

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

00782

-----X
:
CAXTON INTERNATIONAL LIMITED,
CAXTON EQUITY GROWTH HOLDINGS,
LP, individually and derivatively on behalf of
the RESERVE INTERNATIONAL
LIQUIDITY FUND, LTD.,
:

Plaintiffs,
:

- against -
:

Civ. Action. No. _____

RESERVE INTERNATIONAL LIQUIDITY
FUND, LTD., RESERVE MANAGEMENT
CO., INC., RESRV PARTNERS, INC., THE
RESERVE FUND, BRUCE R. BENT, BRUCE
R. BENT II, and ARTHUR BENT III,
:

Defendants.
:
-----X

FILED
2023 JUN 27 11:41:00
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 *et seq.*, and 15 U.S.C. §§ 77a *et seq.*, 78a *et seq.*, 80a-1 *et seq.*, and 80b-1 *et seq.*, Defendants, by their undersigned counsel and with a full reservation of any and all rights, claims, and defenses of any nature whatsoever, including but not limited to defenses related to service of process, jurisdiction, and venue, file this Notice of Removal seeking removal of this action from the Supreme Court of the State of New York, County of New York: Commercial Division, to the United States District Court for the Southern District of New York and respectfully show:

Procedural Background

1. On October 6, 2008, Plaintiffs filed a Verified Complaint, styled *Caxton International Limited, et al. v. Reserve International Liquidity Fund, Ltd. et al.*, Docket No. 08/602875 (the “State Court Action”), in the Supreme Court of the State of New York, County of New York: Commercial Division. The case stated by the Verified Complaint was not removable.

2. On January 9, 2009, Plaintiffs provided Defendants with a copy of a First Amended Complaint (the “Amended Complaint”) and stated their intention to file and serve it in due course.

3. Under New York law, Plaintiffs may file their Amended Complaint at any time as a matter of right because no responsive pleading has yet been filed. Plaintiffs have informed the Court and Defendants that the only reason they have not yet filed the Amended Complaint is because it may contain confidential material.

Jurisdiction and Grounds for Removal

4. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1441 in that all or part of the relief being sought by Plaintiffs in the First Amended Complaint arises under the laws of the United States, including without limitation, the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*, the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, and the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, including any and all rules promulgated thereunder. To the extent that *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 125 S.

Ct. 2363, 2366 (2005), constitutes an independent basis to remove, separate from 28 U.S.C. § 1441, Defendants rely on it to support this Notice of Removal as well.

5. More specifically, as made clear by the Amended Complaint, Plaintiffs' claims and their entitlement to the requested relief necessarily depend on the construction and application of federal law, and thus raise substantial federal questions, for at least (but not limited to) the following reasons:

- Defendant Reserve International Liquidity Fund, Ltd. (the "Fund") is a business company incorporated under the laws of the BVI, and organized under the BVI Business Companies Act of 2004. The Fund is registered as a "Public Fund" within the meaning of the BVI Mutual Funds Act of 1996, as amended. Plaintiffs allege in their Amended Complaint, however, that defendant Reserve Management Company, Inc. ("RMCI"), the Fund's investment adviser, contractually agreed to adopt and to comply with Rule 2a-7 of the Investment Company Act of 1940 ("Rule 2a-7"), a U.S. securities law, promulgated by the Securities Exchange Commission ("SEC"), governing money-market funds. Plaintiffs assert, in the Amended Complaint, that the Fund has not been managed in accordance with Rule 2a-7 and therefore has breached its contractual obligations to plaintiffs. In short, to prevail on this newly pleaded cause of action Plaintiffs must prove, and purport to intend to prove, a violation of the Investment Company Act of 1940.

- The Amended Complaint also alleges several new claims against the board of trustees (the “Trustee Defendants”) of the Reserve Fund, an open-end, management investment company, registered with the SEC under the Investment Company Act of 1940. Specifically, Plaintiffs allege that the Trustee Defendants breached fiduciary duties in connection with the valuation of debt securities issued by Lehman Brothers and held by certain domestic funds, including the Reserve Primary Fund, managed by the Trustee Defendants. The Amended Complaint asserts that the Trustee Defendants owed -- and supposedly breached -- the same duties to the Fund, which plaintiffs allege was affiliated with the Reserve Fund in a manner comparable to the domestic funds managed by the Trustee Defendants. The Trustee Defendants’ rights and obligations in connection with the valuation of portfolio securities held by funds under their management is governed by the Investment Company Act of 1940 and the rules promulgated thereunder, including Rule 2a-4.
- By their express terms, Plaintiffs’ putative state law claims necessarily depend upon a substantial federal question, as such, this action arises under federal law for purposes of 28 U.S.C. § 1331. This is a case “of which the district courts of the United States have original jurisdiction,” which therefore permits Defendants to remove the action to this Court. 28 U.S.C. § 1441(a).

6. Pursuant to 28 U.S.C. § 1441(a), removal to the United States District Court for the Southern District of New York is proper as this is the federal district court for the district and division embracing the place where the state court suit is pending.

7. There are numerous cases filed and pending in the United States District Court for the Southern District of New York arising out of the facts and circumstances alleged in the above-captioned action: *Albert Fried & Company, LLC v. The Reserve Fund*, No. 08-CV-10302 (PGG); *Banc of America Securities LLC v. The Reserve Fund*, No. 08-CV-11204 (UA) (referred to the Honorable Paul G. Gardephe); *Clark Enterprises, Inc. v. The Reserve*, No. 08-CV-9387 (PGG); *Dyer v. The Reserve Fund*, No. 08-CV-8139 (PGG); *Frenkel v. The Reserve*, No. 08-CV-10006 (PGG); *Goodman v. Reserve Management Company, Inc.*, No. 08-CV-8593 (PGG); *Kurtzer v. The Reserve Fund*, No. 08-CV-8292 (PGG); *Lifschitz v. Reserve Management Co., Inc.*, No. 08-CV-8137 (PGG); *M.D.C. Holdings, Inc. v. The Reserve*, No. 08-CV-8141 (PGG); *Miller v. The Reserve*, No. 08-CV-8098 (PGG); *Pogozelski v. The Reserve Fund*, No. 08-CV-9604 (PGG); *Pomeranz v. The Primary Fund*, No. 08-CV-8060 (PGG); *Ross v. Reserve Management Company, Inc.*, No. 08-CV-10261 (PGG); *Schabel v. Bent*, No. 08-CV-8946 (PGG); *Third Ave. Institutional International Value Fund v. The Reserve Fund*, No. 08-CV-8103 (PGG); *Univision Communications Inc. v. The Reserve Fund*, No. 08-CV-9335 (PGG); and *Wolgin v. The Reserve Fund*, No. 08-CV-9525 (PGG).

8. This Notice of Removal is being filed within thirty (30) days of the receipt of a copy of an amended pleading from which it may first be ascertained that the case is one which is or has become removable as required by 28 U.S.C. § 1446(b).

9. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be provided to Plaintiff, and a copy of this Notice will be filed in the appropriate state court.

Prior State Court Proceedings

10. Pursuant to 28 U.S.C. § 1446(a), in addition to the Verified Complaint and the Amended Complaint, the following constitutes the only process, pleadings, and orders served upon defendants in this case:

- (a) Summons, dated October 6, 2008;
- (b) Affidavit of Service, dated October 7, 2008;
- (c) Order to Show Cause for Preliminary Injunction with Temporary Restraining Order, dated October 6, 2008;
- (d) Stipulation and Order, dated October 6, 2008;
- (e) Order Continuing Temporary Restraining Order and Directing Other Relief, dated October 20, 2008;
- (f) Order memorializing the withdrawal of Western Union's motion for leave to intervene, dated October 31, 2008;
- (g) Stipulation and Order appointing Denis O'Connor of Alix Partners LLP as Temporary Supervisor, dated November 7, 2008;
- (h) Order Directing Discovery, dated November 25, 2008;
- (i) Sealing Order, dated December 29, 2008;
- (j) Order Permitting disbursement of monies on or before January 30, 2009, dated January 21, 2009.

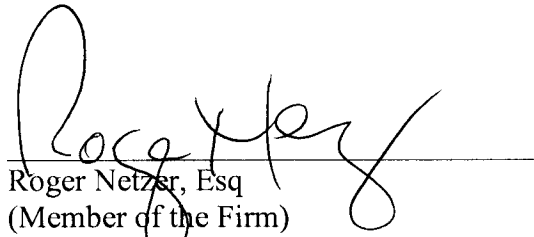
11. Upon a Stipulation of the Parties dated December 17, 2008, the Court overseeing the State Court Action entered an Order on December 29, 2008, directing the Clerk of the Court to seal the file of the State Court Action. Because the file has been sealed, defendants are prohibited from attaching the process, pleadings, and Orders served upon them in the State Court Action. Pursuant to 28 U.S.C. [S] 1450 "[a]ll . . . orders . . . in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."

12. The Amended Complaint purports to name new defendants who were not previously parties to the State Court Action: Edwin Ehlert, Jr., William E. Viklund, Joseph D.

Donnelly, William J. Montgoris, Frank J. Stalzer, Ronald J. Artinian, Santa Albiococco, and Stephen P. Zieniewicz. They have not been served with the Amended Complaint.

WHEREFORE, notice is given that this action is removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: January 27, 2009



Roger Netzer, Esq
(Member of the Firm)
Willkie Farr & Gallagher LLP
Attorneys for Defendants
787 Seventh Avenue
New York, New York 10019-6099
(212) 728-8000
rnetzer@willkie.com

*Attorneys for Defendants Reserve
International Liquidity Fund, Ltd., Reserve
Management Co., Inc., Resrv Partners, Inc.,
The Reserve Fund, Bruce R. Bent, Bruce R.
Bent II, and Arthur Bent III*

4667542.3

TO: KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
Attorneys for Plaintiffs
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700