

**IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT
R.S.B.C. 1996, C. 141, AS AMENDED**

- AND -

WORLDTRANSACT FINANCIAL LIMITED, WORLDTRANSACT ASSET GROUP INC. individually and doing business as WORLDTRANSACT FINANCIAL GROUP and WORLDTRANSACT BANK, CRAIG MARK FOURIE, DANIEL DUCETTE, GARY G.B. MACDONALD, and TOSHIO YAMAGUCHI

- DECISION -

Before: W. Alan Clark
Superintendent of Financial Institutions

Place: Surrey, British Columbia
February 11, 13 and March 6, 2008

Appearing: R. Fernyhough for the Staff of the
Superintendent of Financial Institutions

A. Sodagar & M. Bertoldi for
Worldtransact Financial Ltd., Worldtransact
Asset Group Inc., individually and doing
business as Worldtransact Financial Group
and Worldtransact Bank and Craig Mark
Fourie.

Background

As a result of a complaint received from the RCMP that a machine to make debit and credit cards was seized at the border, an investigation into unauthorized deposit taking was commenced by the Investigations Department of the Financial Institutions Commission.

At the conclusion of the investigation I, in my capacity as Superintendent of Financial Institutions, on September 25, 2007 ordered that:

Pursuant to Sections 244(2)(a) and (9(i) of the Financial Institutions Act ("The Act") and 238 of the Act that WORLDTRANSACT FINANCIAL LIMITED, WORLDTRANSACT ASSET GROUP INC. individually and doing business as WORLDTRANSACT BANK and WORLDTRANSACT FINANCIAL GROUP, CRAIG MARK FOURIE, DANIEL DUCETTE, GARY G. B. MACDONALD, and TOSHIO YAMAGUCHI cease from either directly or indirectly carrying on unauthorized deposit business in British Columbia ; and

Pursuant to Section 244(2)(a) and (9(i) of the Act, WORLDTRANSACT FINANCIAL LIMITED, WORLDTRANSACT ASSET GROUP INC. individually and doing business as WORLDTRANSACT BANK and WORLDTRANSACT FINANCIAL GROUP, CRAIG MARK FOURIE, DANIEL DUCETTE, GARY G. B. MACDONALD, and TOSHIO YAMAGUCHI cease using the term "deposit" in connection with their business in a way likely to deceive or mislead the public about their ability to undertake deposit business in British Columbia.

After the order was issued, the following entities and individual requested a hearing before the Superintendent under section 238(2)(a) of the Act:

- WORLDTRANSACT FINANCIAL LIMITED ("WTF");
- WORLDTRANSACT ASSET GROUP INC ("WTAG"); and
- CRAIG MARK FOURIE.

The following individuals did not request a hearing:

- DANIEL DUCETTE;
- GARY G. B. MACDONALD; and
- TOSHIO YAMAGUCHI.

On December 7, 2008, a Notice of Hearing was issued.

The Hearing

The hearing was commenced on February 11, 2008 and continued on February 13, and March 6, 2008.

The following two persons gave evidence.

1. Rod Clemens
Investigator
Financial Institutions Commission.
2. Craig Mark Fourie ("Fourie")
Individual named in the original order.

In addition, fourteen exhibits in total were entered into evidence.

During the cross-examination of Fourie, he testified that he was the controlling mind of both WTAG and WTF; however, this appeared to be contrary to what he had advised his lawyers. As a result, the possibility of being called as witnesses resulted in counsel getting off the record for their clients. The Respondents requested an adjournment which was granted to provide the Respondents with the opportunity to retain new counsel.

On February 19, 2008, Mr. Bertoldi advised that he and Mr. Sodagar had reconsidered their position and were once again retained by the Respondents to continue their representation at the continuation of this matter and a number of dates were given for the continuation of the hearing.

Issues came up concerning the setting of dates, and I issued my decision on February 29, 2008 confirmed by my reconsideration decision on March 3, 2008. The matter was set to continue on March 6, 2008.

Mr. Fourie did not appear on that date and it was my decision he abandoned his right to be heard. It was troubling that Fourie failed to appear in the middle of cross-examination.

The Evidence

As previously mentioned, the investigation was commenced as a result of a complaint received from the Royal Canadian Mounted Police of unauthorized deposit taking based on two facts:

- Canada Customs had seized a device at the border which is used in the manufacture of credit and debit cards. The business name on the device was Worldtransact Financial Group ("WTFG"); and
- It appeared from the WTFG website that WTFG was conducting deposit business.

Clemons testified he conducted the investigation and produced a report which was placed into evidence as Exhibit One.

Clemons further testified that:

- He searched (on the internet) WTFG and found a website the address of which was www.worldtransactfinancial.com; and
- He printed what he found on the website and included various pages in his report (Exhibit One).

With respect to the website, Clemons testified as follows:

- The site identified Craig M. Fourie as CEO;
- The postal address for WTFG was given as 1260 – 1500 West Georgia Street, Vancouver, British Columbia, Canada; and
- He pointed out various website pages that discussed deposit and investment accounts.

On one of the pages, there was a statement that WTFG was regulated by the Financial Services Authority ("FSA") of Britain. After an inquiry with the FSA, Clemons determined that WTFG is not authorized to undertake regulated activities.

On September 13, 2007, Clemons attended at 1260 – 1500 West Georgia Street, Vancouver. He found the name "Worldtransact Bank" ("WTB") etched on the glass door and also listed in the building directory in the lobby. Photographs of both the door and lobby were subsequently taken and were contained in Exhibit One.

At this time, he spoke with Fourie who identified himself as CEO of WTFG. Some of the salient points of the conversation were as follows:

- The company was established in New Zealand and has been operating since February 14, 2007;
- He does all his work overseas and has a Japanese customer base;
- The only reason the office is located in Vancouver is because his residence is here;
- The company provides customers with: deposit accounts; savings accounts; term deposits and various types of investments including mutual funds;
- Their sales agents are based in Hong Kong;
- The WTFG website contains all of the company information; and
- There is a paper company in New Zealand affiliated to WTFG.

Clemons went on to testify that he identified another company associated to WTFG named Worldtransact Asset Group Inc. ("WTA") which had the same address as WTFG.

On September 19, 2007, Clemons returned to 1260 – 1500 West Georgia Street, Vancouver in company with another investigator. They spoke again with Fourie. The salient points of this conversation were:

- Although the website markets credit and debit cards these activities are not available at this time;
- The reference to the above is because they had copied a lot of the information from another financial group;
- Blank Visa/debit cards had been printed naming WTF as the issuing financial institution and referred to tab seven of Exhibit One;
- The money depositors have invested with WTFG is deposited in the First Caribbean Bank ("FCB") in the Virgin Islands;
- WTFG has approximately 380,000 euro funds currently on deposit at FCB;
- WTFG uses TD Canada Trust in Vancouver for their operational expenses, such as rent;

- He admitted they are not registered with the FSA and that reference on the website came from copying information from another web page;
- WTF is registered in New Zealand, and referred to tab eight of Exhibit One; and
- It was not registered in B.C. because of start-up costs; New Zealand was easier.

Clemons made further inquiries and determined that:

- WTF is not an incorporated company in B.C.;
- WTAG is a B.C. incorporated company;
- WTFG, WTAG, WTB and FCB are not authorized to conduct deposit business in British Columbia and not authorized to conduct banking activities in Canada;

Under cross-examination, Clemons was referred to the web page entitled "Local Restrictions" and asked to read a paragraph which, paraphrasing, stated "this site does not constitute an offering to provide services referred to on this site to a person from a jurisdiction where the offer would be illegal".

Clemons also said he did not see a blank Visa/debit card and believed the copy in Exhibit One was taken from the web site nor was he aware of any deposit money coming into Canada.

The following are the relevant portions of Fourie's testimony:

- He is the director and shareholder of WTF and in charge of operations;
- WTF is engaged in financial services and operates from New Zealand;
- WTF has a "virtual" office in Vancouver;
- WTF provides deposit accounts for savings and term deposits, advertises investment accounts, however, currently there are no investment customers;
- The only marketing WTF does is through the website;
- WTF has deposit accounts which are in the British Virgin Islands;

- WTF is marketing in Asia;
- The identification used to determine where the customers are from is:
 - Passport;
 - Driver licenses;
 - Care Cards;
 - Credit Card statements;
 - Bank statements; and
 - Utility bills.
- WTF does not take deposits from Canadians and, to the best of his knowledge, does not have any Canadian clients;
- He had trouble remembering the directors of WTAG other than Gary and referred to Exhibit Three, however, he states the only officers are he and Toshio Yamaguchi;
- He is the sole shareholder of WTAG;
- WTAG operates from 1260 – 1500 West Georgia Street, Vancouver and provides information technology (“IT”) services;
- WTAG does not engage in deposit business; and
- WTF outsources services to WTAG such as:
 - Domain name registration;
 - Hosting services;
 - Server maintenance,
 - Emergency service for servers or IT related incidents;
 - Software development;
 - Virtual office support;
 - Translation;
 - Administration duties; and
 - Technical support for the website over the telephone.

Fourie placed into evidence a number of exhibits, including bank accounts to support his testimony that WTAG only provided IT services to its clients.

Fourie also went over the local restrictions web page and stated any reference to Canada was because it was intended for technical and administrative services only. He further stated he did not know what a paper company was and exhibit seven, the blank debit/credit card was just an illustration of a design in case WTG were to get a co-branding contract with a merchant bank and WTF is not

currently making debit or credit cards. He stated the design came from a piece of paper that was on his desk.

With respect to the name WTB on the door, he testified that this was the biggest mistake of his life. His intention was to have an office in New Zealand, however, the distance made this impossible. As a result, he stuck the sign up as he didn't see any harm in it.

Under cross-examination he stated:

- He is the CEO of WTAG;
- There are two directors: Daniel Ducette and Gary MacDonald;
- None of the above are directing the company and that, overall, he manages the company;
- It was his decision that the other named parties not come to the hearing; and
- He is the controlling mind of WTF and WTFG.

As previously mentioned, at this point in his cross-examination, the matter was adjourned.

Upon resumption of this matter, counsel for the staff of the Superintendent made submissions which included referencing section 375 of the B.C. *Business Corporations Act* and two cases where the issues of doing business in British Columbia was adjudicated.

The Law

The law with respect to this matter is as follows:

- **Financial Institutions Act ("the Act") – definitions.**
 - **deposit business"** means the business of receiving on deposit or soliciting for deposit money that is repayable
 - (a) on demand,
 - (b) after notice,
 - (c) on the expiry of a specified term, or

(d) at specified intervals for a specified term,

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (d) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution.

- **The Act – Section 31**

- A person must not use

- (a) any of the words

- (i) "trust" or "trustee",

- (ii) "deposit" or "loan", or

- (iii) "insurance", "assurance" or "insurer", or

- (b) any other words in connection with the business of a person, in a way likely to

- (c) deceive or mislead the public about the ability of the person to undertake trust business, deposit business or insurance business, or

- (d) give a false impression that the person is a trust company or insurance company, as the case may be.

- **The Act - Section 81**

- A person must not carry on deposit business in British Columbia unless the person is

- (a) an extraprovincial trust corporation that has a business authorization to carry on deposit business,

- (b) a credit union or extraprovincial credit union that has a business authorization to carry on deposit business,

- (c) a bank, or

(d) a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act (Canada)* applies.

(2) Subsection (1) does not prohibit an insurance company or extraprovincial insurance company from carrying on life insurance business in accordance with a business authorization issued to it.

- **The Act - Section 244 (in part)**

(1) In this section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.

(2) If, in the opinion of the commission, a person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act, the regulations or the *Company Act* as it applies for the purposes of this Act,

(a.1) if the person is an extraprovincial corporation, does not comply with the *Business Corporations Act*,

...

(c) might reasonably be expected to result in a state of affairs not in compliance with this Act or the regulations, with the *Company Act* as it applies for the purposes of this Act or, in the case of an extraprovincial corporation, with the *Business Corporations Act*,

(d) does not comply with a written undertaking given under this Act.

- **Offence Act – Section 85**

- Everyone is a party to an offence who actually commits it,

(b) does or omits to do anything for the purpose of aiding a person to commit it, or

(c) abets a person in committing it.

- **Business Corporations Act – Section 375**

(1) A foreign entity must register as an extraprovincial company in accordance with this Act within 2 months after the foreign entity begins to carry on business in British Columbia.

(2) For the purposes of this Act and subject to subsection (3), a foreign entity is deemed to carry on business in British Columbia if

(a) its name, or any name under which it carries on business, is listed in a telephone directory

(i) for any part of British Columbia, and

(ii) in which an address or telephone number in British Columbia is given for the foreign entity,

(b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address or telephone number in British Columbia is given for the foreign entity,

(c) it has, in British Columbia,

(i) a resident agent, or

(ii) a warehouse, office or place of business, or

(d) it otherwise carries on business in British Columbia.

(3) A foreign entity does not carry on business in British Columbia

(a) if it is a bank,

(b) if its only business in British Columbia is constructing and operating a railway, or

(c) merely because it has an interest as a limited partner in a limited partnership carrying on business in British Columbia.

(4) A foreign entity need not be registered under this Act or comply with this Part other than subsection (5) of this section, and may carry on business in British Columbia as if it were registered under this Act, if

- (a) the principal business of the foreign entity consists of the operation of one or more ships, and
 - (b) the foreign entity does not maintain in British Columbia a warehouse, office or place of business under its own control or under the control of a person on behalf of the foreign entity.
- (5) Every person who is a resident agent or representative of a foreign entity referred to in subsection (4) must file with the registrar
- (a) a notice of agency in the form established by the registrar stating
 - (i) the name of the foreign entity,
 - (ii) the chief place of business of the foreign entity outside British Columbia, and
 - (iii) particulars of the person's agency, and
 - (b) a notice of change of agency in the form established by the registrar identifying any change in that name, chief place of business or agency.
- (6) Sections 27 (1), 384 and 385 apply to a foreign entity referred to in subsection (4) as if it were an extraprovincial company.

The Decision

None of the respondents have a business authorization to conduct deposit taking in the Province of British Columbia. None of the respondents is a bank as defined in the Bank Act. None of the respondents is authorized to conduct banking business by the federal Office of the Superintendent of Financial Institutions.

Section 81 says a person must not carry on deposit business in BC unless authorized. It is not restricted to those providing deposit services to BC residents or Canadian residents but it simply means the business of receiving on deposit or soliciting for deposit money that is repayable in the ways specified.

The financial services sector is highly regulated by governments around the world as it is recognized that public confidence in this area leads to a strong economy. This is never truer than public confidence in deposit taking institutions. Governments have long recognized this fact. In order to build public trust, many statutes have been enacted and government agencies formed to regulate this industry. In addition, deposit insurance has been put in place to further ensure the public have trust in their deposit taking institutions. Lack of public confidence would result in financial chaos.

Canada and BC have an obligation to regulate companies doing business here that also do business in other countries and jurisdictions. Persons and entities cannot be allowed to avoid regulatory requirements in other jurisdictions because they are headquartered in one jurisdiction and claim to only do business in another. Clearly, the Worldtransact group of companies and Fourie are trying to avoid being regulated by using the business model which was the subject of this hearing.

In this business model, none of the normal safeguards regulation insists on are being followed.

For example:

- Solvency safeguards;
- Market conduct safeguards;
- Corporate governance safeguards; and
- The absence of deposit insurance coverage.

In addition, there is a system in place to prevent money laundering. All of these safeguards are in place to protect the public confidence in deposit taking institutions. A failure in any jurisdiction has the ability to affect consumer confidence in other areas.

- **Worldtransact Financial Ltd. (“WTF”)**

WTF was incorporated as a New Zealand company on February 14, 2007. Its sole director and shareholder is Fourie. Fourie stated in evidence he oversees and is in charge of operations. It is clear upon the evidence that WTF is conducting deposit business and is doing so in British Columbia in violation of Sections 31 and 81 of the FIA. Upon reviewing the incorporation documents of WTF (Exhibit One – tab 8), it clearly indicates WTF is not permitted to conduct deposit business or other services advertised on the web site. Given this, WTF is not regulated by any regulator. The reasons for believing WTF is engaged in deposit business in British Columbia are as follows:

- Based on a review of the website materials (Exhibit One) it is clear WTF is engaged in deposit business;
- Fourie the sole director and shareholder and controlling mind of WTF stated to both Clemons and in evidence that WTF is engaged in deposit taking;

- WTF has as its advertised business address: 1260 – 1500 West Georgia, Vancouver, British Columbia;
- The server for the WTF web site is in Vancouver;
- Fourie testified that WTF has only a “virtual” office in Vancouver, however, the above findings negate the “virtual” aspect of the office; and
- It also has a resident director and officer and sole shareholder, Fourie, who advised Clemons the reason the office is here is he lives here. All of the decisions made on behalf of the company are made here, and not New Zealand.

It is also important to note the offices of WTF have etched in the glass door the name Worldtransact Bank. The identification card in the lobby also stated Worldtransact Bank. Both of these things support the belief that WTF (and the other respondents) do business as “Worldtransact Bank” and are in violation of the FIA.

- **Worldtransact Asset Group Inc. (“WTAG”)**

WTAF was incorporated as a British Columbia company on October 28, 2005. Fourie is the sole shareholder, former director and current CEO. It is clear on the evidence that Fourie is the controlling mind of this company and the current directors are directors in name only. It is also clear upon the evidence that WTAF is facilitating the unauthorized deposit taking of WTF by the following:

- WTAG is a registered company in British Columbia with the same address as WTF, with the signage Worldtransact Bank etched on the glass door and in the lobby;
- WTAG provides administrative and technical support, including maintaining the web site in which deposits are solicited. Without these services, WTF could not conduct deposit business since Fourie testified he markets only through the WTF website; and
- Fourie is the controlling mind of all the respondents and he operates them as one “group” as evidenced by the content of the web site pages for WTFG, WTF and WTB. As such, each and every one of the entities is an alter ego of the other. It is clear upon the evidence the respondents all operate in concert.

- **Worldtransact Financial Group (“WFG”)**

There is no evidence that this entity is incorporated anywhere. It appears as a name on the web pages in question. It also was the name of the entity that was importing debit and credit card makers. It is clear upon the evidence that Fourie is the controlling mind of WFG and as such WFG is Fourie. It is clear upon the evidence that WFG is involved in unauthorized deposit taking as it solicits deposits through its web site and through references to WFG as an association of WTB, WTAG and WTF. It is clear upon the evidence WFG is a name used to encompass the activities of WTF and WTAG.

- **Worldtransact Bank (“WTB”)**

There is no evidence of incorporation anywhere for WTB. It shows up as signage on the door of 1260 – 1500 West Georgia, Vancouver and in the lobby. Fourie testified he was responsible for the name being displayed on the door. It is clear that Fourie is the controlling mind of this “entity” and WTB is just another name used for the respondents in the marketing materials used for soliciting deposits.

- **David Fourie**

It is very clear on the evidence that Fourie is the controlling mind of all of the companies, and proprietorships, that are involved in this matter. Fourie was not a credible witness; some examples of his lack of credibility are as follows:

- He testified he had the Worldtransact Bank made for a door in New Zealand, however, when deciding not to maintain an office there put the sign on the door at 1260 – 1500 West Georgia Street in Vancouver. This is not a credible statement given the photographs entered into exhibit (Exhibit One – tab 6) which shows the name etched in glass. He did not testify as to how the signage also was placed in the lobby of that address. The New Zealand entity is not named Worldtransact Bank;
- He testified identification is required to ensure deposits are not taken from Canadians yet also stated one of the pieces of identification used is a Care Card. A Care Card is a British Columbia document issued only to BC residents;
- His explanation as to how the web site stated the entity is regulated by the Financial Institutions Services Agency in Britain was not believable to me and such a statement would clearly be relied upon by depositors;

- His explanation as to why Canada shows up as one of the countries on the website where deposits are taken from is not believable; and
- His explanation as to why he had a mock up of a Worldtransact Visa card is not believable given the device detected by Canada Customs.

With respect to Fourie being the controlling mind of the other attending Respondents, he testified to such and also testified it was his decision the other directors not attend the hearing. The latter indicates the directors of WTAG are directors in name only.

Given the voluminous amount of evidence before me indicating each and every one of the appearing Respondents were in violation of sections 31 and 81 of the FIA and contributing to the violations of the other parties, I confirm my order of September 25, 2007. Mr. Fourie was individually responsible for conduct which I found might reasonably be expected to result in a state of affairs not in compliance with the Act. That is, his conduct resulted in unauthorized deposit business and use of the term "deposit" in a way likely to mislead the public.

In addition, pursuant to section 241.1 of the FIA, I order costs. Staff sought costs and notice was provided to the Respondents that costs would be sought. Exhibit Fourteen is a Certificate of Costs which indicates the costs of the investigation were \$14,094.90. I find the costs reasonable but will reduce the amount and I order costs in the amount of \$10,000 against the respondents WIF, WTAG and Mr. Fourie jointly and severally.


W. Alan Clark
Superintendent of Financial Institutions

Dated at Surrey, British Columbia
This 28th day of March, 2008