTC with a full accounting of all funds and other assets within the United States which are held by them, for their benefit, or under their direct or indirect control, whether jointly or singly;

V.

Maintenance of Business Records

IT IS HEREBY ORDERED that defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any defendant.

VI.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that representatives of the CFTC shall be immediately allowed to inspect the books, records, and other documents of defendants and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with defendants who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the CFTC to locate and provide to representatives of the CFTC all books and records of defendants, wherever such books and records may be situated.

VII.

Expedited Discovery

IT IS FURTHER ORDERED that the prohibition upon discovery before the time specified in Federal Rule of Civil Procedure 26(d) and Local Rule 26.1 and the prohibition upon the immediate commencement of depositions upon oral examination and production of documents set forth in Federal Rule of Civil Procedure 30(a) and (b) are removed. The parties are granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity upon seventy-two (72) hours notice by personal service or by facsimile. The limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph. Any depositions taken pursuant to this Paragraph shall not count towards the ten deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

VIII.

Service of Order

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any defendant, or that may be subject to any provision of this Order.

IX.

Force and Effect

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until ~~order~~ 23, 2005 AT 5:00PM UNLESS THIS ORDER IS EXTENDED BY FURTHER ORDER OF THE COURT UPON ~~order of this Court, and that~~ this Court retains jurisdiction of this matter for all purposes.

Kan
DECEMBER
MOTION OR
STIPULATION
OF
THE PARTIES.

SO ORDERED, at FT. LAUDERDALE, Florida on this 13th day of DECEMBER 2005, at 5:00 p.m.

Certified to be a true and correct copy of the document on file
Clarence Maddox, Clerk,
U.S. District Court
Southern District of Florida
by M. Ivarillo
Deputy Clerk
Date 12-13-05

K
UNITED STATES DISTRICT JUDGE

X
Preliminary Injunction Hearing.

THIS MATTER IS SET FOR AN EVIDENTIARY HEARING ON PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION ~~HEARING~~ FOR DECEMBER 23, 2005 AT 9:00 AM IN COURTROOM 207, U.S. FEDERAL COURTHOUSE, 299 EAST BROWARD BLVD., FT. LAUDERDALE, FL. 33301.

XI

PLAINTIFF SHALL SERVE PROCESS UPON DEFENDANTS NO LATER THAN 72 HOURS FROM THE ENTRY OF THIS ORDER. A COPY OF THIS ORDER SHALL BE SERVED WITH THE SUMMONS AND COMPLAINT. *Kan*