

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EFFINGHAM JAMES ,

Docket No. 05 CV 2593  
(TCP)(AKT)

Plaintiff,

- against -

ODRA N. ARANGO, FFFC f/n/o FIRST FRANKLIN  
FINANCIAL GROUP, NATIONAL CITY HOME LOAN  
SERVICES INC., A&A GLOBAL RESOURCES INC.,  
aka GLOBAL RESOURCES LTD., ANN ALVAREZ,  
ALFRED MILLS, DISCOUNT FUNDING  
ASSOCIATES, WALLY DUVAL, and CHARLES  
LIECHTUNG a.k.a CHAIM LIECHTUNG,

**AFFIDAVIT OF MERIT**

Defendants. X

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STATE OF CALIFORNIA )  
 ) ss.:  
COUNTY OF )

VIVIAN HANSEN, being duly sworn deposes and says:

1. I am the Litigation Manager for the Legal Risk Department of First Franklin Financial Corporation, named herein as FFFC f/n/o First Franklin Financial Group ("FFFC"), one of the defendants in this action. I am fully familiar with the facts stated herein and with the circumstances of this action from my own knowledge and from documents relating to this matter that are in my custody and control.<sup>1</sup>

**BACKGROUND FACTS**

2. Upon information and belief, by contract of sale dated May 15, 2002 between the plaintiff Effingham James ("James") and the defendant Odra N. Arango ("Arango"), Arango

<sup>1</sup> Reference is made throughout this Affidavit to documents annexed to the Declaration of Timothy J. Fierst, Esq. dated June 16, 2006, which will be referred to as "the Fierst Decl." Additionally, various entries within the Court's docket in this action will be referred to as "the Court's Dkt." with the specific numeric entry thereafter.

agreed to purchase and James agreed to sell the premises and real property located at 119-47 166th Street, Jamaica, New York (the "Premises"). *See* Ex. A to the Fierst Decl.

3. On or about May 29, 2002, FFFC, at the request of the defendant Odra N. Arango ("Arango"), loaned to Arango the principal amounts of One Hundred Ninety Six Thousand Dollars and 00/100 Cents (\$196,000.00) (the "First Loan") and Forty Nine Thousand Dollars and 00/100 Cents (\$49,000.00) (the "Second Loan").

4. In connection with the First Loan and the Second Loan, Arango executed in favor of, and delivered to, FFFC an Adjustable Rate Note (the "\$196,000.00 Note") and a Note (the "\$49,000.00 Note") each dated May 29, 2002. *See* Ex. B to the Fierst Decl.

5. The \$196,000.00 Note is secured by a Mortgage executed by Arango and delivered to FFFC dated May 29, 2002 (the "\$196,000.00 Mortgage"). *See* Ex. C to the Fierst Decl. The \$49,000.00 Note is secured by a Mortgage executed by Arango and delivered to FFFC dated May 29, 2002 (the "\$49,000.00 Mortgage") (collectively, the "Mortgages"). *See* Ex. D to the Fierst Decl.

6. The applications for the Mortgages were prepared and submitted to FFFC by a mortgage broker, the defendants Discount Funding Associates and Alfred Mills. The applications for the Mortgages indicate that Arango was purchasing the Premises as her primary residence.

7. The Mortgages provide FFFC with a security interest and lien upon the Premises

8. By Corporate Assignment of Mortgage dated September 4, 2003, FFFC assigned the \$196,000.00 Mortgage to the defendant National City Home Loan Services, Inc. ("National City").

9. The closing of the sale of the Premises between James and Arango took place on May 29, 2002, and the net proceeds from the Mortgages was disbursed on May 30, 2002. At the closing, the sum of \$156,481.01 from the proceeds of the \$196,000.00 Mortgage was paid on behalf of James to Countrywide in order to satisfy a mortgage upon the Premises which James delivered to Countrywide and which, upon information and belief, was in foreclosure.

10. At the time of the origination and closing of the Mortgages, there was no indication given by either James or Arango that the transaction was anything other than an arms length sale of the Premises between James and Arango.

11. The proceeds of the Mortgages were distributed in accord with the instructions provided by both James and Arango. In fact, the HUD-1 Settlement Statements summarizing the manner in which the proceeds of the Mortgages were disbursed were approved and executed by James and Arango. *See Ex. E to the Fierst Decl.*

12. Further, all commissions paid at the closing of the Mortgages were authorized by a signed commission agreement from James. *See Ex. F to the Fierst Decl.*

13. Payments pursuant to the \$196,000.00 Mortgage were made by Arango, however it is currently in default. Additionally, the \$49,000.00 Mortgage is also delinquent. As a result of Arango's failure to make payments when due pursuant to the \$196,000.00 Mortgage, a mortgage foreclosure action was commenced by National City in the Supreme Court of the State of New York in and for Queens County on or about October 15, 2003 under index number 24366/03 (the "Foreclosure Action").

14. The Foreclosure Action was commenced against Arango and FFFC as the holder of a subordinate lien, *i.e.*, the \$49,000.00 Mortgage. Thereafter, James was permitted to

intervene in the Foreclosure Action. The Foreclosure Action remains pending in the Supreme Court.

15. On or about April 27, 2004, James commenced an action in the New York State Supreme Court in and for the County of Queens under index number 9644/04 seeking judgment voiding the sale of the Premises to Arango and voiding the Mortgages (the "Related Action"). *See* Ex. G to the Fierst Decl. The Related Action remains pending in the Supreme Court.

16. Thereafter, James commenced this action on May 27, 2005 seeking the same relief as that which is demanded in the Related Action. *See* Court's Dkt. #1.

17. On July 18, 2005, FFFC and National City filed its answer to this action. *See* Court's Dkt. #3.

18. By order of the Honorable Thomas C. Platt dated December 15, 2005, the complaint filed in this action on May 27, 2005 was dismissed and James was given fifty (50) days within which to file an amended complaint. *See* Court's Dkt. # 16.

19. The amended complaint was filed on February 4, 2006, the fifty-first (51st) day and is thus untimely and should be dismissed. A copy of the amended complaint is annexed as Ex. H to the Fierst Decl.

20. I respectfully refer the Court to the declaration of Timothy J. Fierst, Esq., the attorney for FFFC and National City, also submitted in connection with this matter, for the remaining facts and circumstances regarding the response time, if any, required for the amended complaint, the contents of which I incorporate herewith.

**A. Prior Proceedings and Testimony**

21. In the amended complaint, James alleges that there is an "alliance between the defendants Alfred Mills, Ann Alvarez, Discount Funding, AAGR, Charles Liechtung and FFFC. *See* ¶¶ 51-52 to Ex. H to the Fierst Decl.

22. Moreover, James alleges that monies disbursed at the closing of the Mortgages were a "kickback" to FFFC. *See* ¶¶ 64-67 to Ex. H to the Fierst Decl.

23. All of the allegations made by James within the amended complaint, filed on February 4, 2006, are false and misleading, and in fact, are contradicted by the testimony provided by me on September 27, 2005 in a deposition conducted in the Related Action. Counsel for James conducted that deposition.

24. First and foremost, the only relationship between FFFC and National City is that they are both operating subsidiary corporations of National City Corporation. FFFC originates loans and National City owns and services loans. FFFC does not service loans once they are originated.

25. Discount Funding is merely a mortgage broker. The Defendant Alfred Mills, through Discount Funding prepared the application package for the Mortgages and submitted the package to FFFC. The knowledge that FFFC has regarding the origination of the Mortgages came through the documentation submitted by Discount Funding and Alfred Mills.

26. Moreover, FFFC does not do business with AAGR or A&A Global Resources. FFFC does not know who they are. This entity was merely mentioned in the contract of sale, Exhibit A to the Fierst Decl.

27. At no time was FFFC advised by Arango, Discount Funding or Alfred Mills that the Premises was allegedly part of a "sale-leaseback" scheme. In fact, the application submitted by Arango indicates that the purchase of the Premises was for her primary residence.

28. If FFFC was aware that the sale of the Premises was part of a "sale-leaseback," FFFC would not have originated the Mortgages. As a matter of course, FFC would not fund loans involving such a "program."

29. FFFC has no dealings with the defendant Ann Alvarez, and is only aware of her through this pending litigation.

30. The \$196,000.00 Mortgage was sold and assigned to National City on June 7, 2002. The formal assignment therefor was executed on September 4, 2003. At that time, there was no indication that anyone, including James, was raising any issue with regard to the validity of the Mortgages. Any alleged investigation by the office of the New York State Attorney General into the business practices of AAGR were not public record nor were they brought to the attention of FFFC.

31. Our systems clearly indicate that a wire transfer was forwarded by National City to FFFC for the purchase of the \$196,000.00 Mortgage as part of a bulk purchase within the secondary mortgage market.

32. My review of the loan origination documents clearly shows that there was no question that the transaction in issue was an arms length sale of the Premises. There are no documents or any notations that the sale was anything to the contrary. Further, James clearly authorized the disbursement of the funds at the closing and executed the commission agreement. *See Ex. F to the Fierst Decl.* Indeed, James approved the disbursements of the closing proceeds. *See Ex. E to the Fierst Decl.*

33. All of these facts are clearly contained within the transcript of my deposition taken on September 27, 2005 within the Related Action. For James and his attorney to allege otherwise is clearly specious.

34. In light of the fact that FFFC does not know either Ann Alvarez or AAGR, and the fact that the Arango loan application was submitted through the defendant Discount Funding and Alfred Mills, it is clear that FFFC who has been defrauded.

35. Any funds paid to the defendant Liechtung as settlement agent are reasonable and customary funds associated with a closing. The payment of \$750.00 in connection with a bank closing is by no means a "kick back" as James alleges. See ¶ 98 to Ex. H to the Fierst Decl.

36. Indeed, FFFC acts upon the documents submitted to it in order to originate a mortgage loan. Neither FFFC nor National City can be charged with knowledge of any "side agreements" or participation with the activities of others with other motives.

37. The closing attorneys are chosen by the mortgage brokers who are in contact with the borrower, which is dependent upon locale and availability. Contrary to the assertion by James, FFFC does not "ensure" or require certain settlement agents to be named.

36. Clearly, the documents speak for themselves.

37. Contrary to the assertions made by James, any disbursements of loan proceeds are based upon the approval of the sellers and borrowers. Such approval is indicated by their signature on the final HUD-1 Settlement Statement. Moreover, at the time of the assignment of the \$196,000.00 Mortgage to National City, there was no knowledge or notice of any issue regarding fraud with respect to the origination of the loans. See ¶¶ 100-101; 114 to Ex. H to the Fierst Decl.

38. Further, FFFC and National City are not "sister corporations." See ¶ 102 to Ex. H to the Fierst Decl. FFFC and National City are independent subsidiary corporations of National City Corporation. FFFC originates loans and National City owns and services the loans. Thus, there is no "special relationship" as speciously asserted by James.

39. FFFC is an innocent party to this transaction. Loan applications are submitted through a mortgage broker. As indicated within the Fierst Declaration, Arango clearly states that she did not advise FFFC that the transaction involved a sale-leaseback. Additionally, as set forth in the Fierst Declaration, Liechtung testified that had such an issue arisen at the closing, the closing would not have proceeded.

40. All loans originated by FFFC are based upon documents submitted by the mortgage broker. In the event that the documents indicate that the transaction is one involving a sale-leaseback, straw purchaser or "churning," FFFC would not approve the financing. FFFC is neither in business nor do they have a relationship with AAGR, Alfred Mills, Wally Duval, Discount Funding or any other of the "conspirators" referred to by James, and any conduct on their part is clearly intentional and without the knowledge or consent of FFFC.

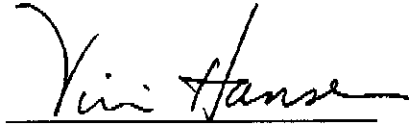
### CONCLUSION

41. It is submitted that FFFC is clearly an innocent party to these transactions. FFFC neither engages in nor condones intentional acts on the part of the other defendants.

42. The Mortgages and any financing originated by FFFC are based upon documents furnished by a mortgage broker. Clearly, agreements outside of the documents submitted to FFFC to which FFFC are not privy are not chargeable to FFFC. Loan proceeds are disbursed with the agreement of the borrower and seller as evidenced by their signatures on the final HUD-1 Settlement Statements.



43. Therefore, it is respectfully requested that FFFC and National City's application be granted in its entirety.



VIVIAN HANSEN

Sworn to before me this  
15<sup>th</sup> day of June 2006

  
Notary Public