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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR COMMUNITY BANK & TRUST CORNELIA, GEORGIA,	§ § § § §	
Plaintiff,	§ §	2:12-CV- 42
v.	§ §	**CIVIL ACTION NO. ________**
CHARLES M. MILLER and TRENT D. FRICKS,	§ §	
	§	**JURY TRIAL DEMANDED**
Defendants.	§	

COMPLAINT

TO THE HONORABLE COURT:

Plaintiff, the Federal Deposit Insurance Corporation, as Receiver for Community Bank & Trust of Cornelia, Georgia ("FDIC"), files the following Complaint against Charles M. Miller ("Miller") and Trent D. Fricks ("Fricks") (collectively "Defendants"):

I. INTRODUCTION

1. The FDIC brings this case in its capacity as Receiver for Community Bank & Trust of Cornelia, Georgia ("CBT" or the "Bank"), pursuant to the authority granted by 12 U.S.C. §1821. The FDIC, on behalf of the Bank's

depositors and creditors, seeks to recover losses in excess of $11 million that CBT suffered as a direct and proximate result of the Defendants' breach of fiduciary duties, negligence, and gross negligence.

II. PARTIES

2. Plaintiff, the FDIC, is a corporation organized and existing under the laws of the United States of America, specifically 12 U.S.C. § 1811 *et seq.,* and is an instrumentality of the United States of America charged with, among other duties, the orderly liquidation of failed banks. 12 U.S.C. § 1821(d).

3. Defendant Charles M. Miller was President, Chief Executive Officer, and a director of CBT for the period of time relevant to this Complaint. He may be served by delivery to his attorney, Robert Long, Alston & Bird, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424.

4. Defendant Trent D. Fricks was Senior Vice President of a Retail Banking Group of CBT for the period of time relevant to this Complaint. He may be served by delivery to his attorney, Robert Long, Alston & Bird, One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309-3424.

5. At all relevant times, CBT was an insured depository institution as defined in 11 U.S.C. § 101(35)(A).

6. Community Bankshares, Inc. ("Bankshares") is a holding company that was the owner of CBT. Bankshares is not a party to this action.

7. On or about January 29, 2010, CBT was closed by the Georgia Department of Banking and Finance. On that same date, the FDIC was appointed Receiver for CBT pursuant to 12 U.S.C. § 1821(c) and accepted its appointment as Receiver.

8. Pursuant to 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC, as Receiver for CBT, succeeded to all rights, titles, powers, and privileges of CBT and of CBT's stockholder, member, accountholder, depositor, officer, or director with respect to CBT, including, but not limited to, CBT's claims against Defendants.

III. JURISDICTION AND VENUE

9. The United States District Court for the Northern District of Georgia has subject matter jurisdiction over this matter because actions in which the FDIC is a party are deemed to arise under federal law pursuant to 12 U.S.C. § 1811 *et seq*., 12 U.S.C. § 1819(b)(1)-(2), and 28 U.S.C. §§ 1331 and 1345. The FDIC further has the power to sue and complain in any court of law. 12 U.S.C. § 1819. Supplemental jurisdiction over the FDIC's state law claims may be exercised by the Court under 28 U.S.C. § 1367.

10. Venue in the Gainesville Division of the Northern District of Georgia is proper under 28 U.S.C. § 1391 and LR 3.1B(3) NDGA because the claims and causes of action asserted in this Complaint arose in this district and division.

IV. FACTUAL BACKGROUND

11. This suit seeks to recover damages in excess of $11 million for losses that were caused by Miller's and Frick's breach of fiduciary duties, negligence, and gross negligence related to CBT's Home Funding Loan Program ("HFLP") between January 6, 2006 and December 2, 2009. Fricks breached his fiduciary duties and was negligent and grossly negligent in approving the HFLP loans in violation of the Bank's loan policy. Specifically, among other loan policy violations, Fricks approved HFLP loans without verified borrower financial information, adequate appraisals, and/or authorization to exceed his individual lending authority. Miller breached his fiduciary duties and was negligent and grossly negligent in failing to supervise Fricks and implement corrective measures after notice on or about January 6, 2006, of Fricks' violations of the Bank's loan policy and underwriting deficiencies in the HFLP loans.

A. Brief History of CBT.

12. CBT was established as a Georgia-chartered bank in 1900, and CBT operated for over a century before it failed on January 29, 2010. Its headquarters

office was in Cornelia, Georgia, and it operated 36 branches in various counties of northeast Georgia.

13. For more than 20 years, Alton Wingate ("Wingate") served as President of both Bankshares and CBT. Until his death on August 16, 2005, he managed all phases of CBT's day-to-day operations in a highly centralized manner.

14. On November 20, 2006, Miller, who had served on the Bankshares Board of Directors with Wingate for 12 years, was named CEO of CBT. Under Miller's leadership, between 2005 and 2008, CBT accelerated commercial real estate ("CRE") lending and pursued growth in other loan products such as the HFLP loans. CBT's CRE lending grew 66 percent from $338 million on December 31, 2005, to $563 million by December 31, 2008. With increased focus on real estate lending, Miller and Fricks had an increased responsibility to ensure that all loan officers adhered to the Bank's loan policy.

B. CBT's Loan Policy.

15. CBT's loan policy required the individual loan officer to ensure that all loan decisions, actions, and recommendations were based on an accurate and thorough understanding of each customer's financial background and needs. In addition, it was the responsibility of the loan officer to properly administer the

creditworthiness and documentation of all loans. The loan policy expressly delegated to the CEO and senior management responsibility for day-to-day credit activities and for enforcing the Bank's goal of sound credit quality.

16. CBT's loan policy provided the underwriting guidelines that loan officers were required to comply with prior to approving and funding loans. In that regard, CBT's loan policy required that: (i) borrowers provide complete and verified financial statements and applications to the Bank; (ii) loans secured by real estate be supported by appraisals from licensed and certified appraisers that were prepared for the Bank; (iii) investment property, second home, and one- to four-family residential loans have a loan-to-value ("LTV") ratio of no more than 85 percent; (iv) out-of-territory loans be approved by senior lending officers; and (v) borrowers pay the full interest due on a loan prior to any renewal. The loan policy prohibited: (i) loan officers from approving loans for amounts above their designated lending authority; (ii) loans to uncreditworthy borrowers; (iii) loans not supported by reliable financial and credit information; and (iv) capitalized interest on renewal loans.

17. CBT's loan policy specifically designated who had authority to approve loans and the amount of monies each person could approve without obtaining secondary approval. Prior to January 23, 2009, the Bank's Board of

Directors was required to approve all loans over $2 million. The Asset Liability Committee ("ALCO") had lending authority for loans up to $2 million. As CEO, Miller's designated lending authority was up to $300,000 for secured loans and $75,000 for unsecured loans. Fricks' designated lending authority was up to $200,000 for secured loans and $25,000 for unsecured loans. After January 23, 2009, the Board of Directors added an Executive Loan Committee with designated lending authority up to $500,000. Additionally, the Board of Directors lowered Miller's lending authority to $50,000 for unsecured loans, while leaving his secured loan authority at $300,000. Fricks' lending authority remained unchanged.

C. Home Funding Loan Program.

18. In 2006, Fricks established an informal relationship with Robert Warren, who owned and operated several mortgage brokerage entities. Warren used several different entities to conduct his mortgage brokerage business, including Family Mortgage and Home Funding Corporation ("HFC"). (For convenience of reference, Warren's entities are referred to collectively herein as "HFC," and all the HFC-related loans are referred to collectively as HFLP as previously defined.) Although there was no written contract governing the business relationship between Warren's entities and CBT, CBT provided bridge loans to the customers of Warren's entities who were ostensibly real estate

investors. In turn, HFC would provide CBT with a "commitment letter," wherein HFC agreed to purchase the HFLP loan from CBT at maturity under specific circumstances. Nonetheless, the HFLP loans were high-risk, short-term bridge loans that were intended to be repaid when the investor/purchaser obtained permanent financing. The majority of these HFLP loans funded purchases of investment single family residences in the Atlanta low-end housing market, including funds for alleged repairs, renovations, and improvements.

19. Fricks was directly responsible for and personally approved the HFLP loans, despite material underwriting deficiencies and violations of the Bank's loan policy. Specifically, Fricks approved the HFLP loans without obtaining signed or complete financial statements, without appraisals prepared for the Bank, and in excess of the Bank's LTV ratio limit. He also approved HFLP loans where the collateral was outside the Bank's lending territory, which required a senior lending officer's approval. Fricks authorized the out-of-territory loans as both the primary loan officer and senior lending officer. Although not explicitly prohibited by the loan policy, Fricks would not have been permitted to approve loans in this dual capacity, since the senior lending officer approval requirement contemplated approval by a second individual.

20. Some time prior to January 6, 2006, William Galardi, who was the Division President of CBT's branch office in Gainesville, Georgia, and Fricks' immediate supervisor, discovered that Fricks was making HFLP loans in violation of CBT's loan policy. Specifically, Galardi discovered that at least some of the HFLP loans were made in violation of the allowed LTV ratio and that in some instances Fricks was compounding the LTV problem by loaning additional funds for repairs and remodeling. In addition, in some instances Fricks used the purchase price of the property to determine the LTV for HFLP loans that he approved, even though the appraised value of the property was lower than the purchase price. Galardi also discovered that Fricks was not conducting inspections of the collateral property to verify that the loan funds advanced by CBT for the repair and/or remodeling of the collateral were used for their intended purpose. At the time of this discovery, the aggregate total of the HFLP loans was less than $6 million.

21. On or about January 6, 2006, Galardi met with Fricks and informed him of the problems he had discovered with the HFLP loans. At this meeting, Galardi delivered to Fricks a handwritten memo setting forth the problems and the "rules" for making future HFLP loans in compliance with CBT's loan policy. Galardi contemporaneously sent a copy of this handwritten memo to Miller and Annette Fricks, CBT's chief operating officer and, coincidentally, Trent Fricks'

mother. At their meeting, Trent Fricks assured Galardi that he would correct the problems Galardi identified with the HFLP loans and that he would abide by the "rules" set forth in the handwritten memo and with CBT's loan policy in general with respect to any future HFLP loans. Galardi never received any response to his handwritten memo from either Miller or Annette Fricks.

22. Within a matter of months after the January 2006 meeting between Galardi and Fricks, Fricks was promoted to Division President of CBT's branch office in Clarksville, Georgia. After that transfer, Galardi was no longer Fricks' supervisor and he no longer had any responsibility with respect to the HFLP loans. At this time, Miller became Fricks' direct supervisor. Subsequent to Fricks' transfer, while under Miller's supervision, the aggregate total of HFLP loans grew dramatically, reaching a total exposure in 2009 of approximately $26 million.

23. In March 2007, Galardi prepared a more formal memorandum regarding his concerns over the HFLP loans. Galardi sent this memo to Miller, Fricks, and other senior officers of CBT, including CBT's Loan Review Officer ("LRO"). Galardi had learned from the monthly officers' loan production reports that were circulated at CBT that the aggregate exposure from the HFLP loans had grown since Fricks was transferred to Clarksville. Although he did not have any specifics, Galardi was still concerned that CBT was loaning too much money with

respect to HFLP loans. His concern was exacerbated by what he perceived to be CBT's risk if there was a decline in the housing market and HFC was unable to fulfill its obligations under its commitment letters. Again, Galardi received no response from Miller, Fricks, or any of the other recipients of his memorandum.

24. Nevertheless, sometime after Galardi sent his March 2007 memorandum, the LRO began a Risk Focus Review ("RFR") on the HFLP loans. The RFR was conducted as of August 31, 2007, and the LRO reduced the RFR to a written report. The RFR report identified multiple loan policy violations by Fricks, such as exceeding his approved lending authority, routinely approving loan draws without inspections, appraisal requirements violations, and LTV ratio limit violations. Copies of the RFR were provided to Miller, Fricks, and others at CBT.

25. On November 14, 2007, the RFR report findings were addressed by CBT's Loan Review Committee ("LRC"), which consisted of CBT's directors and senior management. Miller and Fricks were in attendance at this LRC meeting. Fricks advised the directors and other attendees that he had previously consulted with Miller about the HFLP loans policy violations. He assured the directors and others that he would stop violating CBT's loan policy and that, therefore, no changes to the loan policy were needed.

26. Despite his assurances, after November 14, 2007, Fricks approved at least an additional 119 HFLP loans that violated the Bank's loan policy. The following table lists a sampling of 16 loans that illustrates the typical deficiencies in HFLP loans approved after the 2007 LRC meeting.

Typical Deficiencies in 16 Representative HFLP Loans Approved After November 14, 2007, LRC Meeting						
				Loan Deficiencies		
Borrower	Credit Amount	Estimated Loss	Approval Date	Exceeds Lending Authority	Lacks Verified Financial Stmnts	Other Loan Policy Violations
1. Milton Aubrey Solomon	$124,050.00	$ 85,389.42	12/01/07		x	x
2. Rahman, Iliyas	$115,900.00	$ 42,697.55	12/06/07		x	x
3. Kirby, Lora	$114,360.22	$102,698.03	12/26/07		x	x
4. Lewis, Belinda	$172,118.99	$163,506.58	01/14/08		x	x
5. Holloway, Leslie	$279,033.20	$ 13,658.20	01/28/08	x	x	x
6. Bowen, Josh Lee	$110,820.00	$ 48,186.61	02/19/08		x	x
7. Crawshaw, Dale	$452,469.00	$129,341.40	03/05/08	x	x	x
8. Hennington, Dexter	$471,672.49	$301,288.59	04/11/08		x	x
9. 911 Homebuyers, LLC	$210,700.25	$178,385.36	05/03/08	x	x	x
10. Johnson, Tracy	$299,600.00	$203,732.50	06/01/08	x	x	x
11. Atlanta United, LLC	$431,149.00	$131,149.00	10/04/08	x	x	x
12. Sthrn Invstmnt Hldngs	$549,159.91	$549,159.91	10/06/08	x		x
13. 3 Idiots Investments	$106,758.73	$ 76,475.39	10/27/08		x	x
14. Samuel Properties	$240,000.00	$ 72,000.00	10/28/08	x	x	x
15. Redding, Virgil	$299,843.43	$ 8,164.62	11/21/08	x	x	x
16. Warsaw Dynamics	$266,266.03	$ 56,307.85	12/19/08	x	x	x

27. As a specific example, on October 28, 2008, CBT made a $240,000 single-pay loan with an LTV ratio of 88 percent to Samuel Properties with a personal guaranty from D. Lynne Warren to facilitate the purchase of an investment property located at 202 Clifton St., Atlanta, Georgia. This loan had the

following policy violations when it was approved: (i) Fricks did not have authority to approve the loan, since his authority was only up to $200,000; (ii) the loan application was facially incomplete in material respects; (iii) no borrower financial information was provided; (iv) Fricks did not obtain a credit report; (v) the appraisal was prepared for the customer rather than CBT; and (vi) draw checks were made payable to persons and entities other than borrowers (so it appears that the loan was not used to renovate the investment property). As a result, CBT suffered a loss of $72,000.

D. CEO Miller's Failure to Supervise Fricks.

28. Miller was responsible for ensuring and monitoring the Bank's day-to-day credit operations. He received Galardi's handwritten memorandum in January 2006 and Galardi's more formal memo in March 2007. Miller received the LRO's RFR in September 2007. He also attended the November 14, 2007 LRC meeting when the LRC addressed the RFR findings of HFLP loan deficiencies that confirmed that Fricks had frequently violated the Bank's loan policy. Despite the RFR findings, Miller did not increase supervision of Fricks or ensure that Fricks adhered to the loan policy. Following the meeting, Fricks approved at least 119 new HFLP loans without verified financial statements and with other significant underwriting deficiencies and loan policy violations. These are the same types of

deficiencies and policy violations that Galardi identified in January 2006 and again in March 2007 and that were also identified in the September 19, 2007 RFR report that was discussed at the LRC meeting that Miller attended. Miller failed to supervise Fricks properly after receiving notice of problems with the HFLP loans on at least four different occasions.

29. Miller's and Fricks' failure to address the HFLP loan problems was confirmed by Mauldin & Jenkins, CBT's outside auditors, in a July 20, 2009 report to the CBT's Board. The report confirms that after the November 14, 2007 LRC meeting, Fricks approved HFLP loans that, in numerous instances, violated the Bank's loan policy and that, in other respects, reflected imprudent loan underwriting.

VI. CLAIMS FOR RELIEF

Count One
Claim for Breach of Fiduciary Duties (Georgia law)

30. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 1-29 of this Complaint as though fully set forth herein.

31. The Defendants occupied a fiduciary relationship with the Bank and are thus held to the standard of utmost good faith, honesty, and loyalty in the management, supervision, and conduct of the Bank's business and financial affairs.

Under Georgia law, as part of their fiduciary duties, the directors and managers of a corporation who control and have charge of the corporation's effects are bound to care for its property and manage its affairs in good faith. For a violation of these duties resulting in waste of the corporation's assets and injury to its property, they are liable to account for the same just as other trustees. Georgia statutory law provides that a director or officer of a corporation may be sued for "[t]he acquisition, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of duties." O.C.G.A. § 14-2-831.

32. By their actions and inactions described in this Complaint, the Defendants failed and neglected to perform their respective duties as officers and/or directors of the Bank, constituting breaches of their fiduciary duties owed to the Bank. Specifically, but without limitation, Miller and Fricks allowed the Bank's assets to be wasted by approving the HFLP loans without adherence to the Bank's loan policy such that no business person of ordinary, sound judgment would conclude that the Bank received adequate consideration in exchange for making the loans.

33. As a direct and proximate result of the breaches of fiduciary duties by the Defendants, the FDIC suffered damages in an amount to be determined at trial.

Count Two
Claim for Negligence (Georgia law)

34. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 1-33 of this Complaint as though fully set forth herein.

35. Miller and Fricks each owed the Bank the obligation to exercise the degree of diligence, care, and skill which ordinarily prudent persons in like positions would exercise under similar circumstances in the management, supervision, and conduct of the Bank's business and financial affairs, including its lending practices. Furthermore, Miller and Fricks owed duties to CBT to conduct its business consistent with safe and sound lending practices. Specifically, Georgia statutes outline the duties directors and officers owe to their corporations and the standard of conduct for discharging those duties. O.C.G.A. § 14-2-830 (general standards for directors); O.C.G.A. § 14-2-842 (general standard of conduct for officers) and O.C.G.A. § 7-1-490 (responsibility of officers and directors in the context of financial institutions). The Defendants in fact possess greater skill, knowledge, and intelligence in regards to the banking industry, and as such, they should be held to a standard of an ordinarily prudent person with these superior attributes.

36. "In general, ordinary diligence is that degree of care which is exercised by ordinarily prudent persons under the same or similar circumstances. As applied to the preservation of property, the term 'ordinary diligence' means that care which every prudent man takes of his own property of a similar nature. The absence of such diligence is termed ordinary negligence." O.C.G.A. § 51-1-2.

37. As further detailed in this Complaint, Miller and Fricks failed to discharge their obligations to the Bank as described herein, breaching the statutory and common law duties owed to the Bank, and thus, were negligent by, specifically including, but not limited to:

a. Failing to follow reasonable, prudent, and non-negligent procedures for underwriting and monitoring CBT's HFLP loans;

b. Causing and/or allowing CBT to approve and fund HFLP loans in violation of CBT policies, including its written loan policies;

c. Causing and/or allowing CBT to approve and fund HFLP loans based on inadequate or wrongly valued collateral securing the loans;

d. Causing and/or allowing CBT to approve and fund HFLP loans without requiring adequate sources of repayment;

e. Causing and/or allowing CBT to approve and fund HFLP loans without adequately analyzing the borrowers' ability to perform and without adequately analyzing the ability of the secured property to support the loans;

f. Failing to establish or follow adequate appraisal procedures for real estate used to secure HFLP loans;

g. Failing to properly assess creditworthiness and repayment ability of borrowers and/or guarantors;

h. Failing to comply with CBT's loan policies and applicable regulations;

i. Failing to heed warnings of certain bank officers and outside professionals; and

j. Failing to properly manage, direct, and conduct the business and affairs of CBT to ensure compliance with all applicable laws and regulations, CBT policies, and safe, sound, and prudent principles of banking.

38. As a direct and proximate result of the negligence of Defendants, the FDIC suffered damages in an amount to be determined at trial.

<u>Count Three</u>
Claim for Gross Negligence (Georgia law and 12 U.S.C. § 1821(k)

39. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 1-38 of this Complaint as though fully set forth herein.

40. Section 1821(k) of The Financial Institutions Reform, Recovery and Enforcement Act holds directors and officers of financial institutions personally liable for loss or damage to the institution caused by their "gross negligence," as defined by applicable state law. "In general, slight diligence is that degree of care which every man of common sense, however inattentive he may be, exercises under the same or similar circumstances. As applied to the preservation of

property, the term 'slight diligence' means that care which every man of common sense, however inattentive he may be, takes of his own property. The absence of such care is termed gross negligence." O.C.G.A. § 51-1-4. Georgia case law has defined gross negligence as equivalent to the failure to exercise even a slight degree of care or lack of the diligence that even careless men are accustomed to exercise. Taking into consideration the entirety of the circumstances in the instant suit, the elevated level of skill, knowledge, and intelligence these Defendants presumably possess must be taken into account. Accordingly, they should be held to a standard consistent with these attributes.

41. Defendants owed a duty to exercise even the slight diligence that every person of common sense, however inattentive he or she may be, exercises under the same or similar circumstances.

42. The Defendants' actions and inactions as described herein demonstrate an absence of the slight diligence expected from a person with common sense, and instead exhibited such a degree of carelessness and/or inattention to the performance of their duties as to constitute gross negligence under Georgia law.

43. As described more particularly herein, the Defendants were grossly negligent in that their manner of carrying out their duties and responsibilities to the Bank failed to constitute even a slight degree of care and demonstrated a lack of

diligence that even careless men are accustomed to exercise. Moreover, their actions were reckless and demonstrated a complete disregard for the interests of the Bank. Therefore, the Defendants have breached their statutory and common law duties owed to the Bank.

44. The decisions made by the Defendants as described more particularly herein were not good faith business decisions made in an informed and deliberate manner.

45. As a direct and proximate result of the gross negligence of Defendants, the FDIC suffered damages in an amount to be determined at trial.

VII. JURY DEMAND

46. The FDIC respectfully demands a trial by jury for all issues in this case that are triable by the jury.

VIII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the FDIC prays that Defendants Charles M. Miller and Trent D. Fricks be cited to appear and answer herein and that, on final hearing, the FDIC be awarded the following relief:

a. Actual damages in the amount proved at trial;

b. Prejudgment and post-judgment interest as allowed by law;

c. Costs of suit; and

d. All other relief, at law and in equity, that the Court deems just.

Dated: February 23, 2012

Respectfully submitted,

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