

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

INFORMATION

-v- :

12 Cr.

J. CHRISTOPHER DALY, and :

MICHAEL ABREU, :

Defendants. :

- - - - - x

COUNT ONE

(Conspiracy to Commit Mail Fraud and Wire Fraud)

The United States Attorney charges:

Relevant Persons and Entities

1. At all times relevant to this Information, J. CHRISTOPHER DALY, the defendant, was the owner and President of the Sheldrake Organization (the "Sheldrake Organization"), a real estate development and management company located in New York, New York. Since 1988, the Sheldrake Organization has owned, managed, developed, and leased residential and commercial properties throughout New York State.

2. At all times relevant to this Information, MICHAEL ABREU, the defendant, was the Director of Asset Management for the Sheldrake Organization.

3. At all times relevant to this Information, the Sheldrake Organization and J. CHRISTOPHER DALY, the defendant, managed an entity named Sheldrake Site 16/17 Development Company.

LLC ("Sheldrake"). Sheldrake and an entity named BPC Holdings LLC ("BPC Holdings") were the sole members and managing members of an entity that, through an additional corporate entity, owned the condominium project known as Riverhouse One Rockefeller Park located at One and Two River Terrace, New York, New York (the "Riverhouse Project"). The Riverhouse Project was a \$572,725,000 luxury residential condominium project consisting of 32 stories, 264 residential units, and a separate garage unit.

4. At all times relevant to this Information, the Sheldrake Organization and J. CHRISTOPHER DALY, the defendant, managed the Riverhouse Project, and MICHAEL ABREU, the defendant, supervised the payment of costs associated with the Riverhouse Project.

5. At all times relevant to this Information, a co-conspirator not named as a defendant herein ("CC-1") was the Chief Financial Officer for the Sheldrake Organization.

6. At all times relevant to this Information, the Battery Park City Authority ("BPCA") was a New York State public benefit corporation in charge of the commercial and residential development and maintenance of a segment of downtown Manhattan, which includes the Riverhouse Project.

#### **Factual Background**

7. In or around 2004, BPCA solicited bids for construction on a lot described as Site 16/17 in Battery Park

City. In or around March 2004, Shel Drake submitted a bid to BPCA to become the developer and ground lessee of Site 16/17, and Shel Drake ultimately won the bid to construct the property. In or around December 2005, Shel Drake and BPC Holdings entered into an operating agreement to develop the Riverhouse Project.

8. Shel Drake secured financing for the Riverhouse Project from a foreign-owned bank (the "Lender") and a pension fund for approximately \$357 million.

9. As part of its ground lease with BPCA, Shel Drake was obligated to pay base rent to BPCA.

10. As part of its ground lease with BPCA, Shel Drake was obligated to pay a tax-related charge, known as a "payment in lieu of sales taxes" ("PILOS"), which would be paid on a quarterly basis for two years subsequent to closing. PILOS was set at \$352,832.06 for each quarterly payment.

11. As part of its ground lease with BPCA, Shel Drake was obligated to pay another tax-related charge, entitled "payment in lieu of taxes" ("PILOT"), which would be paid on a semi-annual basis for two years subsequent to closing. During the relevant period in this Information, the PILOT due by Shel Drake to BPCA was between approximately \$2 million and \$2.4 million for each semi-annual payment.

12. On or about January 3, 2006, construction commenced at Site 16/17 on the Riverhouse project.

### The Scheme to Defraud

13. As discussed more fully herein, in or about early 2007, J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, along with CC-1, executed a fraudulent scheme to obtain funding from the Lender to which they were not then entitled. DALY, ABREU, and CC-1 agreed to submit to the Lender BPCA invoices that had already been paid by the Lender and/or had been fabricated by Sheldrake. These fraudulent invoices were for PILOT charges due to BPCA. Unaware of the fraudulent scheme, the Lender wired money to Sheldrake's account for payment on these duplicate or bogus invoices that purported to include legitimate Riverhouse Project expenses.

### *The Requisition Process*

14. Beginning in or about July 2006, BPCA's Assistant Treasurer ("BPCA Employee-1") sent invoices for payment of base rent, PILOS, and PILOT by e-mail and/or facsimile to the attention of MICHAEL ABREU, the defendant, and by "cc" to J. CHRISTOPHER DALY, the defendant, and/or CC-1.

15. When Sheldrake received invoices relating to the Riverhouse Project, including from BPCA, Sheldrake submitted them to the Lender for reimbursement under the aforementioned financing arrangement. Sheldrake submitted invoices on a monthly basis as part of a "requisition book." With each requisition book, Sheldrake, and specifically J. CHRISTOPHER DALY, the

defendant, represented that the disbursed funds would be used to pay the stated project costs. The requisition books were mailed by interstate courier, specifically DHL Express, from the Shel Drake Organization to the Lender in New York, New York. Subsequently, the Lender sent funding by interstate wire transfer to a Shel Drake bank account at Signature Bank in New York, New York.

***The Fraudulent PILOT Charges***

16. From the beginning of the Riverhouse Project in early 2006, Shel Drake struggled to make timely payments to BPCA on its base rent, PILOS, and PILOT invoices.

17. Beginning in or about July 2006, BPCA representatives, including BPCA Employee-1, e-mailed Shel Drake representatives, including J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, and CC-1, concerning Shel Drake's late payment (or non-payment) of outstanding base rent, PILOS and/or PILOT charges to BPCA. To this end, BPCA Employee-1 engaged in e-mail and phone communication with MICHAEL ABREU, the defendant -- who managed the invoicing process for the Riverhouse Project -- concerning Shel Drake's outstanding debts and late charges on invoices. For example, on or about November 17, 2006, BPCA Representative-1 e-mailed ABREU and notified ABREU that the PILOS payment for November 2006 had not been paid and that a portion of

base rent was outstanding, resulting in a total of \$399,393.72 outstanding.

18. As Sheldrake's payment problems persisted throughout the fall of 2006, Sheldrake representatives, including J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, assured BPCA representatives, by e-mail, telephone, and other means, that the outstanding invoices and late charges would be paid. Nevertheless, while Sheldrake made payment on some outstanding amounts owed to BPCA during the fall of 2006, it did not pay the full balances.

19. In or about January 2007, J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, and CC-1 discussed, among other things, the need to obtain additional capital for a new real estate investment project. They also discussed late payments due and owing to BPCA. Because of Sheldrake's need for additional capital, and its inability to pay outstanding BPCA invoices, DALY, ABREU, and CC-1 agreed to submit to the Lender a BPCA PILOT invoice in duplicate, i.e., to resubmit a PILOT charge for reimbursement that the Lender previously funded. DALY authorized ABREU to submit a fabricated PILOT invoice (the "Fabricated PILOT Invoice") to the Lender to effectuate the scheme.

20. By letter dated February 27, 2007 from J. CHRISTOPHER DALY, the defendant, Sheldrake requested payment for Riverhouse Project costs from the Lender, including payment on

the Fabricated PILOT Invoice, which was forged by MICHAEL ABREU, the defendant. The Fabricated PILOT Invoice requested funding for approximately \$2.2 million for the second half of 2007, even though BPCA had not yet billed Shel Drake for this PILOT charge. Unaware of the fraudulent nature of this invoice, on or about March 9, 2007, the Lender funded the requested Riverhouse Project costs through wire disbursement to Shel Drake's bank account at Signature Bank in New York, New York.

21. By letter dated July 6, 2007 from J. CHRISTOPHER DALY, the defendant, Shel Drake requested payment for Riverhouse Project costs from the Lender, including for a BPCA PILOT invoice for \$2.3 million, representing monies due for the second half of 2007 -- specifically, monies that had already been paid to Shel Drake by the Lender in connection with the Fabricated PILOT Invoice. Unaware that this PILOT charge had been funded already, the Lender funded the request through wire disbursement to Shel Drake's bank account at Signature Bank in New York, New York, on or about July 16, 2007.

#### **Statutory Allegation**

22. From in or about January 2007, up to and including in or about July 2007, in the Southern District of New York and elsewhere, J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with

each other to commit mail fraud and wire fraud, in violation of Sections 1341 and 1343 of Title 18, United States Code.

23. It was a part and an object of the conspiracy that J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, and others known and unknown, would and did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and would and did take and receive therefrom, such matters and things, and would and did knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

24. It was further a part and an object of the conspiracy that J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, and others known and unknown, would and did devise and intend to devise a scheme and artifice to defraud and to

obtain money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Means and Methods of the Conspiracy

25. Among the means and methods by which J.

CHRISTOPHER DALY and MICHAEL ABREU, the defendants, would and did carry out the conspiracy were the following:

a. DALY and ABREU agreed to submit fabricated and duplicate PILOT invoices to the Lender for reimbursement.

b. DALY and ABREU used or caused to be used DHL Express to submit fabricated and duplicate PILOT invoices to the Lender for reimbursement.

c. Through their submission of fabricated and duplicate PILOT invoices to the Lender, DALY and ABREU caused the Lender to make interstate wire transfers of requested Riverhouse Project costs, including PILOT charges, using the Fedwire service, to a Sheldrake account at Signature Bank in New York, New York.

Overt Acts

26. In furtherance of this conspiracy, and to effect the illegal objects thereof, the following overt acts, among others, were committed by J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, in the Southern District of New York:

a. In or about January 2007, DALY authorized ABREU to submit to the Lender in New York, New York, by interstate courier, fabricated and duplicated PILOT invoices for reimbursement.

b. In or about February 2007, DALY and ABREU caused Sheldrake to submit to the Lender in New York, New York, by interstate courier, a fabricated PILOT invoice for reimbursement.

c. On or about March 9, 2007, DALY and ABREU caused the Lender to make an interstate wire transfer for requisitioned Riverhouse Project costs, including PILOT, to Sheldrake's bank account at Signature Bank in New York, New York.

d. In or about July 2007, DALY and ABREU caused Sheldrake to submit to the Lender in New York, New York, by interstate courier, a duplicate PILOT charge for reimbursement.

e. On or about July 16, 2007, DALY and ABREU caused the Lender to make an interstate wire transfer for requisitioned Riverhouse Project costs, including PILOT, to Sheldrake's bank account at Signature Bank in New York, New York.

(Title 18, United States Code, Section 1349.)

FORFEITURE ALLEGATION

27. As the result of committing the mail and wire fraud conspiracy offense alleged in Count One of this Information, J. CHRISTOPHER DALY and MICHAEL ABREU, the defendants, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of the offenses.

Substitute Asset Provision

28. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981;  
Title 21, United States Code, Section 853; and  
Title 28, United States Code, Section 2461.)

  
PREET BHARARA   
United States Attorney

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(18 U.S.C. § 1349)

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