

**IN THE CHANCERY COURT OF THE JUDICIAL DISTRICT
OF COUNTY, MISSISSIPPI**

PLAINTIFFS

VS.

CIVIL ACTION NO.

DEFENDANTS

**COMPLAINT FOR INJUNCTIVE RELIEF,
BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY,
DECLARATORY JUDGMENT AND PUNITIVE DAMAGES**

COME NOW (the " "), Plaintiffs, and file this Complaint against
(" ") and (" "), to prevent and enjoin the proposed foreclosure under certain
deeds of trust executed by the on lands located in and Counties, Mississippi,
to recover actual and punitive damages for breach of the agreements between the parties,
 breach of its fiduciary duties to the , and to determine and declare the ' rights
under their agreements with .

 and are attempting to foreclose under the deeds of trust and take the '
property before the resolution of the question whether the promissory notes which the deeds of
trust secure are due and payable. and the are presently involved in a suit over
whether the promissory notes are due and payable, or whether agreed to forbear on the
notes. and should not allowed to foreclose prior to a judgment that the promissory
notes are in default.

The also seek to prevent and enjoin and from publishing any notices
or other matters related to or connected with and attempted foreclosure under
certain deeds of trust on lands located in and Counties, Mississippi. In support
thereof, the state as follows:

PARTIES

1.

are adult resident citizens of _____, _____ County, Mississippi.

2.

is a national banking association which is domiciled and has its principal place of business in _____, _____. _____ may be served with process of this Honorable Court pursuant to Rule 4(c)(5) of the Mississippi Rules of Civil Procedure by mailing a copy of the Summons and Complaint to _____.

3.

is an adult resident citizen of _____, _____ who may be served with process of this Honorable Court pursuant to Rule 4(c)(5) of the Mississippi Rules of Civil Procedure by mailing a copy of the Summons and Complaint to _____.

4.

is a Mississippi corporation with its principal place of business in _____, _____ County, Mississippi and can be served with process of this Court through its registered agent, _____ at _____, _____, Mississippi _____.

5.

is a Mississippi corporation with its principal place of business in _____, _____ County, Mississippi and can be served with process of this Court _____.

JURISDICTION AND VENUE

6.

The Court has jurisdiction and venue. _____ does business in the State of Mississippi, including, but not limited to, making and extending loans and, in a systematic and ongoing way, acquiring and owning deeds of trust and security interests in properties in Mississippi, including _____, _____ and _____ Counties, Mississippi.

7.

has purposefully availed itself of the benefits of conducting business in Mississippi by entering into agreements with the _____ to be performed in whole or in part in Mississippi. The agreements include loans against the deeds of trust on properties in _____, _____ and _____ Counties, Mississippi.

8.

has committed torts against the _____, the injurious effect of which occurred in Mississippi resulting in economic damage and losses in Mississippi.

9.

_____, as owner and holder of the deeds of trust at issue herein, substituted _____, as Trustee on said deeds of trust by an instrument entitled "Substitution of Trustee" dated _____, 20_____, and recorded in the Substituted Trustee Book _____, Pages _____, on file in the office of the Chancery Clerk of _____ County, Mississippi, _____ Judicial District, and in Substituted Trustee Book _____, Pages _____ on file in the office of the Chancery Clerk of _____ County, Mississippi. As Substituted Trustee, _____ has instituted the foreclosure proceedings in _____ and _____ Counties and is subject to the jurisdiction of this Court.

10.

_____ does business in _____ County, Mississippi. In addition, _____ has published and disseminated in _____ County, that certain "Substituted Trustee's Notice of Sale" dated _____, 20_____, and attached to the hereto as Exhibit "A" and incorporated herein by reference. Such publication occurred on _____ and _____, 20_____.

Respectfully submitted,

Attorney for

11.

_____ does business in _____ County, Mississippi. In addition, _____ has published and disseminated in _____ and _____ Counties, that certain "Substituted Trustee's Notice of Sale" dated _____, 20_____, and attached hereto as Exhibit "A" and incorporated herein by reference. Such publication occurred on _____ 20_____.

FACTUAL BACKGROUND

12.

For over _____ years, the _____ have been in the business of acquiring, developing, investing in, and selling properties and other assets which include mineral interests, oil and gas leases, oil and gas wells, real estate and timberland. The nature of this business is speculative

and requires long-term loans, long-term financing, and long-term forbearance from a lending institution which is willing to loan money long-term on and for speculative properties and to await the development or sale of the properties to be paid.

13.

The began doing business with in 20 . The relied on 's assurances that would provide the with long-term loans, financing, and, most importantly, the necessary forbearance which the would need over a long period of time in order to acquire, develop, and sell properties at the most optimum prices available.

14.

Since 20 , the have been one of the substantial customers of . has provided the with long-term loans, financing, and the necessary forbearance for the ' acquisition, development, investment, and sale of various properties. Pursuant to written and verbal agreements, including modifications and amendments of notes, and the course of dealing between the parties, , e.g., has loaned money to the , has advanced monies to the in anticipation of sale, has encouraged the to acquire properties, has paid debts owed by the and has rolled the payments into the ' account, and has paid down the ' account with proceeds received from time to time from the ' income producing properties and the ' periodic sales of properties.

15.

For example, the are presently involved in a sale of approximately acres of timberland in on which holds a second mortgage. The have at all times kept fully apprised of the ' efforts to sell the timberland and of the proposed sale, with the agreement and understanding that the will use a portion of the sale proceeds to bring current the accrued interest on the ' debt to the Bank. This course of dealing between the and the has been followed since 20 .

16.

The have secured with various mortgages, deeds of trust, and security interests in properties located in Counties, Mississippi. These properties include mineral interests, real estate, oil and gas leases, oil and gas wells, and timberlands. The value of these properties more than secures the ' debt to .

17.

The relationship between the _____ and _____ has been a long-standing fiduciary relationship of mutual trust and confidence for the mutual benefit and profit of both the _____ and _____. _____ has exercised a degree of control and influence over the _____' business activities. The _____ and _____ have both benefited from the relationship. Since 19_____, the _____ have paid _____ over \$ _____ in interest and \$ _____ in principal in connection with loans made by _____ to the _____.

18.

_____ has breached its agreements with the _____, its fiduciary duties to the _____, and its duties of good faith and fair dealing. Among other breaches, as more fully set forth herein, _____ has demanded that the _____ immediately pay the Bank \$ _____ in claimed principal and interest, has sued the _____ in the United States District Court for the _____ District of _____ for the amount claimed to be due, has instituted foreclosure proceedings on the _____' properties in _____ and _____ Counties, Mississippi, and has threatened to foreclose on the _____' other properties, including the timberland in _____ which the _____ are in the process of selling. These demands, suits attempting foreclosure and threats of foreclosure constitute breaches of the _____'s agreements with and duties to the _____ and threaten the _____ with substantial and irreparable damages and losses.

19.

As a portion of the security for their indebtedness to the _____, the _____ on _____, 20_____, executed a certain Land Deed of Trust to _____, Trustee, for the benefit of _____, which is recorded in Book _____, Pages _____, Record of Mortgages and Deeds of Trust on Land, _____ County, Mississippi, _____ Judicial District and in Book _____, Pages _____, Record of Mortgages and Deeds of Trust on Land, _____ County, Mississippi. By instrument dated _____, 20_____, _____, as owner and holder of the said Land Deed of Trust substituted _____, as Substituted Trustee, in place of and in lieu of _____, which instrument is recorded in Substituted Trustee Book _____, Pages _____, on file in the office of the Chancery Clerk of _____ County, Mississippi, First Judicial District, and in Substituted Trustee Book _____, Pages _____, on file in the office of the Chancery Clerk of _____ County, Mississippi.

20.

On _____, 20_____, _____ commenced foreclosure of said Land Deed of Trust by posting a "Substituted Trustee's Notice of Sale" on the main bulletin board at the _____ County

Courthouse in _____, Mississippi, and by commencing publication of said "Substituted Trustee's Notice of Sale" in _____ and _____. The "Substituted Trustee's Notice of Sale" was published by said newspapers on _____, 20_____.

FIRST CLAIM

Injunctive Relief

21.

The allegations of paragraphs 1 through 20 are incorporated herein by reference.

22.

In order to preserve the status quo and prevent irreparable harm, _____ and _____ should be enjoined, both by a temporary restraining order and a preliminary injunction, from attempting to foreclose on and from foreclosing on any of the _____' lands and properties until after a judgment has been rendered determining whether the _____ are in default and whether the promissory notes are due and payable. _____ and _____ attempted foreclosure constitutes an attempted prejudgment seizure of property in anticipation of a judgment on the promissory notes. If it is decided that _____ agreed to forbear on the collection of the notes and that the _____ are not in default, then _____ and _____ do not have a right to foreclose.

23.

_____ and _____ should be enjoined from proceeding with any further publications of the foreclosure notices.

24.

_____ 's demand for immediate payment is a breach of the agreements between the _____ and the Bank for the Bank to provide the _____ with long-term loans, financing, and the necessary forbearance while the _____, e.g., develop and sell various properties, so as to apply the proceeds received to reduce the _____' debt to _____.

25.

The agreements between the _____ and _____ include their numerous written and verbal agreements, including modifications and amendments to notes, and their long-standing course of dealing and custom and practice between one another, including the Bank's repeated waiver of the strict enforcement of the default provisions of the written agreements between them. The _____ have relied to their detriment on these agreements.

26.

The are presently involved in a sale of approximately acres of timberland on which holds a second mortgage. Consistent with their long-standing course of dealing, the and heretofore agreed that the will use a portion of the sale proceeds to bring current accrued interest on the ' debt to the Bank. Nevertheless, has demanded immediate payment of the ' entire debt even though the are not in default under the terms of the agreements between the parties and has commenced foreclosure proceedings on properties located in and Counties, Mississippi, as more fully set forth and described in the "Substituted Trustee's Notice of Sale" attached hereto as Exhibit "A" and incorporated herein by reference.

27.

should be held to be estopped to deny, dispute, renege on or breach its agreements with the and from demanding or receiving the immediate payment of the ' outstanding account, an account which is fully secured by various deeds of trust, mortgages and security interests; and to have waived strict enforcement of the default provisions of the written agreements between them.

28.

The are not in default to and is prohibited and estopped from demanding or obtaining immediate payment of the ' account, has waived strict enforcement of the default provisions of written agreements between them, and the are entitled to forbearance from while the develop and sell those properties which are mortgaged or pledged to . The are entitled to injunctive relief to maintain the status quo and to prevent the irreparable harm and injury which would result from 's foreclosure sale of the properties listed in Exhibit "A" and such other injunctive relief as may be necessary pending a final judgment in this action.

SECOND CLAIM

Breach of Contract

29.

The allegations of paragraphs 1 through 28 are incorporated herein by reference.

30.

In the alternative, the are entitled to damages resulting from 's breach of its agreements with the . The damages include, but are not limited to, the diminution in the

fair market value of the ' business and properties occasioned by having to sell or other dispose of properties prematurely or at distressed prices; lost profits; and damages to the ' good will, business reputation and credit rating.

THIRD CLAIM

Breach of Duties of Good Faith and Fair Dealing

31.

The allegations of paragraphs 1 through 30 are incorporated herein by reference.

32.

These are duties of good faith and fair dealing, whether expressed or implied, in every agreement. had and has a duty to deal with the in good faith and fairly with respect to the agreements entered into and performed between the parties over the years.

33.

The actions of in connection with the agreements entered into with the , specifically including its acts with respect to interest rates charged, application of payments, and its current demand for immediate payment from the , while the are not in default and the is fully secured with respect to the ' debt, constitutes a breach of the duties of good faith and fair dealing owed by to the .

34.

The are entitled to a declaratory judgment or appropriate decree that the are not in default to , is prohibited and estopped from demanding or obtaining the immediate payment of the ' account, has waived strict enforcement of the default provisions of the written agreement, and the are entitled to forbearance from while the develop and sell those properties which are mortgaged or pledged to . should be enjoined or estopped from demanding or recovering immediate payment of the ' outstanding account based upon its breach of the duty of good faith and fair dealing to the .

35.

In the alternative, the are entitled to damages resulting from 's breach of its duty of good faith and fair dealing to the . The damages include, but are not limited to, the diminution in the fair market value of the ' business and properties occasioned by

having to sell or otherwise dispose of properties prematurely or at distressed prices; lost profits; and damages to the ' good will, business reputation and credit rating.

FOURTH CLAIM

Breach of Fiduciary Duties

36.

The allegations of paragraphs 1 through 35 are incorporated herein by reference.

37.

's said conduct constitutes a breach of its fiduciary duties to the . The are entitled to recover from all damages which the have suffered or will suffer as a result of 's breach of its fiduciary duties.

FIFTH CLAIM

Breach or Anticipatory Breach of Agreement Concerning the Application of Sale Proceeds

38.

All allegations in paragraphs 1 through 37 are incorporated herein by reference.

39.

has breached or has threatened to breach an agreement between the and regarding the use and application of monies which the are to receive from the sale of certain timberland property located in .

40.

In 19 , the entered into an agreement with concerning certain of the oil, gas, and mineral interests in , under which agreement the received a substantial sum of money. did not have a mortgage, deed of trust, or security interest on said interests sold. The planned to use the monies received from to develop further oil and gas leases and oil and gas wells in County, Mississippi, on which held a deed of trust and security interest. In the past, these oil and gas leases and wells in County, Mississippi, have provided over \$ which the paid to on the ' account. These oil and gas leases and oil and gas wells continue to be valuable properties and a source of revenue for the to pay their account with .

41.

Upon learning of the ' sale to , proposed to the that, if the would pay \$ out of the monies received from , would apply that sum of money to the ' account and then, when the sold a acre tract of timberland in , on which held a second mortgage, the would be allowed to use \$ of the proceeds from that sale to develop further the ' said oil and gas leases, wells and proposed oil and gas operations in the of County, Mississippi, on which held a deed of trust and security interest. Based on the long-standing relationship of trust and confidence, the agreed to 's proposal, relied on 's representations and assurances, and wired over \$ of the proceeds received from .

42.

The then proceeded to arrange for a sale of the acres of timberland in for approximately \$. However, has now stated and indicated that it will not allow the to use any part of the proceeds received from that sale to develop further the oil and gas leases and oil and gas wells in Mississippi.

43.

's said conduct is a breach and violation of its agreement with the concerning the use and application of the proceeds received from and the proceeds to be received from the sale of the timberland; is a breach of its duties of good faith and fair dealing; is a breach of its fiduciary duties to the ; and is a willful and intentional tortious breach of contract and bad faith.

44.

should be estopped from renegeing on and breaching its agreement with the concerning the use and application of the proceeds and the sales proceeds to be received from the sale of the timberland. Among other things, the agreement has been partially performed. The are entitled to a declaratory judgment that, out of the sales proceeds to be received from the sale of the timberland, the are entitled to use \$ of the proceeds to develop further the ' oil and gas leases, oil and gas wells and oil and gas operations in and around the in County, Mississippi.

45.

In the alternative, the _____ are entitled to rescind and disgorge from _____ the _____ payment of the _____ monies previously tendered to _____ and to recover actual and punitive damages from _____ because of _____ 's breach of its agreement.

SIXTH CLAIM

Incorrect Charges and Applications

46.

The allegations of paragraphs 1 through 45 are incorporated herein by reference.

47.

_____ has breached its agreements with the _____ by arbitrarily applying payments to interest in lieu of principal, charging interest on advances of principal on a premature date, arbitrarily adjusting interest rates, and calculating and charging interest on a daily rate for 365 days a year based on a 360 day year.

48.

The _____ are entitled to recover damages resulting from _____ 's said breaches of its agreements with the _____ , including recover of all overpayments of principal and interest.

SEVENTH CLAIM

Punitive Damages

49.

The allegations of paragraphs 1 through 48 are incorporated herein by reference.

50.

_____ has willfully, intentionally and tortuously breached its agreements with and duties to the _____ , and has acted in bad faith. Additionally, _____ is attempting to foreclose on the _____ ' property in _____ and _____ Counties, Mississippi and has threatened to foreclose on the _____ ' other properties, thereby threatening to disrupt or prevent one proposed sale of timberland and to reduce the fair market value of the other pledged properties. The _____ are entitled to an award of punitive damages against _____ in an amount not less than \$ _____ .

WHEREFORE, PREMISES CONSIDERED, the _____ pray that summons issue to the Defendants in accordance with law, and that the Court will grant the following relief to the _____ :

- (1) Immediately issue a temporary restraining order and a preliminary injunction against _____ , _____ , _____ , and _____ prohibiting them from proceeding or taking any other actions

related to or connected with the foreclosure of the properties set forth in Exhibit "A" attached hereto and incorporated herein by reference pending a final determination of this case on the merits;

(2) A declaratory judgment or other appropriate decree that the _____ are not in default with _____, that _____ is prohibited and estopped from reneging on and breaching its agreement with the _____, and estopped from demanding and seeking to recover and collect the _____' outstanding account with the Bank, and that the _____ are entitled to forbearance while the _____ develop and sell those properties which are mortgaged or pledged to the Bank;

(3) A judgment for the _____ against _____ for the actual damages suffered by the _____ as a result of the various breaches by the Bank of its agreements, fiduciary duties, and duty of good faith and fair dealing;

(4) A judgment for the _____ against _____ for not less than \$ _____ punitive damages for the Bank's breach of its agreements with and duties to the _____;

(5) A judgment for the _____ against _____ for all incidental and consequential damages to which they may be entitled;

(6) A judgment that, out of the sales proceeds to be received by the _____ from the sale of the _____' timberland, the _____ are entitled to bring accrued interest current and, e.g., use \$ _____ of the proceeds to develop further the _____' oil and gas leases, oil and gas wells and oil and gas operations in and around the _____ in _____ County, Mississippi;

(7) Other appropriate temporary, preliminary and permanent injunctive relief, as may be needed; and

(8) A judgment for the _____ against _____ for attorney's fees and costs of Court herein.

AND the _____ pray for such further additional, general or specific relief to which they may be entitled.

THIS, the _____ day of _____, 20 _____.

Respectfully submitted,

Attorney for

Of Counsel:

Telephone:
MSB #
Attorney for

STATE OF MISSISSIPPI
COUNTY OF

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the county and state aforesaid, the within named _____ who being by me first duly sworn, acknowledged that he/she signed and delivered the above and foregoing Complaint for Injunctive Relief, Breach of Contract, Breach of Fiduciary Duty, Declaratory Judgment and Punitive Damages on the day and year therein mentioned and for the intent and purposes therein expressed.

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day of _____, 20____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: