
**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon. Cathy L. Waldor
v. : Mag. No. 16- 7025
WILLIAM KIRCHGESSNER : **CRIMINAL COMPLAINT**

I, KARL E. UBELLACKER, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

In violation of Title 18, United States Code, Sections 1343 and 1001.

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.



Karl E. Ubellacker, Special Agent
Federal Bureau of Investigation

Sworn to before me, and
subscribed in my presence

March 15, 2016 at
Newark, New Jersey

HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

COUNT ONE

From on or about February 10, 2015, to on or about February 22, 2015, in the District of New Jersey and elsewhere, defendant

WILLIAM KIRCHGESSNER

did knowingly and intentionally devise and intend to devise a scheme and artifice to defraud "Factoring Company B," and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises concerning the sale of purported accounts receivable concerning a transportation company, and, for the purpose of executing and attempting to execute such scheme and artifice to defraud, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, including but not limited to e-mails described in Attachment B.

COUNT TWO

On or about February 23, 2016, in the District of New Jersey and elsewhere, defendant

WILLIAM KIRCHGESSNER,

in a matter within the jurisdiction of the executive branch of the Government of the United States, did knowingly and willfully make and cause to be made materially false, fictitious, and fraudulent statements and representations.

ATTACHMENT B

I, Karl E. Ubellacker, am a Special Agent with the Federal Bureau of Investigation ("FBI"). I am familiar with the facts set forth herein based on my own investigation, my conversations with other law enforcement officers, and my review of reports, documents, and other evidence. Because this complaint is being submitted for a limited purpose, I have not set forth each and every fact that I know concerning this investigation. Where statements of others are related herein, they are related in substance and in part unless otherwise indicated. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Background

1. At all times relevant to this Complaint:
 - a. Defendant WILLIAM KIRCHGESSNER was a resident of New Jersey and an owner of a factoring company ("Factoring Company A"), a New Jersey limited liability company with its principal place of business in Bergen County, New Jersey. Among other things, Factoring Company A purchased accounts receivable from transportation companies in the transportation industry. If a transportation company wished to sell its accounts receivable to Factoring Company A, it did so pursuant to a Master Factoring Agreement.
 - b. In a Master Factoring Agreement, the transportation company would agree to assign some or all of its accounts receivable to Factoring Company A. In return, Factoring Company A would provide short term financing to the transportation company. In order to obtain the short-term financing, the transportation company would submit an invoice to Factoring Company A. Factoring Company A would then provide the short-term financing against the invoice, specifically a percentage of the face amount of the invoice known as the advance rate. Factoring Company A would thereafter collect the full amount of the invoice from the transportation company's customer. Due to the payment date of an invoice being a future date, Factoring Company A often advanced large sums of money to a transportation company before it received any payment.
 - c. The "Trucking Company" was a trucking company with its principal place of business in Georgia. In or about July 2015, the Trucking Company entered into a Master Factoring Agreement with Factoring Company A. Pursuant to the Master Factoring Agreement, the Trucking Company assigned the rights to collect on invoices (accounts receivable) concerning a vendor (the "Vendor") to Factoring Company A in return for short term financing.

d. "Factoring Company B" was an entity based in South Dakota that engaged in, among other things, factoring services, specifically the purchase of trucking companies' accounts receivables.

e. "Factoring Broker A" was a limited liability corporation located in Texas that was engaged in, among other things, brokering of freight factoring agreements. Since 2011, Factoring Broker A was a sales agent for Factoring Company B and referred its freight factoring leads to Factoring Company B.

Defendant KIRCHGESSNER's Fraudulent Activity

2. On or about February 9, 2016, defendant KIRCHGESSNER contacted a Special Agent of the Federal Bureau of Investigation ("FBI") by telephone. The Special Agent that defendant KIRCHGESSNER contacted was known to defendant KIRCHGESSNER because he investigated a recent matter where Factoring Company A was a victim of a wire fraud scheme using fraudulent invoices. During the telephone call, defendant KIRCHGESSNER explained that he believed Factoring Company A was once again the victim of a wire fraud scheme, on this occasion by the Trucking Company. Defendant KIRCHGESSNER and the Special Agent agreed to meet the following day.

3. On or about February 10, 2016, defendant KIRCHGESSNER met with the Special Agent as well as another FBI Special Agent who had investigated the initial Factoring Company A fraud matter (collectively, the "Special Agents"). During the meeting, defendant KIRCHGESSNER told the Special Agents, in substance and in part, that: (a) in or about July 2015, Factoring Company A entered into a Master Factoring Agreement with the Trucking Company; (b) in or about February 2016 defendant KIRCHGESSNER, on behalf of Factoring Company A, approached an owner ("the Owner") of another factoring company for the purpose of buying the Trucking Company's account from Factoring Company A; and (c) the Owner, after conducting some due diligence, told defendant KIRCHGESSNER that there were many red flags with the Trucking Company's account. Defendant KIRCHGESSNER also told Special Agents, in substance and in part, that based on the red flags and other facts, he believed the Trucking Company was defrauding Factoring Company A.

4. After hearing this information, the Special Agents asked defendant KIRCHGESSNER to wait in a waiting area.

5. The Special Agents then contacted the Vendor. A representative of the Vendor stated, in substance and in part, that: (a) the Vendor had done business with the Trucking Company from in or about February 2015 through on or about September 5, 2015; and (2) from in or about July 2015 through on or

about September 2015, the Vendor had been sending invoice payments for work done by the Trucking Company to Factoring Company A. This information was counter to invoices dated after September 5, 2015, that the Trucking Company had submitted to Factoring Company A pursuant to the Master Factoring Agreement.

6. The Vendor's representative also confirmed, in substance and in part, that a specific individual (the "Individual") did not work for the Vendor, notwithstanding an e-mail defendant KIRCHGESSNER received on or about February 5, 2016, in which the Individual claimed to be a Procurement Manager and Scalemaster for the Vendor and discussed the Vendor's alleged current business activity with the Trucking Company.

7. The Vendor's representative also stated, in substance and in part, that the Vendor's employees had work e-mail addresses that included the Vendor's name but did not include "llc". This information was counter to the e-mail address used and provided by the Individual in the February 5, 2015, e-mail.

8. The Special Agents then resumed their meeting with defendant KIRCHGESSNER. At this time, the Special Agents told defendant KIRCHGESSNER, in substance and in part, of the facts they had obtained during their call with the representative of the Vendor. The Special Agents also told defendant KIRCHGESSNER, in substance and in part, that the Trucking Company was defrauding Factoring Company A.

9. The Special Agents further told defendant KIRCHGESSNER, in substance and in part, that the Trucking Company may attempt to defraud other factoring companies. In this regard, the Special Agents told defendant KIRCHGESSNER that: (a) it was important to prevent any future loss to other factoring companies; (b) defendant KIRCHGESSNER was to advise the Special Agents if he was contacted by any other factoring company concerning the Trucking Company, or if the Trucking Company indicated it wanted to move its account with Factoring Company A to another entity. The Special Agents also told defendant KIRCHGESSNER to preserve all communications with any individual associated with the Trucking Company, and that those communications should only take place at the direction of the FBI.

10. Although instructed not to do so by the Special Agents, and knowing the Trucking Company's post-September 5, 2015, accounts receivable were fraudulent, defendant KIRCHGESSNER, on or about February 11, 2016, contacted a representative of Factoring Broker A by telephone. During the ensuing conversation, defendant KIRCHGESSNER told a representative of Factoring Broker A, in substance and in part, that: (a) he wanted someone to

take over the Trucking Company's account; (b) the Trucking Company does approximately \$50,000 of work for the Vendor a day; (c) the Trucking Company is "gangbusters"; (d) the invoices are verifiable; (e) other than some titles on trucks, there was nothing holding the account back; (f) the Trucking Company has a monthly arrangement with the Vendor; (g) the money comes in like clockwork; and (h) the Trucking Company is his best client. At no point did defendant KIRCHGESSNER mention any issues with the Trucking Company, much less fraud. On this same date, as well as February 12, 2016, defendant KIRCHGESSNER sent e-mails to the Factoring Broker A representative concerning the Trucking Company's account with Factoring Company A.

11. On or about February 12, 2016, defendant KIRCHGESSNER told one of the Special Agents, in substance and in part, that he had not reached out to any other factoring company concerning the Trucking Company since he met with the Special Agents on February 10, 2016.

12. On or about February 16, 2016, defendant KIRCHGESSNER told the Special Agents, in substance and in part, that the most recent checks from the Trucking Company, which were to pay down its account with Factoring Company A, did not clear.

13. On or about February 16, 2016, defendant KIRCHGESSNER called the representative of Factoring Broker A and stated, in substance and in part, that defendant KIRCHGESSNER was calling because he had not heard back from Factoring Broker A. During the ensuing call, defendant KIRCHGESSNER pushed for the buyout to occur. At no time did defendant KIRCHGESSNER state that checks from the Trucking Company had bounced on or about February 12, 2016, or describe any concern with the Trucking Company or its account with Factoring Company A.

14. On or about February 19, 2016, defendant KIRCHGESSNER met with the Special Agents. At that time, defendant KIRCHGESSNER told the Special Agents, in substance and in part, that a representative of the Trucking Company told him that another factoring company would be taking the account from Factoring Company A.

15. That same day, defendant KIRCHGESSNER took part in a consensually recorded conversation with a representative of the Trucking Company. When law enforcement listened to the recording, it appeared as though the representative stated that the Trucking Company's account with Factoring Company A was about to be sold to Factoring Company B and that the transaction was the result of, among other things, actions taken by defendant KIRCHGESSNER. The Special Agents therefore contacted defendant KIRCHGESSNER later that day. During the ensuing telephone conversation,

defendant KIRCHGESSNER told the Special Agents, in substance and in part, that he: (a) did not know Factoring Company B; (b) had no knowledge of a specific employee (the "Employee") at Factoring Company B; (c) had no knowledge of a buyout agreement from any other entity; and (d) had not been contacted for a buyout or wiring instructions for a buyout.

16. The investigation has revealed that on February 19, 2016, defendant KIRCHGESSNER sent an e-mail to a representative of Factoring Company B which had as an attachment the buyout agreement between the Trucking Company, Factoring Company A, and Factoring Company B, which agreement was signed by defendant KIRCHGESSNER. The investigation has also revealed that on February 22, 2016, defendant KIRCHGESSNER sent an e-mail to a representative of Factoring Company B which had as an attachment an updated buyout agreement between the Trucking Company, Factoring Company A, and Factoring Company B, which agreement was signed by defendant KIRCHGESSNER.

17. On or about February 22, 2016, the Special Agents contacted defendant KIRCHGESSNER. During the ensuing conversation, defendant KIRCHGESSNER told the Special Agents, in substance and in part, that the Trucking Company was continuing to represent that it would send Factoring Company A the amount outstanding on its account, which amount was approximately \$1,600,000.

18. On or about February 23, 2016, while in New Jersey, the Special Agents contacted defendant KIRCHGESSNER by telephone. During the ensuing conversation, defendant KIRCHGESSNER told the Special Agents, in substance and in part, that: (a) the Trucking Company may have gone to another company to get a line of credit, but that defendant KIRCHGESSNER was not sure; (b) he had not heard from any other factoring company or financial institution concerning the purchase of the Trucking Company's outstanding accounts receivable with Factoring Company A; (c) he had no knowledge of Factoring Company B; (d) he had no knowledge of any financial institution Factoring Company A banked with receiving any payoff concerning the Trucking Company's outstanding accounts receivable; (e) he had yet to hear from any factoring company or financial institutions requesting wiring instruction information from Factoring Company A; (f) neither he nor anyone else at Factoring Company A had spoken with anyone from Factoring Company B concerning the Trucking Company's account; (g) a person at Factoring Broker A may have told a factoring company about the Trucking Company, but he did not know which company; and (g) he would know if another company was in the process of taking over the Trucking Company's account.

19. Shortly thereafter, defendant KIRCHGESSNER had another telephone conversation with the Special Agents during which he stated, in substance and in part, that he was not going to lie to the Special Agents any longer. Defendant KIRCHGESSNER then told the Special Agents, in substance and in part, that: (a) Factoring Company A's bank had received a wire that day from Factoring Company B; and (b) he had previously been in contact with Factoring Company B. Defendant KIRCHGESSNER also admitted, in substance and in part, that: (a) the wire had actually occurred the prior day; (b) he lied to the Special Agents because he wanted to get the money Factoring Company A had outstanding based upon its relationship with the Trucking Company; and (c) he knew that having Factoring Company B take over the Trucking Company's account was wrong.

20. The investigation has revealed that on February 22, 2016, Factoring Company B caused a wire transfer in the amount of approximately \$1,600,000 to be sent as part of Factoring Company B's buyout of the Trucking Company's account with Factoring Company A. The investigation has also revealed that on February 22, 2016, defendant KIRCHGESSNER sent a text message to another employee of Factoring Company A stating, in substance and in part, that the wire had been received.

21. An employee of Factoring Company A told law enforcement, in substance and in part, that prior to February 22, 2016: (a) defendant KIRCHGESSNER told him/her that the Trucking Company's account with Factoring Company A was fraudulent; and (b) he/she questioned defendant KIRCHGESSNER about selling the Trucking Company's account because they knew there was a problem with the account.

22. The investigation has revealed that on or about March 4, 2016, in order to make Factoring Company B whole, the party that received the February 22, 2016, wire transfer described above caused the money to be returned to Factoring Company B.