

CITATION: LABYRINTH PARTNERS LTD. v. IBERBANCO LTD., 2026 ONSC 1397
COURT FILE NO.: CV-25-00756073-0000
DATE: 20260309

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: LABYRINTH PARTNERS LTD. and ATHENA ADVISORY LTD., Applicants

AND:

IBERBANCO LTD., CARL KUUR, JIBRIL GALADIMA HAMIDU, SEKER IBU, SEKERBANK IBU, SEKER BANK, and SEKER INTERNATIONAL, Respondents

BEFORE: Parghi J.

COUNSEL: *Macdonald Allen and Hashim Sohail*, for the Applicants

David A. Brooker and Daria Krysik, for the Respondents Iberbanco Ltd., Carl Kuur, and Jibril Galadima Hamidu

HEARD: March 6, 2026

ENDORSEMENT

- [1] A case conference was held on March 6, 2026, further to the March 4 case conference, to address Iberbanco’s ongoing failure to comply with its disclosure obligations, in violation of several orders of this court dating back months. Iberbanco’s representative, their in-house counsel, attended both the March 4 and March 6 case conferences, on my instruction.
- [2] Regrettably, the March 6 case conference only reinforced my view that Iberbanco does not appear to appreciate the importance of complying with the various court orders and has not made adequate efforts to do so.

Court-ordered items 1 and 33

- [3] Items 1 and 33 on the disclosure list require Iberbanco to provide bank statements and source documents for spreadsheets and account statements in their native format. Iberbanco has failed to provide these materials in their native format.
- [4] In response to my questioning, Iberbanco’s representative states that Iberbanco receives the documents in PDF format and has simply passed them along as such. But that is not what Iberbanco is required by the court to do. Iberbanco is obligated to work thoughtfully and proactively to provide what the court has ordered it to provide. It cannot simply throw up its hands and say, “This is how I received the documents, so this is how I will send them to you.” I have instructed Iberbanco’s representative to contact JNFX and tell them that the documents are required in their native format, with IBAN and account numbers, pursuant to a binding court order, forthwith.

Court-ordered items 4, 5, and 40

- [5] Items 4, 5, and 40 on the disclosure list require Iberbanco to provide various FINTRAC reports it has filed. Iberbanco has offered an ever-evolving set of explanations for why these have not been produced. It initially said that the reports contained confidential information of other clients. It later said that the reports are “in progress”. It has provided screenshots and an email referring to filed reports. It has not provided the reports themselves. Iberbanco says that the reports were filed via email – that is, the reports were attached to emails sent by Iberbanco staff to the regulatory authority. It says it cannot locate the emails to which the reports were attached. It says the employees who sent the emails are no longer with Iberbanco and as a result it is difficult to locate their emails.
- [6] On further questioning, Iberbanco’s representative tells me she has not seen any such reports. To the extent that she is suggesting that the reports do not exist or cannot be recovered, this is both implausible and fundamentally at odds with Iberbanco’s other explanations, namely that the reports exist but contain confidential information, and/or that the reports were sent via email but the emails cannot be retrieved. These things cannot all be true.
- [7] Iberbanco’s shifting explanations defy credulity. I am unable to accept them.
- [8] These documents are compliance reports. I would expect compliance reports prepared and filed by a regulated entity to be retained in some organized fashion as self-standing documents and not to exist only as attachments to emails. Email attachments do not exist in the ether.
- [9] Even if the reports are, for some inexplicable reason, only available as attachments to emails, Iberbanco offers no credible explanation as to why it cannot locate those emails. Iberbanco has an email service provider which should be able to help it retrieve emails, including ones sent or received by former employees. I am not persuaded that Iberbanco has made reasonable efforts to locate or retrieve the emails.
- [10] If indeed Iberbanco intends to cling to these explanations, it will need to provide detailed affidavit evidence detailing them. That affidavit will need to include, at a minimum, evidence on Iberbanco’s usual practice for preparing, filing, and retaining such compliance reports; the efforts it has made to locate both the reports and the emails through which they were sent to the regulator, any obstacles encountered in those efforts, and all attempts at addressing those obstacles; and the efforts Iberbanco has made to ask for duplicate copies of the reports from the regulator itself.

Court-ordered item 14

- [11] Item 14 requires Iberbanco to produce documents showing that it froze funds held in one of its accounts. Iberbanco says it is unable to produce any such documents. I find it surprising that a regulated bank cannot generate evidence showing that it has placed restrictions on a bank account – all the more so when Iberbanco has asserted in this litigation that it in fact placed restrictions on the account.

- [12] In response to my questions, Iberbanco's representative now advises that there may in fact be documents that evidence restrictions being placed on the account, and that she simply needs to speak with a colleague to learn more. These are steps she should have taken months ago. She gives no reasonable explanation for not having made these efforts before. Nor does her counsel.

Court-ordered items 24-26

- [13] Items 24 and 25 require Iberbanco to produce additional emails. These items, like some of the ones discussed above, require Iberbanco to make inquiries of its email service provider. I have discussed above my concern with Iberbanco's efforts in this regard. I will not repeat those concerns here. It is sufficient to say that Iberbanco should be doing far more than it has to retrieve the emails.
- [14] Item 26 requires Iberbanco to provide the records from which Iberbanco obtained a particular phone number. Iberbanco has yet to provide a responsive response to this question. Counsel has now advised that he will try to find out what records were reviewed in providing the information. It is not clear why this step was not taken previously. It should have been.

Next steps and costs

- [15] The above are just examples of some of the disclosure items that remain outstanding, in breach of several orders of this court. We did not have enough time to address all of the outstanding disclosure items. Nor, frankly, would it have been a good use of everyone's time, or judicial resources, to try to do so. I should not have to be posing obvious follow-up questions to Iberbanco's representative, to nudge Iberbanco into taking steps that it ought to have taken months ago and on its own initiative. It is Iberbanco's responsibility, with the guidance and active involvement of counsel, to be working proactively to provide the required disclosure. Based on what I have seen so far, Iberbanco does not appear to appreciate this obligation or to treat it with sufficient seriousness.
- [16] The applicants wish to schedule a contempt motion. The parties are to sort out a proposed timetable for the steps of the motion and send it to me via email by 4 pm on March 13, 2026. I will remain seized of any such motion if it proves necessary.
- [17] The applicants seek costs of \$11,375.15, representing the costs they incurred in relation to the March 4 and March 6 case conferences. The case conferences became necessary only due to Iberbanco's ongoing disregard for orders of this court. I note that this costs amount does not include the time applicants' counsel would have spent reviewing Iberbanco's disclosure in the ordinary course. It reflects only the time spent addressing the deficiencies in the disclosure and preparing for and attending the case conferences.
- [18] The fixing of costs is a discretionary decision under section 131 of the *Courts of Justice Act*, R.S.O. c. C.43. In exercising my discretion with respect to fixing costs, I considered the factors identified in Rule 57.01 of the *Rules of Civil Procedure*. I also considered the overall objective of any costs award: that it be fair and reasonable and within the reasonable expectation of the unsuccessful party to pay (*Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 26, 38).

- [19] I grant the applicants their costs of \$11,375.15, inclusive of HST. Based on the principle of indemnity, they ought to be made whole for the costs they incurred solely as a consequence of Iberbanco's repeated failure to comply with court orders. The amount sought is fair and reasonable. Iberbanco's positions on the various issues raised by the applicants are without merit, and to the extent that there can be a "winner" in case conferences such as these, the applicants are clearly the "winners". Furthermore, it is appropriate to award costs against Iberbanco to communicate to it, in unequivocal terms, that its failure to comply with the court orders is unacceptable and will not be countenanced by this court.
- [20] Iberbanco is to pay \$11,375.15 to the applicants within 30 days.

Justice
Ira Parghi

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Justice Ira Parghi
Date: 2026.03.09
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Parghi J.

Date: March 9, 2026