

EX. B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

C.A. # 07-1812

Sandra DiGiovanni, individually and as Trustee of the Pashun Realty Trust and Wee Packet Realty Trust Plaintiff,

v.

LBM Financial LLC, Marcello Mallegni, Stone Services, Inc., and Michael Norris Defendants.

6731A000005/16/07CIVIL 240.00
6731A000005/16/07SUR CHARGE 15.00
6731A000005/16/07SECC 20.00
6731A000005/16/07SUMMONS 20.00

VERIFIED COMPLAINT AND JURY DEMAND

INTRODUCTION

The instant complaint involves a pattern of illegal and predatory lending practices by defendants, LBM Financial LLC ("LBM"), Marcello Mallegni ("Mallegni"), Stone Services, Inc. ("Stone") and Michael Norris, ("Norris") (LBM, Mallegni, Stone, and Norris hereinafter collectively referred to as "Defendants"). Plaintiff, Sandra DiGiovanni ("Sandra") individually and in her capacity as Trustee of the Pashun Realty Trust ("Pashun") and Wee Packet Realty Trust ("Wee Packet") (Sandra, Pashun and Wee Packet herein collectively referred to as "Plaintiff") entered into a series of loan transactions with Defendants from 2004 until 2007 in which Defendants charged usurious interest, converted Plaintiff's funds, used false and deceptive accounting, charged inappropriate and improper fees, wrongfully delayed and / or withheld information and documentation including discharges, used unfair collection practices, wrongfully extorted additional fees, security interests and payments, and otherwise used unfair and deceptive acts and practices in violation of various state, federal and common laws in a scheme

9. Of the stated value of \$875,000.00, however, only \$830,000.00 was disbursed to seller; \$35,000.00 was retained by Defendants as points and \$1,200.00 was disbursed to Plaintiff / Buyer, leaving approximately \$8,800.00 charged in closing costs of which, on information and belief, Defendants retained \$2,500.00 in attorneys fees to Norris, \$1,000 for a "Loan Processing Fee" to Stone, and \$2,213.75 as title insurance commission to Norris, making, on information and belief, approximately \$834,286.25 actually disbursed by Defendants on Loan 918.
10. Plaintiff made payments on Loan 918 of \$12,055.56 on or about 6/29/04 and of \$12,199.54 on or about 11/17/04.
11. On or about January 6, 2005, Plaintiff sold a portion of the 125 Main Street Property known as the Main House to Audrey Brandt for \$303,000.00. From the proceeds, Comac Investment Co. LLC was paid in full, and Defendant LBM received payment of \$142,325.57, sent to LBM by the closing attorney on or about January 7, 2005 and reported as received by LBM on or about January 14, 2005.
12. In or about April, 2005, Plaintiff ended her personal and business relationship with Thomas Inman ("Inman"), a guarantor on Plaintiff's notes with Defendants and a long time business associate of Defendants.
13. Prior to April, 2005, Defendants had generally presented themselves as business partners of the Plaintiff, privately acknowledging that Plaintiff would not be making periodic payments and even inducing such non payment, on information and belief, in order to increase Defendants' own return on investment through late fees and default rates of interest.

the debt by \$24,110.14. Plaintiff immediately made such payment but never received the promised credit.

26. On or about December 8, 2005, Plaintiff obtained a loan from Century Bank secured by the remaining portions of the property at 125 Main Street and the property at 6-10 Bliscott Street, making payment to Defendant of \$850,000.00, leaving a balance alleged by Defendant on loan 918 of \$80,427.68.

**Part B. Generally Regarding 397 Lower County / 79 and 98 Depot Street / Loan 930**

27. On or about June 8, 2004, Plaintiff as Trustee of Pashun Realty Trust, purchased real property known and numbered as 397 Lower County Road, Dennisport, Massachusetts ("397 Lower County") from Robert and Sheila Briggs, Trustees of R & S Trust, for \$330,600.00, with an additional \$17,400.00 being paid for personal property, and \$100.76 being paid for taxes paid by seller, for a total of \$348,100.76 being paid to seller at closing for 397 Lower County.
28. On or about June 8, 2004, Plaintiff as Trustee of Wee Packet Realty Trust, purchased real property known and numbered as 79 and 98 Depot Street, Dennisport, Massachusetts ("79 and 98 Depot") from Wee Packet, Inc., an unrelated entity, for \$358,150.00, with an additional \$18,850.00 being paid for personal property, and \$109.12 being paid for taxes paid by seller, for a total of 377,109.12 being paid to seller at closing for 79 and 98 Depot.
29. Plaintiff financed the purchase of the June 8, 2004 purchases of 397 Lower County and 79 and 98 Depot through a single deposit of \$32,500.00 and a single loan from Defendants, referred to by Defendants as loan "930", in the stated

mortgage of \$1,600,000.00 on two parcels of property known and numbered as 20 Neptune Lane, West Yarmouth, and 6-10 Bliscott Ave., West Yarmouth.

- 19. Defendants did not disburse any funds (in fact they were receiving \$109,698.18) and no new loan was made, nor did other justification exist regarding the demand for the \$1,600,000.00 Mortgage.
- 20. On information and belief, Defendants knew that due to the end of her relation with Inman, and due to Defendants' recent aggressive demands to be paid, Plaintiff was vulnerable, desperate and easy to manipulate at the time of the Salt Box sale.
- 21. On information and belief, Defendants believed, at the time of the Salt Box sale, that Plaintiff would ultimately be unable to pay their demands and extract herself from their control, and that Defendants would then be able to foreclose on property that they knew to be extremely valuable, specifically 20 Neptune Lane.
- 22. All of Plaintiff's existing obligations to Defendants were, at the time of the Salt Box sale, already properly secured by the property already under mortgage.
- 23. Plaintiff agreed to Defendants' extortionate demand to grant the \$1,600,000.00 mortgage.
- 24. On or about June 16, 2005, without any reasonable justification, Defendant Norris demanded \$500.00 for "Services Rendered" allegedly in May and June of the previous year, despite having been paid lavishly for all of his "services".
- 25. On or about August 8, 2005, Defendants induced Plaintiff to make an immediate payment of \$21,351.23 in exchange for a promise to credit the overall balance of

14. After April, 2005, on information and belief, due at least in part to the loss of influence that Defendants had on Plaintiff through her relation with Inman, Defendants began aggressively demanding payments and additional collateral to secure their loans.
15. On or about May 17, 2005, as the direct result of Defendants' aggressive pursuit of payment with express and implied threats of wrongfully refusing to allow Plaintiff to sell properties or of taking other wrongful actions, presumably foreclosure, and with statements to the effect that Defendants' own finance participants were demanding immediate payment, Defendants pressured Plaintiff into re-writing loan 918, extracting an additional 4 points, (\$36,523.85), \$1,000.00 in loan "processing" fees to Stone, and \$700.00 attorneys fees to Norris.
16. Plaintiff paid \$1850.00 directly to Norris for the attorney and processing fees and \$150.00 recording fee.
17. On or about June 14, 2005, Plaintiff sold another portion of the 125 Main Street property known as the "Salt Box" (one of the 7 cottages), to the Sheehans ("buyers") for \$130,000.00, with Defendants receiving \$109,698.18, credited on June 17, 2004.
18. On or about June 14, 2005, while buyers and Plaintiff were at the registry of deeds, attempting to close the Salt Box real estate transaction, Defendants, without warning or justification, refused to grant a partial release for the Salt Box sale or otherwise allow the closing to go forward, unless Plaintiff granted a

4. Defendant LBM Financial LLC ("LBM") is a limited liability company organized in the Commonwealth of Massachusetts with a principle office at 171 Locke Drive, Marlborough, Middlesex County, Massachusetts.
5. Defendant Marcello Mallegni ("Mallegni") is an individual with a residence at 6 Wolfpen Lane, Southboro, Worcester County, Massachusetts, who is listed by the Secretary of the Commonwealth as "manager" of LBM and President of Stone Services, Inc..
6. Defendant Stone Services, Inc. ("Stone") is a domestic for profit corporation with a principle office at 171 Locke Drive, Marlborough, Middlesex County, Massachusetts.
7. Defendant Michael Norris ("Norris") is an attorney with a residence at 43 Hopewell Farm Rd., Natick, Massachusetts, practicing law at 171 Locke Drive, Marlborough, Middlesex County, Massachusetts, who is, on information and belief, general counsel for and possibly a principle of LBM.

**FACTS**

**Part A. Generally Regarding 125 Main Street, Dennisport / Loan 918**

8. On or about May 17, 2004, Plaintiff as Trustee of the Pashan Realty Trust, purchased real property known and numbered as 125 Main Street, Dennisport, Massachusetts ("125 Main Street") consisting of a "Main House" and 7 cottages, from Comac Investment Co., LLC, for \$960,000.00, with a \$20,000.00 deposit financed in part by a \$110,000.00 Note from seller, and in part by a Mortgage Loan from LBM with a stated value of \$875,000.00 ("Loan 918").

purposefully designed to gain property or monies far beyond what was reasonable or due on the loans that were made.

The relevant portion of Plaintiff's business consisted of purchasing real property and making a profit by the timely subdivision, renovation and sale of such investments. After making initial loans to Plaintiff to purchase certain investment properties, Defendants began a pattern of fraudulent, unfair and deceptive acts purposefully designed to gain additional secured interests in other of Plaintiff's real properties and to prevent Plaintiff from being able to complete various transactions and extract herself from Defendants' control, eventually being able to either seize equity through foreclosure or to collect usurious and wrongful monies from Plaintiff, which is what ultimately did occur. In order to extract herself from Defendants' control, Plaintiff was forced to borrow sums of money from unrelated third parties well beyond what should have been borrowed in order to pay off any legitimate claim by Defendants.

**PARTIES**

1. Plaintiff Sandra DiGiovani ("Sandra") is an individual residing in South Yarmouth, Massachusetts.
2. Pashua Realty Trust is a Massachusetts Realty Trust created under a trust agreement dated October 17, 2001 and has a mailing address of Post Office Box 1282, South Yarmouth, Massachusetts.
3. Wee Packet Realty Trust is a Massachusetts Realty Trust created under a trust agreement dated June 8, 2004 and has a mailing address of Post Office Box 1282, South Yarmouth, Massachusetts.

amount of \$725,000.00 ("loan 930"), secured by first mortgages in all of the properties.

30. All loan proceeds transferred directly to Defendant Norris, who was also the closing attorney.
31. Of the \$725,000.00 face value of the note, the following amounts were retained by Defendants (not disbursed) in the 397 Lower County transaction : \$14,500.00 (2% loan origination fee to Defendant LBM); \$500.00 (loan processing fee to "Stone Services, Inc." a corporation owned and run by Defendant Mallegni); \$2,500.00 (Attorney Fee to Defendant Norris); and \$1846.25 (title insurance commission to Defendant Norris), making the total amount so retained \$19,346.25.
32. The total amount actually disbursed by Defendants on loan 930 was approximately \$705,653.75 (\$725,000.00 - \$19,346.25).
33. On or about June 10, 2004, without consideration or informed consent of Plaintiff, Defendants wrongfully and deceptively debited an additional \$1,000.00 in principle on loan 930 as a "transfer" from an unrelated loan under which Plaintiff was in no way obligated.
34. On or about September 2, 2004, Plaintiff sold a separated portion of the 397 Lower County property known and numbered as 6 Chase Street with payments made to LBM of \$193,527.63 and \$11,654.95 (\$205,182.58 total) of which LBM credited only payments of \$181,273.73 and \$11,654.95, (\$192,928.22 total) thereby converting \$12,254.36 through false and deceptive accounting.

35. On or about December 22, 2004, Plaintiff sold the property known and numbered as 98 Depot Street with payment on or about December 30, 2004 to LBM of \$172,762.62 which was broken down in the LBM account statement as payment of \$148,834.14 in principle and \$23,928.48 in interest, however, despite the fact that LBM regularly added the interest accumulations to the loan balance, apparently compounding the loan on a daily or 360 day basis, the loan balance was only reduced by \$161,506.93, thereby converting \$11,255.69 through false and deceptive accounting.
36. On or about June 22, 2005, Plaintiff sold the properties known and numbered as 397 Lower County Road and 79 Depot Street with \$332,388.37 (\$328,638.37 "cash to seller" and \$3,750.00 excess deposit) being paid at closing to LBM on or about June 24, 2005 and an additional \$150,534.24 from a "holdback" paid entirely to LBM on or about November 22, 2005.
37. On or about August 12, 2005, Defendant induced Plaintiff to make a payment of \$2,586.54 promising a credit on the overall balance of the loan of \$5,298.99. Plaintiff made the demanded payment but never received the credit.

**Consolidation Loan 1129**

38. On or about December 8, 2005 the remaining balances claimed by LBM on loan 918 (approximately \$80,000.00) and loan 930 (approximately \$15,000.00) were consolidated into a new loan, loan 1129, with a stated loan amount of \$95,000.00, from which no actual disbursements were made.

39. Between December, 2005 and November, 2006, Plaintiff made periodic interest payments on loan 1129 totaling \$10,588.43 (proportionately \$1,671.85 (15/95) to loan 930 and \$8,916.57 (80/95) to loan 918).
40. On or about January 5, 2007, through a loan from Belmont Savings Bank secured by unrelated property, Plaintiff paid LBM \$97,233.78, paying off the last of any amounts remaining claimed by LBM.
41. Plaintiff continues to service the loans obtained by Century Bank and Belmont Savings Bank.

**COUNT I EQUITABLE RELIEF (LBM)  
(USURIOUS LENDING IN VIOLATION OF M.G.L. c. 271 § 49)**

42. Plaintiff re-alleges paragraphs 1-41 as if expressly restated herein.
43. LBM did not notify the Attorney General of its intent to lend money at usurious interest rates for loans made on or about May 17, 2004 and June 8, 2004 as required by M.G.L. c. 271 § 49(d).
44. Defendants charged and collected usurious interest, fees and costs in violation of M.G.L. c. 271 § 49.
45. Plaintiff requests and demands that the usurious loans be declared void and that all of the proceeds paid thereunder by Plaintiff to LBM be returned and refunded to Plaintiff.

**COUNT II EQUITABLE RELIEF (LBM)  
(FALSE AND DECEPTIVE ACCOUNTING / WRONGFUL ACCRUAL OF INTEREST)**


46. Plaintiff re-alleges paragraphs 1-45 as if expressly restated herein.

WHEREFORE, Plaintiff demands:

1. That Judgment be entered for Plaintiff and against Defendants on all Counts as set forth in the Complaint;
2. That Plaintiffs be awarded actual damages and that such damages be doubled or trebled in accordance with M.G.L. c. 93A;
3. That Plaintiffs be awarded interest, costs and reasonable attorneys fees; and
4. That Plaintiffs be granted such other and further relief as is just and equitable.

**PLAINTIFF REQUESTS AND DEMANDS A TRIAL BY JURY.**

Respectfully Submitted,  
The Plaintiff  
By her Attorneys,



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James E. Hoyt (BBO #644651)  
Portnoy and Greene, P.C.  
687 Highland Ave.  
Needham, MA 02494  
(781) 449-6050

Dated:

May 16, 2007

**VERIFICATION**

I, Sandra DiGiovanni, individually and as trustee of the Pastum and Wee Packet Realty Trusts, hereby certify that I have read the contents of the Complaint to which this verification is attached; that I have personal knowledge of the facts set forth therein; that said facts are true to the best of my knowledge; and where something is pled on information and belief, that I believe said information to be true.

Signed under the pains and penalties of perjury this 16th day of May, 2007.



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Sandra DiGiovanni

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

69. Plaintiffs re-allege paragraphs 1-68 as if expressly restated herein.
70. 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."
71. 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 unfair debt collection practices, fraudulent accounting, interference with business relations, extortion, unjust enrichment, failures to provide information or discharge, and usury as described in this complaint as the unfair and deceptive acts relied on by Plaintiffs.
72. As the result of Defendants' unfair and deceptive acts, Plaintiffs have been harmed.

**COUNT IX BREACH OF CONTRACT (ALL DEFENDANTS)**

58. Plaintiffs re-allege paragraphs 1-57 as if expressly restated herein.
59. All Defendants contracted with Plaintiff to provide financing and / or services in connection with certain real estate transactions.
60. All Defendants breached their implied covenant of good faith and fair dealing.
61. Defendants LBM, Mallegni and Norris contracted with Plaintiff to reduce loan balances in exchange for certain payments by Plaintiff.
62. Plaintiff made payment and said Defendants failed to reduce the loan balances.
63. As the result of Defendants' breach(es) of contract, Plaintiff was harmed.

**COUNT X UNJUST ENRICHMENT (LBM and NORRIS)**

64. Plaintiffs re-allege paragraphs 1-63 as if expressly restated herein.
65. LBM and Norris collected monies from Plaintiff that were not properly due and owing and as a result, LBM and Norris have been unjustly enriched and Plaintiff has been harmed.

**COUNT XI EXTORTION (ALL DEFENDANTS)**

66. Plaintiffs re-allege paragraphs 1-65 as if expressly restated herein.
67. Defendants extorted monies and additional security interests from Plaintiff by threatening and refusing to grant discharge or otherwise perform acts they were obligated to perform.
68. As the result of Defendants' extortion, Plaintiff was harmed.

47. The wrongful actions and false and deceptive accounting of Defendant LBM caused interest to be charged and paid on principle balances that were much higher than were just or proper.
48. Plaintiff requests and demands that all interest on the Notes be declared improper and wrongful and refunded to Plaintiffs.

#### **COUNT III CONVERSION (ALL DEFENDANTS)**

49. Plaintiff re-alleges paragraphs 1-48 as if expressly restated herein.
50. Defendant LBM used false and deceptive accounting to convert Plaintiff's funds to LBM's own use.
51. All Defendants charged improper and or excessive fees, thereby converting Plaintiff's funds to their own use.
52. As the result of Defendants' conversion(s), Plaintiff has been harmed.

#### **COUNT IV TORTUOUS INTERFERENCE WITH BUSINESS RELATIONS (ALL DEFENDANTS)**

53. Plaintiff re-alleges paragraphs 1-52 as if expressly restated herein.
54. Defendants' bad faith failure and refusal to provide information, discharges and payoff statements caused delays and harm to Plaintiff's business and business relations, and as a result, Plaintiff was harmed.

#### **COUNT V FRAUD IN THE INDUCEMENT (ALL DEFENDANTS)**

55. Plaintiff re-alleges paragraphs 1-54 as if expressly restated herein.
56. Defendants fraudulently induced Plaintiff to enter into loan agreements, to make certain payments and to grant improper interests in properties.
57. As the result of Defendants' fraud, Plaintiff was harmed.