

1538

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|--------------------------|---|-------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | Criminal No. 11-300 |
| v. |) | |
| |) | (18 U.S.C. §§ 371, 1014 |
| DAVID F. BAKER, III |) | and 1349) |
| BETH B. BAKER |) | |

RECEIVED
U.S. DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
NOV 22 2011

INDICTMENT

COUNT ONE

The Grand Jury charges:

THE CONSPIRACY AND ITS OBJECTS

From in and around December, 2005, and continuing thereafter until in and around January, 2006, in the Western District of Pennsylvania, the Defendants, DAVID F. BAKER, III and BETH B. BAKER (Defendants), did knowingly and wilfully conspire, combine, confederate together, and with each other, to commit an offense against the United States, that is:

Bank fraud, in violation of Title 18, United States Code, Section 1344(1).

MANNER AND MEANS OF THE CONSPIRACY

1. It was a part of the conspiracy that the Defendants did agree to purchase a condominium in Sarasota, Florida, located at Unit 502, 1300 Ben Franklin Drive, Sarasota, Florida 34236, for the agreed upon price of \$2,500,000.00. (hereinafter throughout this Indictment, Sarasota condominium)

2. It was further a part of the conspiracy that on or about December 23, 2005, the Defendant, DAVID F. BAKER, III, did

submit, or cause the submission of, a Uniform Residential Loan Application for a conventional loan with the J.P. Morgan Chase Bank, N.A., (hereinafter throughout this Indictment, J.P. Morgan) in the amount of \$1,750,000.00 in order to obtain loan funds for a first mortgage on the Sarasota condominium.

3. It was further a part of the conspiracy that the Defendant, DAVID F. BAKER, III, in connection with the Loan Application, did knowingly make materially false statements and representations concerning his income, employment, and misrepresentations concerning his financial worth, and did provide materially false information and supporting documentation to J.P. Morgan in order to obtain loan funds for the Sarasota condominium, well knowing that statements and misrepresentations were false and fraudulent, and designed to conceal the true financial status of the Defendant, DAVID F. BAKER, III, namely:

- a. that he earned income of \$80,000.00 per month;
- b. that he had been self-employed at TMC Partners for 10 years;
- c. that TMC Partners contracted with Sarasota, Florida, to redevelop the downtown area, and that TMC Partners was the recipient of trusts from the City of Sarasota;
- d. that he was going to occupy the Sarasota condominium as his primary residence;

among other material misrepresentations and omissions, well knowing that the statements and misrepresentations contained in the Application and submittals to J.P. Morgan were false.

In violation of Title 18, United States Code, Section
1349.

COUNT TWO

The Grand Jury further charges:

THE CONSPIRACY AND ITS OBJECTS

From in and around March, 2007, and continuing thereafter until in and around April, 2007, in the Western District of Pennsylvania, the Defendants, DAVID F. BAKER, III and BETH B. BAKER, knowingly and willfully did conspire, combine, confederate and agree together, and with each other, to commit an offense against the United States, that is, bank fraud, in violation of Title 18, United States Code, Section 1344(1).

MANNER AND MEANS OF THE CONSPIRACY

1. It was a part of the conspiracy that the Defendants, DAVID F. BAKER, III and BETH B. BAKER (hereafter, Defendants) did agree to refinance the first and second mortgage on the Sarasota condominium.

2. It was further a part of the conspiracy that the Defendant, BETH B. BAKER, on or about March 20, 2007, did submit, or cause the submission of, a Uniform Residential Loan Application to Washington Mutual Bank, N.A. (hereinafter throughout this Indictment, Washington Mutual), to refinance the original and second mortgages on the Sarasota condominium, and in order to obtain loan funds in the amount of \$2,080,000.00 from Washington Mutual.

3. It was further a part of the conspiracy that the Defendant, BETH B. BAKER, in connection with the Loan Application, did knowingly make materially false statements and representations concerning her income, assets, and employment, and did provide materially false information and supporting documentation to Washington Mutual in order to obtain the loan funds, well knowing that the misrepresentations were false when made, and designed to conceal the true financial status of the Defendant, BETH B. BAKER, namely:

- a. that she earned income of \$80,000.00 per month;
- b. that she was employed as an owner of TMC Partners, L.P. for 10 years;
- c. that she owned assets included in a promissory note totaling \$614,000.00;
- d. that she owned assets totaling approximately \$183,102.57 in an account at Dollar Bank; and
- e. that she intended to occupy the Sarasota condominium as her primary residence.

4. It was further a part of the conspiracy that the Defendants, then did agree to obtain a second mortgage on the Sarasota condominium with National City Bank.

5. It was further a part of the conspiracy that on or about March 23, 2007, the Defendant, BETH B. BAKER, did submit, or cause the submission of, an application to National City Bank to

obtain an Equity Reserve Line of Credit in the amount of \$350,000.00.

6. It was further a part of the conspiracy that the Defendant, BETH B. BAKER, in connection with the Loan Application, did knowingly make materially false statements and representations concerning her income, assets, and employment, and whether she intended to occupy the Sarasota condominium as her primary residence, well knowing that the statements were false when made, and designed to conceal the true financial status of the Defendant, BETH B. BAKER.

In violation of Title 18, United States Code, Section 1349.

COUNT THREE

The Grand Jury further charges:

On or about December 23, 2005, in the Western District of Pennsylvania, the Defendant, DAVID F. BAKER, III, did make a false statement or report to a federally insured financial institution in a loan application, which statement was for the purpose of influencing the bank to make a loan, to wit, the Defendant, DAVID F. BAKER, III, did submit, or cause the submission of, a Uniform Residential Loan Application to J.P. Morgan for the purpose of obtaining a first mortgage on the Sarasota condominium, in the amount of \$1,750,000.00, which Loan Application did contain a false statement concerning his income and assets, and a false statement that he would occupy the condominium as his primary residence, which statements were for the purpose of influencing the bank to loan the funds, well knowing that the statements were false when made.

In violation of Title 18, United States Code, Section 1014.

COUNT FOUR

The Grand Jury further charges:

On or about March 20, 2007, in the Western District of Pennsylvania, the Defendant, BETH B. BAKER, did make a false statement or report to a federally insured financial institution in a loan application, which statement was for the purpose of influencing the bank to make a loan, to wit, the Defendant, BETH B. BAKER, did submit, or cause the submission of, a Uniform Residential Loan Application to Washington Mutual for the purpose of obtaining a mortgage refinance of the Sarasota condominium, in the amount of \$2,080,000.00, which Loan Application did contain false statements concerning her income, employment, assets, and that she intended to occupy the property as her primary residence, which statements were for the purpose of influencing the bank to loan the funds, well knowing that the statements were false when made.

In violation of Title 18, United States Code, Section 1014.

COUNT FIVE

The Grand Jury further charges:

On or about January 6, 2005, in the Western District of Pennsylvania, the Defendant, DAVID F. BAKER, III, did make a false statement or report to a federally insured financial institution in a loan application, which statement was for the purpose of influencing the bank to make a loan, to wit, the Defendant, DAVID F. BAKER, III, did submit, or cause the submission of, a Uniform Residential Loan Application to National City Bank, for the purpose of obtaining a home equity line of credit on his residence located on Cardinal Lane, Sewickley, Pennsylvania, in the amount of \$315,000.00, which Loan Application did contain false statements concerning his income, length of employment, and a false 2003 1040 U.S. Individual Income Tax Return, which statements were for the purpose of influencing the bank to loan the funds, well knowing that the statements were false when made.

In violation of Title 18, United States Code, Section 1014.

COUNT SIX

The Grand Jury further charges:

On or about March 23, 2007, in the Western District of Pennsylvania, the Defendant, BETH B. BAKER, did make a false statement to a federally insured financial institution in a loan application, which statement was for the purpose of influencing the bank to make a loan, to wit, the Defendant, BETH B. BAKER, did submit, or cause the submission of, a Uniform Residential Loan Application to National City Bank for the purpose of obtaining a Home Equity line of credit on the Sarasota condominium in the amount of \$350,000.00, which Loan Application did contain false statements concerning her income, employment, and that she would occupy the property as her primary residence, which statements were for the purpose of influencing the bank to loan the funds, well knowing that the statements were false when made.

In violation of Title 18, United States Code, Section 1014.

COUNT SEVEN

The Grand Jury further charges:

INTRODUCTION

1. At all times material hereto, J.P. Morgan was a federally insured financial institution.

2. On or about December 23, 2005, the Defendants, DAVID F. BAKER, III and BETH B. BAKER (hereafter Defendants), executed a promissory note and first mortgage in favor of J.P. Morgan on the Sarasota condominium, in the original principal amount of \$1,750,000.00.

3. On or about March 20, 2007, the Defendants did agree to refinance the condominium, and did execute a promissory note in favor of Washington Mutual in the amount of \$2,080,000.00, satisfying the first mortgage held in favor of J.P. Morgan, with the first P&I payment of \$13,733.68 due on or about May 1, 2007.

4. The Defendants soon thereafter defaulted on the terms of the mortgage and note by failing to make mortgage payments, and a foreclosure proceeding by Washington Mutual against the Defendants was commenced on or about October 17, 2007 against the Defendants, styled Washington Mutual Bank, N.A., et al. v. Beth A. Baker, et al., 2007-CA-012479, in Sarasota County, Florida.

THE CONSPIRACY AND ITS OBJECTS

5. From in and around June, 2008, and continuing thereafter until in and around October, 2011, in the Western

District of Pennsylvania, the Defendants knowingly and willfully did conspire, combine, confederate and agree together and with each other, to commit offenses against the United States, that is:

a) Bankruptcy fraud, in violation of Title 18, United State Code, Section 157(1);

b) False declaration and statement, in violation of Title 18, United States Code, Section 152(3).

MANNER AND MEANS OF THE CONSPIRACY

6. It was a part of the conspiracy that the Defendants did agree to prevent Washington Mutual Bank, and J.P. Morgan, from exercising their lawful right to foreclose upon the Sarasota condominium, and to take possession of the property.

7. It was further a part of the conspiracy that the Defendants then did agree to devise a scheme and artifice to defraud Washington Mutual and J.P. Morgan from obtaining rightful possession of the Sarasota condominium.

8. It was further a part of the conspiracy that the Defendants then did agree to file one or more bankruptcy petitions under Title 11 in the Western District of Pennsylvania in order to invoke the automatic stay in debt collection against the Washington Mutual and J.P. Morgan, and to prevent any scheduled foreclosure sale of the Sarasota condominium.

9. It was further a part of the conspiracy that the Defendants each then did alternate the filing of Title 11 petitions

in bankruptcy, so as to both conceal their fraudulent scheme to defraud the banks and the bankruptcy court.

10. It was further a part of the conspiracy that the Defendants then did make misrepresentations on the bankruptcy petitions, and did conceal prior bankruptcy proceedings filed by the Defendants, in order to further the Defendants' scheme to defraud.

11. It was further a part of the conspiracy that the Defendants then did fail and refuse to file the required schedules and statements to prosecute their bankruptcy filings, and to seek a discharge of debt or adjustment of their debts.

OVERT ACTS

12. In furtherance of the conspiracy, and to effect the objects of the conspiracy, the Defendants did commit, and cause to be committed, the following overt acts, among others, in the Western District of Pennsylvania:

(a) On or about June 6, 2008, the Defendant, BETH B. BAKER, did file a Chapter 11 petition in bankruptcy 5 days before a scheduled foreclosure sale of the Sarasota condominium on June 11, 2008, No. 08-23772-JAD.

(b) On or about July 24, 2009, the Defendant, DAVID F. BAKER, III, did file a false statement and declaration at 08-23772, claiming that he and his wife, the Defendant, BETH B. BAKER,

were owed approximately \$614,343 by TMC Partners LP, in a Promissory Note dated June 23, 2005.

(c) On or about November 12, 2010, the Defendant, BETH B. BAKER, did file a Chapter 13 Petition in bankruptcy, approximately 3 days before the re-scheduled foreclosure sale of the Sarasota condominium on November 15, 2010, No. 10-28035-JAD.

(d) On or about March 7, 2011, the Defendant, DAVID F. BAKER, III, did file a Chapter 13 Petition in bankruptcy, approximately 2 days before the re-scheduled foreclosure sale of the Sarasota condominium on March 9, 2011, No. 11-21299-JAD.

(e) On or about May 27, 2011, the Defendant, BETH B. BAKER, did file a Chapter 13 Petition in bankruptcy, approximately 4 days before the re-scheduled foreclosure sale of the Sarasota condominium on May 31, 2011, No. 11-23410-JAD.

(f) On or about August 12, 2011, the Defendant, DAVID F. BAKER, III, did file a Chapter 13 Petition in bankruptcy, approximately 3 days before the re-scheduled foreclosure sale of the Sarasota condominium on August 15, 2011, No. 11-25125-JAD.

(g) On or about October 27, 2011, the Defendant, BETH B. BAKER, did file a Chapter 13 Petition in bankruptcy, approximately 1 day before the re-scheduled foreclosure sale of the Sarasota condominium, No. 11-26600-JAD.

(h) In the 11-26600 Petition, the Defendant, BETH B. BAKER, knowingly omitted and did conceal two prior bankruptcy petitions, Nos. 10-28035, and 08-23772.

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS

1. The Grand Jury realleges and incorporates by reference the allegations contained in Counts One through Seven of this Indictment for the purpose of alleging criminal forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 28 United States Code, Section 2461, and Title 18, United States Code, Section 982(a)(2).

2. Upon conviction of the offenses set forth in Counts One through Five of this Indictment, the Defendants, BETH B. BAKER and DAVID F. BAKER, III, shall forfeit to the United States of America:

A) pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 28 U.S.C. Section 2461 and 18 U.S.C. Section and 982(a)(2), any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of such violations.

3. If any of the property described above, as a result of any act or omission of the Defendants:

a) cannot be located upon the exercise of due diligence;

b) has been transferred or sold to, or deposited with, a third party;

c) has been placed beyond the jurisdiction of the court;

d) has been substantially diminished in value; or

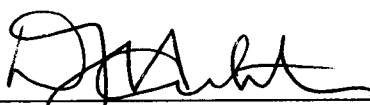
e) has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, U.S.C. Section 2461(c).

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2), and Title 28, United States Code, Section 2461(c).

A True Bill,



FOREPERSON



DAVID J. HICKTON
United States Attorney
PA ID No. 34524

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)
)
 DAVID F. BAKER, III)
 BETH B. BAKER)

Criminal No. 11-304

CERTIFICATION AND NOTICE FOR FILING PRETRIAL MOTIONS

I hereby certify that I have been notified by the United States Magistrate Judge that all pretrial motions must be filed within fourteen (14) days of Arraignment unless the Court extends the time upon written application made within said fourteen (14) day period.

Date

Attorney for Defendant
DAVID F. BAKER, III

Date

Attorney for Defendant
BETH B. BAKER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.)
)
 DAVID F. BAKER, III)
 BETH B. BAKER)

Criminal No. 11-304

ARRAIGNMENT PLEA

ARRAIGNMENT PLEA

Defendant David F. Baker, III
being arraigned, pleads _____
in open Court this _____ day of
_____, 20____.

Defendant Beth B. Baker
being arraigned, pleads _____
in open Court this _____ day of
_____, 20____.

(Defendant's Signature)

(Defendant's Signature)

(Attorney for Defendant)

(Attorney for Defendant)

CRIMINAL CASE INFORMATION SHEET

11-304

Pittsburgh Erie _____ Johnstown _____

Related to No. _____ Judge _____

(All criminal prosecutions arising out of the same criminal transaction or series of transactions are deemed related).

- CATEGORY: 1. _____ Narcotics and Other Controlled Substances
- 1a. _____ Narcotics and Other Controlled Substances
(3 or more Defendants)
- 2. Fraud and Property Offenses
- 2a. _____ Fraud and Property Offenses
(3 or more Defendants)
- 3. _____ Crimes of Violence
- 4. _____ Sex Offenses
- 5. _____ Firearms and Explosives
- 6. _____ Immigration
- 7. _____ All Others

Defendant's name: David F. Baker, III

Is Indictment waived: _____ yes no

Pretrial Diversion: _____ yes no

Juvenile proceeding: _____ yes no

Defendant is: Male _____ Female

Superseding Indictment or Information: _____ yes no

Previous case number: _____

If superseding, previous case was/will be:

- _____ Dismissed on defendant's motion
- _____ Dismissed on government's motion
- _____ After appellate action
- _____ Other (explain)

County in which first offense cited occurred: Allegheny

Previous proceedings before Magistrate Judge: _____

Case No.: _____

PLEASE INCORPORATE MAGISTRATE CASE WITH CRIMINAL CASE

Date arrested or date continuous U.S. custody began: _____

Defendant: _____ is in custody is not in custody

Name of Institution: _____

Custody is on: _____ this charge _____ another charge
_____ another conviction

_____ State _____ Federal

Detainer filed: _____ yes no

Date detainer filed: _____

Total defendants: 2

Total counts: 7

Data below applies to defendant No.: 1

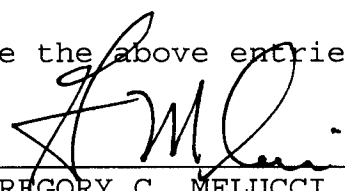
Defendant's name: David F. Baker, III

SUMMARY OF COUNTS

| <u>COUNT NO.</u> | <u>U.S. CODE</u> | <u>OFFENSE</u> | <u>FELONY</u> |
|------------------------|------------------|-------------------------------------|---------------|
| 1&2 | 18 U.S.C. § 1349 | Bank Fraud Conspiracy | X |
| 3&5 | 18 U.S.C. § 1014 | False Statement in Loan Application | X |
| 7 | 18 U.S.C. § 371 | Bankruptcy Fraud Conspiracy | X |
| FORFEITURE ALLEGATIONS | | | |

I certify that to the best of my knowledge the above entries are true and correct.

DATE: 12/20/11



GREGORY C. MELUCCI
Assistant U.S. Attorney
PA ID No. 56777

CRIMINAL CASE INFORMATION SHEET

Pittsburgh Erie _____ Johnstown _____

11-304

Related to No. _____ Judge _____
(All criminal prosecutions arising out of the same criminal transaction or series of transactions are deemed related).

- CATEGORY: 1. _____ Narcotics and Other Controlled Substances
 1a. _____ Narcotics and Other Controlled Substances
 (3 or more Defendants)
 2. Fraud and Property Offenses
 2a. _____ Fraud and Property Offenses
 (3 or more Defendants)
 3. _____ Crimes of Violence
 4. _____ Sex Offenses
 5. _____ Firearms and Explosives
 6. _____ Immigration
 7. _____ All Others

Defendant's name: Beth B. Baker

Is Indictment waived: _____ yes no

Pretrial Diversion: _____ yes no

Juvenile proceeding: _____ yes no

Defendant is: _____ Male Female

Superseding Indictment or Information: _____ yes no

Previous case number: _____

If superseding, previous case was/will be:

- _____ Dismissed on defendant's motion
- _____ Dismissed on government's motion
- _____ After appellate action
- _____ Other (explain)

County in which first offense cited occurred: Allegheny

Previous proceedings before Magistrate Judge: _____

Case No.: _____

PLEASE INCORPORATE MAGISTRATE CASE WITH CRIMINAL CASE

Date arrested or date continuous U.S. custody began: _____

Defendant: _____ is in custody is not in custody

Name of Institution: _____

Custody is on: _____ this charge _____ another charge
 _____ another conviction

_____ State _____ Federal

Detainer filed: _____ yes no

Date detainer filed: _____

Total defendants: 2

Total counts: 7

Data below applies to defendant No.: 2

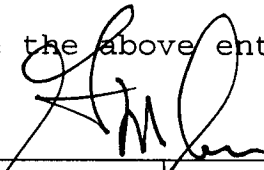
Defendant's name: Beth B. Baker

SUMMARY OF COUNTS

| <u>COUNT NO.</u> | <u>U.S. CODE</u> | <u>OFFENSE</u> | <u>FELONY</u> |
|------------------------|------------------|-------------------------------------|---------------|
| 1&2 | 18 U.S.C. § 1349 | Bank Fraud Conspiracy | X |
| 4&6 | 18 U.S.C. § 1014 | False Statement in Loan Application | X |
| 7 | 18 U.S.C. § 371 | Bankruptcy Fraud Conspiracy | X |
| FORFEITURE ALLEGATIONS | | | |

I certify that to the best of my knowledge the above entries are true and correct.

DATE: 12/20/11



 GREGORY C. MELUCCI
 Assistant U.S. Attorney
 PA ID No. 56777