

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MANATEE COUNTY
CIRCUIT CIVIL CASE NO. _____

WELLS FARGO BANK, N.A., SUCCESSOR
BY MERGER WITH WACHOVIA BANK, N.A.

Plaintiff,

v.

A BUN IN THE OVEN, INC. a Florida corporation;
DARLA COOK; PATRICK COOK; SAN MARCO
PLAZA CONDOMINIUM ASSOCIATION, INC., a
Florida not for profit corporation; SAN MARCO PLAZA
LAND CONDOMINIUM ASSOCIATION, INC., a
Florida not for profit corporation; JANE/JOHN DOE,
fictitious names representing tenants in possession; and
ALL UNKNOWN PARTIES CLAIMING INTERESTS
BY, THROUGH, UNDER OR AGAINST A NAMED
DEFENDANT TO THIS ACTION, OR HAVING OR
CLAIMING TO HAVE ANY RIGHT, TITLE OR
INTEREST IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

_____ /

COMPLAINT

Plaintiff, WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER WITH
WACHOVIA BANK, N.A. ("Lender"), sues the Defendants A BUN IN THE OVEN, INC. a
Florida corporation ("Borrower"); DARLA COOK ("DC"); PATRICK COOK ("PC")
(collectively "Guarantors"); SAN MARCO PLAZA CONDOMINIUM ASSOCIATION, INC., a
Florida not for profit corporation; SAN MARCO PLAZA LAND CONDOMINIUM
ASSOCIATION, INC., a Florida not for profit corporation (collectively the "Associations");
JANE/JOHN DOE, fictitious names representing tenants in possession ("Unknown Tenants");
and ALL UNKNOWN PARTIES CLAIMING INTERESTS BY, THROUGH, UNDER OR
AGAINST A NAMED DEFENDANT TO THIS ACTION, OR HAVING OR CLAIMING TO
HAVE ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY HEREIN DESCRIBED, and
alleges as follows:

NATURE OF CLAIM

1. This is an action: (a) to foreclose certain liens and security interests in real property located in Manatee County, Florida; (b) to recover damages under a certain promissory note; and (c) to recover damages under a certain Unconditional Guaranty.

JURISDICTION AND VENUE

2. Jurisdiction is proper because each cause of action contained in this Complaint is an action for damages that exceeds \$15,000.00, exclusive of interest, attorneys' fees and costs, and the real property is located in Manatee County, Florida. The actions and omissions which are the basis of this lawsuit took place in Manatee County, Florida.

GENERAL ALLEGATIONS

3. Lender, Wells Fargo Bank, N.A., as Successor by Merger with Wachovia Bank, N.A., is a National Association engaging in business in Manatee County, Florida.

4. Borrower, A Bun in the Oven, Inc., is a Florida corporation with its principal place of business in Manatee County, Florida and is the maker of the debt which is the subject of this lawsuit.

5. Guarantor, DC, is an individual who guaranteed the debt which is the subject of this lawsuit and upon information and belief resides in Manatee County, Florida.

6. Guarantor, PC, is an individual who guaranteed the debt which is the subject of this lawsuit and upon information and belief resides in Manatee County, Florida.

7. The Associations are Florida not for profit corporations with their principal places of business in Manatee County, Florida.

8. Jane/John Doe Unknown Tenants represent any unknown tenants of the real property located in Manatee County, Florida.

9. On or about May 11, 2007, Borrower executed and delivered to Lender a Promissory Note (the "Note") in the principal amount of \$680,000.00, which amount was loaned by Lender to Borrower.

10. A true and correct copy of the Note is attached hereto as **Exhibit A**, and the terms and conditions thereof are incorporated herein by reference.

11. On or about May 11, 2007, as part of the same transaction evidenced by the Note and to induce Lender to make the loan, Guarantors executed and delivered to Lender an Unconditional Guaranty, absolutely and unconditionally guaranteeing the timely payment and performance of Borrower's obligations and liabilities under the Note and other Loan Documents (the "Guaranty").

12. A true and correct copy of the Guaranty is attached hereto as **Exhibit B**, and the terms and conditions thereof are incorporated herein by reference.

13. In connection with the execution and delivery of the Note and Guaranty and to secure payment and performance of obligations under the Note and Loan Documents, on or about May 11, 2007, Borrower executed and delivered to Lender a Mortgage and Assignment of Rents (the "Mortgage"), pledging as security real property more particularly described therein (the "Property"), which was then owned by Borrower.

14. The Mortgage, a true and correct copy of which is attached hereto as **Exhibit C**, was recorded in Official Records Book 2204, Page 6996, of the Public Records of Manatee County, Florida, and the terms and conditions of the Mortgage are incorporated herein by reference.

15. Hereinafter the Note, Guaranty and Mortgage and all other documents executed by Borrower or Guarantors that further evidence or secure the loan are sometimes collectively called (the "Loan Documents").

16. As evidenced by a letter dated March 20, 2010, from the Office of Comptroller of the Currency (the "Merger Letter") Wachovia Bank, N.A., merged into Wells Fargo Bank, National Association. A true and complete copy of the Merger Letter is attached as **Exhibit D**.

17. Lender owns and holds the Note, the Mortgage, the Guaranty, and all other Loan Documents.

18. Upon information and belief, Borrower, Guarantors and/or Unknown Tenants are in possession of the Property described in the Mortgage.

19. Borrower defaulted under the terms of the Note and other Loan Documents by failing to pay the required installment payment due November 9, 2009, or any subsequent payments.

20. Guarantors have defaulted under the Guaranty, and consequently the Note, by failing to pay the indebtedness due under the Note on November 9, 2009, or any subsequent payments.

21. By letter dated September 28, 2010, Lender notified Borrower and Guarantors of the foregoing default and demanded payment in full of all outstanding indebtedness under the Note.

22. Pursuant to Section 697.07, *Florida Statutes*, Lender is entitled to collect all rents of or from the real property that accrue or are paid, following Borrower's and Guarantors' default and written demand for rents, which Lender demanded be turned over in its September 28, 2010 demand letter.

23. A true and correct copy of the demand letter is attached hereto as **Exhibit E**.

24. Despite demand, neither Borrower nor Guarantors have made any payment to Lender on account of the Loan Documents.

25. Borrower owes Lender: (a) \$640,408.44 that is due on principal on the Note, plus accrued and unpaid interest thereon; (b) all costs and expenses incurred by Lender in collecting the amounts due to it under the Note or the other Loan Documents, and in protecting its security in the Property encumbered by the Loan Documents; and (c) various other amounts that are or may become due under the terms of the Loan Documents.

26. Pursuant to the Guaranty, the Guarantors are liable to Lender for payment of the indebtedness described in the preceding paragraph.

27. By reason of the aforementioned defaults, Lender has: (a) been required to secure the services of the undersigned attorneys to endeavor to collect the sums due under the Loan Documents and to bring this action, and has agreed to pay said attorneys a reasonable fee for their services and to reimburse them for the costs they incur in connection therewith; and (b) incurred or will incur expenses for title information, judgment lien searches, and federal tax lien searches in connection with this action. All fees, costs and expenses so paid or incurred

constitute additional indebtedness of Borrower to Lender, the payment of which is secured by the Mortgage and other Loan Documents.

28. Defendants Unknown Tenants may claim some right, title, and interest in and to the Property sought to be foreclosed herein by virtue of a lease and/or possession of the Property, but any such right, title or interest in and to the Property is junior, inferior, and subordinate to the prior right, title, and interest of Lender by virtue of the lien created by the Loan Documents.

29. Defendants Associations may claim some right, title, and interest in and to the Property sought to be foreclosed herein by virtue of any unpaid dues and assessments, or may otherwise claim an interest in the Property, but any such right, title or interest in and to the Property is junior, inferior, and subordinate to the prior right, title, and interest of Lender by virtue of the lien created by the Loan Documents except to the extent provided for in Section 718.116(5)(a), *Florida Statutes*.

30. All conditions precedent to the institution and maintenance of this action and to the relief sought herein have been performed or have occurred.

COUNT I
ACTION ON PROMISSORY NOTE

Lender, Wells Fargo Bank, N.A., sues Borrower, A Bun in the Oven, Inc., and alleges:

31. Lender reavers the allegations contained in paragraphs 1 through 17, 19, 21, 23 through 25, 27 and 30 above as if fully set forth herein.

32. This is an action for damages for breach of a promissory note in excess of \$15,000.00, exclusive of interest, costs and attorneys' fees.

33. Despite the foregoing and demand by Lender, Borrower has failed to pay any of the outstanding indebtedness to Lender.

34. As a result of Borrower's breach, Lender has been damaged.

WHEREFORE, Lender respectfully requests judgment for damages against Borrower, A Bun in the Oven, Inc., for all sums due to Lender under the Note and the other Loan Documents, including, but not limited to, interest, attorneys' fees, and costs, and for such other and further relief as the Court may deem appropriate.

COUNT II
ACTION ON GUARANTY

Lender, Wells Fargo Bank, N.A., sues Guarantors DC and PC and alleges:

35. Lender reavers the allegations contained in paragraphs 1 through 17, 20, 21, 23 through 27 and 30 above as if fully set forth herein.

36. This is an action for damages for breach of an unconditional guaranty in excess of \$15,000.00, exclusive of interest, attorneys' fees, and costs.

37. Despite the foregoing and demand by Lender, Guarantors have failed to pay any of the outstanding indebtedness to Lender.

38. As a result of Guarantors' breach, Lender has been damaged.

WHEREFORE, Lender respectfully requests judgment for damages against Guarantors, DC and PC, for all sums due to Lender under the Note, Guaranty, and other Loan Documents, including but, not limited to, interest, attorneys' fees, and costs, and for such other and further relief as the Court may deem appropriate.

COUNT III
ACTION TO FORECLOSE MORTGAGE

Lender, Wells Fargo Bank, N.A., sues Borrower, Guarantors, the Associations, and Unknown Tenants and alleges:

39. Lender reavers the allegations contained in paragraphs 1 through 19, 22 through 25 and 27 through 30 as if fully set forth herein.

40. This is an action to foreclose a mortgage on real property located in Manatee County, Florida.

WHEREFORE, Lender respectfully requests that this Court:

- (a) take jurisdiction of this action and the parties hereto;
- (b) appoint a receiver of the real property and the rents, issues, income and profits thereof, with such rights, powers and duties as may be necessary or appropriate for the preservation of the property and the protection of Lender's interest therein during the pendency of these proceedings;
- (c) enter a judgment determining Lender's priority position in the real property;

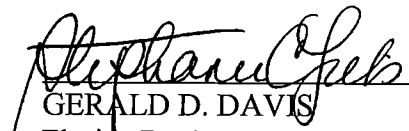
(d) make an accounting of the sums due to Lender under the Note and the other Loan Documents, including all amounts that have been or may be advanced or incurred by Lender in collecting the sums due to it under the Note and the other Loan Documents, including, but not limited to, court costs and reasonable attorneys' fees;

(e) order that if said sums are not paid within the time set by the Court, that the real property be sold and the proceeds of such sale be applied toward satisfaction of Lender's claims; and that the estate and all right, title, and interest of Borrower, Guarantors, the Associations and Unknown Tenants, and all person claiming by, through, under or against said Borrower, Guarantors, the Associations and Unknown Tenants since the filing of the Notice of Lis Pendens herein, be forever barred and foreclosed;

(f) order that, pending the appointment of a receiver, Borrower be required to deposit all rents of and from the real property into the registry of the Court pursuant to Section 697.07, *Florida Statutes*; and

(g) retain jurisdiction of this cause and parties hereto to grant such other and further relief as is just and equitable under the circumstances.

Dated: January 3, 2011.


GERALD D. DAVIS
Florida Bar No. 0764698
gdavis@trenam.com
STEPHANIE CRANE LIEB
Florida Bar No. 0031806
slieb@trenam.com
TRENAM, KEMKER, SCHARF, BARKIN,
FRYE, O'NEILL & MULLIS, P.A.
101 East Kennedy Boulevard, Suite 2700
Tampa, Florida 33602
Tel: (813) 223-7474
Fax: (813) 229-6553
Attorneys for Plaintiff