

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Civil Action No. _____

ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation;

Plaintiff,

v.

THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and
TD BANK, N.A., a national banking association;

Defendants.

COMPLAINT

Plaintiff, ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation (hereinafter “Plaintiff” or “ADVANTAGE TRIM & LUMBER”), by and through undersigned counsel, hereby sue Defendants THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and TD BANK, N.A., a national banking association (“Defendants” or “TD”); for damages.

In support thereof, Plaintiff states as follows:

PRELIMINARY STATEMENT

1. As TD BANK GROUP¹ itself states in its March 2016 published Code of Conduct and Ethics for Employees and Directors:

***Forgery, Falsifying Accounts, Documents and Records –**
Improperly creating or reproducing, or falsifying a signature or initial, or otherwise creating a false document will not be tolerated under any circumstances. In addition:*

→ We must not manipulate internal accounts or make entries to any account which are false, have not been properly verified or obscure the true nature of the transaction, or allow such entries to be made. We must not establish or operate, for any purpose, an account on the books of TD that cannot withstand the closest public scrutiny of its propriety. Also, we must not manipulate or falsify any TD financial statement, record or return.

¹ As represented in their own internal paperwork, THE TORONTO-DOMINION BANK and its subsidiaries, which include TD BANK, N.A., collectively market themselves under the all-encompassing moniker “TD Bank Group.”

* * *

Theft and Fraud – *Defalcation, embezzlement, fraud, theft or misappropriation of funds or property belonging or entrusted to TD or others, is strictly prohibited and will not be tolerated.*

2. Notwithstanding the noble standard to which TD professes to hold itself, it has grossly violated that standard by simultaneously encouraging its employees to generate as many new customer accounts as they can while also failing to ensure that the accounts being opened are properly created and are not the byproduct of outright fraud.

3. In the instant matter, numerous TD employees fraudulently established credit card accounts and distributed those credit cards to scammers who used the cards to obtain from United States-based flooring retailers hardwood flooring that was later transported to Canada for illegal use or re-sale in secondary markets.

4. As a result of the fraud that persisted at TD, several hardwood flooring retailers -- including Plaintiff -- were victimized by this scam (the “Flooring Scam”) and have suffered hundreds of thousands of dollars, if not millions of dollars, in damage.

5. TD created policies designed to boost its profits and enhance its revenue. Unfortunately, TD did not, at the same time, create or enforce adequate policies and procedures to prevent the rampant fraud in which its employees participated and which caused such widespread harm to innocent victims like Plaintiff.

6. Close scrutiny of the propriety of TD’s actions and omissions is now at hand, and Plaintiff submits that TD’s actions and omissions will not withstand that scrutiny.

GENERAL ALLEGATIONS

THE PARTIES

Plaintiffs

7. Plaintiff ADVANTAGE TRIM & LUMBER is a business entity organized under the laws of the state of Florida. ADVANTAGE TRIM & LUMBER's principal place of business is in Sarasota, Florida.

Defendants

8. Defendant THE TORONTO-DOMINION BANK is a Canadian-chartered bank subject to the provisions of the Bank Act (Canada). THE TORONTO-DOMINION BANK's stock is traded on the Toronto and New York Stock Exchanges under the symbol "TD." Furthermore, in its own self-published materials, THE TORONTO-DOMINION BANK states:

TD offers a full range of financial products and services to approximately 22 million customers worldwide through three key business lines:

- *Canadian Retail including TD Canada Trust, TD Commercial Banking, TD Auto Finance (Canada), TD Wealth (Canada) and TD Insurance*
- *U.S. Retail including TD Bank, America's Most Convenient Bank, TD Auto Finance (U.S.), TD Wealth (U.S.) and TD's investment in TD Ameritrade*
- *Wholesale Banking including TD Securities.*

(emphasis added).

9. Defendant TD BANK, N.A. ("TD BANK") is a national banking association federally chartered pursuant to the National Bank Act (12 U.S.C. § 38, *et seq.*) and supervised by the federal Office of the Comptroller of the Currency. TD BANK's principal place of business is in Cherry Hill, New Jersey. Furthermore, as noted above, TD BANK is a subsidiary of THE TORONTO-DOMINION BANK and a member of the family of companies collectively known as "TD BANK GROUP."

Reservation to Name Additional Defendants

10. In addition to the entities set forth as Defendants herein, there are likely other parties who may well be liable to Plaintiff, but respecting whom Plaintiff currently lacks specific facts to permit Plaintiff to name such person or persons as a party defendant. By not naming such persons or entities at this time, Plaintiff is not waiving its right to amend this pleading to add such parties, should the facts warrant adding such parties.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest, costs and attorneys' fees, and is an action between citizens of different states.

12. This Court has personal jurisdiction over Defendants because: (a) Defendants are business entities operating, present, and/or doing business within this jurisdiction, and (b) Defendants' tortious conduct occurred within this jurisdiction.

13. Venue of this action is proper in this Court pursuant to 28 U.S.C. § 1391, as the causes of action alleged herein arose in Sarasota, Florida.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

14. This is a civil action brought by Plaintiff against Defendants who, acting individually and acting in connection with others, both known and unknown, defrauded Plaintiff of more than Three Hundred Thousand Dollars (\$300,000.00) by issuing fraudulent credit cards that were used under false pretenses to procure materials from Plaintiff, in the course of its business, for which Plaintiff was ultimately not paid and for which Plaintiff incurred thousands of dollars of costs and expenses.

The Flooring Scam

15. In connection with construction projects, general contractors and subcontractors commonly place orders with flooring retailers for large amounts of hardwood flooring.

16. General contractors and subcontractors oftentimes do not get paid for their work until completion of the projects on which they work and therefore do not have the funds on hand to pay up-front for the amount of flooring required for those construction projects.

17. As a result, the general contractors and subcontractors regularly offer flooring merchants payment by credit card -- cards whose unpaid balances typically do not have to be satisfied until their next billing cycle closes -- as a way to get the materials they need.

18. Receiving payment by credit card is not uncommon for many flooring retailers. In fact, many such retailers rely on their customers' use of credit cards, as it would be unrealistic to expect flooring customers to be able to use cash to pay in full for large flooring orders.

19. Moreover, it is not uncommon for a flooring customer to present a flooring retailer with multiple credit cards across which the cost of a particular order can be split to avoid running afoul of spending limits on any one particular credit card.

20. Over the past several years, Ontario, Canada has proven to be a very popular destination for shipment of hardwood flooring products in quantities both large and small.

21. United States-based flooring retailers have become accustomed to having many of their products purchased by, or for use by, Canadian contractors in a variety of construction projects.

22. To flooring retailers like Plaintiff, there was nothing inherently suspicious about Canadian customers placing large orders for purchase and shipment of hardwood flooring.

23. Moreover, prior to the Flooring Scam, there was nothing inherently suspicious about customers presenting multiple credit cards to be used as payment for large orders of hardwood flooring.

24. Knowing those facts, the perpetrators of the Flooring Scam preyed upon unsuspecting United States-based flooring providers to fulfill orders and provide valuable flooring materials believing that they (*i.e.*, the flooring merchants) would be compensated as soon as a purchaser's next credit card billing cycle closed.

25. It therefore behooved each participant in the Flooring Scam to conduct as many transactions as possible within a short window of time (usually thirty days) before the flooring retailer who released the purchased flooring realized that the credit cards used as the payment source for the flooring had been obtained and used through fraudulent means.

26. Additionally, it behooved the Flooring Scam participants to ship the purloined flooring across the U.S.-Canadian border as quickly as possible to create a jurisdictional morass for any retailer or supplier who sought to retrieve its fraudulently-obtained materials.

TD Fueled the Flooring Scam with Fraudulent Credit Cards

27. Vital to the Flooring Scam was each scammer's ability to obtain flooring materials from a flooring retailer under the guise of conducting a legitimate transaction.

28. To do that, each scammer had to dupe a flooring retailer into believing that the credit cards being offered for payment were legitimate and would serve as a tool for payment to the retailer.

29. Supplying the fraudulent credit cards is where TD indispensably supported the Flooring Scam.

30. Much like at Wells Fargo Bank, N.A. -- which recently fired more than 5,300 employees and was assessed a \$185 million fine by the U.S. Consumer Finance Protection Bureau for the bank's widespread fraudulent practice of using existing customer bank accounts to issue credit and debit cards without the accountholders' knowledge or consent -- TD encouraged their employees to cross-sell products across the entire range of services that the constituent members of TD Bank Group offer.

31. In accordance with that internal urge to cross-sell products, TD employees oftentimes issued credit cards without customer consent.

32. One or more TD employees -- including Tashanna Mullings -- created Visa credit cards that were fraudulently tied to viable TD accounts; and those cards were then distributed to other perpetrators of the Flooring Scam.

33. The fraudulently-created cards bore valid account numbers but fake names of purported account holders. The cards were linked to real accounts at TD, so when processed over the telephone or the Internet for payment, the cards processed like real credit cards.

34. When processing such a fraudulently-created card for payment, an unsuspecting merchant would initially be informed that the credit card was valid, only to learn later -- likely after a scammer had absconded with the products purchased with the card -- that the true holder of the TD account from which payment would have been drawn was unaware of, and had never authorized issuance or use of, the credit card.

35. TD knew or should have known that its representatives and agents were creating those fraudulent credit cards, but TD did not have in place adequate internal controls to monitor and halt the fraudulent activity.

36. As a result of TD's acts (creating the false credit cards) and omissions (failing to prevent the creation and distribution of the false credit cards), several flooring merchants were unsuspectingly lured into fulfilling fraudulent orders for flooring on which they would not be paid and which cost the merchants hundreds of thousands of dollars in losses.

Advantage Trim Fell Victim to the Scam

37. On or about May 1, 2015, a gentleman who identified himself as "Carl Souza" of "Gerd Furniture Stores" of Oakville, Ontario, Canada contacted ADVANTAGE TRIM & LUMBER to inquire about Red Oak interior flooring.

38. Mr. Souza informed ADVANTAGE TRIM & LUMBER that he and Gerd Furniture Stores needed hardwood flooring to complete construction on a large shopping center being built in Mississauga, Ontario, Canada.

39. Specifically, Mr. Souza informed ADVANTAGE TRIM & LUMBER that he was looking for 12,000 square feet of Red Oak Select and Better flooring in a 4-inch or 3 ¼-inch width and was willing to pick up the order himself.

40. ADVANTAGE TRIM & LUMBER informed Mr. Souza that the requested flooring was not something ADVANTAGE TRIM & LUMBER had in stock at that time; to be fulfilled, the order would have to be sourced for Mr. Souza as a special order.

41. Mr. Souza expressed a great degree of urgency to have his order fulfilled, stating to ADVANTAGE TRIM & LUMBER that he needed the flooring no later than May 8, 2015.

42. On or about May 5, 2015, ADVANTAGE TRIM & LUMBER contacted Mr. Souza to inform him that the flooring order had been sourced and could be fulfilled by May 8, 2015. However, ADVANTAGE TRIM & LUMBER told Mr. Souza that he would have to provide at least a fifty percent (50%) deposit to secure the material and pay the remaining balance on the order no later than the date on which the flooring was to be picked up. The total price of the order was \$41,400.00.

43. On or about May 6, 2015, Mr. Souza called ADVANTAGE TRIM & LUMBER and provided ADVANTAGE TRIM & LUMBER credit card information (Account Holder: Carl Souza; Visa Card No.: ***2042) to use in processing the \$21,400.00 deposit payment for the 12,000 square feet of flooring.

44. On or about May 8, 2015, Mr. Souza called ADVANTAGE TRIM & LUMBER and authorized ADVANTAGE TRIM & LUMBER to use a different credit card (Account Holder: Gerd

Furniture; Visa Card No.: ***0481) to pay the remaining balance (\$20,000.00) on the order of the 12,000 square feet of flooring.

45. Both credit cards to which Mr. Souza told ADVANTAGE TRIM & LUMBER that the charges should be assessed were Visa credit cards issued by THE TORONTO-DOMINION BANK.

46. Mr. Souza arranged to have the flooring materials picked up at ADVANTAGE TRIM & LUMBER's Grover, North Carolina facility on May 8, 2015 by a shipper.

47. Having expressed to ADVANTAGE TRIM & LUMBER his gratitude for fulfilling his order so quickly, Mr. Souza engaged ADVANTAGE TRIM & LUMBER in May 2015 in several subsequent orders for additional types of flooring under circumstances materially identical to the first order, *to wit*:

	Date of Order	Sales Order Number	Amount of Flooring	Total Invoiced Price	TD-Issued Credit Card(s) Used
First Order	May 5, 2015	68011	12,000 sq. ft.	\$41,400.00	Visa Card No.: ***2042
					Visa Card No.: ***0481
Second Order	May 8, 2015	68116	16,000 sq. ft.	\$55,200.00	Visa Card No.: ***0481
					Visa Card No.: ***1064
Third Order	May 18, 2015	68664	16,000 sq. ft.	\$57,920.00	Visa Card No.: ***0099
					Visa Card No.: ***8721
Fourth Order	May 22, 2015	68980	16,000 sq. ft.	\$57,920.00	Visa Card No.: ***2470
					Visa Card No.: ***8922
					Visa Card No.: ***4744
Fifth Order	May 28, 2015	69350	16,000 sq. ft.	\$101,920.00	Visa Card No.: ***0295
					<Remaining balance unpaid>
Sixth Order	May 29, 2015	69395	16,000 sq. ft.	\$57,920.00	<Balance unpaid>
T O T A L			92,000 sq. ft.	\$372,280.00	

48. All of the credit cards used were THE TORONTO-DOMINION BANK-issued Visa cards and purported to be cards maintained in Mr. Souza's name (Account Nos.: ***2042, ***2470, and ***8922) or in the name of Gerd Furniture (Account Nos.: ***0481, ***1064, ***0099, ***8721, ***4744, and ***0295).

49. After Mr. Souza/Gerd Furniture had retrieved from ADVANTAGE TRIM & LUMBER the flooring contained in the first four orders, ADVANTAGE TRIM & LUMBER began receiving chargeback notifications from its credit card processor in June 2015, informing ADVANTAGE TRIM & LUMBER that the transactions were fraudulent transactions for which no actual payment existed.

50. ADVANTAGE TRIM & LUMBER made repeated attempts to contact Mr. Souza to find out from him why it was receiving chargeback notifications and how the situation could be rectified with an alternative form of payment.

51. Despite ADVANTAGE TRIM & LUMBER's efforts to communicate with Mr. Souza, he did not respond.

52. Essentially, Mr. Souza and Gerd Furniture disappeared with the materials contained within the first four flooring orders but without paying for those materials.

53. As a result of the fraud, ADVANTAGE TRIM & LUMBER did not receive payment for any of the orders it had fulfilled for Mr. Souza/Gerd Furniture.

54. Because the Fifth Order and the Sixth Order were not paid for in full by Mr. Souza/Gerd Furniture, the flooring associated with those orders was never delivered to, or picked up by, Mr. Souza/Gerd Furniture. Nevertheless, ADVANTAGE TRIM & LUMBER incurred costs and expenses for sourcing those orders and storing those materials in its warehouse -- costs and expenses for which ADVANTAGE TRIM & LUMBER was not compensated and which continue to accrue on a daily basis.

55. Additionally, ADVANTAGE TRIM & LUMBER incurred from its suppliers, its third-party credit card processor, and its bank several thousand dollars of penalties and costs for processing, sourcing, and fulfilling the fraudulently-ordered flooring.

56. For example, ADVANTAGE TRIM & LUMBER incurred from its credit card processor so many “chargebacks” that ADVANTAGE TRIM & LUMBER now has to pay its processor an exorbitant rate on all credit card transactions. That recurring expense is not likely to be ameliorated any time soon.

57. TD knew or should have known that its employees were materially fueling the Flooring Scam, but TD did not take adequate measures to halt that harmful activity before Plaintiff was victimized by the Scam.

58. TD’s woeful oversight over its employees served to support the Flooring Scam and served to inflict widespread economic harm upon Plaintiff and other victims of the Flooring Scam.

59. As a result of the above-cited actions and omissions, Plaintiff has been damaged.

60. Plaintiff has duly performed all of its duties and obligations, and any conditions precedent to Plaintiff bringing this action have occurred, have been performed, or else have been excused or waived.

61. To enforce its rights, Plaintiff has retained undersigned counsel and is obligated to pay counsel a reasonable fee for its services, for which Defendants are liable as a result of their bad faith and otherwise.

COUNT I – NEGLIGENCE

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 61 above, and further alleges:

62. Defendants owed a duty of care to Plaintiff to adequately prevent the improper issuance of credit cards.

63. While Defendants encouraged their employees to cross-sell products across the entire range of services that the constituent members of TD Bank Group offer, Defendants did not institute adequate policies and procedures to prevent the very type of fraudulent card issuance that occurred here, of which Plaintiff is a victim.

64. Defendants, by acts of both omission and commission, breached their duty of care to Plaintiff.

65. As a direct and proximate result of Defendants' breaches of their duties to Plaintiff, Plaintiff has suffered damages.

WHEREFORE, Plaintiff, ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation; demands entry of a judgment against Defendants THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and TD BANK, N.A., a national banking association, for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT II – NEGLIGENT RETENTION AND SUPERVISION

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 61 above, and further alleges:

66. This is an action seeking damages based upon Defendants' negligent retention and/or supervision of their employees and agents, including but not limited to, Tashanna C. Mullings and those representatives and agents of TD who were responsible for, *inter alia*: (a) knowingly and purposefully providing unauthorized access to people/entities who placed fraudulent orders for flooring products, and (b) furthering the Flooring Scam.

67. Defendants knew or should have known that their representatives and agents were engaging in activities that were improper and harmful to Plaintiff, including but not limited to:

- (a) knowingly and purposefully providing unauthorized access to people/entities who placed fraudulent orders for flooring products; and
- (b) furthering the Flooring Scam.

68. Defendants had an obligation to investigate and monitor their representatives' and agents' activities in connection with the Flooring Scam; and, had Defendants conducted even a reasonably diligent investigation with respect to their representatives' and agents' actions in that regard, Defendants would have discovered that their representatives and agents were, in fact, rendering harmful assistance to a criminal enterprise that was perpetrating the Flooring Scam.

69. Defendants had a duty to take steps to prevent or rectify the improper activities and conduct of their representatives and agents.

70. Rather than discharge their duties to Plaintiff, Defendants turned a blind eye to, or failed to exercise reasonable means to discover and correct, active misconduct and negligence on the part of their representatives and agents.

71. As a direct and proximate result of Defendants' negligent retention and/or supervision of their representatives and agents and others, Plaintiff suffered damages for which Defendants are liable.

WHEREFORE, Plaintiff, ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation; demands entry of a judgment against Defendants THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and TD BANK, N.A., a national banking association, for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT III – AIDING AND ABETTING FRAUD

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 61 above, and further alleges:

72. A gentleman who identified himself as "Carl Souza" of "Gerd Furniture Stores" of Oakville, Ontario, Canada defrauded ADVANTAGE TRIM & LUMBER of several hundred thousand dollars of flooring materials by ordering and retrieving from ADVANTAGE TRIM & LUMBER several thousand square feet of flooring for which he did not pay.

73. Although Mr. Souza proffered to ADVANTAGE TRIM & LUMBER a series of Visa credit cards as payment for the flooring he ordered and retrieved, those credit cards were all fraudulent; and ADVANTAGE TRIM & LUMBER received no actual payment for its flooring materials.

74. Defendants rendered substantial assistance to Mr. Souza in his perpetration of the Flooring Scam, as THE TORONTO-DOMINION BANK issued the fraudulent Visa credit cards used by Mr. Souza to defraud ADVANTAGE TRIM & LUMBER; and one or more of Defendants' representatives and agents provided Mr. Souza the fraudulent Visa cards used to enact the Flooring Scam.

75. But for Defendants' participation in the Flooring Scam, the Flooring Scam would not have succeeded; and Plaintiff would not have been victimized by Mr. Souza.

76. While Defendants encouraged their employees to cross-sell products across the entire range of services that the constituent members of TD Bank Group offer, Defendants did not institute adequate policies and procedures to monitor their employees and prevent the very type of fraudulent card issuance that occurred here, of which Plaintiff is a victim.

77. Plaintiff is not the only victims of the Flooring Scam, and Mr. Souza/Gerd Furniture were not the only perpetrators of the Flooring Scam.

78. Upon information and belief, Defendants -- by and through their employees -- had actual or constructive knowledge of the Flooring Scam; and Defendants were aware that their employees were playing a vital role in the success and maintenance/expansion of the Flooring Scam.

79. As a result of the foregoing, Defendants are liable for all damages directly and proximately caused to Plaintiff through Mr. Souza's fraudulent actions and omissions.

WHEREFORE, Plaintiff, ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation; demands entry of a judgment against Defendants THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and TD BANK, N.A., a national banking association, for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT IV – CIVIL CONSPIRACY

Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 61 above, and further alleges:

80. Defendants conspired with one another, as well as other individuals and entities, to perpetrate an unlawful act upon Plaintiff or to perpetrate a lawful act by unlawful means, *to wit*: Defendants provided fraudulently-issued Visa credit cards to a series of scammers, including but not limited to “Carl Souza” of “Gerd Furniture Stores” of Oakville, Ontario, Canada, which were used as false promises of payment to induce hardwood flooring merchants (including Plaintiff) to fulfill large flooring orders on which the merchants would not be paid while the scammers would abscond with the flooring materials for use or re-sale.

81. The participants in the conspiracy, including Defendants, put their own pecuniary interests ahead of the welfare and economic safety of victims of the conspiracy, including Plaintiff.

82. Upon information and belief, Defendants -- by and through their employees -- had actual or constructive knowledge of the Flooring Scam; and Defendants were aware that their employees were playing a vital role in the success and maintenance/expansion of the Flooring Scam.

83. As a direct and proximate result of Defendants’ participation in, and furtherance of, the conspiracy; Plaintiff has suffered damages.

WHEREFORE, Plaintiff, ADVANTAGE TRIM & LUMBER COMPANY, INC., a Florida corporation; demands entry of a judgment against Defendants THE TORONTO-DOMINION BANK, a Canadian-chartered bank; and TD BANK, N.A., a national banking association, for an amount within the jurisdictional limits of this court, including an award of interest, attorneys’ fees, and costs.

PLAINTIFF’S DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

RESERVATION OF RIGHTS

Plaintiff reserves its right to further amend this Complaint, upon completion of its investigation and discovery, to assert any additional claims for relief against Defendants or other parties as may be warranted under the circumstances and as allowed by law.

Respectfully submitted,

SILVER LAW GROUP

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