UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

PGP INVESTMENTS, LLC **PLAINTIFF,**

VS. **Case No.** 3:09CV042-M-A

REGIONS BANK and
REGIONS FINANCIAL CORPORATION, **DEFENDANTS.**

COMPLAINT

PGP Investments, LLC, by and through counsel, hereby files this Complaint against Regions Bank and Regions Financial Corporation, and alleges as follows:

Parties

1.

PGP Investments, LLC is a Mississippi limited liability company existing under the laws of the State of Mississippi.

2.

Regions Bank is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 1900 Fifth Avenue North, Birmingham, AL, 35203. Regions Bank may be served with process by service on its agent for service of process CSC of Rankin County, Inc., Mirror Lake Plaza, 2829 Lakeland Drive, Suite 1502, Flowood, MS 39232.

3.

Regions Financial Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1900 Fifth Avenue North, Birmingham, AL, 35203. Regions Financial Corporation may be served with process by service on its agent for service of process CSC of Rankin County, Inc., Mirror Lake Plaza, 2829 Lakeland Drive, Suite 1502, Flowood, MS 39232. Regions Bank and Regions Financial Corporation are hereinafter collectively referred to as "Defendants."

Jurisdiction and Venue

4.

Defendants conduct business in Mississippi and this Court has personal jurisdiction over Defendants.

5.

There is complete diversity of citizenship between Plaintiff and Defendants pursuant to 28 U.S.C. § 1332, and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs. Accordingly, this Court has subject matter jurisdiction over this civil action.

6.

Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because Defendants regularly conduct business in the jurisdictional area encompassed by the United States District Court for the Northern District of Mississippi, Western Division, and because a substantial part of the events giving rise to this Complaint occurred in said District.

Facts

7.

Plaintiff sought financing for the purchase of certain real property and the construction of a commercial office building to be constructed at 1105 Harlan Drive, Oxford, MS (hereinafter referred to as "the project"). Plaintiff communicated with representatives of numerous lending institutions regarding financing for the project, including Defendants. Members of Plaintiff had a course of dealings with Defendants.

8.

Plaintiff required certain terms for financing of the project, including an interest rate to be fixed for fifteen (15) years. Plaintiff expressed those specific requirements to various lenders in seeking offers for financing, including Defendants. Multiple lenders were able to satisfy these requirements, including Defendants.

9.

Defendants specifically promised to out-bid the other lenders and specifically marketing their alleged abilities to loan Plaintiff money on terms and services not otherwise available to Plaintiff. Defendants further specifically promised that they could offer "better" terms to Plaintiff than other local and regional lenders. Defendants also expressed a specific desire for the substantial deposits of Plaintiff and its members.

10.

Defendants initially offered Plaintiff financing for the project at an interest rate of 5.35%, fixed for fifteen (15) years. After being informed that its offered interest rate was not the lowest rate that Plaintiff had been offered, a representative of Defendants asked for another opportunity to discuss the terms of the offered financing with his supervisor(s). Defendants' representative then offered Plaintiff financing for the project at an interest rate of 4.85%, fixed for fifteen (15) years. This offer was conditioned upon Plaintiff purchasing 50 "basis points" for $5,000. Another condition of the offer was that Plaintiff was to move certain accounts and deposits to Defendants' banks.

11.

Plaintiff and the Defendants' representative then specifically discussed the fact that rates could continue to fall. Plaintiff and Defendants' representative mutually acknowledged that Plaintiff's risk was that interest rates would continue to fall while Defendants' risk was that rates would subsequently increase.

12.

In reliance upon Defendants' representations, Plaintiff agreed to purchase the basis points, agreed to transfer its deposits to Defendants, and accepted Defendants' offer to loan Plaintiff money at an interest rate of 4.85% fixed for fifteen (15) years. Plaintiff then declined other lenders' offers for financing after accepting Defendants' offer.

13.

Plaintiff then went forward with the project during 2008 in reliance upon Defendants' agreements for permanent financing under the above-stated terms. Plaintiff's actions taken in reliance upon Defendants' promises included but were not limited to the following: (1) Plaintiff rejected other lenders' offers for financing at interest rates fixed for fifteen years; (2) Plaintiff halted all efforts to pursue financing from other lenders; and (3) one or more members of Plaintiff took all necessary steps to move their personal and/or business accounts from other banks to Defendants' bank.

14.

Defendants subsequently reneged on their promises to provide Plaintiff permanent financing pursuant to the terms previously agreed upon. Upon learning of Defendants' breach, Plaintiff was unable to secure permanent financing from other lenders under similar terms. Therefore, Plaintiff's reliance upon Defendants' agreements was detrimental.

15.

At all times pertinent, Defendants had an incentive compensation plan that rewards Defendants and their representatives for loan volume. Therefore, Defendants and their representatives were financially incentivized by bonuses and were therefore financially motivated to acquire Plaintiff as a borrower.

16.

Defendants similarly reneged on agreements with other customers, such that they had a pattern and practice of this conduct.

17.

One of Defendants' stated reasons for reneging on their agreement was based on the change in the financial markets in 2008, at all times pertinent to the subject agreement. Defendants, acting in their own financial best interests, acted in bad faith and tortiously breached their contract with Plaintiff.

Count I – Breach of Contract

18.

The foregoing paragraphs are incorporated herein as if fully restated.

19.

A valid and binding contract existed between Plaintiff and Defendants, as the parties entered into a contractual relationship by virtue of the fact that Plaintiff sought financing and Defendants agreed to provide said financing. More specifically, Defendants offered financing to Plaintiff under certain terms and conditions, and Plaintiff accepted Defendants' offer. By and through Defendants' conduct described herein, Defendants breached their contractual obligations with Plaintiff and caused Plaintiff to suffer damages.

Count II – Bad Faith and Tortious Breach of Contract

20.

The foregoing paragraphs are incorporated herein as if fully restated.

21.

As described herein, a valid and binding contract existed between Plaintiff and Defendants. Defendants breached its contractual obligations with Plaintiff and caused Plaintiff to suffer damages. Defendants' breach resulted from an intentional wrong, insult and/or abuse by Defendants, was conducted in bad faith, and exhibited malice and a gross and reckless disregard for the rights of Plaintiff.

22.

Defendants' breach of contract rises to the level of an independent tort and punitive damages are appropriate in light of Defendants' extreme conduct, so as to discourage similar conduct.

Count III – Breach of Duties of Good Faith and Fair Dealing

23.

The foregoing paragraphs are incorporated herein as if fully restated.

24.

As described herein, a valid and binding contract existed between Plaintiff and Defendants. By entering into this contractual relationship, Defendants became imposed with contractual and other duties to Plaintiff, including the duties of good faith and fair dealing.

25.

By and through Defendants' conduct described herein, Defendants breached its duties of good faith and fair dealing, which caused Plaintiff to suffer damages.

Count IV – Breach of Fiduciary Duties

26.

The foregoing paragraphs are incorporated herein as if fully restated.

27.

Based on the facts described herein, a fiduciary relationship existed between Plaintiff and Defendants.

28.

By and through Defendants' conduct described herein, Defendants breached its fiduciary duties to Plaintiff which caused Plaintiff to suffer damages.

Count V – Fraudulent Misrepresentation

29.

The foregoing paragraphs are incorporated herein as if fully restated.

30.

Defendants made material and false representations to Plaintiff regarding the terms of the financing with knowledge that they were false or ignorance of the truth, and with the intent that those representations should be acted upon by Plaintiff in a manner reasonably contemplated.

Plaintiff had no knowledge of the falsity of those representations, but rightfully relied upon those representations and consequently suffered damages as a proximate result.

Count VI – Negligent Misrepresentation

31.

The foregoing paragraphs are incorporated herein as if fully restated.

32.

Defendants made material and false representations and/or omissions of fact to Plaintiff regarding the terms of the financing, and the representatives of Defendants failed to exercise that degree of diligence and expertise the public and Plaintiff is entitled to expect of such persons. Plaintiff reasonably relied upon the misrepresentations or omissions and suffered damages as a direct and proximate result of such reasonable reliance.

Count VII – Negligence

33.

The foregoing paragraphs are incorporated herein as if fully restated.

34.

Based on the facts of this case, Defendants owed certain duties to Plaintiff. Defendants breached those duties based on Defendants' conduct described herein. Defendants' breach of those duties proximately caused damages to Plaintiff.

Damages

35.

The foregoing paragraphs are incorporated herein as if fully restated.

36.

Plaintiff's damages were foreseeable to Defendants. As such, Plaintiff is entitled to recover monetary damages. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to compensatory damages, economic and non-economic damages, loss of goodwill, reimbursement of penalties and fees, extra-contractual damages, pre-judgment and post-judgment interest, punitive and exemplary damages, incidental and out of pocket expenses, attorneys' fees and litigation costs, and such other relief as justice requires.

Jury Demand

Plaintiff demands trial by jury on all issues so triable.

Prayer for Relief

WHEREFORE, Plaintiff PGP Investments, LLC prays for the following relief:

(1) Process be issued as required by law and that Defendants be served with a copy of the summons and complaint;

(2) Compensatory damages;

(3) Economic and non-economic damages;

(4) Loss of goodwill;

(5) Reimbursement of penalties and fees;

(6) Extra-contractual damages;

(7) Punitive and exemplary damages;

(8) Fees and costs, including attorneys' fees and litigation costs;

(9) Pre-judgment and post-judgment interest, as allowed by law;

(10) Incidental and out of pocket expenses; and

For any other such relief as the Court deems just and proper and such other relief as justice requires.

DATED this 16th day of April, 2009.

PGP INVESTMENTS, LLC

David Shelton, Esq. (MS Bar # 99675)

David Shelton, Esq. (MS Bar #99675)
Attorney at Law
P.O. Box 2541
120A Courthouse Square
Oxford, MS 38655
Phone: 662-281-1212
Fax: 662-281-1312
david@davidsheltonpllc.com
Counsel for Plaintiff