

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
In re BANCO BRADESCO S.A. SECURITIES :
LITIGATION. :
:
----- X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 9/29/17

1:16-cv-4155-GHW

OPINION AND ORDER

GREGORY H. WOODS, United States District Judge:

In 2013, an anonymous letter was delivered to the headquarters of the Brazilian Federal Police detailing a widespread practice of corporate bribery of Brazilian tax officials. That letter prompted the Brazilian authorities to open a multi-year investigation into more than seventy Brazilian industrial, agricultural, civil engineering, and financial institutions known as “Operation Zealots.” On May 31, 2016, Defendants Luiz Carlos Trabuco Cappi, Domingos Figueiriedo de Abreu, and Luiz Carlos Angelotti, each senior executives of Defendant Banco Bradesco S.A., were indicted by the Brazilian Federal Police on charges of violating Brazilian anti-corruption laws through an alleged scheme to unlawfully influence the outcome of proceedings pending before a Brazilian tax tribunal.

Lead Plaintiff Public Employees’ Retirement System of Mississippi alleges that Defendants made a number of statements that, in light of the alleged misconduct underlying those criminal charges as well as earlier uncharged bribery schemes, were false or misleading in violation of the Securities Exchange Act of 1934. Defendants have moved to dismiss the operative complaint on several grounds. In addition, Defendant Abreu has moved to dismiss the claims against him for lack of personal jurisdiction. For the reasons that follow, Defendants’ motion to dismiss is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND¹

This putative class action arises indirectly out of Operação Zelotes (“Operation Zealots”), a multi-year investigation by Brazilian authorities into allegedly widespread corporate bribery of Brazilian tax officials. As a result of Operation Zealots, Defendants Luiz Carlos Trabuco Cappi (“Trabuco”), Domingos Figueiredo de Abreu (“Abreu”), and Luiz Carlos Angelotti (“Angelotti”) (collectively, the “Individual Defendants”), each senior executives of Defendant Banco Bradesco S.A. (“Bradesco” or the “Company”), were indicted by the Brazilian Federal Police on May 31, 2016 on charges of violating Brazilian anti-corruption laws through an alleged scheme to unlawfully obtain favorable tax treatment and tax rulings for Bradesco.

Lead Plaintiff, the Public Employees’ Retirement System of Mississippi (“Plaintiff”) brings this lawsuit under Section 10(b) of the Securities Exchange Act (“Exchange Act”) and SEC Rule 10b-5 promulgated thereunder, as well as under Section 20(a) of the Exchange Act, on behalf of itself and a putative class of purchasers or acquirers of preferred American Depositary Shares (“PADS”) of Bradesco between April 30, 2012 and July 27, 2016 (the “Class Period”).² Plaintiff filed an amended complaint on October 21, 2016, naming Bradesco, Trabuco, Abreu, and Angelotti as defendants. ECF No. 45. Defendants filed a motion to dismiss the amended complaint on

¹ Unless otherwise noted, the facts are taken from the amended class action complaint, and are accepted as true for the purposes of this motion. See, e.g., *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In the amended complaint, Plaintiff represents that, where allegations are not made on personal knowledge, they are made on information and belief based upon, “among other things, the ongoing investigation that court-appointed Lead Counsel is conducting under Lead Plaintiff’s supervision,” which includes review and analysis of (i) documents filed by Bradesco with the SEC and the Brazilian Comissão de Valores Mobiliários (“CVM”); (ii) securities analysts’ reports about Bradesco; (iii) transcripts of Bradesco conference calls; (iv) Bradesco press releases; (v) media reports, including those published in the U.S. and in Brazil, concerning Bradesco and “Operation Zealots”; and (vi) documents, criminal complaints, and other evidence submitted by Brazilian prosecutors and other governmental authorities in Brazilian court proceedings. Am. Compl. at 1.

² This action was initially filed by purported Bradesco ADS purchaser William Bryan on June 3, 2016. ECF No. 1. In accordance with the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(3), the Court received motions by members of the putative class for appointment as lead counsel. Following full briefing, the Court, by order dated August 15, 2016, appointed the Public Employees’ Retirement System of Mississippi as lead plaintiff and approved its choice of lead counsel and liaison counsel. ECF No. 24. The operative amended class action complaint was then filed on October 21, 2016. ECF No. 45.

December 23, 2016, ECF No. 63, Plaintiff filed an opposition on February 3, 2017, ECF No. 69, and Defendants filed a reply on March 3, 2017, ECF No. 73.

A summary of the factual allegations pleaded in the amended complaint follows.

A. The Parties

Defendant Banco Bradesco S.A. is one of the largest banks in Brazil. Am. Class Action Compl. (ECF No. 45) (“amended complaint” or “AC”) ¶ 23. It provides a variety of commercial banking services, including loans and deposit-taking, credit card issuance, insurance, leasing, payment collection and processing, asset management, and brokerage services. *Id.* Bradesco has a number of subsidiaries that operate in the insurance and asset management industries, including Grupo Bradesco Seguros, Bradesco Seguros S.A., Bradesco Asset Management, and Bradesco BBI. *Id.* Bradesco’s common and preferred shares are listed and traded on the Bolsa de Valores de São Paulo (“BOVESPA”), and its common and preferred American Depositary Shares (“CADS” and “PADS,” respectively) are listed and traded on the NYSE. AC ¶¶ 24-25. Bradesco is subject to reporting requirements of both the SEC and its Brazilian equivalent, the Comissão de Valores Mobiliários (“CVM”). AC ¶ 26.

Defendant Luiz Carlos Trabuco Cappi is Bradesco’s Chief Executive Officer and Vice President of its Board of Directors. AC ¶ 29. Prior to his appointment as CEO on March 10, 2009, Trabuco had served as Bradesco’s Vice President since March 1999. *Id.*

Defendant Luiz Carlos Angelotti is Bradesco’s Managing Officer and Investment Relations Officer and is a member of its Executive Board. AC ¶ 30. Angelotti was elected to the position of Managing Officer in January 2012 and served on Bradesco’s Executive Committees for Disclosure and Corporate Governance from 2012 to 2016. AC ¶ 30. According to the amended complaint, he was also responsible for the Company’s “Tax Audit, General Accounting, Social and Environmental Responsibility, as well as its Planning, Budgeting and Control areas during the Class Period.” *Id.*

Prior to his appointment as Managing Officer, Angelotti served as Department Officer from 2002 to 2010, and then as Deputy Officer from 2010 to 2012. *Id.*

Defendant Domingos Figueiredo de Abreu is Bradesco's Executive Vice President and is also a member of the Company's Executive Board. AC ¶ 31. Abreu served on the Company's Statutory Committees for Ethical Conduct and Internal Controls and Compliance, and its Executive Committees for Disclosure and Corporate Governance from 2012 to 2016. *Id.*

According to the amended complaint, each of the Individual Defendants was "named as a defendant in the Criminal Complaint for his role in Bradesco's tax bribery scheme." AC ¶¶ 29-31. Plaintiff alleges that Trabuco and Angelotti made a series of false or misleading statements in SEC and CVM filings during the Class Period, while Abreu made one false or misleading statement in an SEC filing and, "by virtue of" his committee membership, "was involved in the preparation and review of the false or misleading statements in Bradesco's SEC and CVM filings." *Id.*

B. Bradesco's Alleged Unlawful Scheme

According to the amended complaint, Operations Zealots revealed "that Bradesco had been engaged in an eleven-year scheme, beginning in 2004, to improperly influence the outcome of tax adjudications with billions of Brazilian Reais at stake." AC ¶ 60. The relevant cast of characters in the alleged scheme includes Eduardo Cerqueira Leite ("Leite"), Mario Pagnozzi Junior ("Pagnozzi"), and José Teruji Tamazato ("Tamazato") (collectively, the "Bribe Facilitation Group"), as well as a number of other non-parties. Leite served as an auditor at the Federal Revenue Service of Brazil ("FRS"). *Id.* ¶¶ 4, 33. Specifically, he was the Head of the Tax Guidance and Analysis Division at the Delegacia Especial de Receita Federal de Instituições Financeiras em São Paulo ("Specialized Office for Financial Institutions in São Paulo" or "DEINF/SP"), an administrative body within the FRS with responsibility for taxation, collection and recovery, as well as verification with respect to financial institution taxpayers. AC ¶ 33. Leite, who was also named in the Brazilian criminal complaint, is alleged in the amended complaint to have "facilitated Bradesco's efforts to influence

the outcome of” proceedings before CARF, the appellate body responsible for adjudicating tax disputes in Brazil, and to have been “instrumental in Bradesco’s tax bribery scheme, including his role in making determinations favorable to Bradesco in various actions before the DEINF/SP, in exchange for bribes.” *Id.*

Pagnozzi is a Brazilian businessman and lawyer affiliated with Pagnozzi, Calazans & Associados Consultoria Empresarial Ltda., which “purportedly provided ‘tax advice’ to Bradesco.” AC ¶ 34. Plaintiff alleges that Pagnozzi, who was also named in the Brazilian criminal complaint, “served as an intermediary for Bradesco’s illicit actions, facilitating bribe payments from the Company and the improper provision of confidential information to the Company at both the DEINF/SP and CARF levels.” *Id.*

Tamazato, who was also named in the criminal complaint, is a business partner of Pagnozzi’s at Pagnozzi, Calazans & Associados, where he serves as an accountant and “client winner.” AC ¶ 35. Tamazato “worked with Pagnozzi to facilitate Bradesco’s payment of bribes in exchange for the improper provision of confidential information as well as favorable determinations in various tax proceedings.” *Id.*

Mário da Silveira Teixeira Júnior (“Teixeira”) was a member of Bradesco’s Board of Directors from 2002 to 2015. AC ¶ 41. He served on the Company’s Statutory Committee for Internal Controls and Compliance and acted as its Coordinator from 2012 to 2015. *Id.* Also named in the criminal complaint, Teixeira allegedly attended at least one meeting between the Individual Defendants, Leite, and Pagnozzi, where he “encouraged the Bradesco attendees to pay for the ‘services’ that Leite and Pagnozzi were offering.” *Id.*

Jorge Victor Rodrigues (“Victor”) is a former FRS auditor and CARF councilor. In addition to being named in the criminal complaint, Victor “has also been implicated in CARF bribery schemes involving Banco Safra, Santander[, and] other Brazilian companies.” AC ¶ 37.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.