

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RALPH M DWORMAN and NANCY S)	C.A. NO. 05-12044GAO
DWORMAN,)	
Plaintiffs,)	
)	
v.)	AMENDED
)	COMPLAINT
FLETCHER, TILTON & WHIPPLE, PC.,)	
ROBERT R KIMBALL, ESQ., and PAM)	
MASSAD)	
Defendants)	
)	

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’s 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.
5. Robert R. Kimball is a partner in the law firm of FTW.
6. Pam Massad was employed as an attorney by FTW at the time of the closing.

FACTS

7. FTW has represented the Plaintiffs and their companies relative to business for over a decade.
8. FTW has also represented Commerce Bank & Trust Company (“the Bank”) relative to all transactions of the Bank with the plaintiffs.
9. 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.
10. The loans were free of personal guarantees.
11. 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.
12. In June of 2002, the plaintiff bought an adjacent building at 68 Gardner Street for cash.
13. 68 Gardner Street, LLC, owned substantially by the plaintiffs, applied for two business loans through the Bank.
14. 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, but only on the 68 Gardner Street, LLC, new debt.
15. 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.

16. 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.

17. In fact, the daughter of the Bank owner, Pam Massad was employed by FTW, and also was a member of the board of the Bank. She personally played an active role in representing the Bank in the transaction at issue.

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

19. He obtained loans without personal guarantees from the plaintiffs in 2001.

20. However, he did not represent the plaintiff for the 68 Gardner Street loans but rather Robert R Kimball did. The latter never informed the plaintiffs 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.

21. The plaintiffs had hired FTW to read carefully the loan documents and advise them as to any provisions that were not in their interest. The law firm failed to do so.

22. Pam Massad, an associate of FTW and also the daughter of the owner of the Bank, as well as a member of the Bank's board, had an extra heavy conflict of interest by virtue of not only being a member of the same law firm that represented the plaintiff, but, additionally, as an

active attorney for the firm in the transaction, and as a member of the Board of the Bank and daughter of its owner.

23. In the summer of 2003, Phil Davis of FTW assured the plaintiff Ralph M Dworman that, “You don’t need to worry, you and Nancy did not personally guarantee the prior loans.”

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

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

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

27. The Bank also moved aggressively against the plaintiffs’ homes in Maine and in Worcester to satisfy their “personal obligations”. It 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

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

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

30. By representing both the plaintiffs and the loaning bank, there was a huge conflict of interest that resulted in the plaintiffs’ guaranteeing personally prior loans that had originally no personal guarantees.

31. The defendants violated that duty by never informing plaintiffs that they were guaranteeing the prior loans.

32. Representation of both sides in a transaction where the Parties had an adverse interest was malpractice even if the plaintiffs had been aware of the conflict

33. Such a conflict could not be waived as a matter of law.

WHEREFORE, the Plaintiffs pray for the following relief:

- (a) compensation for damages of over \$2 million;
- (b) costs; and
- (c) 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,

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