

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

NCMIC FINANCE CORPORATION d/b/a  
PROFESSIONAL SOLUTIONS FINANCIAL  
SERVICES, an Iowa Corporation,

CASE NO: **09-21192**

Plaintiff,

COMPLAINT

vs.

BRICAN AMERICA, INC., a Florida  
Corporation,

**CIV - HUCK**

Defendant.

**MAGISTRATE JUDGE  
/O'SULLIVAN**

FILED BY \_\_\_\_\_  
2009 MAY -4 PM 1:15  
STEVEN J. O'SULLIVAN  
CLERK U.S. DISTRICT  
COURT  
S.D. OF FLA - HIA

Plaintiff NCMIC Finance Corporation d/b/a Professional Solutions Financial Services, by its attorneys, Levey, Filler, Rodriguez, Kelso & De Bianchi, LLP, for its complaint seeking relief against defendant Brican America, Inc., alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff NCMIC Finance Corporation d/b/a Professional Solutions Financial Services ("PSFS") and Defendant Brican America, Inc. ("Brican"), entered into an Agreement, dated July 15, 2005, entitled the General Vendor Agreement (the "Agreement"). Pursuant to the Agreement, PSFS agreed to purchase certain goods from Brican for the purpose of leasing or financing those goods to customers of Brican. As a result of the Agreement, PSFS has entered into 1672 leases with customers of Brican. Brican made representations and warranties in the Agreement to induce PSFS to enter into the Agreement. Brican has breached those representations and warranties, which has triggered a provision in the Agreement which compels Brican to repurchase all of the Leases from PSFS. Despite due demand, Brican has refused to repurchase the Leases. The value of the Leases exceeds \$38,000,000.

**THE PARTIES**

2. Plaintiff PSFS is a corporation organized under the laws of Iowa, with its principal place of business in Clive, Iowa.

3. Defendant Brican is a corporation organized under the laws of Florida, with its principal place of business in Miami, Florida.

**JURISDICTION AND VENUE**

4. Pursuant to 28 U.S.C. §1332 (a)(2), this Court has jurisdiction over the claims brought as the plaintiff is a citizen of the State of Iowa, having its principal place of business at 14001 University Avenue, Clive, Iowa, and the defendant is a citizen of the State of Florida, having its principal place of business at 5301 Blue Lagoon Drive, Miami, Florida, and the amount in controversy exceeds the value of \$75,000, exclusive of interests and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) and (3) since a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this District, and defendant is subject to personal jurisdiction in this District.

**FACTUAL BACKGROUND**

6. PSFS is in the business of, *inter alia*, providing financing to creditworthy entities to allow those entities to obtain goods. Such financing is often provided through leases.

7. Upon information and belief, Brican is in the business of leasing to medical providers combined television/computer systems which display health care information to patients visiting their offices.

8. Pursuant to Paragraph 4 of the Agreement, Brican would locate medical providers who wanted to lease this equipment and transmit to PSFS a package of materials containing the information necessary to determine their creditworthiness and financial standing.

9. Once such a medical provider was deemed creditworthy, it would sign an Equipment Lease Application and Agreement whereby the medical provider (now, the “Lessee”) would agree to lease the television/computer system (the “Goods”) from PSFS (the “Lease”) for a term of sixty (60) months with a monthly payment of \$508.00, an annual cost of \$6,096 and a total cost over the Lease period of \$30,480.

10. Pursuant to Paragraph 3 of the Agreement, PSFS was required to pay the Purchase Price only upon receipt of the following documents:

- (a) The executed Lease;
- (b) A delivery and acceptance certificate;
- (c) Brican’s invoice to PSFS for the Goods;
- (d) Any additional support documents from the Lessee as PSFS might reasonably require; and
- (e) The Lessee’s check or other instrument for any advance payment due pursuant to the Lease.

11. Upon the delivery and acceptance of the Goods by the Lessee, PSFS would pay Brican \$23,283.84 (the “Purchase Price”) for the Goods.

12. Beginning in early 2009, at Brican’s request this structure was amended so that the Lessees leased the Goods from Brican America LLC who then assigned the Leases to PSFS.

13. Pursuant to the Agreement, PSFS has entered into 1672 Leases with Brican customers.

14. Pursuant to Paragraph 6 of the Agreement, **Representations and Warranties: Goods**, Brican warranted, *inter alia*, that:

\* \* \*

- (c) There are no other agreements or warranties given to Lessee relating to the Goods or Leases written or verbal that are not included in the documents given to PSFS;

\* \* \*

15. In fact, there was at least one additional agreement, a “Marketing Agreement,” which related to the Goods or Leases provided to the Lessees, that Brican gave to each of the Lessees, which was not included in the documents that were provided to PSFS for each of the Leases.

16. Under the Marketing Agreement, Brican’s affiliate, Viso Lasik Medspas, LLC, would pay the Lessees a minimum fee of \$5,800 per year in return for the ability to run advertisements for Viso Lasik Medspas, Inc. on the leased television/computer systems.

17. The Marketing Agreement was material to PSFS’s decision to underwrite these Leases as the payments under the Marketing Agreement were designed to offset the cost of the Lease payments, suggesting that the Lessees would not enter into the Leases or might cease payment under them without the income stream provided by the Marketing Agreement.

18. As a result of Brican’s failure to provide the Marketing Agreement to PSFS with each packet of documents related to each of the Leases, Brican has breached the Agreement.

19. Pursuant to Paragraph 5(a) of the Agreement, Brican represented and warranted that it was a corporation validly existing and in good standing under the laws of Nebraska.

20. This was and is a false representation and warranty, as Brican is and always has been a Florida corporation.

21. Pursuant to Paragraph 6(d) of the Agreement, Brican represented and warranted that it would perform all of the obligations under the warranties given by Brican relating to the Goods.

22. This was and is a false representation as another Brican entity, called Brican America LLC, arranged for and collected the Purchase Price on the Leases and actually provided the Goods.

23. Paragraph 7 of the Agreement, **Brican's Breach of Representations and Warranties**, states that:

If Brican breaches any representation or warranty herein with respect to a Lease entered into by PSFS, Brican shall repurchase such Lease and/or Goods from PSFS on demand for the unpaid balance due thereon. PSFS may, upon notice to Brican, offset any indebtedness or monies PSFS owes to Brican against any obligation owed to PSFS by Brican. After Brican repurchases a Lease and/or Goods, PSFS will reconvey all of its rights, title and interest in and to the Lease and/or Goods to Brican. Brican's repurchase obligations are not contingent upon Brican recovering the Goods from the Lessee.

24. As a result of Brican's breaches, it is obligated to repurchase each Lease from PSFS on demand for the unpaid balance due thereon.

25. PSFS has duly demanded that Brican repurchase each of the Leases.

26. Brican has refused to repurchase the Leases.

**AS AND FOR A FIRST CAUSE OF ACTION**

27. PSFS repeats and realleges the allegations contained in paragraphs 1 through 26 as if fully set forth herein.

28. Brican breached the Representations and Warranties in Paragraph 6(c) of the Agreement by failing to provide PSFS with the Marketing Agreement with each packet of documents related to each of the Leases.

29. Brican breached the Representation and Warranty in Paragraph 5(a) of the Agreement in that it is not a corporation validly existing and in good standing under the laws of Nebraska.

30. Brican breached the Representations and Warranties in Paragraph 6(d) of the Agreement in that it warranted that it would perform all of the obligations under the warranties it gave relating to the Goods, but instead another Brican entity, called Brican America LLC, arranged for and collected the Purchase Price on the Leases and actually provided the Goods.

31. As a result of these breaches of Representations and Warranties, pursuant to Paragraph 7 of the Lease Brican is obligated to repurchase each of the Leases from PSFS.

32. Despite due demand, Brican has refused to repurchase the Leases.

33. As a result, PSFS has suffered monetary damages of no less than \$38,000,000.

WHEREFORE, PSFS requests an Order:

a) pursuant to the First Cause of Action, finding that Brican has breached the General Vendor Agreement and compelling Brican to repurchase each of the Leases entered into between PSFS and the Lessee-medical providers pursuant to the Agreement; and

b) for such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

Demand for Jury Trial on all Issues

DATED this 4<sup>th</sup> day of May, 2009.

Respectfully Submitted,

Catherine M. Rodriguez (Fla. Bar No. - 896993)

[cmrodriguezpa@dlz.mailstreet.com](mailto:cmrodriguezpa@dlz.mailstreet.com)

Levey, Filler, Rodriguez, Kelso & Debianchi, LLP

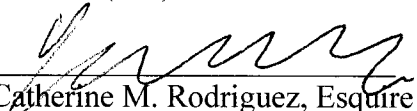
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BY:   
Catherine M. Rodriguez, Esquire

\*JS 44 (Rev. 2/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS**  
 NCMIC FINANCE CORPORATION d/b/a PROFESSIONAL SOLUTIONS FINANCIAL SERVICES, an Iowa Corp.  
 (b) County of Residence of First Listed Plaintiff MIAMI-DADE  
 (EXCEPT IN U.S. PLAINTIFF CASES)  
 (c) Attorney's (Firm Name, Address, and Telephone Number)  
 Levey, Filler, Rodriguez, Kelso & De Bianchi, LLP  
 1688 Meridian Avenue, Suite 902  
 Miami Beach, Florida 33139 Telephone: 305-672-5007

**DEFENDANTS**  
 BRICAN AMERICA, INC., a Florida Corporation,  
 County of Residence of First Listed Defendant Miami Dade  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.  
 Attorneys (if known)

(d) Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKLAHOOBEE HIGHLANDS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)  
 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
 (For Diversity Cases Only)  
 Citizen of This State PTF  1 DEF  1  
 Citizen of Another State PTF  2 DEF  2  
 Citizen or Subject of a Foreign Country PTF  3 DEF  3  
 Incorporated or Principal Place of Business In This State PTF  4 DEF  4  
 Incorporated and Principal Place of Business In Another State PTF  5 DEF  5  
 Foreign Nation PTF  6 DEF  6

*Dade 09cv 21192/Huel/O'Sullivan*

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):  
 a) Re-filed Case  YES  NO b) Related Cases  YES  NO  
 JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**VII. CAUSE OF ACTION**  
 Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):  
 This action involves the breach of a General Vendor Agreement and is subject to the jurisdiction of this court pursuant to 28 U.S.C. Section 1332 (a)(2).  
 LENGTH OF TRIAL via 3-5 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**  Yes  No

**ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE** SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_ DATE 5/4/09  
 FOR OFFICE USE ONLY  
 AMOUNT 350 RECEIPT # 1000077 FP