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CV-2011-900074.00
CIRCUIT COURT OF
WALKER COUNTY, ALABAMA
SUSAN ODOM, CLERK

IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

COMPASS BANK,)
)
Plaintiff,)
)
v.) Case No. _____)
)
DARRELL L. FORD, FRANK B. LARUSSA.)
and ALFRED W. SEIER, III,)
)
Defendants.)

COMPLAINT

Comes now Compass Bank ("Compass"), through its undersigned counsel, and for its Complaint against Darrell L. Ford ("Ford"), Frank B. LaRussa ("LaRussa") and Alfred W. Seier, III ("Seier" and together with Ford and LaRussa, the "Guarantors"), states as follows:

Parties

1. Compass, the plaintiff herein, is a banking corporation organized and existing under the laws of the State of Alabama.
2. Based upon information and belief, Ford is an individual above the age of 19 years residing at 7548 County Road 1043, Vinemont, Alabama 35179.
3. Based upon information and belief, LaRussa is an individual above the age of 19 years residing at 2731 County Road 223 Cullman, Alabama 35057.
4. Based upon information and belief, Seier is an individual above the age of 19 years residing at 7091 Bethel Road, Dora, Alabama 35062.

DOCUMENT 2

Jurisdiction & Venue

5. This Court has jurisdiction over the subject matter of this action pursuant to Alabama Code § 12-11-30 (1975).

6. Venue is proper in this Court pursuant to Alabama Code §§ 6-3-2 and Alabama Rule of Civil Procedure 82.

Background

7. On or about April 19, 2005, Southshore Development, LLC (the "Borrower") executed and delivered a promissory note, as amended and modified from time to time (the "Note") payable to the order of Compass in the original principal amount of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00). A true and correct copy of the Note is attached hereto as **Exhibit "A"**.¹

8. The loan evidenced by the Note (the "Loan") was modified pursuant to Change in Terms Agreements executed by the Borrower dated April 18, 2007, May 25, 2007, November 20, 2007, January 28, 2008, June 11, 2008 and August 26, 2009 (collectively, the "Change in Terms Agreements"). The Change in Terms Agreements are attached hereto as **Exhibit "B"**.

9. The Loan was modified further pursuant to a Loan Modification Agreement (the "Modification Agreement") executed on or about October 10, 2009 by the Borrower a true and correct copy of which is attached hereto as **Exhibit "C"**.

10. Pursuant to the Note, the Change in Terms Agreements and the Modification Agreement, the Borrower is to make regular quarterly interest payments to Compass of accrued unpaid interest until the Loan matures on September 10, 2011.

¹ All Exhibits attached to this Complaint are incorporated herein by reference.

11. To secure payment of the Note and all obligations of the Borrower to Compass, the Borrower executed and delivered to Compass a Future Advance Mortgage on or about April 15, 2005, as amended and/or modified from time to time (the "Mortgage"). A true and correct copy of the Mortgage and recorded modifications and amendments thereto are attached hereto as **Exhibit "D"**.

12. Pursuant to the Mortgage, the Borrower granted to Compass a first priority security interest in, among other things, real property located in Winston County, Alabama (the "Property") in which the Borrower intended to develop a residential development at Smith Lake.

13. Compass properly perfected its interest in the Property by recording the Mortgage in the Office of the Winston County Alabama Judge of Probate on April 19, 2005 at Book 471, Page 297.

14. The Loan also is governed and evidenced by a Construction Loan Agreement dated December 10, 2009 executed by the Borrower (the "Loan Agreement"). A true and correct copy of the Loan Agreement is attached hereto as **Exhibit "E"**.

15. As additional security for performance of the Borrower's obligations to Compass, Ford executed Continuing Guaranty Agreements in favor of Compass on April 15, 2005, April 18, 2007, May 25, 2007 and January 28, 2008 (collectively, the "Ford Guaranties"). True and correct copies of the Ford Guaranties are attached hereto as **Exhibit "F"**.

16. Pursuant to the Ford Guaranties, Ford irrevocably and unconditionally guaranteed the obligations owed by the Borrower to Compass.

17. As additional security for performance of the Borrower's obligations to Compass, LaRussa executed Continuing Guaranty Agreements in favor of Compass on April 15, 2005,

April 18, 2007, May 25, 2007 and January 28, 2008 (collectively, the "LaRussa Guaranties"). True and correct copies of the LaRussa Guaranties are attached hereto as **Exhibit "G"**.

18. Pursuant to the LaRussa Guaranties, LaRussa irrevocably and unconditionally guaranteed the obligations owed by the Borrower to Compass.

19. As additional security for performance of the Borrower's obligations to Compass, Seier executed Continuing Guaranty Agreements in favor of Compass on April 15, 2005, April 18, 2007, May 25, 2007 and January 28, 2008 (collectively, the "Seier Guaranties" and together with the Note, the Change in Terms Agreement, the Mortgage, the Loan Agreement, the Ford Guaranties and the LaRussa Guaranties, the "Loan Documents"). True and correct copies of the Seier Guaranties are attached hereto as **Exhibit "H"**.

20. Pursuant to the Seier Guaranties, Seier irrevocably and unconditionally guaranteed the obligations owed by the Borrower to Compass.

21. Events of default have occurred and continue to occur under the Loan Documents by reason of, among other things, the Borrower's failure to pay to Compass amounts due under the Loan Documents.

22. As a result, Compass has accelerated the maturity of the indebtedness evidenced by the Note. Compass made demand for payment of the amount due under the Loan Documents upon the Borrower and each of the Guarantors on or about January 20, 2011, but the indebtedness remains outstanding. A true and correct copy of the January 20, 2011 demand letter is attached hereto as **Exhibit "I"**.

23. The Borrower filed a petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") on February 24, 2011 in the United States Bankruptcy Court for the Northern District of Alabama (Western Division)

commencing the chapter 11 bankruptcy case of In re Southshore Development, LLC (Bankr. Case No. 11-70388).

24. Based upon information and belief, none of the Guarantors are debtors in open bankruptcy cases.

25. As of February 25, 2011, the outstanding balance of the indebtedness evidenced by the Loan Documents was \$894,322.38 plus interest accrued thereon, fees and costs of collection including reasonable attorneys' fees.

26. Pursuant to the terms of the Loan Documents, Compass is entitled to recover the costs of collection, including attorneys' fees which it incurs as a result of the default under the Loan Documents.

COUNT I

BREACH OF GUARANTY (FORD)

27. Compass adopts and re-alleges the averments of paragraphs 1 through 26 of this Complaint as if set forth in their entirety.

28. Ford has breached the Ford Guaranties by failing to pay to Compass the amounts due thereunder.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against Ford in the amount of \$894,322.38 plus interest as described in the Loan Documents, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled.

COUNT II**ACCOUNT STATED (FORD)**

29. Compass adopts and re-alleges the averments of paragraphs 1 through 28 of this Complaint as if set forth herein in their entirety.

30. Pursuant to the terms of the Ford Guaranties, Ford, as of February 25, 2011, was indebted to Compass in the amount of \$894,322.38, plus interest accrued thereon, late charges and costs of collection in accordance with the terms of the Ford Guaranties.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against Ford in the amount of \$894,322.38 plus interest, late charges as described in the Ford Guaranties, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled.

COUNT III**BREACH OF GUARANTY (LARUSSA)**

31. Compass adopts and re-alleges the averments of paragraphs 1 through 30 of this Complaint as if set forth in their entirety.

32. LaRussa has breached the LaRussa Guaranties by failing to pay to Compass the amounts due thereunder.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against LaRussa in the amount of \$894,322.38 plus interest as described in the Loan Documents, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled.

COUNT IV

ACCOUNT STATED (LARUSSA)

33. Compass adopts and re-alleges the averments of paragraphs 1 through 32 of this Complaint as if set forth herein in their entirety.

34. Pursuant to the terms of the LaRussa Guaranties, LaRussa, as of February 25, 2011, was indebted to Compass in the amount of \$894,322.38, plus interest accrued thereon, late charges and costs of collection in accordance with the terms of the LaRussa Guaranties.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against LaRussa in the amount of \$894,322.38 plus interest, late charges as described in the LaRussa Guaranties, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled.

COUNT V

BREACH OF GUARANTY (SEIER)

35. Compass adopts and re-alleges the averments of paragraphs 1 through 34 of this Complaint as if set forth in their entirety.

36. Seier has breached the Seier Guaranties by failing to pay to Compass the amounts due thereunder.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against Seier in the amount of \$894,322.38 plus interest as described in the Loan Documents, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled.

DOCUMENT 2

COUNT VI

ACCOUNT STATED (SEIER)

37. Compass adopts and re-alleges the averments of paragraphs 1 through 36 of this Complaint as if set forth herein in their entirety.

38. Pursuant to the terms of the Seier Guaranties, Seier, as of February 25, 2011, was indebted to Compass in the amount of \$894,322.38, plus interest accrued thereon, late charges and costs of collection in accordance with the terms of the Seier Guaranties.

WHEREFORE, PREMISES CONSIDERED, Compass demands judgment against Seier in the amount of \$894,322.38 plus interest, late charges as described in the Seier Guaranties, court costs, costs of collection, including reasonable attorneys' fees, and such other amounts to which Compass is entitled

Dated: February 25, 2011.

/s/ Jeremy L. Retherford
Jeremy L. Retherford
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Attorney for Compass Bank

DOCUMENT 2

Plaintiff's Address

Compass Bank
701 South 32nd Street
Birmingham, Alabama 35233

Plaintiff request service upon Defendants by special process server.

Defendants' Addresses

Darrell L. Ford
7548 County Road 1043
Vinemont, Alabama 35179

Frank B. LaRussa
2731 County Road 223
Cullman, Alabama 35057.

Alfred W. Seier, III
7091 Bethel Road
Dora, Alabama 35062