

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

THE BANK OF NEW YORK MELLON, as
Trustee and UNICREDIT BANK AG
(formerly known as Bayerische Hypo- und
Vereinsbank AG),

Plaintiffs,

vs.

Case No. 10-2293-EFM

BROOKE HOLDINGS, INC.,

Defendant.

BROOKE HOLDINGS, INC.,

Counter Complaint Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, as
Trustee and UNICREDIT BANK AG
(formerly known as Bayerische Hypo- und
Vereinsbank AG),

Counter Complaint Defendants.

MEMORANDUM AND ORDER

Before the Court is Plaintiffs Bank of New York Mellon and Unicredit Bank, AG's Joint Motion to Dismiss Defendant Brooke Holdings, Inc. Counter Complaint. (Doc. 18). Plaintiffs filed suit on May 21, 2010, and Defendant filed its Counter Complaint on July 26, 2010. On May 21, 2010, Plaintiff Bank of New York Mellon also filed a separate suit in this court with two other

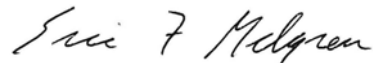
plaintiffs, Fifth Third Bank and Textron Business Services, Inc., against the same defendant, Brooke Holdings, Inc.¹ Defendant Brooke Holdings, Inc. filed a counterclaim in that case as well, with substantially the same allegations as those alleged in this case.

All plaintiffs in both cases filed motions to dismiss the counterclaim, and several of the parties make substantially the same arguments. On April 7, 2011, Judge Vratil issued a Memorandum and Order denying Plaintiffs' motion to dismiss the counterclaim, finding that Defendant Brooke Holdings, Inc. has standing to sue, and Defendant adequately stated plausible claims for tortious interference with contract and tortious interference with prospective business advantage.² Judge Vratil's analysis is persuasive and equally applicable in this case; therefore, her Memorandum and Order is adopted in full.

IT IS ACCORDINGLY ORDERED that Plaintiffs Bank of New York Mellon and Unicredit Bank, AG's Joint Motion to Dismiss the Counter Complaint (Doc. 18) is hereby **DENIED**.

IT IS SO ORDERED.

Dated this 18th day of May, 2011.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

¹Case No. 10-2294-KHV-GLR.

²Doc. 43 in Case No. 10-2294.