

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2005 OCT -7 P 3: 32

RALPH M DWORMAN and NANCY S DWORMAN,
Plaintiffs,
v.
FLETCHER, TILTON & WHIPPLE, PC.,
ROBERT R KIMBALL, ESQ.,
Defendants

C.A. NO. _____

U.S. DISTRICT COURT
DISTRICT OF MASS.

05-12044 GAO

RECEIPT # 62353
AMOUNT \$ 950.00
SUMMONS ISSUED 2
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 10/7/2005

RBC
MAGISTRATE JUDGE

INTRODUCTION

1. This case involves a blatant conflict of interest and malpractice by the Worcester law firm of Fletcher, Tilton & Whipple, P.C. (hereinafter "FTW"), a partner, and an associate to that law firm. At the same time the law firm represented the plaintiff, it was also representing the bank who was making the loan to the plaintiff. A provision of personal guarantee for prior loans was placed, not in the commitment letter, but tucked in difficult language only in the lengthy loan agreement. The plaintiff's lawyer from FTW never informed the plaintiff of the other personal guarantees or the conflict. It was in the bank's interest to have that provision but not in the plaintiff's interest as the prior loans were substantial. The plaintiff lost well over a million dollars as a result of the FTW conflict and malpractice.

JURISDICTION

2. Jurisdiction is based upon the diversity of the parties where the claim is for over \$75,000.

PARTIES

- 3. Ralph M and Nancy S Dworman are residents of Ogunquit, Maine.
- 4. FTW is a law firm in Worcester, Massachusetts.

 ORIGINAL

5. Robert R Kimball is a partner in the law firm of FTW.

FACTS

6. FTW has represented the Plaintiffs and their companies relative to business for over a decade.

7. FTW has also represented Commerce Bank & Trust Company (“the Bank”) relative to all transactions of the Bank with the Plaintiffs.

8. In 2001, the Bank gave the Plaintiffs two loans: one for a \$1.5 million line of credit to Ralphco, Inc., and the other was a real estate loan to GTH Trust.

9. The loans were free of personal guarantees.

10. In 2001, Ralphco, Inc., also purchased a company, the Middlesex Paper Tube and Core Company. There were no personal guarantees on that transaction and the sellers took back a note.

11. In June of 2002, the plaintiff bought an adjacent building at 68 Gardner Street for cash.

12. 68 Gardner Street, LLC, owned substantially by the plaintiffs, applied for two business loans through the Bank.

13. The commitment letter did not call for personal guarantees from the plaintiffs on the GTH Trust debt, or Ralphco, Inc., debt, which were the previous debts, only on the 68 Gardner Street, LLC, new debt.

14. However, the extensive loan document had slipped in personal guarantees for all of the loans, including the prior ones. It was buried in a “cross-guarantee”, taking out the usual clause, that the guarantor guarantees the debts of the borrower to the Bank, to add completely non-standard and highly unusual language that had each guarantor guarantee not only such debts

but also the debts of each of the guarantors. Plaintiffs certainly would not have signed the loan agreement if they had known that it provided for personal guarantees of the prior loans.

15. FTW, in a blatant conflict of interest, represented both the plaintiff and the Bank. The Bank had an interest in having the plaintiffs personally guarantee all the loans while the plaintiffs' interest was not to personally guarantee the prior loans. Said law firm should have advised the plaintiff to go to another bank for the loan or another law firm to represent them.

16. In fact, the daughter of the Bank owner, Pam Massad, was "of counsel" to FTW, and a member of the board of the Bank.

17. Phil Davis at FTW was plaintiffs' attorney for all prior transactions with the Bank.

18. He obtained loans without personal guarantees from the plaintiff in 2001.

19. However, he did not represent the plaintiff for the 68 Gardner Street loans but rather Robert R Kimball did. The latter never informed the plaintiff that even though the commitment letter mentioned no personal guarantees for all of the loans, that the loan document provided for personal guarantees on all prior loans when there had been none before.

20. The plaintiffs had hired FTW to read carefully the loan documents and advise them as to its important aspects. The law firm failed to do so.

21. Pam Massad, as "of counsel" to FTW and also the daughter of the owner of the Bank, as well as a member of the Bank's board, had a blatant conflict of interest as she had obligations both to the Bank and to plaintiff by virtue of being "of counsel" to the law firm.

22. In the summer of 2003, Phil Davis assured the plaintiff Ralph M Dworman that, "You don't need to worry, you and Nancy did not personally guarantee the prior loans."

23. Shortly thereafter, the Bank called in their notes on all of the loans, including the prior loans.

24. Ralphco, Inc., and Middlesex Paper Tube and Core, Inc., filed for Chapter 11 Bankruptcy in October of 2003.

25. The Bank moved to attach all of the plaintiffs' real estate assets to satisfy the loans in question.

26. The Bank also moved aggressively against the plaintiffs' homes in Maine and in Worcester to satisfy their "personal obligations". It has placed a lien on the Maine residence and, not being satisfied with that, forced plaintiffs to obtain a new first mortgage in order to reduce by \$805,000 the debt on the old loans.

COUNT I
MALPRACTICE

27. The plaintiff restates and realleges all of the foregoing paragraphs 1 through 27 as though fully set forth herein.

28. The defendants owed a duty to the plaintiffs to represent them with due care.

29. Furthermore, by representing both the plaintiffs and the loaning bank, there was a blatant conflict of interest also resulting in the plaintiffs' guaranteeing personally prior loans that had originally no personal guarantees

30. The defendants violated that duty by never informing the plaintiff that he was guaranteeing the prior loan.

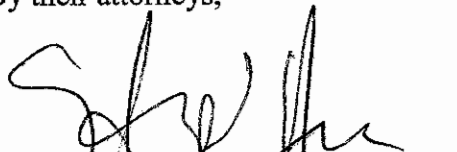
WHEREFORE, the Plaintiffs pray for the following relief:

- (a) compensation for damages of over \$2 million;
- (b) any other relief which this Court deems just, equitable, and which justice demands.

JURY TRIAL

A jury trial is requested.

Respectfully submitted
The Plaintiffs Ralph M Dworman
and Nancy S Dworman,
By their attorneys,



Stephen Hrones (BBO No. 242860)
HRONES GARRITY & HEDGES LLP
Lewis Wharf-Bay 232
Boston, MA 02110-3927
T)617-227-4019

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