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2 IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
3 IN AND FOR DADE COUNTY, FLORIDA
4 GENERAL JURISDICTION DIVISION

5
6 CASE NO. 03-28272 CA 10

7 GUSTAVO GOMEZ-LOPEZ,
8 individually, and CLAUDIA
9 FEBRES-CORDERO, individually,

10 Plaintiffs,

11 vs.

12 BANCO LATINO INTERNATIONAL,

13 Defendant.

14
15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE

17 THE HONORABLE MARGARITA ESQUIROZ

18
19
20
21 Dade County Courthouse
22 73 West Flagler Street
23 Dade County, Florida

24 Thursday, October 21, 2004
25 4:25 p.m.- 5:20 p.m.

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1 The claims it asserted were RICO claims and
 2 it asserted claims under state law. The RICO
 3 claims were the principle claims, and, in
 4 fact, the current plaintiff --
 5 THE COURT: In other words, Banco
 6 Latino sued its former officers?
 7 MR. ALEXANDER: Under RICO.
 8 THE COURT: In federal court?
 9 MR. ALEXANDER: In federal court.
 10 THE COURT: You said it lost?
 11 MR. ALEXANDER: The federal court
 12 dismissed that case because it concluded that
 13 Banco Latino didn't have standing because it
 14 wasn't a party who was the target of a fraud
 15 that was committed. Rather, the target of
 16 the fraud that was committed was the United
 17 States Reserve.
 18 Judge Highsmith ruled that Banco Latino
 19 didn't have the right to assert that RICO
 20 claim. Therefore, he didn't exonerate those
 21 defendants, those directors and officers. In
 22 fact, he found that there was, in fact, a
 23 scheme to defraud. But he said, Banco
 24 Latino, you can't assert it because you
 25 weren't the target of that scheme to defraud.

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1 THE COURT: You are set for half an
 2 hour on this, so we need to try to keep it
 3 limited. It's your motion to dismiss?
 4 MR. ALEXANDER: Our motion to dismiss.
 5 THE COURT: And/or summary judgment?
 6 MR. ALEXANDER: Yes.
 7 THE COURT: Go ahead.
 8 MR. ALEXANDER: Jay Alexander and with
 9 me is Mr. Foster from Bilzin, Sumberg. We
 10 represent the defendant, Banco Latino or
 11 BLI.
 12 I note that Harley Tropin is also
 13 here. He represents someone who the
 14 plaintiff has announced that they seek to add
 15 as a co-defendant if this goes forward. The
 16 law firm that represents Banco Latino in an
 17 earlier litigation.
 18 This is the third time, Your Honor,
 19 that BLI has been through for malicious
 20 prosecution based on an action they brought
 21 about ten years ago against its prebankruptcy
 22 directors and officers. That earlier lawsuit
 23 that it brought it lost.
 24 THE COURT: Who lost?
 25 MR. ALEXANDER: Banco Latino lost it.

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1 THE COURT: What are your theories in
 2 this particular case?
 3 MR. ALEXANDER: This case now is a
 4 malicious prosecution case and a conspiracy
 5 to prosecute maliciously.
 6 THE COURT: Two counts?
 7 MR. ALEXANDER: Two defendants in four
 8 counts. They each assert one claim for
 9 malicious prosecution and one count for
 10 failure to prosecute.
 11 THE COURT: A conspiracy to commit
 12 malicious prosecution?
 13 MR. ALEXANDER: Correct.
 14 The malicious prosecution theory is not
 15 viable. The conspiracy to prosecute
 16 maliciously is not viable neither through
 17 Florida law because you need to have an
 18 underlying tort in order to have a conspiracy
 19 to commit that tort. The law in the summary
 20 is very clear on that. I can hand you cases
 21 if you would like, but it is very clear.
 22 Let me go back to the motion for
 23 prosecution because, in my view, that is the
 24 matter in dispute. This is the third time we
 25 have seen it. The first two were dismissed

<p>Page 6</p> <p>1 following a hearing on a motion to dismiss. 2 Most recently, less than six months ago I was 3 before Judge Cohen. 4 THE COURT: Okay. You were sued in 5 federal court and the federal judge held that 6 -- no. You sued the officers and directors 7 in federal court and the federal judge held 8 you were not the object of a fraud and 9 dismissed the case? 10 MR. ALEXANDER: That's correct. 11 THE COURT: You have been through 12 twice? 13 MR. ALEXANDER: Three times. 14 THE COURT: This is the third time? 15 MR. ALEXANDER: This is the third time. 16 THE COURT: And by whom were you being 17 sued? 18 MR. ALEXANDER: Originally the former 19 officer named Mr. Gilly. The second lawsuit 20 we were sued by Ms. Pulgar. This time we are 21 being sued by Mr. Gomez-Lopez and his wife, 22 Ms. Febres-Cordero. 23 THE COURT: All these folks were? 24 MR. ALEXANDER: They were former 25 directors. Prior to the Banco Latino</p>	<p>Page 8</p> <p>1 directors in the same lawsuit relating to the 2 same misconduct, and he said that Banco 3 Latino couldn't assert those claims because 4 the knowledge of its directors was imputed. 5 I have put that aside. Just be aware of 6 that. He then withdrew based on Mr. Gilly. 7 We filed a motion to dismiss. After a 8 hearing in front of Federal Judge Huck, that 9 case, Mr. Gilly withdrew it. 10 The second case heard by Judge Cohen 11 was the Pulgar case. Less than six months 12 ago we were in front of Judge Cohen and we 13 had an extensive hearing. Judge Cohen 14 actually had done her own independent 15 research, and said I reviewed the federal 16 judge's ruling dismissing the Banco Latino 17 case, and I have reviewed the law on 18 malicious prosecution, and it is absolutely 19 clear to me there is no doubt that the 20 federal case was dismissed for lack of 21 standing, and lack of standing is not -- a 22 lack of standing cannot provide the basis for 23 a malicious prosecution case because in order 24 to have a malicious prosecution case you must 25 have a bonafide termination of the first</p>
<p>Page 7</p> <p>1 bankruptcy in 1994 they had been directors. 2 THE COURT: They have all been 3 directors? 4 MR. ALEXANDER: They have all been 5 directors. 6 THE COURT: Okay. 7 MR. ALEXANDER: Judge Highsmith, the 8 federal judge in the lawsuit that we brought, 9 said you, Banco Latino, cannot proceed 10 against them on a RICO claim -- a RICO fraud 11 claim because the scheme that you have 12 described in your complaint, which was a 13 theme by which they funneled money out of the 14 United States, was intended not to deceive 15 you, Banco Latino, but instead was intended 16 to deceive the United States Federal Reserve 17 that regulates Banco Latino. Therefore, you, 18 Banco Latino, are not the victim. Rather the 19 Federal Reserve is the victim, so you don't 20 have standing, Banco Latino, and he dismissed 21 Banco Latino. 22 THE COURT: Okay. 23 MR. ALEXANDER: The other claim -- 24 there is a second claim, state law claims for 25 which Banco Latino asserted against those</p>	<p>Page 9</p> <p>1 lawsuit, okay. 2 What Judge Cohen said is a dismissal 3 for lack of standing is not a bonafide 4 termination because a bonafide termination is 5 the ending of the first lawsuit that 6 determines that the defendant in the original 7 lawsuit, the directors, didn't do anything 8 wrong. And because judge -- the federal 9 judge didn't find that they didn't do 10 anything wrong, he just found that we 11 couldn't complain about it, Judge Cohen said 12 there is not a bonafide termination. You 13 cannot assert a malicious prosecution claim. 14 Your Honor, I have brought a copy of 15 the transcript of that hearing. I have 16 tagged and highlighted the relevant pages 17 from Judge Cohen's ruling, which I would be 18 pleased to hand you. 19 THE COURT: Now, I take it that in 20 suing in federal court on the theory of 21 fraud, I guess, and others, Banco Latino sued 22 these folks, Lopez and Cordero? 23 MR. ALEXANDER: Yes. 24 THE COURT: Who are part of the 25 defendant?</p>

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1 MR. ALEXANDER: Yes.
 2 THE COURT: In that case?
 3 MR. ALEXANDER: That's correct.
 4 THE COURT: That's the case that
 5 they're relying on for saying that they
 6 maliciously prosecuted.
 7 MR. ALEXANDER: They are saying that
 8 because we sued them and we lost the case, we
 9 maliciously prosecuted them. What Judge
 10 Cohen said is --
 11 THE COURT: There is no bonafide
 12 termination?
 13 MR. ALEXANDER: Exactly.
 14 THE COURT: There are four or five
 15 elements of malicious prosecution and one of
 16 them is that one.
 17 MR. ALEXANDER: Precisely.
 18 THE COURT: Probable cause.
 19 MR. ALEXANDER: Is another one,
 20 correct.
 21 THE COURT: Okay.
 22 MR. ALEXANDER: Filing of the
 23 proceedings.
 24 THE COURT: Filing of the proceedings.
 25 MR. ALEXANDER: Now, Judge Cohen said

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1 -- she said, Ms. Pulgar, you cannot sue for
 2 malicious prosecution based on that RICO
 3 claim. But she said, I want you to go back
 4 and look further and brief for me whether or
 5 not the other claims in the federal case,
 6 which were the state law claims which Judge
 7 Cohen said there was a bonafide termination
 8 for, she said, go back and see if you can
 9 make a malicious prosecution suit on a claim
 10 by claim basis instead of a case basis. Do
 11 you understand what I am saying?
 12 But if you go to the third -- if I can
 13 just sort of walk through these three tabs
 14 with you. It's very important.
 15 The first part is page 15. I have
 16 highlighted the relevant passage. Judge
 17 Cohen said, "There has to be a bonafide
 18 termination. And I've read the case law on
 19 standing and even the federal judge said that
 20 this is a standing issue. I don't believe
 21 that standing -- standing is not a bonafide
 22 determination on the merits."
 23 If you go to the second tab at the
 24 bottom of the page.
 25 THE COURT: Yes.

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1 MR. ALEXANDER: "I've looked at
 2 numerous cases and I've read the federal
 3 judge's opinion and I don't think that that
 4 is a bonafide termination."
 5 THE COURT: I see.
 6 MR. ALEXANDER: Go to the third tab.
 7 THE COURT: I see.
 8 MR. ALEXANDER: Fourth tab. "I really
 9 believe that there has to be a bonafide
 10 termination and based on the complaint, I
 11 feel that you could reach that with your
 12 fiduciary." Referring there to the fiduciary
 13 claims in the federal lawsuit. She said
 14 those, I think, were terminated on a bonafide
 15 basis.
 16 Then she says, "Now, in the case law on
 17 malicious prosecution, can you count by count
 18 and say, well, you know, on that count, no,
 19 it wasn't malicious, but it could have been
 20 malicious on another count."
 21 In other words, Banco Latino sued the
 22 defendants on two counts, RICO and breach of
 23 fiduciary duty. This is not a bonafide
 24 termination. Judge Cohen is saying if this
 25 is not a bonafide termination, you can't make

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1 a malicious prosecution on this claim, but
 2 can you on just this one claim? She said, go
 3 back and brief that.
 4 Before we had a chance to brief it,
 5 Ms. Pulgar dismissed that last piece. Why
 6 did she do that? Because the Florida Supreme
 7 Court has answered Judge Cohen's question in
 8 the Burdines case.
 9 THE COURT: Which tab is the federal
 10 judge's order?
 11 MR. ALEXANDER: I will hand to Your
 12 Honor a copy of it. I have also tabbed the
 13 relevant passage of that order.
 14 MR. DELGADO: Judge, if I could
 15 interrupt. I don't want us to do anything
 16 outside the pleadings. We're here on a
 17 motion to dismiss. They filed an answer.
 18 THE COURT: Actually -- well, this is
 19 local.
 20 MR. DELGADO: That one. I am waiting
 21 for when there was a lapse.
 22 THE COURT: Motion to dismiss and/or
 23 summary judgment.
 24 MR. DELGADO: They just filed an
 25 answer. We haven't done any discovery. If

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1 they want to consider this a motion for
 2 summary judgment, that's fine. We are ready
 3 to argue.
 4 THE COURT: This has to be strictly on
 5 a question of law which is the same thing I
 6 would deal with on a motion to dismiss.
 7 MR. DELGADO: That's fine.
 8 THE COURT: If there are issues of
 9 fact, then the court cannot grant summary
 10 judgment.
 11 MR. DELGADO: I just want to make sure
 12 for the record that we are here --
 13 THE COURT: Then I cannot grant summary
 14 judgment. There would be a denial of summary
 15 judgment.
 16 MR. DELGADO: Okay. I would like for
 17 the record to reflect that.
 18 THE COURT: Let's go ahead and give him
 19 some time to respond. The first tab is?
 20 MR. ALEXANDER: The first tab describes
 21 what this lawsuit -- Banco Latino's lawsuit
 22 was about.
 23 THE COURT: Then the second tab?
 24 MR. ALEXANDER: Further explaining it.
 25 An explanation of what the lawsuit was

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1 about. The third tab is the heading.
 2 THE COURT: RICO claims failed because
 3 it was not the victim of a pattern of --
 4 MR. ALEXANDER: Right.
 5 THE COURT: There was no standing to
 6 bring the RICO claims?
 7 MR. ALEXANDER: Correct.
 8 THE COURT: And then --
 9 MR. ALEXANDER: Next page is where the
 10 court explains that the victim was the
 11 Federal Reserve, not Banco Latino.
 12 THE COURT: Okay.
 13 MR. ALEXANDER: Then the final tab
 14 further confirms --
 15 THE COURT: There is no final tab page.
 16 MR. ALEXANDER: 1536. I'm sorry.
 17 THE COURT: Okay. So there was also
 18 the count for fraud and civil conspiracy?
 19 MR. ALEXANDER: Correct. You had the
 20 federal RICO claim and you had the state law
 21 claim. The federal RICO claim, no bonafide
 22 termination. State claim, Judge Cohen said
 23 there was a bonafide termination.
 24 THE COURT: Okay.
 25 MR. ALEXANDER: In the Burdines case

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1 the Supreme Court explained that the
 2 malicious prosecution case involves whether
 3 or not there was a bonafide termination of
 4 the entire lawsuit. If you have two claims
 5 and for either one of them there was not a
 6 bonafide termination, then there was not a
 7 determination that these defendants were, in
 8 fact, innocent and, therefore, that there was
 9 not a bonafide termination, you cannot bring
 10 the malicious prosecution case. The Burdines
 11 case is applied more recently in the
 12 Fridovich case.
 13 MR. TROPIN: F-R-I-D-O-V-I-C-H.
 14 MR. ALEXANDER: That is why it is clear
 15 that the malicious prosecution case cannot
 16 survive. If it can't survive, the conspiracy
 17 necessarily collapses.
 18 MR. DELGADO: Good afternoon, Judge.
 19 First of all, Judge Cohen never rendered an
 20 order. It was a temporary ruling. They
 21 dismissed the case. So, first of all, that's
 22 not in our case. We are not similarly
 23 situated as Ms. Pulgar. We have a sanction
 24 order against his law firm as well as having
 25 an order from Judge Highsmith. They have

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1 sugarcoated the facts here and given you a
 2 perception that is not necessarily complete.
 3 So, anyway, the oral pronouncement that
 4 the judge made doesn't apply to us, first of
 5 all, because we have completely different
 6 facts.
 7 Secondly, we weren't there. We didn't
 8 participate. There were different parties.
 9 Different issues were raised.
 10 There are cases right on point. We
 11 moved to dismiss that because of the fact
 12 that it doesn't apply. You shouldn't even
 13 consider it as a practical matter.
 14 But having said all of that, what
 15 counsel has clearly indicated, this was a
 16 case that was litigated for about ten years,
 17 and my client filed this malicious
 18 prosecution action because after ten years he
 19 did get a verdict. His verdict was a summary
 20 judgment. It wasn't a dismissal. He moved
 21 for summary judgment and he got summary
 22 judgment.
 23 THE COURT: Who moved for summary
 24 judgment?
 25 MR. DELGADO: Mr. Gomez-Lopez and

<p style="text-align: right;">Page 18</p> <p>1 Mrs. Gomez-Lopez moved for summary judgment 2 and got summary judgment. 3 THE COURT: In the federal? 4 MR. DELGADO: Absolutely. It goes 5 further than that. We have done further 6 discovery. 7 THE COURT: You got summary judgment on 8 what count? 9 MR. DELGADO: On all the counts. The 10 ones referenced. The order you're looking at 11 was before this court on a motion for summary 12 judgment. We were ready to try the case. In 13 fact, we were picking the jury the next day. 14 We had gone through years of discovery. And 15 the court basis of this lawsuit and the 16 reason the judge entered -- 17 THE COURT: Let me stop you right 18 there. The case that he has given to me, I 19 guess, dealt with more defendants. Whose 20 claims were they dealing with when they said 21 BLI had no standing? Your claims as well? 22 MR. DELGADO: The word standing is 23 never used in that final judgment. In fact, 24 the reason for the ruling is because there 25 was a lack of any facts to support any of the</p>	<p style="text-align: right;">Page 20</p> <p>1 possibly one of the claims was viable. The 2 RICO claim possibly was viable under the laws 3 of other jurisdictions. He still found no 4 factual basis for bringing this claim. 5 The reason we are bringing the 6 malicious prosecution claim is because after 7 ten years of litigation we finally 8 prevailed. We finally prevailed. We didn't 9 prevail on a technicality on the standing. 10 If you read the order and read it together -- 11 and we filed all of this as part of our 12 response. Greg, can you hand that to the 13 Judge as well, please? 14 MR. TRASK: Exhibits F and G. 15 MR. ALEXANDER: Do you have a copy? 16 MR. DELGADO: Yes. 17 THE COURT: Give me F. It is not part 18 of the report. 19 MR. TRASK: Next one. 20 THE COURT: Recommendation on orders. 21 Federal magistrate. Motion for sanctions. 22 It is a motion for sanctions. 23 MR. DELGADO: The motion for 24 sanctions -- 25 THE COURT: The reported recommendation</p>
<p style="text-align: right;">Page 19</p> <p>1 claims that they had made. 2 In fact, you need to look at that 3 order. You need to also look at what went 4 with it, which is a motion for sanctions, 5 that goes along side and further explains 6 what Judge Highsmith was trying to do. 7 Because the reason they entered the order and 8 the reason they ruled for a summary judgment, 9 and it was all part and parcel, was in part 10 there was no basis. This was a frivolous 11 claim from the beginning and they knew it. 12 We were able to present this 13 information to prove to the judge. He 14 entered summary judgment and referred the 15 motion for sanctions to Magistrate Garber. 16 Magistrate Garber found that there was no 17 basis. They had never done any investigation 18 because much of the facts they have alleged 19 were just plain wrong and were false. He 20 sanctioned them. He ordered them to pay us 21 \$120,000 in sanctions, and it went back to 22 Judge Highsmith because they appealed it, and 23 Judge Highsmith approved it. 24 He did say -- I will grant them that. 25 He did say as part of the ruling possibly,</p>	<p style="text-align: right;">Page 21</p> <p>1 is on the motion for sanctions. 2 MR. DELGADO: That's correct. 3 THE COURT: It is not on the summary 4 judgment. What did you get here? 5 MR. DELGADO: The ruling that they have 6 given to Your Honor was on our motion for 7 summary judgment. 8 In addition to the motion for summary 9 judgment, we had moved for sanctions. The 10 judge entered the order, grants our motion 11 for summary judgment on the basis of there 12 was no evidence to support the claims. 13 Now, certainly a part of one of the 14 elements that they can claim as the 15 racketeering activity, they can argue and 16 make the argument that it was one of the 17 standing issues, but that wasn't the tort. 18 That wasn't the basis of the judge's ruling. 19 The reason Judge Highsmith found for 20 the tort -- he had to because the only thing 21 he had before him was a motion for summary 22 judgment. He found that we met the standard 23 for summary judgment. We prevailed. 24 That's all we need to prove. That's 25 all we need for purpose of a malicious</p>

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1 prosecution action. We need to prove that we
 2 prevailed.
 3 Judge, it couldn't be clearer. We
 4 prevailed. We have an order granting our
 5 motion for summary judgment on the basis of a
 6 lack of evidence to support all of their
 7 claims. It's not just the RICO claims. It
 8 is all of them. That is further supported by
 9 what Judge Highsmith did on the motion for
 10 sanctions, which you have to read in part and
 11 parcel because there they go into the lack of
 12 any evidence to support the claims.
 13 This order then goes back to Judge
 14 Highsmith and he adopts it. He adopts the
 15 finding. At least for purposes of this
 16 argument he adopts the finding that there was
 17 no credible evidence to support any of the
 18 claims. In fact, he goes on to tell them
 19 that they failed to investigate. He goes on
 20 to find there was misrepresentations. He
 21 goes on further. You don't get a federal
 22 judge to grant sanctions and attorney's fees
 23 based on a technicality of standing. How
 24 they could come here and argue that is beyond
 25 me.

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1 We got a ruling on summary judgment.
 2 It was based on a lack of credible evidence
 3 that this case was prosecuted maliciously.
 4 It had no basis from the beginning, and we
 5 are able to prove that going forward.
 6 THE COURT: Okay. Let me see. You
 7 have an order from the federal court. Again,
 8 the reported recommendation --
 9 MR. DELGADO: Yes. I have it here,
 10 Judge, if you would like.
 11 THE COURT: I have it here.
 12 MR. DELGADO: You have it in front of
 13 you. I can point you to the sections, but
 14 basically go to page three. Summarizes the
 15 sanctions are appropriate for three reasons.
 16 BLI failed to conduct a factual legal
 17 inquiry. Two, no factual basis exists from
 18 which BLI could base its claim. No legal
 19 basis to support the claims against
 20 Mr. Gomez-Lopez.
 21 All of that was affirmed by Judge
 22 Highsmith with the exception of the legal
 23 basis. He basically said arguably, possibly
 24 under the laws of other circuits there could
 25 have been a basis. But certainly not on the

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1 factual. He went ahead and sanctioned. He
 2 certainly entered summary judgment. That was
 3 affirmed.
 4 THE COURT: Okay. Brief response.
 5 MR. ALEXANDER: Very briefly. He
 6 admits he characterized the ruling of the
 7 sanctions which was the decision that
 8 resolved the litigation. It resolved the
 9 litigation, and you can see that there is a
 10 standing resolution.
 11 The sanction ordered, Your Honor, if
 12 you look -- I hand you a copy that is
 13 highlighted. Judge Highsmith did not adopt
 14 the magistrate's recommendation for the most
 15 part. He rejected most of them. The only
 16 one he adopted you can see in a footnote at
 17 the bottom of the page.
 18 What he said in that footnote was that
 19 BLI was unable to prove that there was no
 20 factual basis to support BLI's claim that it
 21 was defrauded by the triangular transaction
 22 scheme in this case.
 23 What he said was, I'm going to sanction
 24 you because you didn't have evidence to
 25 support standing. He didn't have that

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1 evidence from the date the summary judgment
 2 motion was filed. He did not -- Judge
 3 Highsmith did not say this case was factually
 4 based. What he said in the sanction motion
 5 was standing -- you didn't have evidence to
 6 support standing.
 7 In the summary judgment order, which
 8 Your Honor has now read, you see that he
 9 clearly talks about the fact that Banco
 10 Latino did not itself have an interest.
 11 THE COURT: All right.
 12 MR. ALEXANDER: The final thing I can
 13 hand you is that plaintiff's counsel then
 14 failed to argue in the federal court that the
 15 Rule 11 order was not relevant to this
 16 proceeding.
 17 THE COURT: Okay. That's it?
 18 MR. ALEXANDER: That's it.
 19 THE COURT: Well, I will tell you what
 20 troubles me here, and I think the meat of
 21 this all is probably in page 1334 of the
 22 federal supplement opinion. The actual order
 23 in the case.
 24 What Judge Highsmith said with regard
 25 to the RICO claim was there is no evidence

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1 that the triangular transactions were made
 2 with the requisite intent to defraud BLI. It
 3 is quite evident that the triangular
 4 transaction scheme was devised by the
 5 principles of BLI, BLCA, and BLNV to deceive
 6 federal regulators by creating the appearance
 7 that BLI was not overexposing itself to BLNV
 8 and BLCA. The intent to deceive federal
 9 regulators does not, however, equate to the
 10 mens rea to defraud BLI.
 11 What they're saying is -- what he is
 12 saying was the fact that they meant to
 13 deceive regulators doesn't mean that BLI was
 14 deceived -- it was meant to deceive BLI.
 15 If you keep reading the case, in a
 16 civil RICO case when the alleged predicate
 17 act is mail or wire fraud, the plaintiff must
 18 have been a target of the scheme to defraud
 19 and must have relied to his detriment on
 20 misrepresentations made in furtherance of the
 21 scheme.
 22 Then it goes on, where, as in the
 23 instant case, the only party possibly
 24 defrauded by a scheme is the federal
 25 government, private litigants, who may have

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1 been harmed by the scheme, cannot bring a
 2 civil RICO case.
 3 That part is what you said. If you
 4 read the footnote, as discussed above, the
 5 judicial bar to these types of civil RICO
 6 claims may be articulated in various terms.
 7 The 11th Circuit has construed the bar both
 8 as a proximate cause issue -- that's not a
 9 standing issue -- and a standing issue.
 10 So the 11th Circuit has said it is a
 11 standing bar or a proximate cause bar. If it
 12 is a proximate cause bar, that is a
 13 determination on the merits.
 14 MR. ALEXANDER: What the 11th Circuit
 15 cases are saying is because you are not --
 16 BLI was not the target, you can't claim
 17 injury, because somebody else was injured;
 18 therefore, you can't claim it.
 19 THE COURT: It may mean it or it may
 20 mean that the actions were not the proximate
 21 cause of your injury and that's a causation
 22 issue. That's not a standing issue.
 23 MR. TROPIN: Either way you don't have
 24 a favorable determination on the merits.
 25 THE COURT: I don't know. This opinion

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1 is heavy with --
 2 MR. DELGADO: You had to be there. I
 3 was probably the only one that was there
 4 throughout all of this. This was based on a
 5 lack of factual basis. That's what he did.
 6 That's why you had to read it.
 7 THE COURT: I have read it five times.
 8 He keeps repeating that there is no evidence
 9 basically.
 10 MR. DELGADO: Basically. Judge, they
 11 even had their own witnesses. This is really
 12 one of the worst cases of malicious
 13 prosecution in 20 years I have been
 14 practicing. This one deserves to go to a
 15 jury. They're trying to do everything they
 16 can to throw in the standing issue. This has
 17 nothing to do with standing. This is not a
 18 technicality, Judge. You don't get a federal
 19 judge to award sanctions to one of the
 20 largest law firms in this country based on
 21 the standing issue of technicality.
 22 THE COURT: If there is no basis to
 23 bring the lawsuit, he can.
 24 MR. DELGADO: That's why he did it.
 25 There was no basis. There was no basis. We

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1 got a summary judgment, Judge. He could have
 2 done it at the beginning on the motion to
 3 dismiss.
 4 After the evidence had been produced,
 5 after we had done all the discovery, we moved
 6 for summary judgment and we got our
 7 decision. This is it. This is a classic
 8 malicious prosecution case. This is where
 9 you have a verdict. You get a decision and
 10 now you come back to another court to have
 11 the basis for that and for everything that
 12 this law firm did --
 13 THE COURT: Did you argue the evidence
 14 in the motion for summary judgment -- did you
 15 argue the lack of evidence?
 16 MR. DELGADO: Absolutely. Obviously we
 17 weren't allowed to give oral argument. The
 18 motion is before you. If you would like to
 19 look at the motion. Absolutely.
 20 MR. ALEXANDER: Your Honor --
 21 THE COURT: What gets me is standing
 22 means you don't have a right to set your foot
 23 into the courthouse to begin with.
 24 MR. ALEXANDER: Correct.
 25 MR. TROPIN: Right.

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1 THE COURT: But that's not what this
 2 court said. Based upon the evidence that was
 3 presented during the discovery and then when
 4 he moved for summary judgment, there is no
 5 evidence that this particular plaintiff was
 6 defrauded.
 7 MR. ALEXANDER: But what the judge
 8 found was that Gomez-Lopez, Pulgar, Gilly,
 9 these plaintiffs engaged in a triangular
 10 placement scheme. He outlines what the
 11 scheme was. He says they did it. But, BLI,
 12 you can't complain about it because you
 13 weren't the target. That's not a
 14 vindication. That is not a determination
 15 that they are not wrongdoers.
 16 In order to assert a malicious
 17 prosecution claim they have to be
 18 vindicated. It can't even be a pact. They
 19 have to be vindicated, and they're not.
 20 MR. DELGADO: Judge, that was in the
 21 alternative. Even if the -- the only
 22 possible person who would have been hurt
 23 would have been the regulators.
 24 THE COURT: What the opinion says is
 25 everybody was doing this. The plaintiff was

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1 plaintiff and defendant are Ms. Lopez and
 2 Banco Latino, correct?
 3 MR. TROPIN: Correct.
 4 THE COURT: There is no case you have
 5 in front of me?
 6 MR. DELGADO: There is nothing, so I
 7 don't think he should be arguing.
 8 THE COURT: I don't know what is going
 9 to be put before me.
 10 MR. TROPIN: I want 30 seconds to say
 11 that they weren't vindicated. The law firm,
 12 Banco Latino and everybody else was punished
 13 by the RICO sanction. Paid the money.
 14 That's it.
 15 The question of whether or not he has a
 16 malicious prosecution case is simple. We
 17 were told by the court or the jury you didn't
 18 do anything wrong.
 19 In this case they said you did this
 20 triangular transaction. He definitely found
 21 there was nothing good about it. Probably
 22 were deceiving the federal regulators; but
 23 you, Banco Latino -- these people were their
 24 officers. You, Banco Latino, stand in the
 25 shoes of them. You don't have standing.

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1 doing it. BLI.
 2 MR. DELGADO: BLI.
 3 THE COURT: It outlines it.
 4 MR. DELGADO: Not my client. That's
 5 the distinction.
 6 THE COURT: BLI was doing it and
 7 perhaps --
 8 MR. ALEXANDER: The defendants.
 9 THE COURT: The defendants were doing
 10 it, but BLI was also doing it, so BLI was not
 11 the victim. It was the federal regulators.
 12 MR. TROPIN: BLI was --
 13 MR. DELGADO: Judge, he is not counsel
 14 of record. I don't think he should be
 15 arguing.
 16 MR. TROPIN: I represent the law firm
 17 that was being sued, and, of course, your
 18 ruling -- we are right before you and it will
 19 affect us.
 20 THE COURT: What law firm do you
 21 represent?
 22 MR. TROPIN: Cleary, Gottlieb. There
 23 is going to be another law firm. Akerman,
 24 Senterfitt is going to be sued.
 25 THE COURT: In this particular case

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1 That is not saying that Gomez-Lopez was
 2 vindicated. You have to be vindicated to
 3 bring a malicious prosecution case. So this
 4 should be dismissed. Otherwise, we will
 5 spend a lot of time taking discovery and it
 6 will come right back to this legal point.
 7 Why put everybody through it? Thank you.
 8 MR. DELGADO: That's certainly the
 9 farthest thing from what actually happened.
 10 He wasn't there.
 11 THE COURT: You're asking me to dismiss
 12 it so you take it up.
 13 MR. DELGADO: Judge, we are asking you
 14 to deny it.
 15 THE COURT: There is also another issue
 16 that is hanging out there. The one which you
 17 cited this case for, and I'm not convinced
 18 that this stands for that proposition.
 19 MR. DELGADO: We think you have to deny
 20 their motion, Judge. It is the only
 21 appropriate thing to do and let this case go
 22 to a jury.
 23 THE COURT: I don't know that we are
 24 talking about letting this case go to a
 25 jury. You're at the beginning at the case.

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1 I could -- I mean, all this is is a motion to
 2 dismiss. You could develop the case and you
 3 could bring another motion for summary
 4 judgment. I don't care. You can do that. I
 5 don't know what else you can argue on this
 6 point because this is probably a question of
 7 -- more of a question of law than anything
 8 else.
 9 MR. DELGADO: They raised it as a
 10 summary judgment. I don't think this issue
 11 should come back.
 12 MR. ALEXANDER: This is a question of
 13 law. The court should rule on a question of
 14 law.
 15 THE COURT: All right. I don't have to
 16 agree with you.
 17 MR. ALEXANDER: That's true. I
 18 understand.
 19 THE COURT: I will tell you what. I
 20 will deny the motion at this time, okay. I'm
 21 not convinced I should grant this motion. If
 22 you want to bring this before the court later
 23 on a motion for summary judgment, you can.
 24 I'm not going to dismiss it on a motion to
 25 dismiss. I'm not convinced that the evidence

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1 was not reached in that case to say --
 2 actually, there was a sanction. There was no
 3 basis -- no factual basis for this lawsuit
 4 against these defendants.
 5 MR. DELGADO: Thank you, Judge.
 6 THE COURT: That's what the court did.
 7 I'm sorry.
 8
 9 (Thereupon, the hearing was concluded)
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1 CERTIFICATE OF NOTARY
 2 STATE OF FLORIDA:
 SS.
 3 COUNTY OF DADE:
 4 I, SHEILA A. WILSON, a Registered
 5 Professional Reporter and Notary Public in and for
 6 the State of Florida at Large, do hereby certify
 7 that I reported in shorthand the proceedings in
 8 the above-styled cause before the Honorable
 9 Margarita Esquiroz, at the time and place as set
 10 forth; that the foregoing pages, numbered from 1
 11 to 36, inclusive, constitute a true record.
 12 I further certify that I am not an
 13 attorney or counsel of any of the parties, nor
 14 related to any of the parties, nor financially
 15 interested in the action.
 16 WITNESS my Hand and Official Seal this
 17 27th day of October, 2004.
 18
 19
 20 Notary Public State of
 Florida. My Commission
 expires Oct. 26, 2007.
 21
 22
 23
 24
 25

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO: 03-28272 CA 10

GUSTAVO GOMEZ-LOPEZ, ET AL.,

Plaintiff(s),

vs.

BANCO LATINO INTERNATIONAL,

Defendant(s).

ORDER

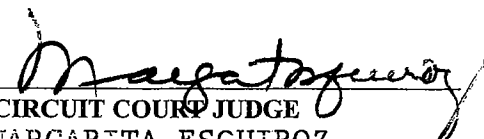
~~GRANTING/DENYING~~
~~PLAINTIFF'S/DEFENDANT'S~~
MOTION TO DISMISS COMPLAINT
AND /OR FOR SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on October 21, 2004,
on ~~Plaintiff's~~ Defendant's Motion
to Dismiss Complaint and/or Summary Judgment

and the Court having heard argument of counsel, and being otherwise advised in the premises, it is
hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby
denied. In the event there is no genuine issue of material fact
in the progress of the case and either party should be entitled to
judgment as a matter of law, either party may move for summary
judgment at that time.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 26th day of
October, 2004.


CIRCUIT COURT JUDGE
MARGARITA ESQUIROZ