

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION**

IN RE: TP, INC., DEBTOR.	CASE NO. 10-01594-8-SWH CHAPTER 11
TP, INC., Plaintiff, vs. BANK OF AMERICA, N.A. and JONATHAN P. JOYNER, . Defendants	ADVERSARY PROCEEDING NO.:

COMPLAINT

Plaintiff/Debtor, complaining of the Defendants, alleges and says:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims for relief alleged herein, pursuant to the Federal Rules of Bankruptcy Procedure, 28 U.S.C. §§151, 157, and 1334, in that the matters alleged herein are civil proceedings arising in or related to a case under Title 11, United States Code.

2. This action seeks damages against the Defendants, for the various claims set forth herein; for revocation; rescission; modification; subordination and/or recharacterization of any debt claimed to be due from the Plaintiff to the Defendant Bank of America, who filed an action against the Plaintiff prior to the Debtor filing a Petition in Bankruptcy. The claims asserted, therefore, by the Plaintiff arise out of the same transaction or transactions that were the subject of previous claims asserted by the Defendant Bank of America, which included claims asserted by

Bank of America upon a sealed instrument. These claims are therefore brought within the applicable statute of limitations. *See* N.C.G.S. §1-47(2) and McGuire v. Dixon, ___ N.C.App. ___, 700 S.E.2d 71 (2010).

3. The Debtor filed a Petition under Chapter 11 of the Bankruptcy Code on or about March 1, 2010.

4. This is a core proceeding under 28 U.S.C. §157(b)(2).

5. Venue is properly in this district pursuant to 28 U.S.C. §1409.

PARTIES

6. The Plaintiff TP, Inc. (herein “TP”) is a corporation organized and existing under the laws of the State of North Carolina, having been incorporated by Ronald S. Bryant (herein “Bryant”) in August, 1999. At all times herein mentioned, Branch was an officer, director and shareholder of TP.

7. The Defendant Bank of America, N.A. (herein “BOA”) is a national banking association with its principal office and place of business being located in Charlotte, North Carolina.

8. The Defendant Jonathan P. Joyner (“Joyner”) is a citizen and resident of New Hanover County, North Carolina. At all times herein mentioned, Joyner was acting within the course and scope and in furtherance of his employment as Senior Vice President for BOA. Joyner, at all times material to this action, had actual or apparent authority to engage in the conduct herein described, and since BOA’s discovery of Joyner’s conduct, it has ratified and condoned the same.

GENERAL ALLEGATIONS

9. TP is a corporation organized and existing under the laws of the State of North Carolina, incorporated on or about August 20, 1999. At all times herein mentioned, Bryant has

been an officer, director and shareholder of TP, together with his wife.

10. Bryant has a 10th grade education and did not graduate from high school, having dropped out to work in a furniture factory. Prior to the incorporation of TP in 1999, Bryant was involved in the furniture business in and around Lenoir County, North Carolina.

11. In and around 1999, Bryant sold his furniture business, and decided to devote his fulltime attention to the development of residential real estate, principally in Onslow and Pender Counties, and formed TP for that purpose.

12. When Bryant and TP began to focus their business attention on Onslow and Pender Counties, Bryant approached the local branch of BOA in Surf City, and thereafter, on behalf of TP, entered into a business relationship with BOA, under which BOA agreed to provide the requisite financing to TP for the acquisition of lots and the construction of homes thereon, with TP being responsible for supervising the construction and sales activities for each home.

13. TP's business plan was developed by Bryant. That business plan was based upon a simple principle – TP will only build what it can sell. Led by Bryant, TP located lots that could be purchased at good prices, and built homes thereon at competitive costs to be sold at a range of values that were competitive with market demand.

14. In 1999, TP build and sold 1 house; in 2000, TP built and sold 4 houses; and in 2001, TP built and sold 9 houses. On each occasion, TP, through Bryant, would locate the property to be purchased. BOA would obtain an appraisal that would facilitate TP obtaining a loan for 100% of the purchase price of the lot. BOA would also obtain an appraisal of the “to be completed” house on the lot, and establish a construction loan based upon that completed value. After the start of construction, periodic draws would be made by TP on the construction loans, based upon a percentage of completion, and prior to the completion of construction, TP would

have the house/lot sold.

15. TP's Business Plan between 1993 and the date that Joyner was introduced to Bryant in 2002 was successful. Although TP's financial expertise, through Bryant, was limited, TP executed a Business Plan based upon building only what could be sold, and at prices that the market would bear. Except for the market associated with its Business Plan, TP did not study financial markets or economic trends/forecasts. However, BOA did, and continued to do so at all times material to this action.

16. At all times material to this action, BOA had superior knowledge regarding economic conditions in the United States, and specifically, the housing industry, than did TP. BOA and Joyner were aware of their superior knowledge, and that TP would rely upon that knowledge.

17. By reason of that superior knowledge, a close and confidential relationship existed between BOA, Joyner and TP.

18. At all times material to this action, BOA and Joyner intended for TP to rely upon their substantial expertise.

19. 2001 was, according to BOA's 2001 Annual Report a "weak economic environment", necessitating "major steps in accelerate internal growth." BOA, in the third quarter of 2001, "made a strategic decision....to exit the subprime real estate and auto leasing businesses, both of which tended to produce volatile earnings and did not fit our objectives for profitability."

20. As such, BOA began to implement strategies to increase its revenues, specifically in Consumer and Commercial Banking, and implemented new "compensation and incentive plans" designed to expand its business relationships, and therefore, the revenues of BOA. Therefore, BOA shifted the emphasis for its employee's "bonus awards" towards "relationship

building”, so as to provide incentive for its employees to increase revenues for BOA.

21. Upon information and belief, Joyner’s compensation and incentive plan with BOA enabled him to personally benefit from loan transactions that he either originated or was involved. Upon information and belief, the more loans that Joyner produced, the more money that both he and BOA made. In addition, upon information and belief, Joyner would be paid not only for loan origination, but for increases, disbursements and renewals of lines of credit.

22. During 2002, Bryant was introduced by the loan officer/branch manager in Surf City to Joyner, who was, at all times material to this action, the Senior Vice President of BOA.

23. At all times herein mentioned, Joyner was an agent, servant and employee of BOA, and acting within the course and scope of his employment with BOA. Joyner’s actions were in furtherance of the business of BOA, and both BOA and Joyner profited from the actions of Joyner, as set forth herein.

24. At all times herein mentioned, BOA ratified and condoned the conduct and actions of Joyner in connection with his dealings with TP and Bryant, as set forth herein.

25. Upon information and belief, Joyner is a member of BOA’s “Real Estate Banking” Group” Joyner and the “Real Estate Group” were given “quotas” or “budgets” of money that they were required to lend, in order to keep BOA’s ROE (Return on Equity) and ROA (Return on Asset) ratios/percentages within certain specified ranges.

26. Upon information and belief, the “Real Estate Banking Group” of which Joyner was a member was an “asset lender” for BOA, meaning, it made loans based upon the value of the collateral, and not on the basis of the borrower’s ability to repay.

27. Upon information and belief, loans made by the “Real Estate Banking Group” were treated differently than loans made by other departments and divisions within BOA, with respect to the requirement that BOA reserve certain sums as against potential loan losses.

28. Upon information and belief, BOA was able to leverage, or borrow against, loans made by the “Real Estate Banking Group”, therefore increasing the income that BOA and Joyner could earn from the making of loans through the “Real Estate Banking Group.”

29. Upon information and belief, Joyner actively sought out lending opportunities for the “Real Estate Banking Group.”

30. During Bryant’s first meeting with Joyner in 2002, Joyner touted his and BOA’s background and expertise in providing financing for someone like TP. By the end of the first meeting, Joyner had extended Bryant and TP a \$5 million “line of credit” in which to conduct real estate development activities. Joyner explained to Bryant, in detail, how TP would obtain advancements on the line of credit.

31. Joyner explained that Bryant and TP would be permitted to find property/lots to purchase, and after consultation with Joyner or his designated representatives, enter into a contract to purchase the property/lots. Joyner and BOA would then undertake to have the property appraised at values that would insure the ability of BOA and Joyner to disburse 100% of the purchase price of the property from the line of credit, with TP not being required to come out of pocket for monies towards the purchase of the property.

32. Joyner further explained that he and BOA would likewise undertake the process of having the proposed improvement (house) on the property appraised, and establish a construction loan based upon a designated percentage of the appraised value of the completed home. Advancements would be made on the construction loan in accordance with the percentage of completion.

33. Joyner’s Business Plan for TP would have TP increase the number of houses under construction, backed by the Line of Credit that BOA, through Joyner, agreed to provide. Joyner’s Business Plan placed TP at greater risk, as it required that TP borrow more money and

build and sell more homes than TP had typically built and sold.

34. During 2002, TP built and sold approximately 26 homes. BOA and Joyner earned substantial sums from the funds provided from TP's Line of Credit. In addition, BOA obtained additional income by providing mortgage loans to some of the purchasers that bought the homes that TP constructed.

35. Between the Spring of 2002 and January, 2003, Joyner told Bryant that he was impressed with Bryant's knowledge of the real estate market in Onslow and Pender Counties, and asked for Bryant's advice in locating properties that might be available for purchase at a great price.

36. The first such advice offered by Bryant to Joyner was with respect to a tax foreclosure being conducted by Onslow County, North Carolina, with respect to a lot in Oceanridge, an oceanfront single family development in Onslow County. Upon information and belief, Joyner owned another lot in Oceanridge that he purchased at a foreclosure sale from another bank, and knew that Bryant was familiar with this subdivision and the potential therein.

37. After consulting with Bryant, Joyner purchased, on or about May 16, 2002, Lot 4, Oceanridge II, for the sum of \$2,500.00, as evidenced by a Deed recorded in Book 1849 at Page 999 of the Onslow County Registry.

38. On or about July 8, 2002, Joyner, for no consideration, conveyed Lot 4, Oceanridge II to JCOR Investments, LLC, a North Carolina Limited Liability Company owned and controlled by Joyner.

39. On or about January 10, 2003, TP executed a "Master Loan Agreement" with BOA, and pursuant to its provisions, executed a Promissory Note in the principal amount of \$5,000,000.00, and a Deed of Trust and Security Agreement, securing the line of credit, and the same was recorded in on or about January 10, 2003 in Book 2024 at Page 158 of the Pender

County Registry, and on or about May 5, 2003 in Book 2017 at Page 683 of the Onslow County Registry, with the “Land” securing the Deed of Trust consisting of two (2) separate lots, located at 407 N. Anderson Blvd., and 13409 Ocean Blvd., Topsail Beach, North Carolina.

40. At no time subsequent to January, 2003 to the present did TP or Bryant have the ability to repay any sums on any Line of Credit provided by Joyner and BOA, except through the sale of the properties and homes to be constructed thereon, a fact well known to Joyner.

41. Upon information and belief, Joyner did not underwrite this Line of Credit nor all of the disbursements made therefrom in accordance with BOA’s written lending policies.

42. Upon information and belief, Joyner disbursed or caused to be disbursed funds from the Line of Credit for purposes unrelated to activities to be undertaken on any property that BOA held as collateral, including for Joyner’s personal benefit.

43. Upon information and belief, Joyner provided this Line of Credit due to his and BOA’s desires to generate substantial profits from the making of such loans. While both Joyner and BOA profited greatly from their conduct, through the collection of fees and interest, that same conduct, as set forth herein, is the reason for TP’s inability to pay its creditors, and that TP finds itself in bankruptcy.

44. From 2002 forward, Joyner was intimately involved in the management and control of TP’s business. Joyner interposed himself in the business direction and day to day operations of TP, and as set forth herein, Joyner implemented a change in TP’s business plan, by advising TP to increase the number of homes that it constructed; and to buy and develop property in other areas of North Carolina and construct homes in the “high end” of the market, i.e., sales prices in excess of \$700,000.00.

45. From 2002 forward, Joyner, on behalf of BOA, acted as a “joint venturer” with TP in the development and sale of real property. Joyner and BOA agreed to provide and did

provide the required funding for the joint venture; undertook to manage, control, extend, modify, increase and disburse those funds, including the terms of repayment; determined and controlled what property was purchased by TP, and what was constructed upon such property; provided advice, direction and control regarding the business of TP; established the price at which the inventory of TP, consisting of residential real estate, would be sold and/or released from the lien of any deed of trust held by BOA.

46. The joint venture between BOA, Joyner and TP was designed to make a profit for all involved.

47. Joyner informed Bryant that he wanted to “personally” manage TP’s business and the Line of Credit that Joyner agreed to provide, and to bypass others “lower” in BOA’s chain of command. Upon information and belief, Joyner knew that both he and BOA would derive substantial profits from this joint venture, and Jordan personally derived substantial income from his “management” of TP’s loans and lines of credit that grew, as set forth with more particularity below, from \$5,000,000.00 in January, 2003, to \$17,500,000.00 by February, 2008, all at the direction and control of Joyner.

48. In May, 2003, Bryant informed Joyner about another lot in Oceanridge for sale, and on or about May 13, 2003, Joyner purchased Lot 15, Oceanridge II, for the sum of \$45,000.00 using, upon information and belief, monies that Joyner made from the loans he made to TP, as evidenced by a Deed recorded in Book 2027 at page 349 of the Onslow County Registry.

49. Bryant and Joyner would speak frequently, and sometimes daily, about the business of TP, including its sales activities and costs. Joyner informed Bryant that he was one of the smartest builders that he had ever met, because even though Bryant never held a general contractor’s license, he was able to get general contractors and crews to work for him at prices

below that of other builders/developers in the market.

50. On or about June 30, 2003, BOA and TP executed a Loan Extension Agreement, under which the maturity date for the Line of Credit was extended until September 30, 2003. As of that date, the Line of Credit had an outstanding balance of \$2,256,762.97, which sums were repaid from the sales of homes constructed and sold by TP.

51. Upon information and belief, Joyner would be paid compensation by BOA for each Loan Extension Agreement executed by TP, and in connection with each increase in TP's Line of Credit.

52. On or about November 18, 2003, BOA and TP executed a Loan Extension Agreement, under which the maturity date for the Line of Credit was extended until December 15, 2003. As of that date, the Line of Credit had an outstanding balance of \$1,647,634.06, which sums were repaid to BOA from the sales of homes constructed and sold by TP.

53. As BOA planned, total revenues from the making of loans in the consumer and commercial sectors, such as the Line of Credit that Joyner provided for TP, increased in 2003, and BOA's net income derived from these activities also increased.

54. During 2003, TP built and sold approximately 25 homes. BOA and Joyner earned substantial sums from the funds provided from TP's Line of Credit. In addition, BOA obtained additional income by providing mortgage loans to some of the purchasers that bought the homes that TP constructed.

55. On or about January 8, 2004, BOA and TP executed a Loan Extension Agreement, under which the maturity date for the Line of Credit was extended until February 15, 2004. As of that date, the Line of Credit had an outstanding balance of \$1,856,583.54, which sums were repaid to BOA from the sales of homes constructed and sold by TP.

56. At all times material to this matter, a close and confidential relationship existed

between TP and Joyner/BOA. Both TP and Bryant reposed a great deal of confidence in Joyner and BOA. As to matters of finance, Joyner and BOA had superior knowledge to that held by TP and Bryant, a fact well known to Joyner. Joyner and BOA used that superior knowledge to manage and control TP and its finances.

57. During the month of January, 2004, Joyner told Bryant that he was in need of money, and asked Bryant to have TP “purchase” two of Joyner’s lots in Oceanridge. Joyner informed Bryant that in order to insure that Bryant and TP would not have to “come out of pocket” for the purchase, Joyner would advance TP monies off of the line of credit.

58. Joyner told Bryant that he wanted TP to pay \$150,000.00 for Lt. 4, Oceanridge II, for which Joyner had paid \$2,500.00, and \$60,000.00 for Lt. 15, Oceanridge II, for which Joyner had paid \$45,000.00. Bryant believed that the sums requested by Joyner exceeded the actual fair market value of these lots.

59. By reason of the close and confidential relationship that existed; the domination, control and influence that had been exercised by Joyner over both TP and Bryant, at great risk and exposure to them; and the ability on the part of Joyner and BOA to call all of TP’s loans due, TP and Bryant felt that they had no choice but to agree to Joyner’s requests. TP trusted Joyner, yet Bryant feared that if TP did not purchase Joyner’s lots, even though TP had no legitimate interest in them, BOA and Joyner would terminate TP’s Line of Credit and demand that all sums due thereunder be immediately paid.

60. On January 15, 2004, TP executed an Amendment to Deed of Trust and Security Agreement, which was recorded on January 16, 2004 in Book 2304 at Page 13 of the Onslow County Registry, and pursuant to its provisions, Joyner advanced TP the monies necessary to complete the purchase of Joyner’s lots in Oceanridge.

61. On January 15, 2004, using the monies advanced by Joyner off of TP’s line of

credit with BOA, TP “purchased” from Joyner Lt. 4, Oceanridge II, for the sum of \$150,000.00, as evidenced by a deed recorded in Book 2181 at Page 140 of the Onslow County Registry, and Lt.15, Oceanridge II, for the sum of \$60,000.00, as evidenced by a deed recorded in Book 2181 at Page 142 of the Onslow County Registry.

62. Joyner personally profited from this transaction. BOA was aware of and ratified this transaction.

63. During the months of April and October, 2004, acting on information that he obtained from Bryant, Joyner purchased two (2) additional properties within Oceanridge.

64. On or about April 26, 2004, Joyner, through JCOR Investments, LLC, purchased Lt. 14, Oceanridge III, for the sum of \$205,000.00, as evidenced by a deed recorded in Book 2245 at page 402 of the Onslow County Registry. Less than five (5) months later, again with the assistance of Bryant, Joyner resold Lt. 14, Oceanridge III, for the sum of \$450,000.00, as evidenced by a deed recorded on September 3, 2004 in Book 2313 at Page 467 of the Onslow County Registry.

65. On or about May 20, 2004, BOA and TP executed a Loan Extension Agreement, under which the maturity date for the Line of Credit was extended until December 31, 2005. As of that date, the Line of Credit had an outstanding balance of \$3,318,319.99, an increase of over \$1.5 million in six months, which sums were repaid to BOA from the sales of homes constructed and sold by TP

66. Shortly thereafter, Joyner informed Bryant that he was going to increase TP’s Line of Credit from \$5 million to \$8 million, and on July 15, 2004, BOA, TP and Bryant entered into a Loan Modification Agreement to this effect, and caused the same to be recorded in Book 2431 at Page 114 of the Pender County Registry.

67. As of July 15, 2004, TP and Bryant, as a guarantor, owed BOA the sum of

\$3,695,208.14, and by reason of Joyner's increase in TP's line of credit, the sum of \$4,304,791.86 was available to be disbursed by Joyner. As of July 15, 2004, neither TP nor Joyner had the ability to repay BOA any sums advanced on the Line of Credit but through the sale of the houses being constructed by TP.

68. Upon information and belief, Joyner received compensation from BOA from increasing TP's Line of Credit. Upon information and belief, had BOA's lending guidelines been followed, accurate information considered, and appropriate loan underwriting standards applied, any increase in TP's Line of Credit could not have been approved. The process by which the Line of Credit was extended was controlled solely by Joyner and BOA, with TP, through Bryant, simply following the directions of Joyner.

69. One of the properties purchased by TP, using funds disbursed by Joyner from the Line of Credit, an "island" upon which TP intended to construct a house. After purchase of the island, TP funded the construction of a bridge to the island, at a cost in excess of \$500,000.00, from its accumulated cash assets, based upon Joyner's representations that BOA would then fund the construction of the home thereon. After completion of bridge, Joyner informed TP that the property would need to be subdivided so that Joyner could advance the "maximum" towards the costs of construction of the home. Accordingly, at Joyner's direction, TP undertook to have the island subdivided, and thereafter, Joyner obtained appraisals on a single lot, and a lot/house. By reason of the conduct of Joyner and BOA, that house remains incomplete, and Joyner and BOA repeatedly failed to respond to the reasonable requests of TP and Bryant so as to avoid waste to that and other property owned by TP upon which BOA claims as security.

70. In September, 2004, Joyner informed Bryant that he was going to increase TP's Line of Credit to \$9,750,000.00, and thereafter, BOA, TP and Bryant entered into a Loan Modification Agreement to this effect, and the same was recorded on September 28, 2004 in

Book 2487 at Page 225 of the Onslow County Registry.

71. By this time, TP and Bryant, as a guarantor, owed BOA the sum of \$5,186,684.13, an increase of more than \$1.7 million in 5 months, and by reason of Joyner's increase in TP's line of credit, the sum of \$4,563,315.87 was available to be disbursed by Joyner from the Line of Credit. As of September, 2004, neither TP nor Bryant had the ability to repay BOA any sums advanced on the Line of Credit but through the sale of the houses being constructed by TP, a fact well known to Joyner.

72. Upon information and belief, Joyner received compensation from BOA from increasing TP's Line of Credit.

73. On or about October 5, 2004, Joyner, through JCOR Investments, LLC, purchased Lt. 6, Oceanridge I, for the sum of \$300,000.00, as evidenced by a deed recorded in Book 2330 at page 192 of the Onslow County Registry

74. During 2004, TP sold approximately 25 homes. BOA and Joyner earned substantial sums from the funds provided from TP's Line of Credit, and the interest and fees paid therefrom. In addition, BOA obtained additional income by providing mortgage loans to some of the purchasers that bought the homes that TP constructed.

75. In its 2004 Annual Report, BOA touted its having increased shareholder value, by "building and expanding millions of customer and client relationships", including the relationship between BOA, Joyner and TP. In 2004, BOA was the "world's fifth most profitable company", and the second most highly valued financial services company in the world. In 2004, BOA was the nation's number five retail mortgage originator, and had generated substantial revenues and profits from its Business Banking segment. In furtherance of both BOA and Joyner's touted expertise, BOA in its 2004 Annual report confirmed the reliance that it wished TP and others to place in BOA and Joyner: "Small business owners want to work with bankers

who provide a one-stop shop for a broad range of financial services and who also understand their challenges well enough to help them plan and make critical decisions.”

76. Throughout the years 2005 and 2006, TP and Bryant worked to complete the construction and sale of homes, using the proceeds from the sales thereof to pay down the sums due on the Line of Credit, in amounts set by Joyner.

77. Revenues for BOA continued to increase in 2005. In 2005, BOA paths to growth continued, including record increases from “strong loan growth across all business lines.”.

78. By December 30, 2005, TP and Bryant, as a guarantor, owed BOA the sum of \$5,071,000.00, and the sum of \$4,679,000.00 was available to be disbursed by Joyner from the Line of Credit. BOA and Joyner had continued to earn substantial sums from interest and fees charged to TP on the Line of Credit.

79. In December, 2005, Joyner informed Bryant that he was going to increase TP’s Line of Credit from \$8 million to \$9,750,000.00, and on December 30, 2005, BOA, TP and Bryant entered into a Loan Modification Agreement to this effect, and caused the same to be recorded in the Pender County Registry

80. As of December 30, 2005, neither TP nor Joyner had the ability to repay BOA any sums advanced on the Line of Credit but through the sale of the houses being constructed by TP, a fact well known to Joyner.

81. Joyner would structure the Line of Credit and the maturity dates, together with any modifications and increases therein. Upon information and belief, despite the maturity dates provided for in the written documents executed by TP, Joyner had the ability to extend maturity dates for a designated period of time, and therefore routinely, without request from Bryant or TP, would further extend and modify the Line of Credit, as evidenced by additional Loan Modification Agreements executed by TP and Bryant.

82. TP and Bryant would simply be informed by Joyner about the necessity of executing various documents, and in reliance upon the trust and confidence that both TP and Bryant reposed in Joyner, each document was executed, with little regard to its content.

83. During 2005, TP sold approximately 15 homes. BOA and Joyner earned substantial sums from the funds provided from TP's Line of Credit. In addition, BOA obtained additional income by providing mortgage loans to some of the purchasers that bought the homes that TP constructed.

84. By the Summer of 2006, BOA and Joyner were aware that the Home Construction Index in the United States was down more than 40% over the previous year. Upon information and belief, BOA was aware of warnings from representatives of the International Monetary Fund about a coming housing bust in the United States, mortgage-backed securities failures, bank failures and a recession.

85. Obviously, neither Joyner or anyone else at BOA warned TP about anything, and in fact, Joyner increased TP's risks in 2007.

86. However, revenues for BOA increased, once again, in 2006. BOA believed that the continuing issues with yield curve (the difference between short and long term interest rates) provided BOA with additional opportunities to generate net interest income, such as the income BOA and Joyner earned from TP's Line of Credit. Accordingly, for 2007, BOA announced that it would continue its "intense pursuit of growth", and "create value" for its customers by being more efficient with the "credit decision process."

87. During 2006, TP sold approximately 10 homes. BOA and Joyner earned substantial sums from the funds provided from TP's Line of Credit. In addition, BOA obtained additional income by providing mortgage loans to some of the purchasers that bought the homes that TP constructed.

88. By 2007, it was well recognized by experts across the United States (which did not include TP or Bryant) that the country was experiencing and would continue to experience a decline in the housing market, and both Joyner and BOA were well aware of this fact. By January 1, 2007, home prices had started to fall, the rate of price appreciation had slowed, and interest rates were climbing, and experts were predicting that steep decreases in demand and therefore housing prices would continue for the foreseeable future.

89. By 2007 BOA had already experienced rising default rates on “subprime” and adjustable rate mortgages, and in 2007, interest rates for mortgages began to rise. A series of factors, therefore, had caused the financial system, including BOA, to both expand and become increasingly fragile, a fact known to both BOA and Joyner.

90. During the month of January, 2007, Joyner told Bryant that he was in need of money to purchase a new home/property in the Landfall subdivision in Wilmington, and asked Bryant to have TP “purchase” another lot owned by Joyner in Oceanridge. As with the previous purchases, Joyner informed Bryant that in order to insure that Bryant and TP would not have to “come out of pocket” for the purchase, Joyner would advance TP monies off of the Line of Credit to complete this purchase.

91. Joyner told Bryant that he wanted TP to pay \$225,000.00 for Lt. 14, Oceanridge II, for which Joyner had only paid \$37,500.00. Bryant believed that the sums requested by Joyner exceeded the actual fair market value of this lot.

92. By reason of the close and confidential relationship that existed; the domination, control and influence that had been exercised by Joyner over both TP and Bryant, at great risk and exposure to them; and the ability on the part of Joyner and BOA to call all of TP’s loans due, TP and Bryant felt that they had no choice but to agree to Joyner’s requests. TP trusted Joyner, yet Bryant feared that if TP did not purchase Joyner’s lots, even though TP had no legitimate

interest in them, BOA and Joyner would terminate TP's Line of Credit and demand that all sums due thereunder be immediately paid.

93. On or about January 31, 2007, using monies advanced by Joyner off of TP's Line of Credit with BOA, TP "purchased" from Joyner Lt. 14, Oceanridge II, for the sum of \$2250,000.00, as evidenced by a deed recorded in Book 2813 at Page 799 of the Onslow County Registry.

94. On February 27, 2007, using, upon information and belief, the proceeds from the purchase of Lt. 14, Oceanridge II, Joyner purchased Lt. 5, Block 1, Pembroke Jones Park at Landfall, for the sum of \$645,000.00, as evidenced by a deed recorded on Book 5147 at page 2677 of the New Hanover County Registry.

95. By March, 2007, the subprime industry, in which BOA was heavily involved, had collapsed in the United States, and the Country was at the beginning of an economic collapse.

96. Apparently unphased by any of this, by the Spring of 2007, Joyner advised TP and Bryant that, in his opinion, they needed to "diversify" TP's Business Plan, and buy and develop "high end" property in other areas of North Carolina, and specifically, in the Charlotte, North Carolina area, a market that Joyner told Bryant that he knew and that was "hot."

97. Joyner informed Bryant that he would increase TP's Line of Credit from \$9,750,000.00 to \$12,500,000.00, and advance TP additional monies if TP would pledge other unencumbered owned by TP as collateral, namely, a subdivision known as Topsail Cove of Surf City, which TP and Bryant had purchased and developed using its own funds, and not funds advanced by BOA and Joyner.

98. On or about April 9, 2007, TP, Bryant and BOA executed a Loan Modification Agreement, increased TP's Line of Credit to \$12,500,000.00, and recorded the same on April 12, 2007 in Book 2853 at Page 703 of the Onslow County Registry.

99. By April 12, 2007, TP and Bryant, as a guarantor, owed BOA the sum of \$4,782,000.00, and the sum of \$7,718,000.00 was available to be disbursed by Joyner from the Line of Credit, pursuant to the direction and control that he was exercising over TP.

100. On April 12, 2007, in furtherance of Joyner's diversification plan for TP, and using proceeds advanced by Joyner from TP's Line of Credit with BOA, TP purchased Lot 162, of The Sanctuary at Lake Wylie, for the sum of \$1,800,000.00, as evidenced by a deed recorded on April 17, 2007 in Book 22081 at Page 852 of the Mecklenburg County Registry.

101. On July 2, 2007, in furtherance of Joyner's diversification plan for TP, and using proceeds advanced by Joyner from TP's Line of Credit with BOA, TP purchased Lots 172 and 173, of The Sanctuary at Lake Wylie, for the sum of \$2,000,000.00, as evidenced by a deed recorded on July 17, 2007 in Book 22516 at Page 286 of the Mecklenburg County Registry.

102. On July 2, 2007, an Amendment to Deed of Trust and Security Agreement between TP and BOA was recorded in Book 3265 at Page 148 of the Pender County Registry.

103. At Joyner's recommendation and direction, TP and Bryant, using their accumulated cash reserves, began the construction of a multi-million dollar home on Lake Wylie for purposes of resale, which TP, by reason of the conduct of Joyner and BOA, was unable to complete and forced to sell at a substantial loss.

104. At the same time that TP acquired the property and began construction of the home on Lake Wylie, Joyner informed Bryant that he believed that TP should increase the pricing of the homes that it was constructing in and around Onslow and Pender Counties, to homes priced in the \$700-800,000.00 range. With respect to Topsail Cove, Bryant suggested that TP build a couple of houses there to test that market, and Joyner disagreed, telling Bryant that TP would save money if all homes that could be built there were built at one time.

105. In the face of a nationwide decline in the housing market; an increase in the

number of mortgage loan defaults; increasing interest rates; and the fragility of the financial markets, Joyner controlled the business activities of TP in beginning the construction of more than 20 homes/units in the Onslow/Pender County area of North Carolina at the same time, most of which (approximately 16) being located in the Topsail Cove Subdivision. While the required increases in TP's Line of Credit generated substantial profits for both Joyner and BOA, Joyner never advised TP about the risks of Joyner's direction, and certainly never informed TP and Bryant during this time that it intended to abandon this joint venture in 2008.

106. In reliance on Joyner's direction and control, TP, using funds advanced by Joyner from TP's Line of Credit, began the construction of approximately 20 homes during the Spring of 2007, even though Joyner and BOA knew, or reasonably should have known, of the downturn in the housing market that the United States had already begun to experience. This was in addition to the approximate 12 other homes that TP built and sold during 2007.

107. Joyner and BOA obtained "as built" appraisals of approximately \$800,000.00 for the homes and created construction loans of approximately \$650,000.00 for each home to be constructed.

108. Joyner informed Bryant that he would increase TP's Line of Credit from \$12,500,000.00 to \$17,500.00 to facilitate TP continuing its business activities in the construction of these homes. In addition, at Joyner's recommendation and direction, TP obtained three (3) additional lots, and started the construction of two additional homes, in addition to those under construction in Topsail Cove.

109. On or about October 4, 2007, TP, Bryant and BOA executed a Loan Modification Agreement, increasing TP's Line of Credit to \$17,500,000.00, and on October 9, 2007, recorded a Modification to Deed of Trust and Security Agreement in Book 3334 at page 165 of the Pender County Registry.

110. As of October 4, 2007, TP and Bryant, as a guarantor, owed BOA the sum of \$9,582,088.73, an increase of approximately \$5 million than what had been owed just six (6) months earlier (\$4,782,000.00) and by reason of Joyner's increase in TP's line of credit. As of October 4, 2007, neither TP nor Bryant had the ability to repay BOA any sums advanced on the Line of Credit but through the sale of the houses being constructed by TP, a fact well known to Joyner.

111. By the Fall of 2007, just as experts predicted prior to January 1, 2007, there existed a worldwide credit crunch as subprime mortgage backed securities are discovered in portfolios of banks, including BOA, around the world, requiring the Federal Reserve to inject billions of dollars into the money supply for banks to borrow.

112. Accordingly, the houses that TP had constructed under the direction and control of Joyner, and using the funds disbursed by him from TP's Line of Credit, became impossible to sell, especially at the "high end" of the market that Joyner drove TP into.

113. On several occasions, in 2007 and 2008, TP, through Bryant, would bring Joyner offers on the completed homes less than what was owed on the construction loans, and Joyner would refuse these offers, thereby continuing TP and Bryant's obligations on the Line of Credit, and the burgeoning interest carry, which Joyner would simply advance each month from the amounts remaining on the Line of Credit.

114. By February, 2008, the changed business plan of TP directed and controlled by Joyner had failed. As experts had stated, the housing market experienced a rapid decline; activity in the Onslow/Pender County areas had virtually evaporated; the market activity that did exist was totally inconsistent with the "high end" market dynamic created by Joyner. Completed houses could not be sold at the price point established by Joyner, and Joyner and BOA failed to respond to opportunities to "short sell" some of these homes. Joyner continued to draw monies

from TP's Line of Credit to pay the substantial interest carry, and Joyner therefore informed Bryant that he had another plan to assist with TP's cash flow issues.

115. Upon information and belief, by February, 2008, the Line of Credit created by Joyner for TP was no longer in compliance with the various policies and guidelines of both BOA and FDIC. Joyner knew that the inability of TP and Bryant to personally pay the sums due on the Line of Credit, coupled with the declining values of the real estate securing the Line of Credit, necessitated that he obtain additional security in order for BOA to hold this Line of Credit on its books as a "pass" or "performing asset." Therefore, upon information and belief, Joyner devised another plan (not one shared with TP) to gain control over other unencumbered assets owned by TP and therefore improve BOA's position, one that BOA and Joyner had created.

116. Joyner was aware of another subdivision, Oceanaire, that TP and Bryant had purchased and developed, not from any funds advanced by Joyner, and that these subdivisions was owned by TP free and clear of any liens and encumbrances. Joyner informed Bryant that BOA would advance TP additional funds to fund the interest carry to BOA and to cover losses from the sale of the substantial inventory that TP owned.

117. Joyner informed Bryant that he would obtain an appraisal on Oceanaire, and based upon that appraisal, advance monies to TP. While Oceanaire was fully developed (infrastructure installed), and the required CAMA permits for this ocean to sound development (with the setback requirements that were then in effect), the Final Plat for this subdivision had not been recorded.

118. Completed valuations of Oceanaire previously obtained by TP placed its value in excess of \$11 million, but Joyner ordered a "discounted" commercial appraisal, which, upon information and belief, placed the value of Oceanaire in excess of \$5 million. Upon receipt of

that appraisal, Joyner informed Bryant that he could loan/advance TP the additional sum of \$3 million, approximately \$1.1 million of which would be used to fund the continuing interest carry to BOA on TP's Line of Credit, and the balance used to offset losses from the sale of TP's substantial inventory. This new plan, according to Joyner, would enable TP to survive the downturn in the economy, with Jordan assuring TP, through Bryant, that he and BOA would "work" with TP.

119. Once again, in reliance upon the trust and confidence that both TP and Bryant placed in Joyner, TP and Bryant agreed to Joyner's further direction and control regarding the business of TP, including providing Oceanaire as security in order to obtain the necessary funds to weather the economic storm that existed in the United States.

120. On or about February 14 or 28, 2008, TP and BOA executed an Amendment to Deed of Trust and Security Agreement. Joyner informed Bryant and his attorney that the funds would be advanced by him in two (2) separate transactions, the first of which would fund the interest carry to BOA. Joyner informed Bryant and his attorney that the remaining balance would be disbursed "in a few weeks".

121. On February 27, 2008, Joyner caused an Amendment to Deed of Trust and Security Agreement to be recorded in Book 3023 at Page 147 of the Onslow County Registry, which purports to subject the Oceanaire property to the lien of BOA's Deed of Trust.

122. On February 29, 2008, Joyner caused an Amendment to Deed of Trust and Security Agreement to be recorded in Book 3415 at Page 113 of the Pender County Registry, which purports to subject the Oceanaire property to the lien of BOA's Deed of Trust.

123. Upon information and belief, Joyner funded the approximate sum of \$1.1 million to BOA as a payment of some sorts. Joyner never intended to fund any additional amounts to TP, nor continue in the joint venture that he had created, on behalf of BOA, with TP.

124. From and after February, 2008, Joyner would not communicate with Bryant and TP, despite repeated requests. The balance that was to be disbursed by him, of approximately \$2 million, was not disbursed.

125. Almost immediately thereafter, TP was contacted by individuals in BOA's "special asset" departments, and Joyner would no longer respond to inquiries from Bryant. TP and Bryant were continuously rebuffed and ignored by members of BOA's special assets department, when efforts were made to explain Bryant and TP's efforts to sell TP's inventory; and TP's plan for the disposition of the remaining inventory. Instead, BOA's "special asset" department, in a conscious and reckless disregard to the rights of TP as a member of the joint venture that Joyner had created, began incredibly aggressive collection efforts against Bryant and TP. Upon information and belief, this aggression was designed, at least in part, to cover up the conduct of Joyner.

126. In June, 2009, BOA commenced various foreclosure actions against the property of TP.

127. In order to generate cash flow, TP began renting the houses that Joyner directed be constructed, and both before and after the filing of its Petition in Bankruptcy, could utilize said rental proceeds to protect these properties, and provide "adequate protection" to BOA.

128. On or about July 7, 2009, BOA filed an action in the Superior Court Division of Pender County (09 CvS 755) against TP, Bryant and his wife, Deborah, and HP, Inc., another corporate owned and controlled by Bryant. BOA obtained ex parte Orders of attachment against TP and Bryant. BOA issued various notices of garnishment to TP's creditors and business associates.

129. By this point, Joyner and BOA had stripped TP and Bryant of its cash, and accordingly, neither was able to find and retain an attorney to represent them, especially any

attorney that understood the complexity of Joyner and BOA's conduct. Nevertheless, on August 10, 2009, TP filed a pro se Answer to BOA's Complaint, and a "Counterclaim" for "breach of implied covenant of good faith and fair dealing and petition for damages caused therefore..."

130. The State Court Action was pending at the time of the filing of the Debtor's Petition in Bankruptcy and upon information and belief, has not been removed to this Court. On March 11, 2010, BOA filed a "Suggestion of Bankruptcy" in the State Court action, and as of that date, TP's "Counterclaim" was pending in the Superior Court Division of Pender County.

131. This is a core proceeding under 28 U.S.C. §157(b)(2).

FIRST CLAIM FOR RELIEF
(Constructive Fraud)

132. TP incorporates herein by reference the allegations contained in paragraphs 1 through 131 as if fully set forth.

133. At all times material to this action, a relationship of trust and confidence existed between TP, BOA and Joyner, which existed by reason of the superiority of knowledge of Joyner and BOA versus that of TP, and therefore, the confidence reposed by TP in BOA and Joyner, and the resulting superiority and influence on the part of BOA and Joyner.

134. BOA and Joyner sought to and did benefit themselves in the transactions with TP, including compelling and/or influencing TP to purchase lots owned by Joyner, using monies advanced from TP's Line of Credit.

135. BOA and Joyner took advantage of their position of trust in order to benefit themselves. Both BOA and TP made substantial profits from the making of loans, the charging of interest and other fees, the extensions, modifications and renewals of TP's Line of Credit. In addition, Joyner and BOA benefitted from disbursements being made from TP's Line of Credit to purchase property owned by Joyner.

136. BOA and TP breached their duties to TP.

137. As a direct and proximate of BOA and Joyner's conduct and breaches of duty in taking advantage of the relationship of trust and confidence that existed with TP, TP has been injured, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

SECOND CLAIM FOR RELIEF

(Fraud)

138. TP incorporates herein by reference the allegations contained in paragraphs 1 through 137 as if fully set forth.

139. Joyner and BOA, at all times herein mentioned, had a duty to disclose material facts to TP that would have influenced TP's decision to enter into any Master Loan Agreements, Loan Modifications or provide BOA with any additional collateral and security.

140. Joyner and BOA's duty to disclose materials facts to TP arose by reason of the fiduciary relationship that existed between BOA, Joyner and TP.

141. Alternatively, BOA and Joyner took affirmative steps to conceal material facts from TP.

142. Specifically, Joyner and BOA had a duty to disclose to TP the risks which TP had in entering into the ever increasing Line of Credit provided by BOA. Both Joyner and BOA were possessed of information that they knew TP did not know, and which information TP relied upon BOA and Joyner to provide.

143. Joyner had a duty to inform TP about the sums that both BOA and Joyner were earning from their conduct involving the Line of Credit, and would continue to earn, by reason of the substantial interest income which BOA earned by reason of the provision of the Line of Credit.

144. Joyner and BOA had a duty to disclose to TP knowledge that BOA and Joyner

had, from 2006 on, regarding the continued downturn of the economy and the outlook for the housing industry, which downturn greatly impacted TP's Business Plan which Joyner, on TP's behalf, controlled, and therefore, placed TP at great risk.

145. Joyner and BOA did not disclose, in 2006 and beyond, the studies and analysis undertaken by BOA that showed a nationwide decline in the housing market; an increase in the number of mortgage loan defaults; increasing interest rates; and the fragility of the financial markets, all of which would have an effect upon the Business Plan that Joyner had created for TP, and that placed TP at great financial risk.

146. Joyner represented to TP in 2007 that he was familiar with the trends of the real estate market, and that the "high end market" of residential real estate construction was profitable, that Joyner was familiar with that market, and that TP should revise its Business Plan accordingly.

147. Joyner represented to TP in 2007 that the high end real estate market in and around Charlotte was "hot", and that TP should begin construction in that market.

148. Joyner represented to TP in 2007 that he had undertaken an analysis of the market in Onslow and Pender County, and instead of building a house or two at a time, it would be a better idea to construct more than 20 homes in the Onslow/Pender County areas at the same time, a strategy that Joyner indicated would save TP money.

149. Joyner failed to disclose to TP that Joyner had not underwritten TP's Line of Credit in accordance with BOA's own lending policies.

150. Joyner knew that TP could never repay any sums under the Line of Credit without a sale of the property acquired and constructed by TP. Joyner failed to disclose to TP that BOA would not permit the Line of Credit to be extended until the property was sold by TP, and that BOA would therefore attempt to acquire title to all of TP's property.

151. In February, 2008, when Joyner induced TP to provide BOA with additional collateral, namely, the Oceanaire subdivision, Joyner informed TP and Bryant that TP intended to extend additional monies to TP. Upon information and belief, neither Joyner nor BOA intended to disburse any additional funds to TP at the time said representations were made.

152. In 2007 and 2008, after Joyner's Business Plan for TP had failed, Joyner informed TP that it had BOA's permission to lease the homes that could not sell. Upon information and belief, the rental income from these homes will sustain TP's ability to provide such adequate protection to BOA and others as the Court might deem appropriate.

153. Joyner made false representations and/or concealments of a past or existing material fact. Joyner affirmatively represented to TP, from 2002 to 2008, during the numerous meetings and discussions between Joyner and TP, that Joyner had substantial real estate experience and expertise, and that BOA had studied real estate market trends that would be applied in the handling of TP's finances.

154. The representations, conduct and concealments of Joyner and BOA were reasonably calculated to deceive, and were made with the intent to deceive TP.

155. TP was in fact deceived by the conduct, representations, and concealments of Joyner and BOA.

156. TP relied on the representations and concealments on the part of Joyner and BOA, and TP's reliance on the same was reasonable, under the circumstances.

157. BOA and Joyner, by February, 2008, knew or reasonably should have known that they had fraudulently prolonged the corporate life of TP, resulting in the deepening insolvency of TP.

158. BOA and Joyner caused TP to remain in business while accumulating substantial debt to BOA, to the benefit of both BOA and Joyner, while injuring TP and its unsecured

creditors.

159. The additional incurrence of debt via Joyner's increases in TP's Line of Credit, coupled with BOA and Joyner's successful efforts, through their false representations and nondisclosures, of securing the Line of Credit with other unencumbered property owned by TP, made a salvageable situation impossible, necessitating TP having to liquidate everything that it owns in order to pay debt created by Joyner and BOA. Joyner and BOA were the cause of TP's increasing insolvency.

160. As a direct and proximate cause of the conduct, representations and concealments on the part of Joyner and BOA, TP has been injured; its debt has been increased; equity has been stripped; and TP is therefore entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

THIRD CLAIM FOR RELIEF

(Fraud in the Inducement)

161. TP incorporates herein by reference the allegations contained in paragraphs 1 through 160 as if fully set forth.

162. BOA and Joyner made false representations or concealments of material fact.

163. The false representations and concealments on the part of Joyner and BOA were reasonably calculated to deceive, and made with the intent to deceive.

164. TP was in fact deceived.

165. Joyner and BOA made these representations intended to deceive TP, or made them recklessly without knowledge of the truth intending to deceive TP.

166. TP reasonably relied on the representations of Joyner and BOA and acted upon them in determining whether to enter into the various documents evidencing the Line of Credit.

167. Due to the existence of fraud, induced by Joyner and BOA, to the detriment of

TP, the various instruments executed by TP lack mutuality and/or there exists a failure of consideration, and are therefore unenforceable as against TP.

168. By reason of the fraud of Joyner and BOA, TP executed the various documents, referenced above, and TP has been damaged, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

FOURTH CLAIM FOR RELIEF

(Rescission – Fraud)

169. TP incorporates herein by reference the allegations contained in paragraphs 1 through 168 as if fully set forth.

170. By reason of the false and fraudulent representations and concealments on the part of Joyner and BOA, TP is entitled to rescind any agreement that it executed with BOA.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

171. TP incorporates herein by reference the allegations contained in paragraphs 1 through 170 as if fully set forth.

172. At all times material to this action, a relationship of trust and confidence existed between TP, BOA and Joyner, which existed by reason of the superiority of knowledge of Joyner and BOA versus that of TP, and therefore, the confidence reposed by TP in BOA and Joyner, and the resulting superiority and influence on the part of BOA and Joyner.

173. A fiduciary relationship existed between BOA, Joyner and TP.

174. TP reposed a special confidence in Joyner and BOA who, in equity and good conscience, was bound to act in good faith and with due regard to the interests of TP.

175. Joyner and BOA had an obligation to act in a reasonable manner as to the

property of TP, so as not to cause injury to TP.

176. Joyner and BOA took advantage of TP's reliance that Joyner and BOA would further TP's interests thereby breaching their fiduciary duties.

177. Joyner and BOA had a duty of loyalty to TP, and a duty to exercise reasonable care, skill and diligence, and a duty to make a full and truthful disclosure to TP of all facts known to them, or discoverable with reasonable diligence, that were likely to affect TP's decisions relating to its relationship with Joyner and BOA, including the execution of any loan and security documents.

178. By reason of the various breaches of fiduciary duties on the part of BOA and Joyner, TP has been damaged, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

FIFTH CLAIM FOR RELIEF

(Negligence)

179. TP incorporates herein by reference the allegations contained in paragraphs 1 through 178 as if fully set forth.

180. Joyner and BOA interposed themselves in the business of TP.

181. At the time that Joyner and BOA interposed themselves in the business of TP, from and after 2003, TP did not need Joyner and BOA's direction, as TP had already successfully developed its own Business Plan.

182. The actions of Joyner and BOA were designed, in large part, to benefit Joyner and BOA.

183. Joyner and BOA benefited from their actions.

184. Joyner and BOA owed a duty to TP.

185. Joyner and BOA were negligent, and breached that duty, in that:

- a. They failed to act with reasonable skill, care and diligence.
- b. They failed to exercise the care that a reasonable lender would exercise under similar circumstances, including applying sound lending practices.
- c. They interposed themselves into the business of TP.
- d. They subjected TP to the payment of debt beyond TP's ability to repay.
- e. They exercised undue control over the business of TP.
- f. They dominated and directed the conduct of TP.
- g. They changed TP's Business Plan.
- h. They caused TP to begin the construction of housing units in an economy that they knew would not absorb the construction of these housing units at the prices reflected in appraisals obtained by BOA and Joyner;
- i. They exercised undue control over the appraisal process.
- j. They failed to follow lending guidelines in underwriting any Line of Credit provided to TP.
- k. They failed to properly underwrite the Line of Credit made to TP.
- l. They established sales prices for property that was beyond the ability of the market to absorb.
- m. They failed to accept sales prices for property that was within the ability of the market to absorb.
- n. They subjected TP to additional debt at a time when it was unreasonable for TP to do so.
- o. They failed to possess and exercise that degree of knowledge and skill which others in their profession and business situated throughout the United States would ordinarily possess and exercise;

- p. They failed to exercise and use their best judgment in the best interests of TP;
- q. They failed to exercise and use their best judgment in the utilization of the knowledge and skill which they possessed or reasonably should have possessed;
- r. They exercised control over TP beyond that necessary to insure repayment of any sums advanced, by increasing the Line of Credit.
- s. They exercised actual, participatory, and by reason of its control over the Line of Credit, total control over the affairs of TP to such an extent that TP was the mere instrumentality of Joyner and BOA, such that TP had no separate existence;
- t. They exercised such control and influence over the affairs of TP such as to make BOA and Joyner an “insider” and principal as to any of TP’s obligations;
- u. They stripped, or attempted to strip, equity from TP’s property, by creating a Line of Credit for TP based upon the value of an asset securing the Line of Credit, for which BOA obtained the appraisal, rather than TP’s ability to repay.
- v. They issued a Line of Credit to TP that was destined to fail, thereby giving BOA and Joyner incentive, beyond the substantial incentives and profit they had already derived, to acquire all of TP’s property through default.
- w. They advanced monies from TP’s Line of Credit that were not in TP’s best interests;
- x. They failed to properly administer TP’s Line of Credit.
- y. They interfered with TP’s rights to have its affairs managed by competent

directors and officers who would maintain a high degree of undivided loyalty to TP;

- z. They interfered with TP's contractual relationships;
- aa. They were negligent in other ways to be shown at the trial of this matter after completion of discovery

186. TP did not ultimately benefit from the actions of Joyner and BOA. Through the actions of Joyner and BOA, TP has been stripped of all of its cash assets; pledged its property to BOA in furtherance of Joyner and BOA's Business Plan that was otherwise unencumbered; and has no ability to liquidate the homes that BOA caused to be constructed with BOA's consent (which it has declined to give); and now faces a demand from BOA, who together with Joyner earned substantial sums from their conduct, to repay monies that BOA and Joyner advanced, pursuant to the Business Plan created by Joyner.

187. As a direct and proximate result of the negligence of Joyner and BOA, TP has been damaged, all of which was reasonably foreseeable by BOA and Joyner, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

188. TP incorporates herein by reference the allegations contained in paragraphs 1 through 187 as if fully set forth.

189. BOA and Joyner had a duty to exercise reasonable care or competence in obtaining or communicating information to TP, who they knew would rely on information supplied by BOA and Joyner.

190. In the course of their business, BOA and Joyner supplied information to TP and

intended for TP to rely on that information for its guidance or benefit.

191. BOA and Joyner made material misrepresentations or failed to exercise due care with they made material misrepresentations to TP, all as set forth above.

192. TP actually relied on the false information supplied by BOA and Joyner, and TP's reliance was justifiable, under the circumstances.

193. As a direct and proximate result of the negligent misrepresentations of Joyner and BOA, TP has been damaged, all of which was reasonably foreseeable by BOA and Joyner, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

SEVENTH CLAIM FOR RELIEF

(Tortious Interference With Contractual Relationships and Business Opportunities)

194. TP incorporates herein by reference the allegations contained in paragraphs 1 through 193 as if fully set forth.

195. At all times material to this action, TP had the right to be managed by an independent Board of Directors and Officers, free from the conflicts created by BOA and Joyner with the creation of its Business Plan and the Line of Credit which generated substantial profits for both BOA and Joyner.

196. By reason of the control exercised by Joyner and BOA, TP was not managed by an independent board of directors, but was managed by Joyner and BOA. Joyner and BOA therefore interfered, without lawful justification, in the Business Plan and business opportunities of TP.

197. BOA and Joyner knew or reasonably should have known of valid contracts between TP and other unsecured creditors, payment of which depended upon TP's ability to sell the property and homes constructed thereon pursuant to the Business Plan created by Joyner.

198. BOA and Joyner knew or reasonably should have known of valid offers that TP obtained to purchase some of the homes constructed pursuant to the Business Plan created by Joyner, and that each of these offers were time sensitive, and required a prompt response.

199. BOA and Joyner knew or reasonably should have known that there were obligations associated with property owned by TP and otherwise unencumbered by the lien of any Deed of Trust to BOA.

200. Joyner and BOA stripped TP of all of its financing, despite its assurances that the financing needed by TP would be provided. As a result, TP was forced to either abandon projects, for which it had already incurred obligations, or sell property/houses that it could not complete, at substantial losses.

201. Joyner and BOA acted without justification.

202. As a direct and proximate result of Joyner and BOA's tortious interference with TP's contractual and business relationships, TP has been damaged, all of which was reasonably foreseeable by BOA and Joyner, and is entitled to recover a sum from BOA and Joyner, jointly and severally, in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from the conduct of both BOA and Joyner.

EIGHTH CLAIM FOR RELIEF

(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)

203. TP incorporates herein by reference the allegations contained in paragraphs 1 through 202 as if fully set forth.

204. Upon information and belief, one or more valid contracts, including the Master Loan Agreement, loan commitments and security/collateral agreements, with respect to both real and personal property, between TP and BOA, authorized by Joyner within the course and scope of his employment with BOA.

205. BOA breached its contracts with TP, by failing to comply with the obligations

imposed upon it with respect to the funding, administration, disbursement and renewal of the Line of Credit.

206. TP performed every obligation under every contract with BOA that it was capable of performing. Any alleged default by TP, as alleged by BOA, was orchestrated by BOA, who knew, at all times material to this action, that TP could not repay any sums advanced by BOA without a sale of the property that BOA funded the purchase and construction of.

207. An implied term in every contract between TP and BOA was that BOA and Joyner act in good faith and deal fairly with TP. Both BOA and Joyner were expected to act as any experienced lender would do in the same situation and not undertake action that would harm TP.

208. Furthermore, there is an implied covenant in every contract between TP and BOA that neither party would do anything which injures the right of the other to receive the benefits of the agreement.

209. BOA and Joyner acted in bad faith, as more particularly set forth above.

210. BOA and Joyner did not deal fairly with TP, as more particularly set forth above.

211. BOA breached its contracts with TP.

212. As a direct and proximate result of BOA's breach, TP has been damaged, and such damages were reasonably within the contemplation of the parties at the time that any contract was made, and is entitled to recover a sum from BOA in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including compensatory and special damages, resulting from BOA's breach.

NINTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

213. TP incorporates herein by reference the allegations contained in paragraphs 1 through 212 as if fully set forth.

214. The actions and conduct of BOA and Joyner, delineated above, constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of N.C.G.S. §75-1.1.

215. TP's claims for unfair and deceptive trade practices include each of the allegations set forth above, and also include, but are not limited to:

- a. Their actions, who offend established public policy, federal and state banking laws, are immoral, predatory, oppressive, unscrupulous and/or substantially injurious to consumers;
- b. Their failures to act as a prudent lender would act;
- c. Their fraud and/or deceptive conduct, detailed above, which included the intentional misrepresentation and concealment of material facts.

216. As a direct and proximate result of the conduct of BOA and Joyner, TP is entitled to recover from BOA and Joyner, jointly and severally, an amount in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), to recover treble damages pursuant to N.C.G.S. §75-16, and to recover reasonable attorney's fees, as provided in N.C.G.S. §75-16.1.

TENTH CLAIM FOR RELIEF
(Alter Ego/Insider Liability)

217. TP incorporates herein by reference the allegations contained in paragraphs 1 through 216 as if fully set forth.

218. Joyner and BOA, at all times material to this action, exercised domination and control over the activities of TP.

219. The domination and control exercised by Joyner and BOA was so pervasive that TP became a "mere instrumentality" of BOA and Joyner.

220. Given that BOA and Joyner were the exclusive source of financing for TP, their control over TP was total, to the extent that TP manifested no separate corporate interest of its own and functioned solely to achieve the purposes of BOA and Joyner, as the only ones that

could ever profit from this conduct under the circumstances.

221. BOA and Joyner used their control over TP to commit fraud and to bring about an unjust result, a nonexclusive list of which includes:

- a. increasing TP's Line of Credit beyond its ability to repay;
- b. earning substantial sums for themselves;
- c. disbursing funds from the Line of Credit to purchase property owned by Joyner;
- d. "requesting", at a time when TP owed BOA millions of dollars, with short maturity dates, TP to purchase property owned by Joyner;
- e. recommending, approving, and disbursing the necessary funds for the construction of housing units that both BOA and Joyner knew, or reasonably should have known, could not be sold for the amounts necessary to satisfy any debt that BOA claimed as being due;
- f. refusing to accept reasonable offers to sell housing units, and therefore, reduce the debt to BOA, while continuing to charge interest on the Line of Credit, and upon information and belief, continuing to reap profits from that conduct;
- g. obtaining, through fraud, additional collateral on the Line of Credit consisting of other unencumbered property owned by TP, and thereafter, refusing to comply with its commitment, and immediately undertaking aggressive actions to collect sums under the Line of Credit, including interest that continued to accrue.

222. BOA and Joyner's conduct goes beyond the exercise of normal commercial rights and remedies.

223. The conduct of BOA and Joyner has disadvantaged TP and its other creditors, to

the preference of BOA.

224. BOA is an insider pursuant to the provisions of 11 USC §101(31)(B).

225. Joyner and BOA exercised financial power over the affairs of TP.

226. As a direct and proximate result of the conduct of BOA and Joyner, BOA and Joyner are liable for the debts and obligations of TP; TP is entitled to rescind any debt obligations and any related security documents claimed by BOA; is entitled to recoup sums paid by TP to BOA; and TP is entitled to recover from BOA and Joyner, jointly and severally, an amount in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00),

ELEVENTH CLAIM FOR RELIEF
(Equitable Subordination/Recharacterization)

227. TP incorporates herein by reference the allegations contained in paragraphs 1 through 226 as if fully set forth.

228. By reason of its conduct, and the conduct of its agent Joyner, which conduct injured TP and its other creditors, pursuant to the provisions of 11 USC §510(c)(1), any net sums due BOA (the existence of which being specifically denied by TP) should be subordinated to the claims of any other creditor of TP.

229. Alternatively, the Court should recharacterize any debt claimed by BOA (the existence of which being specifically denied) as equity and a capital investment, rather than as a loan or Line of Credit.

230. At the time that the Line of Credit was increased by Joyner and BOA, TP became undercapitalized, relative to its other debts and obligations.

231. By recharacterizing any debt claimed by BOA as equity and a capital investment in TP, this Court can assure that BOA and Joyner do not continue to profit from its unlawful conduct.

WHEREFORE, the Debtor prays unto the Court as follows:

1. That the Debtor have and recover judgment against BOA and Joyner in an amount in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00).
2. That any damages awarded to the Debtor be trebled, pursuant to N.C.G.S. §75-16, and that the Debtor recover its reasonable attorney's fees, as provided in N.C.G.S. §75-16..
3. That the Court enter an Order rescinding, modifying, subordinating recharacterizing and/or reclassifying any claimed debt from Bank of America.
4. That to the extent that any of the Debtor's claims, set forth above, are not considered to be a part of the "claims administration" process, that the Debtor have a trial by jury on all issues so triable.
5. That the costs of this proceeding be taxed by the Court against the Defendants, jointly and severally.
6. For such other and further relief as to the Court seems just and proper.

This the 31st day of March, 2011.

SHIPMAN & WRIGHT, L.L.P.

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