

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.

Civil Action No. 1:00CV826

THE WOLCOTT LIFETIME TRUST,  
JACK W. HIGGINS, TRUSTEE,  
MELODY WOLCOTT GILLILAND,  
JEFFREY D. SAXON, Jr.,  
OPTION ONE MORTGAGE  
CORPORATION, NORWEST BANK  
MINNESOTA, n/k/a WELLS FARGO BANK  
MINNESOTA, and NORTHPOINTE BANK,

Hon. Gordon J. Quist

Defendants.

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**ANSWER, AFFIRMATIVE DEFENSES, CROSS CLAIM and  
COUNTERCLAIM OF DEFENDANTS  
OPTION ONE MORTGAGE CORPORATION,  
NORWEST BANK MINNESOTA (k/n/a  
WELLS FARGO BANK MINNESOTA), and  
NORTHPOINTE BANK**

Defendants Option One Mortgage Corporation (“Option One”), Norwest Bank  
Minnesota (k/n/a Wells Fargo Bank Minnesota) (“Norwest”) and Northpointe Bank  
 (“Northpointe”), by their attorneys, Miller, Johnson, Snell & Cummiskey, P.L.C., hereby submit  
their Answer, Affirmative Defenses, Cross Claim and Counterclaim in the above matter as  
follows:

**I. ANSWER OF OPTION ONE, NORWEST AND NORTHPOINTE.**

**1.  
PARTIES, CITIZENSHIP and SERVICE**

1.01 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1.01.

1.02 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1.02.

1.03 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1.03.

1.04 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1.04.

1.05 Admitted.

1.06 Admitted.

1.07 Admitted.

**2.  
IN PERSONAM JURISDICTION OVER  
NONRESIDENT DEFENDANTS and IN REM JURISDICTION**

2.01 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.01.

2.02 Admitted.

2.03 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.03.

2.04 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.04.

2.05 Admitted.

**3.**

**SUBJECT MATTER JURISDICTION AND VENUE**

3.01 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.01.

3.02 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.02.

3.03 Admitted.

3.04 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.04.

**4.**

**FACTUAL BACKGROUND**

4.01 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.01.

4.02 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.02.

4.03 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.03.

4.04 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.04.

4.05 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.05.

4.06 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.06.

4.07 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.07.

4.08 Defendants admit that the Wolcott Trust purchased the Property in accordance with the warranty deed described in Exhibit 2. Defendants are without sufficient facts or knowledge as to the source of the money used to purchase the Property and as to whether or not Melody Gilliland has been in physical and/or constructive possession of the Property.

4.09 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.09.

4.10 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.10, except that Defendants admit that the Lis Pendens was recorded in Liber 2699, Page 633 of Ottawa County Records.

4.11 Defendants admit that Ottawa County Register of Deeds has maintained a grantor-grantee index recording system but denies that the Ottawa County Register of Deeds has maintained a tract index for the parcel of land which is the subject of this controversy.

4.12 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.12.

4.13 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.13, except that Defendant admits the Saxon Quit Claim Deed was recorded in Liber 2729, Page 168 of Ottawa County Records.

4.14 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.14.

4.15 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.15.

4.16 Admitted.

4.17 Admitted.

4.18 Defendants deny the allegations of Paragraph 4.18 for the reason that the allegations are untrue.

4.19 Admitted.

4.20 Defendants deny the allegations of Paragraph 4.20 for the reason that the allegations are untrue.

4.21 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.21.

4.22 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.22.

4.23 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.23.

**5.**  
**COUNT ONE**  
**(Claim For Declaratory Judgment)**

5.01 Defendants reallege their answers to the allegations of Paragraph 4 above.

5.02 Admitted.

5.03 Denied as to 5.03(A) through (I).

5.04 Denied.

**6.**  
**COUNT TWO**  
**(Claim For Conversion)**

6.01 Defendants reallege their answers to the allegations of Paragraphs 4 and 5 above

6.02 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.02.

6.03 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.03.

6.04 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.04.

6.05 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.05.

**7.**  
**COUNT THREE**  
**(Application For Injunctive Relief)**

7.01 Defendants reallege their answers to the allegations of Paragraphs 4, 5 and 6 above.

7.02 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.02.

7.03 Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.03.

**8.**  
**Jury Demand**

8.01 Response not required.

**II. DEFENDANTS' AFFIRMATIVE DEFENSES**

Defendants Option One, Norwest and Northpointe shall rely upon the following Affirmative Defenses:

1. The Notice of Lis Pendens (Exhibit 3 of the Complaint) fails to satisfy the requirements of Michigan law and did not provide constructive notice to Defendants as to Plaintiff's claims alleged in its Complaint in this case or in the Civil Action No. 3:98-CV-2689-M, styled *Securities and Exchange Commission v Funding Resource Group, et. al.*, pending before the United States District Court for the Northern District of Texas, Dallas Division ("Texas Action") for the following reasons:

- (a) The Texas Action names a myriad of defendants, none of which have ever been the owner of the Property identified in the Notice of Lis Pendens. Specifically, neither the Wolcott Trust or Jeffrey Saxon are named as defendants in the Texas Action.
- (b) The Texas action, and in particular the Order Freezing Assets, Reinstating Appointment of Receiver And Authorizing Expedited Discovery (Exhibit 1 of the Complaint) relates to and involves the freezing of assets of the defendants in the Texas Action. Upon information and belief, the Property identified in the Notice of Lis Pendens was not described in the Complaint filed in the Texas Action or in any other pleadings filed of that case.
- (c) The Notice of Lis Pendens inaccurately characterizes the Texas Action as "involving the property located in Ottawa County, Michigan." Upon information and belief, the Texas Action was brought for the specific purpose of freezing assets of the named defendants in that case and not for the purpose of freezing the assets of the Wolcott Trust,

of Jeffrey Saxon or of any other owners of the Property which is the subject of the current case.

- (d) Summons in the Texas Action has not been served upon any of the Defendants in the current case within 60 days of the filing of the Texas Action as required by MCLA 600.2701(2).
- (e) Plaintiff failed to satisfy the requirements of MCLA 565.25(2) by (1) not filing proof of service with the Register of Deeds that actual notice has been given to the owner of record of the Property and (2) by failing to file with the Register of Deeds a full and fair accounting of the facts that support recording the Notice of Lis Pendens and supporting documentation of Plaintiff's interest in the Property.
- (f) As a result of all of the above, a reasonable search of the Ottawa County records was unable to detect or discern the claimed interest of Plaintiff in the Property, using the grantor/grantee index and the partial tract index maintained by the Ottawa County Register of Deeds.
- (g) Even if Defendants had detected the Notice of Lis Pendens filed by Plaintiff, the pleadings of record in the Texas Action would not have advised Defendants of Plaintiff's claim relating to the Property.

2. Franklin Mortgage is a good faith creditor, having loaned \$349,000 to Jeffrey Darrouf Saxon, Jr. and Nohemy R. Saxon, husband and wife, on or about December 21, 1999 in reliance on the Mortgage from the Saxons. (Exhibit 5 of Complaint.) Franklin Mortgage did not have constructive or actual knowledge of the claims of Plaintiff as alleged in the Complaint or in the Texas Action.

3. Defendants Option One and Norwest are good faith assignees of the Franklin Mortgage without constructive or actual knowledge of the claims of Plaintiff as alleged in the Complaint or in the Texas Action.



4. Defendant Northpointe is a good faith creditor, having loaned \$75,000 to Jeffrey Darrouf Saxon, Jr. on or about January 10, 2000 in reliance on the Mortgage from Saxon. (Exhibit 8 of Complaint.) Northpointe did not have constructive or actual knowledge of the claims of Plaintiff as alleged in the Complaint or in the Texas Action.

5. The Franklin Mortgage and the Northpointe Mortgage constitute valid liens upon the Property and have priority over the interests claimed by the Plaintiff.

6. Plaintiff's claims against Defendants are barred by the doctrine of estoppel resulting from Plaintiff's failure to identify the Wolcott Trust or Jeffrey Saxon as the owner of the Property thereby preventing a prospective secured creditor of the owner of the Property from detecting the Notice of Lis Pendens when searching the Ottawa County Records.

### **III. CROSSCLAIM OF DEFENDANTS OPTION ONE, NORWEST AND NORTHPOINTE AGAINST DEFENDANT JEFFREY DARROUF SAXON, JR.**

Option One, Norwest and Northpointe, by their attorneys, Miller, Johnson, Snell, Cummiskey, P.L.C. Crossclaim against Defendant Jeffrey Darrouf Saxon, Jr. ("Saxon") as follows:

1. Jeffrey Darrouf Saxon, Jr. ("Saxon") is a Defendant as described in Paragraph 1.04 of the Complaint.

2. Option One is a California Corporation identified in accordance with Paragraph 1.05 of the Complaint.

3. Norwest is a national banking association as identified in Paragraph 1.06 of the Complaint.

4. Northpointe is a Michigan Corporation as identified in Paragraph 1.07 of the Complaint.

5. 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 secured by the Franklin Mortgage.

6. In accordance with the terms and conditions of the Franklin Mortgage, Saxon warranted perfect title of the Property in himself and against all previous encumbrances.

7. On January 10, 2000, Saxon obtained a loan in the amount of \$75,000 secured by the Northpointe Mortgage.

8. In accordance with the Northpointe Mortgage, Saxon warranted perfect title of the Property in himself and against all previous encumbrances.

9. Franklin Mortgage and Northpointe relied upon the warranty of perfect title to the Property in granting the loans to Saxon.

10. In the event Plaintiff prevails and sets aside the Franklin Mortgage, then Defendants Option One and Norwest would be damaged to the extent that balances due and owing on the Franklin Mortgage and Note would be uncollectible or unenforceable and Option One and Norwest as their interests appear with respect to the Franklin Mortgage and Note would be entitled to a judgment against Saxon for the full amount due and owing on the Franklin Mortgage and Note.

11. In the event Plaintiff prevails and sets aside the Northpointe Mortgage, then Defendant Northpointe would be damaged to the extent that the balance due and owing on the Northpointe Mortgage and Note would be uncollectible or unenforceable and Northpointe would be entitled to a judgment against Saxon for the full amount due and owing on the Northpointe Mortgage and Note.

#### **IV. COUNTERCLAIMS OF OPTION ONE, NORWEST AND NORTHPOINTE AGAINST PLAINTIFF.**

Option One, Norwest and Northpointe, by their attorneys, Miller, Johnson, Snell & Cummiskey, P.L.C., counterclaim against Plaintiff Michael J. Quilling as follows:

1. Michael J. Quilling is the Receiver as described in Paragraph 1.01 of the Complaint.
2. Option One is a California Corporation identified in accordance with Paragraph 1.05 of the Complaint.
3. Norwest is a national banking association as identified in Paragraph 1.06 of the Complaint.
4. Northpointe is a Michigan Corporation as identified in Paragraph 1.07 of the Complaint.
5. This Counterclaim arises out of the transaction or occurrence that is the subject matter of the Complaint and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

#### **COMMON FACTS**

6. On December 21, 1999, A.R.T. Financial Services, Inc., d/b/a Franklin Mortgage, a Michigan corporation, entered into a mortgage loan transaction with Jeffrey Darrouf Saxon, Jr. and Nohemy R. Saxon, husband and wife, in which Saxons obtained a loan in the amount of \$349,000.00 as evidenced by a Promissory Note and a Mortgage each of the same date (December 21, 1999) against the Property (the "Franklin Note and Mortgage"). A copy of the Franklin Mortgage is attached as Exhibit 5 to the Complaint. The Mortgage was filed on December 28, 1999 and recorded in Liber 2764, Page 287, of Ottawa County Records.

7. The Franklin Mortgage and Note were transferred to Option One by a written Assignment of Mortgage dated December 21, 1999, filed on July 25, 2000, and recorded in Liber 2867, Page 365, Ottawa County Register of Deeds. The Assignment of Mortgage to Option One is attached as Exhibit 6 to the Complaint. The Franklin Mortgage and Note were subsequently transferred to Norwest by written Assignment of Mortgage dated September 7, 2000, filed on September 28, 2000, and recorded in Liber 2902, Page 456, Ottawa County Register of Deeds. The Assignment of Mortgage to Norwest is attached as Exhibit 7 of the Complaint. The Franklin Mortgage and Note are currently in default and Norwest is prepared and intends to foreclose on the Franklin Mortgage.

8. On January 10, 2000 Northpointe entered into a mortgage loan transaction with Jeffrey Darrouf Saxon, Jr. in which Saxon obtained a loan in the amount of \$75,000 as evidenced by a Promissory Note and a Mortgage each of the same date (January 10, 2000) against the Property (the "Northpointe Note and Mortgage"). A copy of the Northpointe Mortgage is attached as Exhibit 8 to the Complaint. The Northpointe Mortgage was filed on February 7, 2000 and recorded in Liber 2782, Page 650, Ottawa County Records. The Northpointe Mortgage and Note are in default and Northpointe intends to foreclose on the Northpointe Mortgage pending the disposition of the case in this court.

9. Franklin Mortgage is a good faith creditor, having loaned \$349,000 to the Saxons on or about December 21, 1999 in reliance on the Mortgage from the Saxons. Franklin Mortgage did not have constructive or actual notice of the claims of Plaintiff as alleged in the Complaint or in the Texas Action ("Texas Action") as defined in Defendant's Affirmative Defense No. 1 to Plaintiff's Complaint in this matter.

10. Option One and Norwest are good faith assignees of the Franklin Mortgage without constructive or actual knowledge of the claims of Plaintiff, as alleged in the Complaint or in the Texas Action.

11. Northpointe is a good faith creditor having loaned \$75,000 to Jeffrey Saxon, Jr. on or about January 10, 2000 in reliance on the Northpointe Mortgage from Saxon. Northpointe did not have constructive or actual knowledge of the claims of Plaintiff as alleged in the Complaint or in the Texas Action.

12. The Franklin Mortgage and the Northpointe Mortgage constitute valid liens upon the Property and have priority over the interest claimed by the Plaintiff in the Complaint and in the Texas Action.

13. On or about August 23, 1999, Plaintiff filed a Notice of Lis Pendens with the Ottawa County Register of Deeds, recorded in Liber 2699, Page 633 of Ottawa County Records.

14. The Notice of Lis Pendens as filed by Plaintiff fails to satisfy the requirements of Michigan law and did not provide constructive notice to Norwest or to Northpointe as to Plaintiff's claims alleged in its Complaint in this case or in the Texas Action for the following reasons:

- (a) The Texas Action names a myriad of defendants, none of which have ever been the owner of the Property identified in the Notice of Lis Pendens. Specifically, neither the Wolcott Trust or Jeffrey Saxon are named as defendants in the Texas Action.
- (b) The Texas Action, and in particular the Order Freezing Assets, Reinstating Appointment of Receiver And Authorizing Expedited Discovery (Exhibit 1 of the Complaint) relates to and involves the freezing of assets of

the defendants in the Texas Action. Upon information and belief, the Property identified in the Notice of Lis Pendens was not described in the Complaint filed in the Texas Action or in any other pleadings filed of that case.

- (c) The Notice of Lis Pendens inaccurately characterizes the Texas Action as “involving the property located in Ottawa County, Michigan.” Upon information and belief, the Texas Action was brought for the specific purpose of freezing assets of the named defendants in that case and not for the purpose of freezing the assets of the Wolcott Trust, of Jeffrey Saxon or of any other owners of the Property which is the subject of the current case.
- (d) Summons in the Texas Action has not been served upon any of the Defendants in the current case within 60 days of the filing of the Texas Action as required by MCLA 600.2701(2).
- (e) Plaintiff failed to satisfy the requirements of MCLA 565.25(2) by (1) not filing proof of service with the Register of Deeds that actual notice has been given to the owner of record of the Property and (2) by failing to file with the Register of Deeds a full and fair accounting of the facts that support recording the Notice of Lis Pendens and supporting documentation of Plaintiff’s interest in the Property.
- (f) As a result of all of the above, a reasonable search of the Ottawa County records was unable to detect or discern the claimed interest of Plaintiff in the Property, using the grantor/grantee index and the partial tract index maintained by the Ottawa County Register of Deeds.
- (g) Even if Defendants had detected the Notice of Lis Pendens filed by Plaintiff, the pleadings of record in the Texas Action would not have advised Defendants of Plaintiff’s claim relating to the Property.

**DEFENDANTS' PRAYER FOR RELIEF AS TO PLAINTIFF'S  
COMPLAINT, DEFENDANTS' CROSS CLAIM AND  
DEFENDANTS' COUNTERCLAIM**

WHEREFORE, Defendants Option One, Norwest and Northpointe request the Court to enter its judgment as follows:

As to Plaintiff's Complaint:

- (a) Deny and dismiss any and all claims of Plaintiff's Complaint against Defendants Option One, Norwest and Northpointe with respect to the validity and enforceability of the Franklin Mortgage shown in Exhibit 5 of the Complaint and the Northpointe Mortgage identified as Exhibit 8 of the Complaint.

As to Defendants' Cross Claim Against Saxon:

- (b) Enter judgment in favor of Defendants Option One, Norwest and Northpointe (as their respective interests appear) against Defendant Saxon in the amounts due and owing under the Franklin Mortgage and Note and the Northpointe Mortgage and Note plus interest, costs and attorneys fees as provided in each of the respective Mortgages.

As to Defendants' Counterclaim Against Plaintiff:

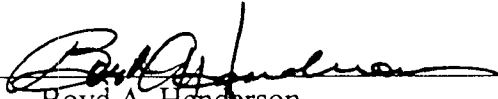
- (c) Enter judgment in favor of Defendants Option One, Norwest and Northpointe against Plaintiff declaring that the Franklin Mortgage and the Northpointe Mortgage are valid mortgages constituting liens upon the Property and that the Franklin Mortgage and Northpointe Mortgage have priority over the interest claimed by the Plaintiff and further that

Defendants Option One, Norwest and Northpointe are entitled to costs and attorneys fees as allowed by statute or by discretion of the Court as justice would allow.

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.  
Attorneys for Defendants Option One Mortgage, Norwest Bank and Northpointe Bank

Dated: December 6, 2000

By

  
Boyd A. Henderson

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