

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. QUILLING, Receiver for
Hammersmith Trust, L.L.C., Hammersmith
Trust, Ltd., Microfund, L.L.C. and B.
David Gilliland

Plaintiff,

v.

THE WOLCOTT LIFETIME TRUST,
JACK W. HIGGINS, TRUSTEE,
MELODY WOLCOTT GILLILAND,
JEFFREY D. SAXON, JR.,
OPTION ONE MORTGAGE
CORPORATION, NORWEST BANK
MINNESOTA (now known as WELLS
FARGO BANK MINNESOTA), and
NORTHPOINTE BANK,

Defendants.

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Civil Action No. 1:00cv 820

(JURY TRIAL REQUESTED)

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U.S. DISTRICT COURT
WESTERN DISTRICT MICH
BY

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Michael J. Quilling, in his capacity as Receiver for Hammersmith Trust, L.L.C., Hammersmith Trust, Ltd., Microfund, L.L.C., and B. David Gilliland, Plaintiff herein, and files this his Complaint and application for injunctive relief against The Wolcott Lifetime Trust, Jack W. Higgins, Trustee, Melody Wolcott Gilliland, Jeffrey D. Saxon, Jr., Option One Mortgage Corporation, Norwest Bank Minnesota (now known as Wells Fargo Bank Minnesota), and Northpointe Bank, Defendants herein, and for a cause of action would respectfully show unto the Court as follows:

SMITH, HAUGHEY, RICE & ROEGGE, A Professional Corporation

PARTIES, CITIZENSHIP AND SERVICE

1.01 Michael J. Quilling is the Receiver appointed for Hammersmith Trust, L.L.C., Hammersmith Trust, Ltd., Microfund, L.L.C. and B. David Gilliland in Civil Action No. 3:98-CV-2689-M, styled *Securities and Exchange Commission v. Funding Resource Group a/k/a FRG Trust; Quentin Hix; Gene Coulter; Steven C. Roberts; MVP Network, Inc., a Texas corporation a/k/a MVP Network (Trust); FMCI Trust; Funders Marketing Company, Inc., a Texas corporation; Raymond G. Parr; Willard Vearl Smith; Earl D. McKinney; Fortune Investments, Ltd., a Nevada corporation, Robert Cord, a/k/a Robert F. Schoonover, Jr.; Winterhawk West Indies, Inc.; IGW Trust; Carolyn Don Hicks; and Carl LaDane Weaver, Defendants, and Howe Financial Trust, an Indiana corporation; Treds Financial Trust; Mary Ann Bauce, Hammersmith Trust, L.L.C., a Tennessee limited liability company; Hammersmith Trust, Ltd., an Irish Corporation; Bridgeport Alliance, L.L.C., a Nevada limited liability company; Landfair Custodial Services, Inc., a Tennessee corporation; Microfund, L.L.C., a Nevada limited liability company; American Pacific Bank & Trust, Inc., an Antigua corporation; Eurofund Investment Inc., a Tennessee corporation; B. David Gilliland; and Melody Rose, Defendants Solely for Purposes of Equitable Relief*, pending before the United States District Court for the Northern District of Texas, Dallas Division, the Honorable Barbara Lynn presiding. Michael J. Quilling is an individual resident and citizen of the State of Texas.

1.02 The Wolcott Lifetime Trust is a trust established in Nevis, West Indies, whose trustee is Jack W. Higgins, an individual resident and citizen of the State of Florida. The Wolcott Lifetime Trust may be served with process by and through Jack W. Higgins, Trustee, at 4022 Indian Trail, Destin, Florida 32541.

1.03 Melody Wolcott Gilliland is an individual resident and citizen of the State of Michigan, who may be served with process by and through her attorney, Charles E. Damon, at 220 Lyon Street, NW, Suite 525, Grand Rapids, Michigan 49503.

1.04 Jeffrey D. Saxon, Jr. is an individual resident and citizen of the State of Alabama, who may be served with process at 9370 Leverette Drive, Semmes, Alabama 36575.

1.05 Option One Mortgage Corporation is a California corporation with its principal place of business located at 3 Ada, Irvine, California 92618. Option One Mortgage Corporation may be served with process by and through its registered agent, The Corporation Company, at 30600 Telegraph Road, Suite 3275, Bingham Farms, Michigan 48025.

1.06 Norwest Bank Minnesota (now known as Wells Fargo Bank Minnesota) is a national banking association with its principal place of business located at Minneapolis, Minnesota. Norwest Bank Minnesota (now known as Wells Fargo Bank Minnesota) may be served with process by and through its President & CEO, Richard M. Kovacevich, at 6 & Marquette Avenue, Minneapolis, Minnesota 55479.

1.07 Northpointe Bank is a Michigan corporation with its principal place of business located at 770 Kenmoor SE, Grand Rapids, Michigan 49546. Process may be served upon Northpointe Bank by serving its president, Charles Williams, at 770 Kenmoor SE, Suite 201, P.O. Box 68330, Grand Rapids, Michigan 49546.

2.

IN PERSONAM JURISDICTION OVER NONRESIDENT DEFENDANTS AND IN REM JURISDICTION

2.01 This Court has *in personam* jurisdiction over The Wolcott Lifetime Trust and Jack W. Higgins, Trustee, nonresident Defendants, pursuant to Chapter 600, § 731, of the Michigan Compiled

Laws, because they have carried on a continuous and systematic part of their general business within the State of Michigan.

2.02 This Court has *in personam* jurisdiction over Jeffrey D. Saxon, Jr., a nonresident Defendant, pursuant to Chapter 600, § 705, of the Michigan Compiled Laws, because he has transacted business within the State of Michigan and has owned, used or possessed real or personal tangible property within the State of Michigan.

2.03 This Court has *in personam* jurisdiction over Option One Mortgage Corporation, a nonresident Defendant, pursuant to Chapter 600, § 715, of the Michigan Compiled Laws, because it has transacted business within the State of Michigan.

2.04 This Court has *in personam* jurisdiction over Norwest Bank Minnesota, a nonresident defendant, pursuant to Chapter 600, Section 715 of the Michigan Compiled Laws, because it has transacted business with the State of Michigan.

2.05 This Court has *in rem* jurisdiction over this case, pursuant to 28 U.S.C. § 1655, because it involves a dispute relating to title to real estate located wholly within the State of Michigan and some of the Defendants cannot be served within the State of Michigan.

3.

SUBJECT MATTER JURISDICTION AND VENUE

3.01 This Court has subject matter jurisdiction of this case, pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties plaintiff and defendant and the amount in controversy exceeds the sum of \$75,000.

3.02 This Court has subject matter jurisdiction of this case, pursuant to 28 U.S.C. § 1331, because it is ancillary to the Security and Exchange Commission proceeding (the nature of which is more

fully described below) and is, therefore, also a proceeding arising under the laws of the United States of America.

3.03 Venue for this action is proper in the Western District of Michigan, pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to the action occurred, and the real property which is the subject of the action is situated, within the Western District of Michigan. Additionally, venue for this action is proper in the Western District of Michigan, pursuant to 28 U.S.C. § 1655, because the real property which is the subject of this action is located within the Western District of Michigan.

3.04 The Receiver is authorized to bring this action in the Western District of Michigan without ancillary appointment pursuant to 28 U.S.C. § 754. The Receiver complied with all filing requirements of 28 U.S.C. § 754 on August 29, 2000.

4.

FACTUAL BACKGROUND

4.01 On November 13, 1998 the Securities and Exchange Commission ("SEC") initiated Case No. 3:98-CV-2689-M styled *Securities and Exchange Commission v. Funding Resource Group, a/k/a FRG Trust; Quentin Hix; Gene Coulter; Steven C. Roberts; MVP Network, Inc., a Texas corporation a/k/a MVP Network (Trust); FMCI Trust; Funders Marketing Company, Inc., a Texas corporation; Raymond G. Parr; Willard Vearl Smith; Earl D. McKinney; Fortune Investments, Ltd., a Nevada corporation, Robert Cord, a/k/a Robert F. Schoonover, Jr.; Winterhawk West Indies, Inc.; IGW Trust; Carolyn Don Hicks; and Carl LaDane Weaver, Defendants, and Howe Financial Trust, an Indiana corporation; Treds Financial Trust; Mary Ann Bauce, Hammersmith Trust, L.L.C., a Tennessee limited liability company; Hammersmith Trust, Ltd., an Irish Corporation; Bridgeport Alliance, L.L.C., a Nevada limited liability*

company; Landfair Custodial Services, Inc., a Tennessee corporation; Microfund, L.L.C., a Nevada limited liability company; American Pacific Bank & Trust, Inc., an Antiguan corporation; Eurofund Investment Inc., a Tennessee corporation; B. David Gilliland; and Melody Rose, Defendants Solely for Purposes of Equitable Relief, Defendants and in connection therewith sought the appointment of a Receiver as to the Defendants and Equity Relief Defendants (the "SEC Proceeding"). By Order dated November 13, 1998, entered in the SEC Proceeding (the "November 13, 1998 order"), Michael J. Quilling was appointed as the Receiver and has continued to function in that capacity since that time.

4.02 By subsequent Order dated July 22, 1999, entered in the SEC Proceeding (the "July 22, 1999 Order"), the receivership was expanded to include a number of additional individuals and entities, including Hammersmith Trust, L.L.C. ("Hammersmith"), Microfund, L.L.C. ("Microfund") and B. David Gilliland ("Gilliland"). (Exhibit 1, Order dated July 22, 1999). By virtue of the same Order, Michael J. Quilling was appointed as the Receiver for each of the additional individuals and entities and he continues to function in that capacity since that time. Michael J. Quilling will hereafter be referred to as "the Receiver."

4.03 Hammersmith and Microfund are entities which operated huge international Ponzi schemes under the direction and control of Gilliland. In particular, the scam required investors (called "lenders") to "loan" funds to Hammersmith which loans would be repaid by virtue of monthly interest payments at a rate of 480 % percent per annum (and higher) for twelve months and a repayment of all principal in month thirteen. The "loans" were supposedly secured by an assignment of a deposit account containing the investor's money and by treasury bills for the same amount. The Microfund "program" differed in some respects, but the intentions were the same — promise huge returns based upon non-existent trading programs and then steal the money.

4.04 As part of his overall scheme, Gilliland engaged Bridgeport Alliance, L.L.C. ("Bridgeport") to screen potential "lenders," which in essence required that Bridgeport make sure they had money, would not ask questions and were not really government agencies posing as investors. Bridgeport, in turn, engaged various entities and individuals to act as agents and/or brokers. These agents/brokers would locate and solicit potential investors, sell them on the "program" being offered by Hammersmith and Microfund and then submit the potential lender/investor to Bridgeport for screening and approval. Once the potential lender/investor was approved, a Loan Agreement would be signed with Hammersmith and/or Microfund and then funds would be wired to an account designated by Gilliland. Each lender/investor would also sign a Client Agreement with Bridgeport.

4.05. The programs offered by Hammersmith and Microfund were completely fraudulent. The lender/investor funds did not remain in segregated deposit accounts. There were no treasury bills which secured each loan/investment. There was no trading program. There was no generation of any income by either Hammersmith, or Microfund which could be used to pay the fantastic returns promised to lenders/investors. Instead, as funds were received, Gilliland caused Hammersmith and Microfund to systematically divert the funds to make Ponzi payments to prior investors and support the lavish lifestyle and spending of Gilliland.

4.06. On July 31, 1998 the Wolcott Lifetime Trust (the "Wolcott Trust") was established by Classic Trust Administration, Inc. of Nevis West Indies, as the grantor of the Trust. Jack W. Higgins ("Higgins"), a business associate of Gilliland, was appointed as the Trustee and continues to function in that capacity. The lifetime beneficiary of the Wolcott Trust is Melody Wolcott Gilliland (the ex-wife of Gilliland, hereinafter referred to as "Melody Gilliland") and the remainder beneficiaries are Devon

Leigh Gilliland and Ashley Waldron Miller (the daughters of Gilliland). The affairs of the Wolcott Trust are controlled by Gilliland.

4.07 The primary, if not sole, reason for creation of the Wolcott Trust was to acquire certain real property located in the Township of Port Sheldon, County of Ottawa, and State of Michigan, consisting of a lot and residence commonly known as 9047 Lakeshore Drive, West Olive, Michigan 49460, and legally described as follows:

A part of the North ½ of the Southwest fractional 1/4 of Section 4, Town 6 North, Range 16 West, described as commencing at a point 1100 feet West and 999 feet South of the Northeast corner of the said Southwest fractional 1/4 of said Section; running thence South 110 feet; running thence West to the margin of Lake Michigan; running thence North along the margin of Lake Michigan 110 feet to a point directly West of place of beginning; running thence East to place of beginning. Including an unrecorded right of ingress and egress from the Public Highway over the presently established roadway.

(the "Property").

4.08 On August 11, 1998, the Wolcott Trust purchased the Property from John and Nancy Carlyle (the "Carlyles") for the sum of \$385,000. This transaction is evidenced by a warranty deed dated August 11, 1998 from the Carlyles to the Wolcott Trust (the "Wolcott Trust Deed"). (Exhibit 2, Warranty Deed dated August 11, 1998). The Wolcott Trust Deed was filed on October 9, 1998 and has been recorded in Liber 2494, page 785, Ottawa County Register of Deeds. The money used by the Wolcott Trust to purchase the Property is directly traceable to monies which Gilliland wrongfully diverted, or stole, from Hammersmith, Microfund. and the defrauded investors. At all material times, Melody Gilliland has been in physical and/or constructive possession of the Property.

4.09 By virtue of his appointment, the Receiver has been vested with complete jurisdiction and control of the Property, including the right to possession thereof, pursuant to the July 22, 1999 Order and 28 U.S.C. § 754. The Receiver complied with the requirements of 28 U.S.C. § 754 by filing the

required documents with the Clerk of the United States District Court for the Western District of Michigan on August 29, 2000. Upon filing, the matter was given docket number 1:00MC120 and assigned to the Honorable Gordon J. Quist, United States District Judge.

4.10 When the Receiver first learned, or had reason to believe, that the Property had been purchased by the Wolcott Trust with funds of the defrauded investors, the Receiver prepared a notice of lis pendens dated August 23, 1999, which described the SEC Proceeding and the Property involved in this action (the "Lis Pendens"). The Lis Pendens was filed on August 24, 1999 and has been recorded in Liber 2699, page 633, Ottawa County Register of Deeds. (Exhibit 3, Notice of Lis Pendens dated August 23, 1999).

4.11 The Receiver alleges, upon information and belief, that the Ottawa County Register of Deeds has maintained both a grantor/grantee index recording system as well as a tract recording system since approximately 1940.

4.12 Jeffrey D. Saxon, Jr. ("Saxon") is one of the investors in the fraudulent program operated by Hammersmith. As a result of the collapse of the program, Saxon claims to be owed funds by Hammersmith. Prior to the appointment of the Receiver, in an effort to pacify and lull Saxon with respect to his continued demands for payment, Gilliland instructed Higgins to give two checks drawn on a Hammersmith account to Saxon, even though Gilliland knew that there were insufficient funds on deposit to cover the checks. Consequently, when Saxon presented the checks for payment they were dishonored. Saxon then filed hot check charges against Higgins in Alabama.

4.13 In order to avoid prosecution for the hot check charges, Higgins, without the knowledge or consent of Gilliland or any other persons associated with the trust, agreed to cause the Wolcott Trust to convey the Property to Saxon. This transaction is evidenced by a handwritten quitclaim deed dated

October 18, 1999 from Wolcott Trust, Higgins Trustee, to Saxon (the "Saxon Quitclaim Deed"). (Exhibit 4, Quitclaim deed dated October 18, 1999). The Saxon Quitclaim Deed was filed on October 20, 1999 and has been recorded in Liber 2729, page 168, Ottawa County Register of Deeds. Saxon, however, has never been in actual, physical possession of the Property.

4.14 Saxon is a not a good faith purchaser because he had actual, constructive and/or inquiry notice of the claims of the Receiver. Not only was the Receiver's Lis Pendens already of record, Saxon was well aware of the receivership and the Receiver's claim to an interest in the Property. Further, Saxon either paid no consideration, or grossly inadequate consideration, for the Property. More specifically, the Saxon Quitclaim Deed recites on its face that Saxon only paid the sum of \$100 for the Property. No such money was paid by Saxon. Finally, the Saxon Quitclaim Deed is in direct violation of applicable provisions of the agreement governing the Wolcott Trust insofar as that document did not confer authority upon Higgins to convey the Property to Saxon. Accordingly, any interest which Saxon may have in the Property by virtue of the Saxon Quitclaim Deed is subject, and inferior, to the claims of the Receiver.

4.15 Upon learning of the Saxon Quitclaim Deed from Higgins, the Receiver immediately sent a letter to Saxon enclosing a copy of the Lis Pendens, giving notice that the Property was a receivership asset and demanding a rescission of the Saxon Quitclaim Deed. Saxon ignored the demands of the Receiver and instead embarked on his own scheme to convert the Property into cash and to deprive the Receiver, and the other defrauded investors, of the value of the Property. He did so by obtaining a series of loans secured by mortgages against the Property without the intent of repaying those loans; rather, he intended to simply allow the lenders to foreclose upon the Property.

4.16 On December 21, 1999, Saxon obtained a loan in the amount of \$349,000 from A.R.T. Financial Services, Inc. d/b/a Franklin Mortgage (the "Franklin Mortgage Loan"). The Franklin

Mortgage Loan is evidenced by a promissory note in the amount of \$349,000, dated December 21, 1999, and is secured by a mortgage of even date against the Property (the "Franklin Note and Mortgage") (Exhibit 5, Mortgage dated December 21, 1999). The Franklin Mortgage was filed on December 28, 1999 and has been recorded in Liber 2764, page 287, Ottawa County Register of Deeds.

4.17 The Franklin Note and Mortgage were transferred to Option One Mortgage Corporation ("Option Mortgage") by a written assignment of mortgage dated December 21, 1999, which was belatedly, filed on July 25, 2000 and has been recorded in Liber 2867, page 365, Ottawa County Register of Deeds. (Exhibit 6, Assignment of Mortgage dated December 21, 1999). The Franklin Note and Mortgage were subsequently transferred to Norwest Bank Minnesota ("Norwest Bank") by written assignment of mortgage dated September 7, 2000, which was filed on September 28, 2000 and has been recorded in Liber 2902, page 456, Ottawa County Register of Deeds. (Exhibit 7, Assignment of Mortgage dated September 7, 2000). The Franklin Note is currently in default and the Receiver has been notified that Option Mortgage and/or Norwest Bank intends to foreclose on the Property.

4.18 Franklin Mortgage was not a good faith creditor because it had actual, constructive and/or inquiry notice of the claims of the Receiver. Consequently, neither are its assignees, Option Mortgage and Norwest Bank. Accordingly, any interest which Option Mortgage and Norwest Bank may have in the Property by virtue of the Franklin Mortgage is subject, and inferior, to the claims of the Receiver.

4.19 On January 10, 2000, Saxon obtained a loan in the amount of \$75,000 from Northpointe Bank (the "Northpointe Bank Loan"). The Northpointe Bank Loan is evidenced by a promissory note in the amount of \$75,000, dated January 10, 2000, and is secured by a mortgage of even date against the Property (the "Northpointe Note and Mortgage"). (Exhibit 8, Mortgage dated January 10, 2000). The Northpointe Mortgage was filed on February 7, 2000 and has been recorded in Liber 2782, page 650,

Ottawa County Register of Deeds. Upon information and belief, the Receiver alleges that the Northpointe Note is currently in default and that the Property is in jeopardy of foreclosure.

4.20 Northpointe Bank is not a good faith creditor because it had actual, constructive and/or inquiry notice of the claims of the Receiver. Accordingly, any interest in the Property which Northpointe Bank has by virtue of the Northpointe Mortgage is subject, and inferior, to the claims of the Receiver.

4.21 When the Receiver learned of the existence of the Saxon Quitclaim Deed, he made demand upon Higgins and Saxon to rescind that instrument and to cause the Wolcott Trust to convey the Property to him. Saxon, as alleged above, ignored the demands and embarked on his scheme to defraud the Receiver. However, Higgins, on behalf of the Wolcott Trust, agreed to the demands of the Receiver and caused the Wolcott Trust to convey the Property to the Receiver on February 9, 2000. This transaction is evidenced by a warranty deed from Higgins, Trustee, to the Receiver dated February 9, 2000 (the "Receiver Deed"). The Receiver Deed was filed on March 7, 2000, and has been recorded in Liber 2795, page 485, Ottawa County Register of Deeds. (Exhibit 9, Warranty Deed dated February 9, 2000).

4.22 When Melody Gilliland, the beneficiary of the Wolcott Trust, learned of the existence of the Saxon Quitclaim Deed, she executed an affidavit dated March 21, 2000 disputing the validity of that instrument and the authority of Higgins to execute it as trustee for the Wolcott Trust (the "Gilliland Affidavit"). (Exhibit 10, Affidavit dated March 21, 2000). The Gilliland Affidavit was filed on March 23, 2000 and has been recorded in Liber 2803, page 865, of the Ottawa County Register of Deeds. Although the Receiver has made demand upon Melody Gilliland to release the Gilliland Affidavit, she has refused to do so.

4.23 Melody Gilliland has no interest in the Property in her individual capacity by virtue of the Gilliland Affidavit. Any interest which Melody Gilliland may have in the Property is strictly derivative

of her status as a beneficiary of the Wolcott Trust. However, as has been previously alleged, the Wolcott Trust purchased the Property with funds which were stolen from Hammersmith, Microfund and the defrauded investors. Accordingly, any interest of the Wolcott Trust and Melody Gilliland in the Property is subject, and inferior, to the claims of the Receiver.

5.

COUNT ONE

(CLAIM FOR DECLARATORY JUDGMENT)

5.01 The Receiver realleges the allegations contained in paragraph 4 above, the same as if fully set forth herein.

5.02 An actual controversy exists between the Receiver, the Wolcott Trust, Melody Gilliland, Saxon, Option Mortgage, Norwest Bank and Northpointe Bank regarding the nature, extent and relative priority of their respective interests in the Property.

5.03 The Receiver is entitled to declaratory judgment, pursuant to 28 U.S.C. § 2201, as follows:

- A. That the Wolcott Trust purchased the Property with funds which Gilliland had wrongfully diverted, or stole, from Hammersmith, Microfund and the defrauded investors;
- B. That equitable title to the Property is vested in the Receiver;
- C. That a constructive trust is imposed upon title to the Property in favor of the Receiver; or, alternatively, that legal title to the Property is vested in the Receiver by virtue of the Receiver's Deed;
- D. That any interest of Saxon in the Property by virtue of the Saxon Quitclaim Deed is subject, and inferior, to the title, interest and claims of the Receiver;

- E. That any interest of Option Mortgage in the Property by virtue of the Franklin Mortgage is subject, and inferior, to the title, interest and claims of the Receiver;
- F. That any interest of Norwest Bank in the Property by virtue of the Franklin Mortgage is subject, and inferior, to the title, interest and claims of the Receiver;
- G. That any interest of Northpointe Bank in the Property by virtue of the Northpointe Mortgage is subject, and inferior, to the title, interest and claims of the Receiver; and
- H. That any interest in the Property of Melody Gilliland, by virtue of the Gilliland Affidavit, is subject, and inferior, to the title, interest and claims of the Receiver.
- I. That a constructive trust is imposed upon the Franklin Mortgage Loan proceeds and the Northpointe Bank loan proceeds in the hands of Saxon in favor of the Receiver.

5.04 Pursuant to 28 U.S.C. § 2202, the Receiver is entitled to necessary and proper further orders from the Court requiring the Wolcott Trust, Melody Gilliland, Saxon, Option Mortgage, Norwest Bank and Northpointe Bank to execute all documents and undertake all actions necessary to establish the Receiver's record title to the Property.

6.

COUNT TWO

(CLAIM FOR CONVERSION)

6.01 The Receiver realleges the allegations contained in paragraphs 4 and 5 above, the same as if fully set forth herein.

6.02 Pursuant to the July 22, 1999 Order and the provisions of 28 U.S.C. § 754, the Receiver is vested with exclusive jurisdiction, dominion and control of the Property, including the right to possession thereof.

6.03 By causing the Wolcott Trust to convey the Property to him by virtue of the Saxon Quitclaim Deed, Saxon has wrongfully and illegally interfered with the Receiver's exclusive jurisdiction, dominion and control of the Property, which act constitutes a civil conversion of the Property.

6.04 Further, by encumbering the Property with the Franklin Mortgage and the Northpointe Mortgage, and by absconding with the proceeds of the underlying loans, Saxon has wrongfully and illegally interfered with the Receiver's exclusive jurisdiction, dominion and control of the Property, and the proceeds thereof, all of which acts constitute a civil conversion of the Property.

6.05 As a direct and proximate result of such acts, the Receiver has been damaged in the amount of the fair market value of the Property and/or the proceeds of the Property, for which sum the Receiver sues Saxon herein.

7.

COUNT THREE

(APPLICATION FOR INJUNCTIVE RELIEF)

7.01 The Receiver realleges the allegations contained in paragraphs 4, 5 and 6 above, the same as if fully set forth herein.

7.02 Unless restrained by the Court, Saxon will hide, secrete, hypothecate, dispose and/or waste the proceeds of the Franklin Mortgage loan and the Northpointe Bank loan, and will permanently and irrevocably deny the Receiver the proceeds of the Property. This would cause irreparable harm to the Receiver, for which he has no adequate remedy at law. In this regard, the Receiver alleges, upon information and belief, that Saxon is notoriously insolvent, or would be insolvent, but for his misappropriation of the loan proceeds.

7.03 Accordingly, the Receiver is entitled to a permanent prohibitory injunction restraining Saxon from hiding, secreting, hypothecating, disposing or wasting the Franklin Mortgage and Northpointe Bank loan proceeds, and a permanent mandatory injunction requiring Saxon to provide the Receiver with a full accounting of the location, the amount, and his disposition or use, of all such loan proceeds.

8.

JURY DEMAND

8.01 The Receiver requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final trial hereof, he recover judgment against Defendants, in accordance with the foregoing, and for such other and further relief, both general and special, at law and in equity, to which he may show himself justly entitled.

Respectfully submitted,

SMITH HAUGHEY RICE & ROEGGE

DATED: November 3, 2000.

By: Aileen M. Leipprandt
T. J. Ackert (P37123)
Aileen M. Leipprandt (P44651)

200 Calder Plaza Building
250 Monroe, N.W.
Grand Rapids, MI 49503-2251
(616) 774-8000 (Telephone)
(616) 774-2461 (Telecopier)

AND

Michael J. Quilling, Texas Bar No. 16432300
Arthur F. Selander, Texas Bar No. 18004300
D. Dee Raibourn, III, Texas Bar No. 24009495
QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.
2001 Bryan St., Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Telecopier)
(Application for Admission Pending)
ATTORNEYS FOR PLAINTIFF