

EX.B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

**SUPERIOR COURT
DOCKET NO.**

Jean Boudreau and Janet Reynolds, individually)
and as Trustee of the Fatima Realty Trust,)
Plaintiffs,)
v.)
)
LBM Financial LLC, Marcello Mallegni and)
Michael Norris)
Defendants.)

VERIFIED COMPLAINT AND JURY DEMAND

INTRODUCTION

The underlying facts of the instant complaint involve the financing or attempted financing of a real estate development at 377 Ocean Blvd., Hampton Beach, NH (hereinafter the "development" or "project"). The plaintiff / developers, Jean Boudreau and Janet Reynolds, individually and as Trustee of the Fatima Realty Trust (hereinafter "Plaintiffs") sought financing for the approximately Twenty Four Million Dollar (\$24,000,000.00) project from the defendants LBM Financial LLC, Marcello Mallegni, and Michael Norris, (hereinafter "Defendants"). Defendants agreed to finance the development, but only provided initial / partial loans and then failed and refused to provide additional funds as needed and requested. There is evidence that such failure and refusal was made in bad faith: that Defendants did not have the intention to fund the entire project but instead intended to foreclose their security interests in the project or, as it turned out, demand an illegal and outrageous payoff on the initial outlays in the event that Plaintiffs obtained subsequent financing. Defendants have also committed numerous common law and statutory torts as outlined in the complaint.

PARTIES

1. Plaintiff Jean Boudreau ("Boudreau") is an individual with a residence in Hampton, New Hampshire.
2. Plaintiff Janet Reynolds ("Reynolds") is an individual with a residence in Hampton, New Hampshire and is sister to Boudreau.
3. Fatima Realty Trust is a New Hampshire Realty Trust created under a trust agreement dated May 15, 2000, and has a mailing address of 377 Ocean Blvd., Hampton Beach, New Hampshire 03842.
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.
6. Defendant Michael Norris ("Norris") is an attorney with a residence unknown, 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

7. On or about May 24, 2004, Plaintiffs signed a promissory note as Maker, dated May 24, 2004 with a loan amount listed as \$2,600,000.00 ("1st Note").
8. LBM was the Lender of the 1st Note.

9. On or about May 24, 2004, approximately \$2,200,000.00 was disbursed by LBM under the 1st Note.
10. The remaining approximately \$400,000.00 was retained or otherwise not disbursed by LBM: approximately \$114,000.00 as settlement charges to LBM or its agents, \$156,000.00 as "interest reserve", and \$129,757.25 completely unaccounted for.
11. The 1st Note does not state any initial interest rate.
12. The 1st Note provided for a default interest rate of 20% and 1 point per month, and as such effectively has a default interest rate of 32% exclusive of late fees.
13. The 1st Note states that it shall be governed by the laws of the Commonwealth of Massachusetts.
14. On or about March 3, 2005, Plaintiffs sold certain real property, known and numbered as 35 Ashworth Avenue, Hampton, NH ("35 Ashworth"), which partially secured the 1st Note.
15. The cash proceeds from the sale of 35 Ashworth consisted of \$107,656.00.
16. In addition to the cash proceeds, Plaintiffs seller-financed an additional \$175,000.00 with a note and mortgage.
17. All of the proceeds of the sale (\$107,656.00) were paid to LBM, and the mortgage on 35 Ashworth was assigned to LBM.
18. LBM did not apply or credit the \$107,656.00 towards payment of the 1st Note, and has failed and refused to account for such monies which they received.
19. Loan proceeds from the 1st Note were used entirely to pay existing obligations already incurred in the project, not to fund ongoing or future operations.

20. All parties to the 1st Note understood and agreed that approximately \$24 million in additional funding would ultimately be needed to fund the project, and LBM eventually drafted a loan commitment for that amount, presented it to Plaintiff's, but never executed such commitment or provided the financing.
21. At numerous and various times between May 24, 2004 and April 15, 2005, Plaintiff's made repeated and increasingly urgent requests to continue funding the project as had been agreed by LBM.
22. On or about April 15, 2005, Plaintiff's signed a promissory note as Maker, dated April 15, 2005 with a loan amount listed as \$685,000.00 ("2nd Note").
23. LBM was the Lender of the 2nd Note.
24. The 2nd Note states an initial interest rate of 16% and provides for a default interest rate of 20% and 1 point per month, effectively having a default interest rate of 32% exclusive of late fees.
25. The 2nd Note states that it shall be governed by the laws of the Commonwealth of Massachusetts.
26. On or about April 15, 2005, approximately \$365,049.75 was disbursed by LBM under the 2nd Note and such disbursement was used to pay existing obligations incurred between the time of the 1st Note and 2nd Note.
27. Approximately \$30,000.00 of the 2nd Note was retained by LBM as settlement charges, and the remaining \$297,689.50 of the 2nd Note was retained by LBM with the stated and agreed purpose of continuing to disburse funds for the project as and when needed.

28. Also, on or about April 15, 2005, under the 1st Note, LBM charged a "renewal fee" of \$109,400.00, apparently for lending money under the 2nd Note.
29. LBM consistently and repeatedly refused to allow Plaintiffs to manage the disbursements under the 2nd Note, and instead, for a short time, appointed a "finance manager" who LBM stated would oversee disbursements.
30. Between April 15, 2005 and on or about October 17, 2005, Plaintiffs began again the previous pattern of repeated and increasingly urgent requests and demands that disbursements under the 2nd Note be made to pay various contractors who were threatening to stop work on the project due to their not being paid.
31. According to LBM's own accounting, only a partial disbursement of the remaining balance of the 2nd Note was made, no accounting was given by LBM of disbursements it did make, and a portion of such disbursements may have been made to persons not even working on the project.
32. On numerous and various dates between April 15, 2005 and October 17, 2005, Plaintiffs called, faxed, wrote and visited LBM, and specifically Mallegni and Norris, making demand of disbursements and information.
33. Mallegni and Norris initially responded to these demands in a solicitous manner, stating that the disbursements would be made and that there was "no problem", but as these statements consistently proved false, Mallegni and Norris became increasingly hostile and difficult to contact or get answers from.
34. In or about early October, 2005 Plaintiffs demanded a meeting with Mallegni and Norris which would be attended by Plaintiffs' attorney

35. Such meeting was scheduled for 4:00 p.m. on October 17, 2005, but was cancelled by LBM with little notice and no substantive explanation.
36. After repeated attempts, after learning of the cancelled meeting, I was able to contact Mallegni by phone, but Mallegni refused to reschedule stating that he was in meetings all week, and when I told him that we might lose an adjoining lot, necessary for the project, at 375 Ocean Blvd, because he was failing to fund its purchase, Mallegni replied "so lose it."
37. Over the next few weeks, Plaintiffs repeatedly tried to contact Mallegni and Norris to reschedule the meeting or otherwise explain the situation.
38. On or about October 25, after repeatedly being unable to reach and speak with Mallegni, Boudreau traveled to LBM's office and waited outside Mallegni's office.
39. When Mallegni left his office and was approached by Boudreau, he refused to answer any substantive questions, became abusive and complaining of Boudreau's waiting outside his office and repeated that Boudreau had made a "very big mistake."
40. During the months of November and December, 2005, Plaintiffs again repeatedly and persistently tried to make appointments, get answers or otherwise have funds disbursed for the project but were repeatedly ignored or put off.
41. During the months of November and December, 2005, various contractors stopped work on the project and one threatened to lien against the real property.
42. LBM stopped providing Plaintiffs with account statements for the 1st Note after June 20, 2005.

43. LBM sent only two account statements for the 2nd Note, dated May 10, 2005 and May 25, 2005.
44. The "payoff" account statement provided by LBM on or about June 2, 2006, indicates that LBM started charging default interest rates and penalties on the 1st Note on or about September 24, 2005 and on the 2nd Note on or about October 15, 2005.
45. At no time during the numerous and repeated attempts, during the last quarter of 2005, to get funding and information from LBM, were plaintiffs informed or given any indication that the loans had been defaulted, and Mallegni and Norris, repeatedly, after putting the loan in default, represented to Plaintiffs that the funding would come when it was "their turn" and in all ways made representations that would be contrary to the loans being defaulted.
46. On information and belief, Defendants engaged in a "loan to own" scheme, purposefully attempting to have the project fail in order to foreclose on their security interests and either assume or sell the project, and in the event that Plaintiff's were able to find alternative financing, Defendants would gouge Plaintiffs with interest, penalties and fees accrued over the period of the delay which Defendants themselves caused.
47. Plaintiffs started looking for alternate funding in late 2005 in an effort to salvage the project.
48. On or about May 30, 2006, having secured commitment from another lender, Plaintiffs requested an accounting and payoff.

49. On or about June 16, 2006, Defendants demanded \$3,880,737.02 to pay off the 1st Note, and \$747,503.76 to pay off the 2nd Note.
50. On or about June 20, 2006, Defendants amended such pay off amounts by demanding an additional \$5000.00 per loan as an unexplained attorney's fee.
51. On information and belief, Defendants added various interest, fees and costs to both loans, knowing that in order to obtain financing for the project, Plaintiffs would be forced to pay whatever payoff Defendants demanded.

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

53. Plaintiffs re-allege paragraphs 1-52 as if expressly restated herein.
54. LBM did not notify the Attorney General of its intent to lend money at usurious interest rates for the period covering May 24, 2004 as required by M.G.L. c. 271 § 49(d).
55. Assuming for the sake of calculation that the LBM's Payoff account statement is accurate (such accuracy is expressly denied by Plaintiffs), and setting aside arguments regarding the disbursed amount versus the Note amount (such argument is expressly reserved), a total of \$472,406.70 was paid under the 1st Note, combined with a payoff of \$3,880,737.02 making a total of \$4,353,143.72 paid under the note of \$2,600,000.00, or \$1,753,143.72 in interest, fees, costs and penalties.
56. The above calculation makes the per annum interest \$841,508.97 and a rate of over 32%, clearly and on its face usurious as the maximum legal rate is 20% per annum.

57. The 1st Note, executed and disbursed on or about May 24, 2004, does not disclose an initial interest rate, and as such, in conjunction with other facts indicating wrongful purpose and actions by LBM, is made under "circumstances and conditions which would cause the integrity of the loan itself to be questionable."
58. Plaintiffs request and demand that the usurious loan be declared void and that all of the proceeds paid thereunder by Plaintiffs to LBM be returned and refunded to Plaintiffs.

**COUNT II EQUITABLE RELIEF (LBM)
(WRONGFUL ACCRUAL OF INTEREST UNDER 1st and 2nd NOTES)**

59. Plaintiffs re-allege paragraphs 1-58 as if expressly restated herein.
60. The bad faith actions and in-actions of LBM as outlined above caused significant delay in the project while at all times interest was accruing, including, unbeknownst to Plaintiffs, default interest and fees.
61. Plaintiffs request and demand that all interest on the 2nd Note and any interest on the 1st Note not voided through Count I, which accrued from October 1, 2005 to present, be declared improper and wrongful and refunded to Plaintiffs.

COUNT III CONVERSION (LBM)

62. Plaintiffs re-allege paragraphs 1-61 as if expressly restated herein.
63. Defendants converted \$107,656.00 from the sale proceeds of 35 Ashworth to their own use.
64. On information and belief, Defendants converted addition funds to their own use by making payments to themselves from loan proceeds and / or by charging improper and undisclosed fees and interest on both loans.
65. As the result of Defendants' conversion(s), Plaintiffs have been harmed.

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

66. Plaintiffs re-allege paragraphs 1-65 as if expressly restated herein.
67. Defendants' bad faith failure and refusal to fund the project and disburse funds to various contractors caused delays in the project and harmed or destroyed the working relationship between Plaintiffs and certain contractors, causing some to walk off the job adding substantially to the cost of the project, and as a result, Plaintiffs were harmed.

COUNT V MISREPRESENTATION (ALL DEFENDANTS)

68. Plaintiffs re-allege paragraphs 1-67 as if expressly restated herein.
69. Defendants misrepresented their intention and / or ability to fund the entire project, misrepresented their intention and / or ability to disburse funds, misrepresented their intention to continue with the project even after putting the subject loans in default without telling defendants, and made numerous and other misrepresentations on which Plaintiffs relied.
70. As the result of Defendants' misrepresentations, Plaintiffs were harmed.

COUNT VI FRAUD / BAIT AND SWITCH (ALL DEFENDANTS)

71. Plaintiffs re-allege paragraphs 1-70 as if expressly restated herein.
72. Defendants engaged in a bait and switch and fraudulently induced Plaintiffs to execute the 1st and 2nd Notes and associated mortgages by agreeing to fund the entire project, claiming that they would fund and disburse in a manner which would allow the project to go forward, and otherwise deal fairly and in good faith with Plaintiffs.
73. As the result of Defendants' fraud / bait and switch, Plaintiffs were harmed.

COUNT VII FRAUDULENT ACCOUNTING (ALL DEFENDANTS)

74. Plaintiffs re-allege paragraphs 1-73 as if expressly restated herein.
75. Defendants provided Plaintiffs with pay-off figures for the 1st and 2nd notes that reflect fraudulent accounting, including but not limited to failing to account for payment made of \$107,656.00 from the sale proceeds of 35 Ashworth, disbursing funds to themselves or 3rd parties not authorized or known to Plaintiffs and charging such disbursements to Plaintiffs' loan, charging unauthorized and / or improper fees, interest and penalties and specifically charging interest on \$2,600,000.00 when only approximately \$2,200,000.00 was disbursed under the 1st Note.
76. As the result of Defendants' Fraudulent Accounting, Plaintiffs were harmed.

COUNT VIII CONVERSION (NORRIS)

77. Plaintiffs re-allege paragraphs 1-76 as if expressly restated herein.
78. Norris added \$5000.00 to the payoff amounts for each loan for "attorneys fees" without any justification or substantiation (such charge is on its face improper as the same amount is being charged for both loans, and the loans are completely different).
79. Norris is converting said \$10,000.00 to his own purpose and Plaintiffs have been harmed.

COUNT IX BREACH OF CONTRACT (LBM)

80. Plaintiffs re-allege paragraphs 1-79 as if expressly restated herein.

81. LBM contracted with Plaintiffs to finance the project and disburse loan proceeds in a timely manner, and further impliedly contracted to act in good faith and deal fairly with Plaintiffs.

82. LBM breached its contract with Plaintiffs and as a result, Plaintiffs were harmed.

COUNT X UNJUST ENRICHMENT (LBM and NORRIS)

83. Plaintiffs re-allege paragraphs 1-82 as if expressly restated herein.

84. 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 Plaintiffs have been harmed.

COUNT XI EXTORTION (ALL DEFENDANTS)

85. Plaintiffs re-allege paragraphs 1-84 as if expressly restated herein.

86. Defendants extorted monies from Plaintiffs in the form of the loan payoffs by charging excessive and improper amounts, knowing that Plaintiffs would have to pay such amount in order to obtain subsequent financing and impliedly threatening to interfere with the project and subsequent financing unless such amounts were paid.

87. As the result of Defendants' extortion, Plaintiffs were harmed.

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

88. Plaintiffs re-allege paragraphs 1-87 as if expressly restated herein.

89. 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."

90. 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, failures to provide information or notice, and usury as described in this complaint are the unfair and deceptive acts relied on by Plaintiffs.
91. As the result of Defendants' unfair and deceptive acts, Plaintiffs have been harmed.

WHEREFORE, Plaintiffs demands:

1. That Judgment be entered for Plaintiffs 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 Plaintiffs
By their Attorneys,

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Dated: