

CV 05 4350

Duval & Stachenfeld LLP
Attorneys for Plaintiff
By: Allan N. Taffet, Esq. (AT-5181)
Joshua C. Klein, Esq. (JK-4558)
300 East 42nd Street
New York, New York 10017
Tel. No.: (212) 883-1700

SIFTON, J.

MATSUMOTO, M.J.

FILED

CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

SEP 14 2005

★ BROOKLYN OFFICE ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CREDIT SUISSE FIRST BOSTON FINANCIAL
CORPORATION,

Plaintiff,

-against-

LAMATTINA & ASSOCIATES, INC., JOSEPH
LAMATTINA, VICTORY STATE BANK and
JOHN DOES 1-10 (said names being fictitious,
it being the intention of Plaintiff to designate any
as yet unknown representatives of defendant
LaMattina & Associates, Inc. that were involved in the
transaction at issue),

Defendants.
-----X

COMPLAINT

05 CV _____

Plaintiff Credit Suisse First Boston Financial Corporation (hereinafter "CSFBFC" or "plaintiff"), by its attorneys, Duval & Stachenfeld LLP, for its complaint against defendants LaMattina & Associates, Inc., Joseph LaMattina (collectively, the "LaMattina defendants") Victory State Bank and John Does 1-10, alleges as follows:

NATURE OF THE ACTION

1. This action arises from an apparent fraud scheme orchestrated by the LaMattina defendants to convert to their own use approximately \$795,000 of plaintiff's funds. Specifically, CSFBFC, providing funding for a residential real estate transaction, wired approximately \$795,000 to an account maintained by LaMattina & Associates, Inc., in

its capacity as settlement agent. Despite confirmation from defendant Victory State Bank that the CSFBFC funds were received, the LaMattina defendants misrepresented to those present at the closing that the loans could not close because the CSFBFC funds had not yet been wired by CSFBFC. It now appears that the LaMattina defendants may have dissipated and/or absconded with the approximately \$795,000 wired by CSFBFC. Indeed, CSFBFC has been unable to locate or otherwise communicate with the LaMattina defendants, despite repeated attempts to do so. The LaMattina defendants have failed to respond to any telephone calls or faxes from CSFBFC. Moreover, upon information and belief, the LaMattina defendants have orchestrated similar thefts of funds from several other lending institutions in or about August 2005, which thefts are currently under investigation by law enforcement authorities. Accordingly, this action seeks to recover the funds wired by CSFBFC by attaching whatever may still be in the LaMattina defendants' account at Victory State Bank and/or by judgment against the LaMattina defendants.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the amount in controversy is in excess of \$75,000, exclusive of interest and costs, and there is diversity between the parties.

3. Venue is proper pursuant to 28 U.S.C. § 1391(a).

THE PARTIES

4. Plaintiff CSFBFC is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Princeton, New Jersey.

5. Upon information and belief, defendant LaMattina & Associates, Inc. is a law firm incorporated, organized and existing under the laws of the state of New York, with its

principal place of business at 220 Old Country Road, Mineola, New York 11501 and also maintaining offices at 88 New Dorp Plaza, Suite 304, Staten Island, New York 10306 and 2071 Clove Road, Suite 206, Staten Island, New York 10304.

6. Upon information and belief, defendant Joseph LaMattina is a member of LaMattina & Associates, Inc., and a resident of Staten Island, New York.

7. Upon information and belief, defendant Victory State Bank is a state-chartered, commercial bank with a principal place of business in Staten Island, New York. Victory State Bank is a necessary party to this action pursuant to Rule 19 of the Federal Rules of Civil Procedure.

8. Defendants John Does 1-10 are the fictitious names of any as yet unknown representatives of defendant LaMattina & Associates, Inc. that participated in the fraudulent transaction at issue.

FACTUAL ALLEGATIONS

A. CSFBFC Wires Funds For the Residential Real Estate Closing

9. On or about August 10, 2005, a residential real estate closing was scheduled for a property located at 4 Laura Court, Quogue, NY 11942 (the "Closing").

10. Upon information and belief, the parties to the Closing, including the buyer, seller, and their respective counsel, gathered at the offices of defendant LaMattina & Associates, Inc. Defendant LaMattina & Associates, Inc. was designated to serve as the settlement agent for the Closing.

11. Plaintiff has funded countless residential mortgage transactions, and agreed to fund the mortgages for the Closing on behalf of WCS Lending, a mortgage broker.

12. In its capacity as settlement agent, LaMattina & Associates, Inc. instructed CSFBFC to wire the mortgage funds to the Joseph LaMattina Settlement Trust Account (the "LaMattina Account") at Victory State Bank in Staten Island. (Attached hereto as Exhibit A is a true and correct copy of the wiring instructions provided by the LaMattina defendants to CSFBFC.)

13. Accordingly, on or about August 10, 2005, CSFBFC wired \$795,507.96 (the "CSFBFC Funds") in two wires to the LaMattina Account at Victory State Bank in Staten Island. (Attached hereto as Exhibit B are true and correct copies of the wire confirmations verifying that CSFBFC had indeed wired the CSFBFC Funds totaling \$795,507.96 to Victory State Bank on August 10, 2005.)

14. After wiring the CSFBFC Funds on August 10, 2005, and receiving immediate confirmation from Victory State Bank that the wires had been received, CSFBFC assumed the funds would be made available for the closing scheduled for the following day.

B. CSFBFC Learns of the LaMattina Defendants' Misrepresentations at the Closing and the Strong Likelihood that the LaMattina Defendants Have Absconded with the CSFBFC Funds

15. In accordance with its custom and practice when funding a residential real estate closing, CSFBFC contacts the settlement agent the day following the scheduled closing to confirm that the loans have closed, and to request documentation verifying the successful closing of the loan.

16. Accordingly, consistent with its practice, a CSFBFC representative sought to contact LaMattina & Associates, Inc. on or about August 11, 2005 to confirm that the loans had indeed closed on August 10, 2005. This call was not answered, and the CSFBFC

representative left a voicemail message requesting confirmation that the loans had indeed closed.

17. Unable to reach anyone at the LaMattina defendants by telephone on the day following the scheduled closing, a CSFBFC representative sent a request, via facsimile, to defendant LaMattina & Associates, Inc. once again requesting documentation verifying that the loans had closed. (Attached hereto as Exhibit C is a true and correct copy of the facsimile sent by Jose Pineda of CSFBFC to the LaMattina defendants requesting verification that the loans had closed.)

18. CSFBFC has since come to learn that, although the CSFBFC Funds were properly and timely wired to the LaMattina Account at Victory State Bank, the loans, inexplicably, failed to close on August 10, 2005.

19. Rather, upon information and belief, during the course of the Closing, a representative of the LaMattina defendants, with full knowledge that CSFBFC had in fact wired the CSFBFC Funds, falsely informed those present at the Closing that the loans could not close because the CSFBFC Funds had not yet been wired by CSFBFC to the LaMattina Account at Victory State Bank.

20. Upon information and belief, rather than using the CSFBFC Funds to finance the mortgages, the LaMattina defendants have absconded and fraudulently asserted ownership of the CSFBFC Funds wired to the LaMattina Account at Victory State Bank on August 10, 2005.

21. CSFBFC has made repeated attempts to contact the LaMattina defendants by telephone and facsimile; however, the LaMattina defendants have, to date, failed to respond to each of these attempts.

22. While Victory State Bank has confirmed that it received the two wires totaling \$795,507.96 from CSFBFC on August 10, 2005, citing customer privacy laws, Victory State Bank has refused to provide a status of the CSFBFC funds.

FIRST CLAIM FOR RELIEF
(Conversion)

23. Plaintiff CSFBFC realleges paragraphs 1 through 22 of this complaint as if fully set forth herein.

24. On or about August 10, 2005, CSFBFC wired the CSFBFC Funds to the LaMattina Account at Victory State Bank, which money was intended to fund the mortgages in connection with the purchase of the property located at 4 Laura Court, Quogue, NY 11942.

25. Upon information and belief, the LaMattina defendants were aware at all times that they had no personal claim, right, title or interest in the CSFBFC Funds.

26. Upon information and belief, rather than using the CSFBFC Funds to finance the mortgages, the LaMattina defendants converted the CSFBFC Funds for their own personal use without permission or authority to do so.

27. By reason of the foregoing, the LaMattina defendants have converted the CSFBFC Funds totaling \$795,507.96, plus interest from August 10, 2005.

SECOND CLAIM FOR RELIEF
(Fraud)

28. Plaintiff CSFBFC realleges paragraphs 1 through 27 of this complaint as if fully set forth herein.

29. Upon information and belief, the LaMattina defendants fraudulently misrepresented to CSFBFC that the CSFBFC Funds were to be used to fund the mortgages in connection with the purchase of the property located at 4 Laura Court, Quogue, NY 11942.

30. Upon information and belief, the LaMattina defendants made this statement with the intent to deceive.

31. CSFBFC relied on the foregoing misrepresentations to its detriment by making two separate wire transfers totaling \$795,507.96 to the LaMattina Account at Victory State Bank.

32. Such actions and conduct have caused significant injury to CSFBFC, including but not limited to the \$795,507.96 that remains unpaid.

33. By reason of the foregoing, CSFBFC has been damaged in the amount of \$795,507.96, plus interest from August 10, 2005, together with punitive damages as a result of the LaMattina defendants' knowing, intentional and malicious misconduct

THIRD CLAIM FOR RELIEF
(Unjust Enrichment)

34. Plaintiff CSFBFC realleges paragraphs 1 through 33 of this complaint as if fully set forth herein.

35. At the direction of the LaMattina defendants, CSFBFC wired the CSFBFC Funds to the LaMattina Account at Victory State Bank

36. The LaMattina defendants have wrongfully converted the CSFBFC Funds causing CSFBFC to lose the use of those moneys due and owing.

37. As a result of their false and misleading actions, the LaMattina defendants were personally and unjustly enriched with sums which they acquired under false pretenses from CSFBFC, and which have required CSFBFC to incur attorneys' fees in its effort to recover these funds. It would be unjust and inequitable to allow the LaMattina defendants to benefit in this manner.

38. By reason of the foregoing, the LaMattina defendants have been unjustly enriched at the expense of CSFBFC, and plaintiff has suffered damages in an amount to be established at trial.

FOURTH CLAIM FOR RELIEF
(Money Had and Received)

39. Plaintiff CSFBFC realleges paragraphs 1 through 38 of this complaint as if fully set forth herein.

40. Upon information and belief, the LaMattina defendants received the CSFBFC Funds, to which CSFBFC has an immediate superior right of possession.

41. Upon information and belief, the LaMattina defendants benefited from the receipt of the CSFBFC Funds.

42. Under principles of good conscience, the LaMattina defendants should not be allowed to retain the CSFBFC Funds.

43. By reason of the foregoing, CSFBFC has been damaged in the amount of \$795,507.96, plus interest from August 10, 2005.

PRAYER FOR RELIEF

WHEREFORE, plaintiff CSFBFC respectfully requests judgment against defendants as follows:

A. On all Claims, against the LaMattina defendants in the amount of \$795,507.96, plus interest from August 10, 2005, together with punitive damages as a result of the LaMattina defendants' knowing, intentional and malicious misconduct;

B. On all Claims, enjoining preliminarily and permanently the LaMattina defendants and Victory State Bank from directly or indirectly, transferring, selling, alienating, concealing, converting, liquidating or otherwise dissipating any of the LaMattina

defendants' assets and/or property, including, but not limited to any funds held in the LaMattina Account, and ordering such property turned over to plaintiff upon judgment;

C. On all Claims, that the Court enter a pre-judgment order of attachment against the assets of the LaMattina defendants and any interests of the LaMattina defendants in any personal property or any debt owed to the LaMattina defendants situated in the State of New York until CSFBFC can obtain a judgment against the LaMattina defendants and have such property and assets applied to its satisfaction; and

D. Awarding CSFBFC the costs and disbursements of this action, including reasonable attorneys' fees and such other relief as is just.

Dated: New York, New York
September 14, 2005

Duval & Stachenfeld LLP
Attorneys for Plaintiff
Credit Suisse First Boston Financial
Corporation

By: 

Allan N. Taffet, Esq. (AT-5181)
Joshua C. Klein, Esq. (JK-4558)
300 East 42nd Street
New York, New York 10017
Tel. No.: (212) 883-1700

WIRE INSTRUCTIONS

La Mattina & Associates

220 Old Country Road

Mineola, NY 11501

Tel: (516)213-0449

Fax: (516)213-0568

lamattina@nylawgroup.net

Account Name: LaMattina & Associates, Inc.
Joseph LaMattina Settlement Trust Account

Bank Name: Victory State Bank

Address: 3155 Amboy Road, Staten Island, NY 10306

Routing Number: 026013136

Account Number: 004-002648



Loan No:	700108552	Appraised Value:	\$925,000	PMT:	No	Price:	96.
Borrower:	Sheehan, John E	Sales Price:	\$900,000	MIN No.:	100251207001085526	Margin:	0
Prop. Address:	4 Laura Court East ...	Loan Amount:	\$75,000	Prepay:	No	Margin:	0/0
Prop. Type:	CSFB - Single Family	Product Code:	5600	Prepay Penalty:	0	Caps:	0
Occupancy:	Investment Property	Loan Purpose:	Purchase - Purpose U...	Locked Rate:	0%	Index:	8.0
Lien Position:	Second Mortgage	Loan/Amort Term:	180/180	Lock Exp. Date:	8/28/2005	CLTV:	88.
		Escrows Waived:	Yes	Qualifying Rate:	0%	DTI:	35.

[View Only] Owner: Loan Status: Trust Receipt Received Previous: Collateral to LaSalle
 700108552 ktyries Product Status: Product Valid Previous: Product Valid

Wire Requested

Date (UTC)	Requested By	Wire Action	Wire Payee Name	Canceled	Wire Amount
8/10/2005 1:41:20 PM	kwall	Setup	LA MATTINA & ASSOCIATES	X	71536.02
8/23/2005 2:35:39 PM	kwall	Cancel	LA MATTINA & ASSOCIATES	X	0
8/23/2005 9:33:28 PM	kwall	Setup	NATIONAL SETTLEMENT AGENCY INC		71922.42

Total: \$71,922.42

Wire Acknowledgement

Date (UTC)	FED Reference Number	Amount
8/10/2005 5:07:11 PM	0810B1Q8022C003389	71536.02
8/24/2005 4:08:52 PM	0208386	71922.42

08/24/2005 Actual Closing Date
 08/24/2005 Actual Funding Date

Total: \$143,458.44

Funds Disbursed
 Pending Resolution

CSFB FUNDING REQUIREMENTS

So that we can expedite the funding of your loan, please comply with the following funding requirements:

Please fax signed copies of the following documents immediately after closing:

- Note and Prepayment Penalty Addendum (if applicable)
- Final HUD
- 1003
- Right to Cancel (Refinances only)
- Patriot Act Disclosure
- All applicable "At Closing Conditions" as indicated in the Special Requirements section of the Closing Instructions.

If you have any questions regarding the funding of your loan, please contact the CSFB Funding Department between 8:30am - 5:30pm EST and one of our Funding Specialists will assist you.

**YOU MUST OBTAIN A FUNDING NUMBER FROM CSFB
AS AUTHORIZATION TO DISBURSE.**

Please enter your CSFB funding number and include this document in the closing package.

Funding Number: _____

CSFB FUNDING PHONE: (561) 237-4853
CSFB FUNDING FAX: (561) 352-2429

8/11

Attn: Jennifer 516-213-0568 516
 From: Jose -0569
 Regarding: John Sheehan
 (1st & 2nd Mortgage)

