

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BERNARD J LAVERTY JR.)

Plaintiff,)

v.)

DAVID G MASSAD,)
MARCELLO MALLEGNI, MICHAEL NORRIS,)
COMMERCE BANK AND TRUST COMPANY,)
WILLIAM DEPIETRI, HEIDI NORRIS,)
LBM FINANCIAL, LLC., and)
WOLFPEN FINANCIAL, LLC,)
RIEMER & BRAUNSTEIN LLP)

Defendants.)

COMPLAINT AND JURY DEMAND
NATURE OF THE CASE

1.

This is an action for damages arising under the Racketeer Influence and Corruption Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., as well as claims under Massachusetts law. The predicate acts supporting the RICO counts include, mail fraud, bank fraud, bankruptcy fraud, money laundering, obstruction of justice, loan sharking, and extortion. The facts alleged also indicate violations of the Fair

Housing Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Equal Credit Opportunity Act.

2.

This RICO enterprise (“Massad/Mallegni enterprise”) has been controlled by defendants David G Massad and Marcello Mallegni, William Depeitri, Michael Norris. Their lending companies Wolfpen Financial LLC, LBM Financial LLC and Commerce Bank and Trust Company, which the Defendants controlled and directed to commit these illegal acts, are also members of the Massad/Mallegni enterprise along with the other defendants.

3.

It is alleged that all of the defendants in the Massad/Mallegni enterprise acted in concert to defraud, extort, conspire against, and deprive the Plaintiff of money, property and assets, and have attempted to place him and his family out of their home and in fear for their physical safety.

4.

Defendants Massad /Mallegni and their accomplices would loan through their various lending entities, including defendants Wolfpen Financial and LBM Financial money to individuals and entities and proceed to charge interest rates far in excess of the contractual amount, often in violation of Massachusetts usury laws. This was a scheme designed to effectively strip the property of its equity and force the borrowers to refinance their loans for a higher amount that would include

the fraudulently-inflated interest. The defendants used the threat of foreclosure and bodily harm to force the borrowers to agree to their fraudulent loan terms. In addition, the defendants used their position to force borrowers to pay them kickbacks in the form of cash and ownership interests in the various projects.

PARTIES

5.

Plaintiff Bernard J Lavery Jr. (“Lavery”) is an individual who resides in Marshfield, Massachusetts.

6.

Defendant David G. “Duddie” Massad (“Massad”) is an individual who resides in Westborough, Massachusetts.

7

Defendant Marcello Mallegni (“Mallegni”) is an individual who resides in Southborough, Massachusetts.

8

Defendant Heidi Norris (“H.Norris”) is an individual who resides in Jamaica Plain, Massachusetts.

9

Defendant Commerce Bank and Trust Company (“Commerce Bank”) is a federally insured financial institution headquartered in Worcester, Massachusetts.

10

Defendant William Depeitri (“Depeitri”), is an individual who resides in Southborough, Massachusetts.

11

Defendant LBM Financial, LLC. (“LBM Financial”) is a duly organized Massachusetts limited liability company with a principal place of business located at 171 Locke Drive, Marlboro, Massachusetts.

12

Defendant Wolfpen Financial, LLC (“Wolfpen”) is a duly organized Massachusetts limited liability company with a principal place of business located at 171 Locke Drive, Marlborough, Massachusetts.

13.

Defendant Michael Norris (“M. Norris”) is an individual who resides in Southborough Massachusetts.

14.

Defendant Reimer and Braunstein LLP (“ Reimer/Braunstein”) is a duly organized Massachusetts limited liability partnership located in Boston Massachusetts.

Facts Common to All Counts

15.

At all relevant times, plaintiff Laverty was engaged in the acquisition and development of commercial and residential properties in Massachusetts.

16.

At all relevant times, defendant Massad was the majority shareholder and Chairman of defendant Commerce Bank. On information and belief, defendant Massad is also a major financier of, and holds a significant ownership interest in,

defendant LBM Financial.

17.

At all relevant times, defendant Mallegni was the Manager of, and a substantial shareholder in, defendants LBM Financial and Wolfpen Financial LLC.

18.

At all relevant times, defendant LBM engaged in the business of lending money to individuals and entities. This money typically came from private investors and typically was loaned at a higher rate of interest than that provided by conventional financial institutions.

19.

At all relevant times, defendant Depeitri was 50% shareholder in Wolfpen Financial LLC

20.

At all relevant times, defendant Wolfpen was engaged in the business of lending money to individuals and entities. This money typically came from private investors and typically was loaned at a higher rate of interest than that provided by conventional financial institutions. At no time relevant to this action, did defendant Wolfpen file a Notice of Intent to charge usurious interest with the Massachusetts Attorney General's Office in regards to the loan dated May 9, 2003.

21.

At all relevant times, defendant LBM Financial was engaged in the business of lending money to individuals and entities. This money typically came from private investors and FDIC insured financial institutions through lines of credit and

participatory loan agreements, and typically was loaned at a higher rate of interest than that provided by conventional financial institutions, usually double.

22.

At all relevant time's defendant Reimer and Braunstein LLP was a law firm doing business in the Commonwealth of Massachusetts.

23.

At all relevant time's LBM Financial at no time during the term of the loans between the plaintiff and LBM Financial send default notices.

\$1,200,000.00 655 Corp Loan

24.

In February of 2003 plaintiff was approached by Francis Fraine asking that Plaintiff buy into a property known as 655 West Second St .Mr. Fraine stated that he had a Loan with defendant Wolfpen Financial that he was having problems with and asked that plaintiff assist in getting financing to remove defendant Wolfpen from the deal. Plaintiff was never informed by Fraine, defendant Mallegni or defendant Depeitri that they were all partners in 655 East Second St prior to approaching me to get involved or at any time thereafter.

25.

Plaintiff only recently found out through an action by Shamus Holding LLC that a Trust was formed on March 13th, 2002 called 655 Corporation Voting Trust and that all existing shares of 655 Corp stock were transferred to defendant Mallegni as

Trustee of the trust and that he controls 655 Corporation to this day.

26.

Defendant Mallegni, Fraine and defendant Depetri intentionally withheld this information and deceived plaintiff into entering into this deal. Defendant Mallegni and Fraine stated that they were getting a lot of grief from defendant Depetri and needed Plaintiff to enter the deal and to help get a loan to take out defendant Wolfpen.

27.

Defendant Wolfpen was charging very high usury rates even though the loan was not registered with the Attorney Generals office. The loan was accruing at a rate in excess of 32%.

28.

Plaintiff was introduced to Ms. Moulton then Vice President of General Bank by defendant Mallegni, Fraine and Bradley seeking a take out and construction loan. General Bank, after reviewing all the proforma stated that plaintiff needed more equity in the project. Plaintiff allowed General Bank to use plaintiff's primary residence as additional collateral.

29.

Defendant Mallegni offered to leave \$1,200,000 of equity into the project and defendant Mallegni said he would accrue the interest. Even though the Note stated that monthly payments were to be made, Mallegni told Lavery the monthly interest payments could accrue.

30.

Defendant Mallegni stated that he needed to have defendant LBM loan 655 Corp the \$1,200,000.00 to both satisfy the General Bank requirement and to satisfy defendant Depetri. It was not until the Shamus LLC lawsuit that Plaintiff found out that the transfer of funds was a Sham.

31.

On May 14th 2003 General bank closed the Construction loan with 655 Corp and started funding the construction.

32.

Defendant Mallegni immediately placed a \$1,200,000 loan at 16% and 4 pts with a loan term of 4 months on 655 East Second St after plaintiff closed the General Bank loan. Plaintiff was never informed prior to, during or after by Fraine , defendant Mallegni or defendant Depeitri that they were all partners in 655 East Second St since March of 2002 and that defendant Mallegni held all the voting rights to 655 Corp. Plaintiff only recently found this out through an action by Shamus Holding LLC.

33.

In September of 2003 defendant LBM made an allonge to the original note extending the maturity date to April 9th, 2004 and increased his principal on the note by \$48,000 of accrued interest. Defendant LBM accrued the interest until April 9th 2004 at which time the rate and fees went to 32%.defendant LBM never expected any monthly payments from 655 Corp and was to be repaid from the

sales of the units.

34.

In April of 2004 plaintiff was approached by defendant Mallegni and defendant Norris and asked to help finish a house on Harbor Bluff Road in Hyannis, Massachusetts that defendant Wolfpen had a loan on. The loan was to Robert Bradley and was behind schedule, defendant Mallegni stated that his partner defendant Depeitri was mad and wanted out.

35.

Plaintiff went to the property along with plaintiff's GC Paul Donovan to see what he could do to finish the project. Mr. Donovan finished the project and the property was sold to a third party for what appeared to be well below market value and the money was given to defendant Wolfpen.

36.

Defendant Mallegni stated that there was a \$418,000 shortfall and that it needed to be placed on 655 West Second St so they wouldn't lose any money. Plaintiff told the defendants that the shortfall was not plaintiff's responsibility and that plaintiff had no interest or obligation to any loan on Harbor Bluff Road.

37.

Defendant Mallegni said defendant Depeitri wanted his money and that defendant Mallegni wasn't going to make up the difference. Defendant Mallegni said that if plaintiff didn't agree to put the shortfall interest from Harbor bluff on 655 East Second St, defendant LBM Financial would foreclose on all plaintiffs' loans and

that defendant's Mallegni and Massad would take control of all the properties.

Plaintiff had no choice but to agree to this extortion and allow a mortgage to be placed on 655 East Second St.

38.

On January 27th 2006 defendant Mallegni wanted to consolidate 3 mortgages that defendant Mallegni and defendant Massad had on 655 East Second St and wanted to place a \$2,432,000.00 Mortgage on the property, one of the mortgages paid off was the extorted \$418,000 interest shortfall from Harbor bluff .

39.

The payoff of that interest loan that became a principal loan was over \$750,000 dollars. Defendants Mallegni and Massad effectively extorted over \$700,000 dollars from plaintiff and also took reportable interest and converted it to principal thus avoiding having to claim the interest to the IRS. Plaintiff has asked defendant Attorney Norris for copies of all closing documents but has not received them as of yet. Defendants Mallegni and Massad's delays in funding loans and the extortion of monies has cost plaintiff to lose **\$4,000,000** in profits from the timely sale of units on this project alone.

40.

On February 1st, 2008 plaintiff was served a DEMAND letter seeking payment in full the \$1,200,000 mortgage that defendant LBM left into 655 Corp from the law offices of defendant Riemer and Braunstein. Defendant LBM is demanding \$4,949,774.59 of which they have refused to give an accounting to plaintiff.

Plaintiff contacted Meegan Casey from defendant Riemer and Braunstein and asked how plaintiff was to know what defendants were demanding when they did not include any amount or break down. She stated that she would get the figures to plaintiff. Plaintiff received the figures within days and the day after that a complaint suing plaintiff was served.

\$3,250,000.00 First Street Loan

41.

In or around October of 2003, plaintiff approached defendant LBM about a project located at 401 West First St in South Boston. Defendant Mallegni loved the project and agreed to fund the acquisition and bring plaintiff to defendant Commerce Bank for financing. On December 22, 2003 plaintiff closed on the property with a Mortgage in the amount of \$3,250,000 for a six month period at a rate of 16% from defendant LBM

42.

In November of 2005 the permits were going to expire on the project and LBM asked what the plaintiff needed to do to protect the permits.

43.

Plaintiff explained to defendant Mallegni that the building needed to be demolished and defendant Mallegni agreed to fund the demolishing. Plaintiff proceeded to hire a demo company and when they were finished plaintiff submitted a draw request to pay them and defendant Mallegni refused to pay them even

though defendant Mallegni was holding the funds.

44.

Plaintiff approached defendant Mallegni on numerous occasions to find out when defendant Mallegni was going to take plaintiff to defendant Commerce Bank to obtain the construction loan. Defendant Mallegni would make excuses to delay the meeting until the project was forced into bankruptcy to protect the permits.

45.

Defendant Mallegni funded the DIP loan in the Bankruptcy court and still delayed funding the draw requests to the point where the Bankruptcy court gave a relief of stay and allowed defendants Mallegni and Massad to foreclose on the property.

46.

In November of 2007 defendants Mallegni and Massad auctioned 401 West first St and sold it to an entity called 401 West First St LLC which is controlled by David Mandara defendant Massads son in law and the LLC has an address of 171 Locke Drive, Marlboro Mass which happens to be defendants Mallegni and Massad property.

47.

Defendants Mallegni and Massad have since filed suit against plaintiff seeking over \$8,133,692.92 on a property that the defendants foreclosed on and sold to themselves with no consideration applied to the usuriously inflated debt.

Defendants Mallegni and Massad intentionally used delay and deceit tactics to force this project into a position that they could foreclose and take over. Their

intentional and illegal tactics caused plaintiff to lose over **\$12,000,000.00** in projected profits on this project alone

\$675,000.00 First St/Washington St Interest Loan

48.

In or around December of 2003 defendants Mallegni and Massad were loaning funds for the acquisition of 401 West First St, South Boston Mass and 5168-5174 Washington St and 337 and 338 Cheriton Rd West Roxbury, Mass.

49.

A loan for \$675,000 was done by defendants Mallegni and Massad to cover six months of Interest on these two properties. Defendants Mallegni and Massad wanted the loan place on a property located at 337-345 Main St Hyannis, Mass in addition to the properties they were paying the interest on.

50.

This loan was supposed to only be on the two properties that they where paying defendant LBM the interest on, but at the closing, defendants Mallegni and Massad demanded that the loan also be placed on the Hyannis property or they wouldn't do the other two loans.

51.

Defendants Mallegni and Massad had promised on several occasions to remove the loan from the Hyannis property and place it where it was supposed to be but the defendants never did. Defendants Mallegni and Massad refused to remove the loan causing plaintiff not to be able to get conventional financing without the

defendants. The defendant's refusal to remove this loan on 337-345 Main St, Hyannis allowed defendant LBM to run up the interest to over **\$1,800,000.00**.

52.

Defendants Mallegni, Massad and Norris have told many people in and around the Hyannis area that they own 337-345 Main St and were going to develop the property themselves.

\$2,000,000.00 Line of Credit

53.

In February of 2004 plaintiff approached defendant LBM Financial seeking a \$2,000,000 line of credit to be used to fund 655 Corporation and met with defendants Mallegni and Massad at defendant Commerce Bank to discuss the loan and what plaintiff was going to use it for. Defendants Massad and Mallegni agreed to do the loan and on March 12, 2004 plaintiff went to defendant LBM Financials office in Marlboro, Massachusetts to sign the loan documents.

54.

The loan documents reflect that plaintiff signed for all the guaranteeing entities as Manager, Trustee or President, plaintiff also signed individually along with Robert Bradley.

55.

Plaintiff made 2 draw requests to defendant LBM Financial within the first 2 months at which time LBM funded those requests totaling approximately

\$600,000 dollars. Plaintiff notified defendant LBM that a new draw request was being sent to the defendants and the defendants in turn notified the plaintiff that there was only \$200,000 left in the line and that the defendants were keeping that for debt service.

56.

Plaintiff called defendant Mallegni and defendant M. Norris to find out what had happened to the rest of the money and the defendants said that it had been disbursed. Plaintiff asked the defendants to show plaintiff where the money had gone and the defendants showed plaintiff copies of checks made out to a Kirsten Corp and to KBF Sales at which time Plaintiff demanded to see the draw requests and documentation showing who authorized the defendants to disburse the funds to 2 unrelated entities without plaintiff's consent.

57.

Plaintiff still has not seen this documentation 4 years later even though there has been many requests made. Plaintiff has paid approximately \$1,500,000 from the sales of Condominiums at 320 West Third St, Boston, Massachusetts towards this line of credit. Defendant LBM has since sent a demand notice seeking an additional \$1,106,598.38 on a loan that plaintiff has over paid by approximately \$600,000.

58.

The defendants have never produced any written authorizations from plaintiff instructing defendant LBM to release any funds to any entity except for the first 2

draws.

59.

Defendant LBM's release of these funds to unauthorized entities caused irreparable harm to all the projects that the funds were meant to help move through different stages of development. The financial loss due to this totaled in the tens of millions of lost profit to plaintiff.

SOS Loan \$3,630,000.00 Dated December 22nd, 2003

60.

On or about October of 2003 Plaintiff approached defendant LBM for a loan on 5168-5174 Washington St West Roxbury, Mass and Lots 337 and 338 Cheriton Road West Roxbury, Mass a 48 unit condo development comprised of two 24 unit buildings.

61.

Defendant LBM agreed to finance the project and was going to take plaintiff to defendant Commerce Bank but latter said that the plaintiff had too many loans out or in the pipe line. The defendants said they would take us to Framingham Cooperative Bank to get a construction loan, and that defendants Mallegni and Massad ran that Bank. Defendant Mallegni took plaintiff to see Larry Erickson at Framingham Cooperative Bank and they agreed to do the loan if defendant LBM left in equity. Defendant LBM crossed collateralized this loan with many other projects effectively tying plaintiff's hands and putting all projects at risk.

62.

Framingham Cooperative Bank closed the loan and paid down Defendants LBM's loan to \$1,700,000.00 .Instead of discharging the original \$3,630,000.00 LBM loan and replacing it with a new \$1,700,000.00 loan, they just subordinated to Framingham Cooperative Bank. Plaintiff asked defendant Mallegni why the defendants didn't do a new loan and defendant Mallegni stated that defendant Massad didn't want to. Defendant LBM's Attorney defendant Michael Norris had nothing to do with drawing up any of the loan documents between Framingham Cooperative and SOS Realty LLC but still charged plaintiff on the HUD \$20, 000. Plaintiff asked defendant Norris why was the defendant charging plaintiff for doing Nothing, defendant Norris said if the plaintiff didn't agree that defendant Norris would make sure the loan would not close.

63.

Construction began and 17 units sold quickly. The Framingham loan was a revolving line and reached its limit and couldn't begin to fund again until plaintiff closed units and paid down the loan.

64.

Plaintiff approached Framingham cooperative and asked if they could modify the loan or allow plaintiff to seek secondary financing in the form of a \$500,000.00 revolving line that would be paid down from the draw requests.

65.

Plaintiff had approached some lenders that were willing to do the line at 12% and 2

points but Framingham Cooperative insisted plaintiff to get the loan from defendant LBM at 16% and 4 points.

66.

Plaintiff closed the loan with defendant LBM and started closing units, the proceeds of the sales went to pay down Framingham Cooperative and defendant LBM.

67.

Defendant LBM was to receive an exit fee of \$5000.00 per unit to be paid at Closing. When the units started to close, defendant Norris demanded that the \$5000.00 checks be made out directly to defendant Mallegni and not to defendant LBM. When plaintiff asked Norris why the checks needed to be made out to defendant Mallegni, defendant Norris stated that defendant Mallegni had to cash the checks so he could give defendant Massad his 50% in cash.

68.

Plaintiff started to draw on the \$500,000.00 defendant LBM line and was paying it back through the construction draws that Framingham would pay directly to defendant LBM. Within weeks, defendant LBM stopped advancing on the line and started to keep all the draws. When plaintiff asked defendant Mallegni what was going on, he said defendant Massad wanted the line paid off.

69.

With the line stopped and Framingham Cooperative not funding due to being at the revolving limit, the project stopped. Framingham Cooperative was going to

foreclose on the project and plaintiff had spoken to some lawyers about a possible bankruptcy filing.

70.

Defendants Mallegni and Massad heard that plaintiff was thinking about filing Bankruptcy and called plaintiff. Defendants Mallegni and Massad wanted plaintiff to let Framingham Cooperative foreclose and said the defendants Mallegni and Massad would buy it back at the auction so that they could save millions by wiping out all unsecured creditors and that they would give it back to plaintiff to finish.

71.

Plaintiff told defendants Mallegni and Massad that plaintiff would not go along with defendants plan and that plaintiff believed it was illegal. Plaintiff filed Bankruptcy the next day. Defendants Mallegni and Massad went crazy and said that they would destroy the plaintiff any way they could. On numerous occasions, Mallegni made it very clear to plaintiff that he “was (expletive) with the wrong Guys” and “if you ever want to see your family alive again, you better not file Bankruptcy, you have no idea who you’re (expletive) with!”

72.

Defendant LBM went into the Bankruptcy court and supplied the Dip funding under the condition that the plaintiff resign as manager and turn all plaintiffs’ interest over to attorney James Dimento. Defendant Mallegni brought in a contractor, Lacourse Construction that supplied a contract to finish the project at

20% less than any other contractor. Defendant s LBM and Mallegni told the court that Lacourse Construction had nothing to do with the defendants and defendant Mallegni had nothing to do with the bid. Ken Lacourse has since stated in court documents that defendants Mallegni and Massad told him the price to come in at so he could get approved by the Bankruptcy court. Lacourse Construction offices were located in defendant Mallegni and defendant Massads office building in Marlboro, Mass just 100 feet away from defendant LBM .Ken Lacourse has stated that 90% of Lacourse's work was for defendant Mallegni. Due to defendant LBM's delay's in funding Lacourse Construction draw requests the project was forced to come to a stop and also forced Lacourse into Bankruptcy.

74.

Defendants Mallegni and Massad s action's from day one has caused extreme harm to this project and caused it from being a successful and profitable deal. Instead of making \$7,000,000.00 the project went into bankruptcy and was eventually foreclosed on because of defendant LBM not funding the DIP loan in a timely manner.

Reimer and Braunstein

75.

Defendant Reimer and Braunstein on February 1st, 2008 had served upon plaintiff demand letters drawn up by the defendants seeking to enforce personal guarantee's signed by plaintiff on various loans.

76.

Defendant Reimer and Braunstein never included any accounting by which Plaintiff could see what defendant LBM was charging, they clearly are co-conspirators of defendants Mallegni , Massad and LBM in trying to extort excessive interest monies that are not due or where inflated by defendant Mallegni's and Massad's action's.

77.

Plaintiff called Meegan Casey at defendant Reimer and Braunstein and ask her how plaintiff was supposed to know what is owed when there are no figures on the letter only the original loan amount. Ms Casey stated that plaintiff would get that information latter that day.

78.

Several days later plaintiff did received the artificially inflated figure totals but no accounting as to how the defendants got them. The next day plaintiff was served with a complaint from the defendants suing plaintiff for the usurious loans.

79.

Defendant Reimer and Braunstein clearly failed in their duty and responsibility to verify that the information given to them in issuing the demand letters and the filing of a complaint were correct.

80.

Defendant Reimer and Braunstein along with Meegan Casey should be sanctioned by the courts and the BBO of Mass for conspiracy with defendants to defraud.

Quincy Condo

81.

On or about August 4th, 2004, defendant Michael Norris approached plaintiff and said that defendant M.Norris's daughter defendant Heidi Norris wanted to buy a condo and asked plaintiff to locate one for defendant H.Norris. Plaintiff contacted Stuart Levy to see if he had anything available.

82.

Mr. Levy informed plaintiff he had some condominiums available at 132 Elm St, Quincy Mass and defendant Heidi Norris went and looked at them and wanted to buy unit D-8.

83.

Defendant M.Norris contacted plaintiff to tell plaintiff that defendant H.Norris wanted unit D-8 and that defendant H.Norris could only afford to pay \$165,000.00. Plaintiff contacted Mr. Levy and told him of the offer and he stated that he wanted \$175,000.00

84.

Plaintiff contacted defendant M. Norris and told him of Mr. Levy's price, defendant M.Norris then stated that he wanted plaintiff to purchase the unit from Mr. Levy and sell it to H.Norris for the \$165,000.00. Plaintiff told defendant M. Norris that plaintiff didn't want to do this but defendant M.Norris said if plaintiff didn't defendant M.Norris would have defendant LBM begin foreclosure proceedings on the loans that plaintiff had with defendant LBM.

85.

On August 31st, 2004 plaintiff closed the Condo unit D-8 at the Norfolk County Registry of Deeds for \$175,000.00 plus closing costs and resold the unit to defendant M. Norris's daughter defendant H. Norris approximately 45 minutes later for \$165,000.00 with Salem Five Cents Savings Bank. Plaintiff also had to not only cover the reduced price, plaintiff also had to cover the closing costs from both loans. The transactions cost plaintiff **\$25,000.00**.

86.

Defendant Michael Norris was the closing attorney for both defendant H. Norris and Salem Five in these transactions and clearly extorted this money from plaintiff.

Hibel Realty LLC

87.

In late 2002 plaintiff, along with Robert Bradley purchased 337-339 Main St, Hyannis Mass for \$1,050,000. Plaintiff started the permitting process with the town of Hyannis to build a 15,000 sq ft commercial building with 22 luxury condominium's above.

88.

In 2003 defendants Mallegni and Massad loved the project and wanted to use it as additional collateral for a loan on SOS Realty in West Roxbury, Mass and 401 West

First St in Boston, Mass in the amount of \$675,000.

89.

In 2006 the holders of the mortgages on 337-339 Main St wanted to be taken out of the deal and plaintiff approached defendants Mallegni and Norris about doing a loan that would take out the current mortgages, fund the continuing permitting process and pay the interest going forward.

90.

Plaintiff entered into a loan on March 20th, 2006 for \$1,330,000 which included paying off the existing mortgage, fund the on going permitting, have an interest reserve and pay closing costs.

91.

Defendants Mallegni and LBM constantly delayed in paying draw requests to the engineers and architects, costing the plaintiff delays in getting permitted.

Defendant Mallegni and Massad had agreed to assist in obtaining the construction financing through Commerce Bank. Defendant Mallegni did notify plaintiff that he had obtained the financing but the plaintiff would have to give up 25% of the project to them. Plaintiff refused to give up the 25% and defendants Mallegni and Massad refused to close the loan.

92.

Plaintiff again went to defendant Mallegni to obtain additional financing to complete the permitting process because plaintiff was unable to get other financing due to the \$675,000 cross collateralized loan from 401 First St, Boston Mass and

Washington St, West Roxbury projects.

93.

Defendants Mallegni and Massad were demanding over \$1,800,000 in principal and interest. The defendants would not subordinate to any other financing forcing the plaintiff to borrow from them or see them foreclose and take the project.

94.

In February of 2007 plaintiff entered into a loan arrangement with defendant Mallegni and Massad. The defendants placed a \$3,530,000 loan on 337-339 Main St Hyannis that paid off the first defendant LBM loan and left a reserve for one year of interest and enough money to finish the permitting. The defendants Mallegni and Massad also demanded that we pay off the \$675,000 loan which was now over \$1,800,000 or they would not do the loan and foreclose .

95.

Defendants Mallegni and Massad also demanded that plaintiff resign as manager and turn over his interest in the project to James Dimento. Plaintiff had no choice but to agree or they were going to immediately begin foreclosure on the project.

96.

Defendants Mallegni and Norris would show up at town meetings and at the architects meetings telling everybody that the project was theirs. The defendants still delayed in paying the architects and engineers to the point that they were going to sue plaintiff for non payment.

97.

Defendants Mallegni and Massad contacted Dimento and again said that they had obtained commitments for construction funds but wanted 25% of the project.

98.

Defendants Mallegni and Massad have constantly over the years delayed in making payments to the architects and engineers causing long delays in the permitting of the project, they also used the delayed funding to run up the interest and to put the project into a position that they could foreclose and take over.

99.

Defendants Mallegni and Massad are now in the process of foreclosing on the property and have caused plaintiff to lose expected profits of \$6,000,000 on this project alone.

COUNT I: CIVIL RICO (18 U.S.C. §1961 et seq.)

100.

The plaintiffs repeat and reiterate each and every allegation set forth above and incorporate such allegations into this count.

101.

At all pertinent times, the defendants Massad, William Depetri, Mallegni, M Norris, Commerce Bank, H Norris, Reimer and Braunstein, Wolfpen and LBM Financial combined to form an “enterprise” as that term is defined at 18 U.S.C. §1961(4) (“the Massad/Mellegni Enterprise”). Each of the defendants were members and associates of the Massad/Mellegni Enterprise that were engaged in fraudulent real estate transactions, and the procurement of fraudulent financing for

such transactions through mail fraud, bank fraud, bankruptcy fraud, loansharking, obstruction of justice and extortion. The Massad/Mellegni Enterprise utilized its connection to legitimate banking institutions to enrich its individual members. At all pertinent times the Massad/Mellegni Enterprise was an organized crime group that operated in central Massachusetts and at all pertinent times, it constituted continuing unit for the common purpose of achieving the enterprise's objectives.

102.

At all pertinent times the Massad /MellegniEnterprise was engaged in interstate commerce.

103.

The Massad/Mellegni Enterprise is a group of individuals and corporations associated in fact, although it is not a legal entity. The means and methods utilized to conduct its organized crime activity included a pattern of extortion, threats, intimidation, obstruction of justice, economic duress, and coerced refinancing which had the effect of fraudulently transforming conforming loans into usurious ones. The unlawful actions of the defendants occurred on a continuing basis from at least 2002 to the present. The defendants have conspired to defraud and extract large sums of money from the plaintiff by engaging in the pattern of activity that consists of numerous crimes as set forth below.

104.

The purpose of the enterprise was as follows:

- a. to enrich its members;

b. to preserve, protect, and augment its financial power and leverage in Massachusetts

105.

Among the means and methods employed by the members and associates of the Massad/Mellegni Enterprise in the conduct of the enterprise were the following:

- a. members and associates conspired, committed and attempted to commit mail fraud and bank fraud through control of numerous lending institutions and companies involved in real estate transactions;
- b. members and associates engaged in extortionate acts to enrich its members;
- c. members and associates obstructed and attempted to obstruct justice to prevent victims of the Massad/Mellegni Enterprise from seeking redress in the courts.

106.

The individual members of the Massad/Mellegni Enterprise would cause the corporate members to write loans to the plaintiff and others. When the loans were about to come due, the defendants promised to extend these loans on the same or similar terms, lulling the plaintiff into a sense of false security. At, or immediately prior to the loan closings, the defendants then demanded: (1) additional and unexpected points and finance charges to make the loans; (2) increased payoff amounts, sometimes in the hundreds of thousands of dollars; (3) that closing documents be signed immediately at said closings or that the notes will be called and the mortgages foreclosed, (4) cash payments to offset alleged debts entirely unrelated to the loans at issue. Finally, defendants Mallegni and Massad demanded an equity interest in a project as a last-minute condition of closing. The defendants'

apparent intent throughout the history of said loans was to profit unlawfully from said loans by purposefully hindering and delaying the plaintiffs' efforts to pay off their loans so the defendants' could charge fraudulently inflated "default interest" and fees and/or to utilize foreclosure proceedings and the threat of foreclosure proceedings to take the plaintiff's properties for less than market value. In the words of defendant Mallegni, "that's how we really make our money, default interest, late fees and points."

107.

In at least one instance, in or around April 2004, some or all of the defendants extorted a debt from the Plaintiff that was statutorily usurious, in violation of G.L. c. 271 §49 and 18 U.S.C. §1961(6). Specifically, the debt (Harbor Bluff house) was in the amount of \$418,000.00 of which all was "default interest" and some or all of the defendants did extort a mortgage on 655 East Second St, Boston, Mass from the plaintiff and did in fact receive \$750,000 from the plaintiff out of a \$2,432,000.00 mortgage dated January 27th, 2006.

COUNT II: CIVIL RICO CONSPIRACY (18 U.S.C. §§1962(d), 1964(c))
(ALL DEFENDANTS)

108.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 107 and incorporate such allegations into this count.

109.

The members of the Massad/Mallegni Enterprise, as above defined, did unlawfully agree and conspire together to perform the illegal acts set forth above in violation of 18 U.S.C. §1962(d).

110.

Their conduct constituted an ongoing criminal conspiracy.

111.

Said RICO conspiracy caused great damage to the plaintiff, including, but not limited to losses in excess of approximately \$100 million.

COUNT III: BREACH OF CONTRACT v. LBM FINANCIAL: SOS
REALTY TRUST
(ALL DEFENDANTS)

112.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 111 and incorporate such allegations into this count.

113.

The defendant and plaintiff entered into a binding contract which contract included an implied obligation of good faith and fair dealing.

114.

By its conduct set forth above, the defendant breached said contract without excuse or right.

115.

Said breach of contract caused great damage to the plaintiffs, including, but not

limited to economic losses.

COUNT IV: BREACH OF CONTRACT v. LBM FINANCIAL : 655 CORP
(ALL DEFENDANTS)

116.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 115 and incorporate such allegations into this count.

117.

The defendant and plaintiff entered into a binding contract which contract included an implied obligation of good faith and fair dealing.

118.

By its conduct set forth above, the defendant breached said contract without excuse or right.

119.

Said breach of contract caused great damage to the plaintiff, including, but not limited to economic losses

COUNT V: INTENTIONAL INTERFERENCE WITH CONTRACTS v.
MARCELLO MALLEGNI: LAVERTY LOANS
(ALL DEFENDANTS)

120.

The plaintiff repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 119 and incorporate such allegations into this count.

121.

The individual defendants controlled the corporate defendant LBM Financial.

122.

There was an express contract between the corporate defendant LBM Financial and Laverty

123.

The individual defendants was aware of the express contract between the corporate defendant LBM Financial and Laverty.

124.

The individual defendants interfered with the express contract between the corporate defendant LBM Financial and Laverty, and induced and caused the corporate defendant LBM Financial to breach its contract with Laverty. Said wrongful interference was without right or justification.

125.

Said tortuous and wrongful interference caused the plaintiffs to suffer great damage including, but not limited to, economic loss.

**COUNT VI: UNFAIR AND DECEPTIVE PRACTICES IN VIOLATION OF
G.L. C.93A SEC. 11 – (ALL DEFENDANTS)**

126.

The plaintiff repeats and reiterate each and every allegation set forth above in paragraphs 1 thru 125 and incorporate such allegations into this count.

127.

The defendants each do business within the Commonwealth of Massachusetts.

128.

The manner and means described above in which all defendants attempted to collect a civil debt were unfair and deceptive as defined in G.L. c. 93A §11.

129.

As a result of the Defendants' unfair and deceptive collection practices, the Plaintiffs suffered in business, in their personal and professional reputations, suffered emotional distress and were otherwise damaged, including, but not limited to losses in excess of approximately \$100 Million.

**COUNT VII: WRONGFUL ACCURAL OF INTEREST
(ALL DEFENDANTS)**

130.

Plaintiff re-alleges paragraphs 1 thru 129 as if expressly restated herein.

131.

The bad faith actions and in-actions of LBM as outlined above caused significant delay in the projects while at all times interest was accruing, including, default

interest and fees.

132.

Plaintiff requests and demands that all interest on notes be voided through Count 1, which accrued from December 2002 to present, be declared improper and wrongful and refunded to plaintiff.

**COUNT VIII; TORTUOUS INTERFERENCE WITH BUSINESS
RELATIONS (ALL DEFENDANTS)**

133.

Plaintiff re-alleges paragraphs 1 thru 132 as if expressly restated herein.

134.

Defendants bad faith failure and refusal to fund the loans and disburse funds to various contractors caused delays in the projects and harmed or destroyed working relationships between plaintiff and certain contractors, causing some to walk off the jobs adding substantially to the costs of the projects and as a result plaintiff was harmed.

**COUNT IX; MISREPRESENTATIONS
(ALL DEFENDANTS)**

135.

Plaintiff re-alleges paragraphs 1 thru 134 as if expressly restated herein.

136.

Defendants misrepresented their intentions and/or ability to fund all the projects, misrepresented their intentions to continue with the projects even after putting the loans in default without notifying plaintiff and made numerous other

misrepresentations on which plaintiff relied.

137.

As a result of defendant's misrepresentations, plaintiff was harmed.

COUNT X; BAIT AND SWITCH
(ALL DEFENDANTS)

138.

Plaintiff re-alleges paragraphs 1 thru 137 as if expressly restated herein.

139.

Defendants engaged in a bait and switch and fraudulently induced plaintiff to execute notes and associated mortgages by agreeing to fund the projects, claiming they would fund and disburse in a manner which would allow the projects to go forward and otherwise deal fairly and in good faith with plaintiff.

140.

As the result of defendant's fraud/bait and switch, plaintiff was harmed.

COUNT XI; FRAUDULANT ACCOUNTING
(ALL DEFENDANTS)

141.

Plaintiff re-alleges paragraphs 1 thru 140 as if expressly restated herein.

142.

Defendants provided plaintiff with pay-off figures for notes that reflect fraudulent accounting, including but not limited to failing to account for payments made from

sales, disbursing funds to themselves or 3rd parties not authorized or known to plaintiff and charging such disbursements to plaintiff's loans, charging unauthorized and or improper fees, interest and penalties and specifically disbursing funds from the \$2,000,000.000 line of credit to unauthorized parties.

143.

As the result of the defendant's fraudulent accounting, plaintiff was harmed.

COUNT XII; UNJUST ENRICHMENT
(ALL DEFENDANTS)

144.

Plaintiff re-alleges paragraphs 1 thru 143 as if expressly restated herein.

145.

Mallegni, Massad and Norris collected monies from plaintiff that were not properly due and owing and as a result Mallegni, Massad and Norris have been unjustly enriched and plaintiff was harmed.

COUNT XIII; EXTORTION (ALL DEFENDANTS)

146.

Plaintiff re-alleges paragraphs 1 thru 145 as if expressly herein.

147.

Defendant Mallegni, Massad and Norris extorted monies from plaintiff in the form of loan pay-offs by charging excessive and improper amounts including \$5000 exit fees payable by check to Mallegni for Mallegni and Massad \$2500.00 each.

Knowing that plaintiff would have to pay such amount in order to obtain partial releases and impliedly threatening to interfere with the projects.

148.

As a result of defendants extortion plaintiff was harmed.

COUNT XIV;EXTORTION (M.NORRIS/H.NORRIS)

149.

Plaintiff re-alleges paragraphs 1 thru 148 as if expressly herein.

150.

Defendant M.Norris had plaintiff locate a condominium for his daughter H.Norris

And plaintiff arranged for defendant H.Norris to view unit.

Defendant H.Norris like the unit and wanted to purchase. Defendant M.Norris told

plaintiff that H.Norris could only afford \$165,000 and since the unit was \$175,000

he said plaintiff would have to make up the difference or he would have defendant

Mallegni foreclose on all plaintiff loans.

151.

Plaintiff closed on said unit for \$175,000 and sold it to H.Norris 45 minutes later

for \$165,000, M.Norris also had plaintiff cover the closing costs of both sales.

152.

As a result of defendants extortion plaintiff was harmed.

COUNT XV; CO-CONSPIRACY

153.

Plaintiff re-alleges paragraphs 1 thru 152 as if expressly herein.

154.

On or about February 2008 Reimer and Braunstein mailed to plaintiff a demand letter for \$21,994,275.43 for personal guarantees plaintiff had given defendant LBM.

155.

Defendant Reimer and Braunstein acted in a co-conspirator role by sending a demand letter based on fraudulent accounting, usurious rates , misrepresentations, failure to provide information and unjust enrichment and then filing with the courts a complaint to recover the outrageous monies claimed by the defendants.

156.

Defendant Reimer and Braunstein as officers of the court have a duty to the court not to submit fraudulent information in trying to obtain a judgment.

157.

As a result of defendants co-conspiracy plaintiff was harmed.

COUNT XVI: BREACH OF CONTRACT ALL DEFENDANTS : GENEVA

158.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 157 and incorporate such allegations into this count.

159.

The defendant and plaintiff entered into a binding contract which contract included an implied obligation of good faith and fair dealing.

160.

By its conduct set forth above, the defendant breached said contract without excuse

or right.

161.

Said breach of contract caused great damage to the plaintiff, including, but not limited to economic losses.

COUNT XVII: BREACH OF CONTRACT v. ALL DEFENDANTS :HIBEL

162.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 161 and incorporate such allegations into this count.

163.

The defendant and plaintiff entered into a binding contract which contract included an implied obligation of good faith and fair dealing.

164.

By its conduct set forth above, the defendant breached said contract without excuse or right.

165.

Said breach of contract caused great damage to the plaintiff, including, but not limited to economic losses.

COUNT XVIII: BREACH OF CONTRACT v. ALL DEFENDANTS :LINE OF CREDIT

166.

The plaintiffs repeat and reiterate each and every allegation set forth above in paragraphs 1 thru 165 and incorporate such allegations into this count.

167.

The defendant and plaintiff entered into a binding contract which contract included an implied obligation of good faith and fair dealing.

168.

By its conduct set forth above, the defendant breached said contract without excuse or right.

169.

Said breach of contract caused great damage to the plaintiff, including, but not limited to economic losses.

COUNT XIV: VIOLATION OF M.G.L.c.93A §11
(ALL DEFENDANTS)

170.

The plaintiff repeats and reiterates each and every allegation set forth above in paragraphs 1 thru 169 and incorporate such allegations into this count.

171.

At all times relevant hereto, the business of the defendants was to engage in investment in and the ownership and development of real estate and the interests therein.

172.

Defendants actions and in-actions as described in this complaint were unfair and deceptive within the meaning of M.G.L.c.93A§11 and specifically, plaintiffs rely on the misrepresentations, fraud / bait and switch, fraudulent accounting, interference with business relations, extortion, unjust enrichment, failure to provide

information or notice and usury as described in this complaint are the unfair and deceptive acts relied on by plaintiff.

173.

As a result of defendant's unfair and deceptive acts, plaintiff has been harmed.

JURY DEMAND

174.

The plaintiff respectfully requests a trial by jury to the greatest extent allowed by law.

PRAYER FOR RELIEF

175.

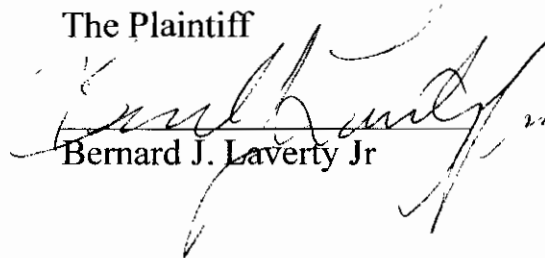
Wherefore ; the plaintiff respectfully requests this Honorable Court to :

1. Pursuant to Fed.R.Civ.P.65 (b), issue a preliminary injunction enjoining said defendants from selling, transferring, alienating, hypothecating, conveying or foreclosing or otherwise obtaining any equitable interest in the properties identified in this complaint known as Hibel property, 401 West First St property, 655 Corp property, and Washington St property and from pursuing any remedies on the personal guarantees given to the defendants.
2. Rescind any and all contracts and /or agreements to which the plaintiff or any of the plaintiffs assets has been fraudulently induced ,or in the alternative to reform any such agreements or instruments.
3. Order the defendants jointly or severally to pay all compensatory damages in the greatest amount approved by law or evidence.
4. Assess against each defendant the greatest amount of special, exemplary or punitive damages as are supported by law or evidence, including but not limited to such double or treble damages assessed in accord with the terms of 18 U.S.C.§1964(c) and M.G.L.c.93a.
5. Assess against each defendant interest, costs and attorney fees to the greatest extent permitted by law.

6. Assess against each defendant such relief as is mete and just.
7. Grant an attachment on all defendants assets for the purpose of securing that any monies awarded plaintiff by the jury in this case is not devalued by any of the defendants liquidating and the transferring and hiding of assets.

Respectively Submitted by

The Plaintiff



Bernard J. Lavery Jr