

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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In re )  
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NICHOLAS J. FIORILLO and ) Chapter 7, No. 10-44179-MSH  
 ) and  
TRACY L. KROWEL ) Chapter 7, No. 11-43854-MSH  
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Debtors )  

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JONATHAN R. GOLDSMITH, ) Adversary Proceeding No. \_\_  
TRUSTEE IN BANKRUPTCY OF )  
NICHOLAS J. FIORILLO and )  
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JOSEPH H. BALDIGA, )  
TRUSTEE IN BANKRUPTCY OF )  
TRACY L. KROWEL )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
DAVID MASSAD, )  
MARCELLO MALLEGNI, )  
COMMERCE BANK AND TRUST CO., )  
and LBM FINANCIAL, LLC. )  
 )  
Defendants. )  

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**COMPLAINT**

Plaintiffs Jonathan Goldsmith, Chapter 7 Trustee in Bankruptcy of Nicholas J. Fiorillo, and as the Assignee of claims by the Shrewsbury Street Development Companies, Inc., the Fiorillo Family Trust, and the 49 Old Colony Drive Trust (hereafter “Trustee Goldsmith” or “Goldsmith”) and Joseph Baldiga, Chapter 7 Trustee in Bankruptcy of Tracy L. Krowel, and as

the Assignee of claims by the Fiorillo Family Trust and the 49 Old Colony Drive Trust (hereafter “Trustee Baldiga” or “Baldiga” and “Plaintiffs” or “Chapter 7 Trustees” collectively), by and through their attorneys, complain of Defendants David Massad and Marcello Mallegni (“RICO Defendants”), and Defendants Commerce Bank and Trust Company and LBM Financial, Inc., as follows, for damages caused by their violations of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, and/or state law claims of breach of contract and breach of the covenant of good faith and fair dealing, and in support hereof states:<sup>1</sup>

**PARTIES**

1. Plaintiff Jonathan R. Goldsmith, Chapter 7 Trustee in Bankruptcy of Nicholas J. Fiorillo (“Fiorillo”), is a citizen of Massachusetts. He brings these claims solely in his capacity as Chapter 7 Trustee, and not in his individual capacity, and, as Chapter 7 Trustee, is the assignee of claims by the Shrewsbury Street Development Companies, Inc., the Trustee of the Fiorillo Family Trust, and the Trustee of the 49 Old Colony Drive Trust.
2. Plaintiff Joseph H. Baldiga, Chapter 7 Trustee in Bankruptcy of Tracy L. Krowel (“Krowel”; together with Fiorillo, “the Debtors”) is a citizen of Massachusetts. He brings these claims solely in his capacity as Chapter 7 Trustee, and not in his individual capacity, and, as Chapter 7 Trustee, is the assignee of claims by the Trustee of the Fiorillo Family Trust and the Trustee of the 49 Old Colony Drive Trust.

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<sup>1</sup> Defendants Commerce Bank and Trust Company and LBM Financial, Inc. are only Defendants for the state law claims, not the RICO claims. “RICO Defendants” will refer to Defendants David Massad and Marcello Mallegni. “Defendants” will refer to all the named Defendants.

3. Chapter 7 Trustees Goldsmith and Baldiga bring these claims based on their investigation of the case, and not on their own personal knowledge of the facts set forth herein.
4. Shrewsbury Street Development Companies, Inc. (“SSDC”) is a corporation formed by Fiorillo in March 2005 in Massachusetts. It has assigned all of its claims related to this case to Goldsmith. It is not a Plaintiff in this case. Fiorillo is the president of SSDC.
5. The Fiorillo Family Trust (“FFT”) is a trust formed by Fiorillo for the benefit of the Fiorillo Family Revocable Trust (“FFRT”). The Trustee of FFT is Frank Fiorillo. Frank Fiorillo, as the Trustee of FFT, assigned all of its claims related to this case to the Chapter 7 Trustees. It is not a Plaintiff in this case.
6. The 49 Old Colony Drive Trust (“Old Colony Trust”) is a trust formed by the Fiorillo Family Revocable Trust for its benefit. The current Trustee of the Old Colony Trust is John Raimo. Raimo, as the Trustee of the Old Colony Trust, assigned all of its claims related to this case to the Chapter 7 Trustees. It is not a Plaintiff in this case.
7. Defendant David G. “Duddie” Massad (“Massad”) is a citizen of Massachusetts. At all relevant times, Massad was the majority shareholder and Chairman of Commerce Bank and Trust Company (“Commerce Bank”). On information and belief, Massad is also a major financier of, and holds a significant ownership interest in LBM Financial, Inc. (“LBM Financial”).
8. Defendant Marcello Mallegni (“Mallegni”) is a citizen of Massachusetts. At all relevant times, Mallegni was the Manager of, and a substantial shareholder in, LBM Financial, LLC.

9. Defendant Commerce Bank is a federally insured financial institution headquartered in Worcester, Massachusetts. Commerce Bank is not a Defendant in the RICO case, but is a Defendant in the state law claims.
10. Defendants LBM Financial, LLC is a Massachusetts limited liability company with a principal place of business located at 171 Locke Drive, Marlboro, Massachusetts. LBM Financial is not a Defendant in the RICO case, but is a Defendant in the state law claims.

### **JURISDICTIONAL, VENUE AND PROCEDURAL ALLEGATIONS**

11. As a Bankruptcy Court, this Court has jurisdiction over this instant Adversary Proceeding pursuant to 28 U.S.C. §157, which confers upon this Court jurisdiction over proceedings arising under Title 11 of the United States Code and of civil proceedings arising in or related to cases under Title 11 of the United States Code, and this proceeding may be commenced and prosecuted in this Bankruptcy Court in which these Chapter 7 cases are pending.
12. This matter is a core proceeding as defined in 28 U.S.C. §157(b)(2)(H), and is brought pursuant to Bankruptcy Rule 7001(1).
13. Pursuant to 11 U.S.C. §105(a), this Court has the equitable power to issue Orders that are necessary and appropriate to carry out the provisions of 11 U.S.C. §§101-1330.
14. These are bankruptcy cases (“Cases”) pending in the United States Bankruptcy Court, District of Massachusetts and therefore venue is proper in this district and in this Court pursuant to 28 U.S.C. §1409(a).
15. This is a RICO action conferring this Court, as a unit of the District Court, subject matter jurisdiction pursuant to RICO’s civil suit provision, 18 U.S.C. §1964(c).

Jurisdiction is also vested in this Court by virtue of 28 U.S.C. §1331 as a federal question.

16. Because claims brought under Massachusetts law are so related to the RICO claims, over which the Court has original jurisdiction, that they form part of the same case or controversy, the Court has supplemental jurisdiction over Plaintiffs' Massachusetts common law claims pursuant to 28 U.S.C. §1367.

### **NATURE OF CASE**

17. Fiorillo is a citizen of Massachusetts. At all relevant times, Fiorillo was in the business of commercial real estate development in Worcester, Massachusetts. He filed for bankruptcy in August 2010. He is not a Plaintiff in this case.
18. Krowel is a citizen of Massachusetts. At all relevant times, she was married to Fiorillo. She is not involved in commercial real estate development. She filed for bankruptcy in September 2011. She is not a Plaintiff in this case.
19. On August 23, 2010, Fiorillo filed a Voluntary Petition under the provisions of Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of Massachusetts, being assigned Case Number 10-44179-MSH. Subsequently, on October 7, 2010, the case was converted to a Chapter 7 case by Order of the United States Bankruptcy Court.
20. On September 12, 2011, Krowel filed a Voluntary Petition under the provisions of Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court, District of Massachusetts, being assigned Case Number 11-43854-MSH.

21. The commencement of a bankruptcy case creates an “estate” comprised of all legal or equitable interests of the debtor in property as of the commencement of the case, including the causes of action set forth herein. *See* 11 U.S.C. §541(a)(1).
22. On October 7, 2010, Jonathan R. Goldsmith was appointed as Chapter 7 Trustee for the Fiorillo bankruptcy estate.
23. On September 13, 2011, Joseph H. Baldiga was appointed as Chapter 7 Trustee for the Krowel bankruptcy estate.
24. Pursuant to 11 U.S.C. §704, the Chapter 7 Trustees are required to collect and reduce to money the property of the bankruptcy estates. Pursuant to this mandate, the Chapter 7 Trustees are granted standing to pursue legal claims and causes of action of the underlying Debtors, including those claims set forth herein.
25. Plaintiffs allege that the RICO Defendants have conspired to extort money and property from Fiorillo, Krowel, Fiorillo’s corporation, and their trusts (each as applicable to the respective debtor), through threats of physical violence and loss of property/title, and through loan sharking, over the past ten years (the “Scheme”).<sup>2</sup> The RICO Defendants have used their real estate business dealings with Fiorillo at the following properties to carry out this Scheme: 157 Shrewsbury Street; 249 Lincoln Street; 88 Shrewsbury Street; 425B Salisbury Street; 49 Old Colony Drive; and 23 ABCD North Quinsigamond Avenue (these properties are located in Worcester, Massachusetts and Shrewsbury, Massachusetts).

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<sup>2</sup> The “Scheme” includes a number of interrelated “sub-schemes” at the various properties described below. The facts relating to the scheme at each individual property will be referred to by the property name, for example, “the 88 Shrewsbury Street Scheme.”

26. Massad and Mallegni have a close personal and working relationship. They frequently work together on various real estate dealings, including the transactions described herein. They are also, or have been, shareholders in several of each other's companies.
27. Massad and Mallegni reputedly engage in organized crime tactics: violence and the threats of violence to force business associates to do as they want. Massad, Mallengi and their various companies have been defendants in numerous federal and state lawsuits relating to their allegedly illegal business and loan dealings.
28. The RICO Defendants' acts of extortion and loan sharking have damaged Plaintiffs by costing the Debtors, the Shrewsbury Street Development Companies, Inc., the Fiorillo Family Trust, and the Old Colony Trust, lost income from real estate transactions and payment of usurious interest rates. These crimes are RICO violations.

**A. FACTS RELATING TO THE 157 SHREWSBURY STREET SCHEME**

29. The preceding paragraphs are incorporated herein as though set forth in full.
30. In or about February 2004, Fiorillo approached Massad about purchasing the building located at 157 Shrewsbury Street, Worcester, Massachusetts for commercial development. The purchase price was \$520,000. This building was located in a popular and trendy commercial district in Worcester.
31. On or about February 2004, in order to purchase this building, Massad promised Fiorillo a loan from Commerce Bank for \$520,000 at 7% interest. The mortgage was for three years and Fiorillo was required to pay \$50,000 as an initial down payment. The Commerce Bank loan also was to include funds that were to be used for improvements to the property.

32. At the closing, on or about June 7, 2004, Mallegni, through his attorney Michael Norris, presented Fiorillo with a different loan than originally promised. The new loan was made by LBM Financial for \$360,000 at 14% interest with four points and an interest reserve. This loan would also be for up to one year.<sup>3</sup>
33. Fiorillo was forced to accept this deal or else lose his \$50,000 down payment.
34. In or around October 2004, before the mortgage was coming due, Fiorillo attempted to refinance the LBM Financial mortgage with a more conventional loan from Webster First Federal Credit Union for \$400,000 over five years at an interest rate of 6.75%. Massad and Mallegni, through their attorney Michael Norris, and aware of the outstanding principal balance of \$360,000, demanded that Fiorillo pay \$495,000 (as the loan payoff amount), well in excess of the actual balance of the loan.
35. Massad and Mallegni refused to give clear title to Fiorillo unless he paid this extra interest, which was approximately \$135,000 more than the mortgage agreement required. This would have resulted in an effective annual interest rate of at least 64%.
36. In January 2005, fearing Massad and Mallegni would foreclose on 157 Shrewsbury Street if he did not refinance, but still needing an additional \$95,000 to cover the bogus payoff amount demanded by Massad and Mallegni (above and beyond the loan from Webster First Federal Credit Union), Fiorillo was also forced into a second mortgage from Mallegni for \$95,000 at 14% interest over one year.
37. In or around February 2006, at about the same time the \$95,000 loan was coming due, Massad and Mallegni summoned Fiorillo to their offices to discuss their

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<sup>3</sup> Fiorillo also received a mortgage for the remainder of the \$520,000 purchase price (above the amount of his down payment and the loan from Mallegni). This loan was from the seller, Santo Arcuri, for \$120,000. This loan is not at issue with respect to the 157 Shrewsbury Street Scheme, but is at issue with respect to the 425B Salisbury Street Scheme and the 49 Old Colony Drive Scheme.



various real estate dealings. During this meeting, Massad demanded that Fiorillo give him the deed to the building located at 267 Shrewsbury Street (also known as the “Airline Lewis Building”) as a condition for continuing to do business, to avoid bodily harm, and to avoid deprivation of money. When Fiorillo refused, Massad threatened Fiorillo with physical harm and said: “If this was twenty years ago, you’d be dead kid. Now sign the fucking deed.” Frederick Carozza, an individual with a reputation for violence and intimidation, was also present at the meeting, among others. Massad blocked the doorway in an attempt to prevent Fiorillo from escaping.

38. Fiorillo managed to escape the meeting unharmed. But a few months later, in or about May 2006, Massad, through his attorney Michael Norris, sent a notice of foreclosure to Fiorillo claiming that Fiorillo owed Mallegni \$178,000 on the second mortgage on 157 Shrewsbury Street (*i.e.* the \$95,000 loan). Mallegni was aware this demand was well in excess of the actual amount due on the loan, which was at most \$135,000 (taking into account additional advances, as well as additional points/interest tacked on by the RICO Defendants), and did so to retaliate against Fiorillo for not deeding the Airline Lewis Building to Massad.

39. Payment of \$178,000 on this second mortgage would have resulted in an effective annual interest rate of over 75%.

40. In or about early May 2006, Mallegni initiated foreclosure proceedings on this property (and others, as stated below) even though he did not have the legal right to do so (*i.e.* Fiorillo was in compliance with the stated terms) and even though Fiorillo was disputing the payoff figure. He did this in retaliation for Fiorillo’s refusal to give Massad the deed to the Airline Lewis Building.

41. Fiorillo then initiated his own legal proceedings in Massachusetts state court to halt the RICO Defendants' foreclosure on 157 Shrewsbury Street. During the litigation,<sup>4</sup> Massad and Mallegni directed an associate of theirs, known locally as an individual who engages in organized crime tactics, to scare and intimidate Fiorillo into ending his defensive litigation. Fearing for his safety, the safety of his family, and the safety of his business partners, as well as the constant fear of economic reprisals by the RICO Defendants on his other properties, Fiorillo was forced to settle the state court proceedings in October 2006 by, *inter alia*, paying Mallegni \$156,000 in exchange for dropping the foreclosure proceedings and the intimidation tactics (described herein).

**B. FACTS RELATING TO THE 249 LINCOLN STREET SCHEME**

42. The preceding paragraphs are incorporated herein as though set forth in full.

43. In or about April 2005, Fiorillo approached Mallegni about purchasing the building located at 249 Lincoln Street, Worcester, Massachusetts for commercial purposes. The purchase price was \$550,000.

44. In order to purchase this building, Mallegni promised Fiorillo a conventional loan from LBM Financial for \$550,000, at an interest rate of 12%, and payment of three points. Under this deal, Fiorillo paid \$20,000, which included the down payment and other out of pocket expenditures.

45. At the closing, on or about May 3, 2005, Fiorillo was presented with a different loan than originally promised by Mallegni. The new loan was for one year at 14%

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<sup>4</sup> The legal proceedings also involved a number of the other properties that are the subject of this case and will be detailed in their respective sections below.

interest, and three points, and also required Fiorillo to assign a 25% interest in the property located at 157 Shrewsbury Street to Mallegni.

46. During the closing, when Fiorillo questioned Mallegni by phone about the drastically different loan terms, Mallegni threatened to revoke the loan altogether, which would have resulted in Fiorillo losing his down payment. Mallegni also threatened to have Massad foreclose on other properties Fiorillo owned, such as his personal residence and the Airline Lewis Building, if Fiorillo did not accept this deal. As a result, Fiorillo reluctantly and unwillingly acquiesced to the new terms of this loan so as not to lose his other properties.

47. At the time Fiorillo purchased this building, Dinny's Pub and the Doo-Wop Laundromat were tenants on the ground floor. There were also a number of residential tenants above. The combined yearly projected rent from all of these tenants was approximately \$109,000. These leases were to continue for at least 10 years and Fiorillo expected to receive this income through that time.

48. Once Fiorillo purchased the property, he immediately began investing his own money into renovating and repairing the property, in excess of \$18,000.

49. In or about November 2005, Fiorillo attempted to refinance the loan on this property in order to receive a more conventional rate. To this end, Fiorillo requested a payoff amount from Mallegni. Mallegni told him that the payoff amount was \$648,758.48, when according to the terms of the loan, Mallegni knew the full payoff amount should have only been \$554,000. This resulted in Mallegni attempting to charge an effective interest rate of over 48% for only a five month period, which was far in

excess of the contract rate of interest. Fiorillo was unable to pay this amount and was unable to complete the refinance.

50. In or about May 2006, after the meeting described above in Paragraph 37, Mallegni, through his attorney Michael Norris, sent a notice of foreclosure to Fiorillo claiming that Fiorillo owed LBM Financial approximately \$871,000 on the 249 Lincoln Street mortgage. Mallegni was aware this demand was well in excess of the actual amount due on the loan, which was only \$603,000. Payment of this amount would have resulted in an effective annual interest rate of over 51%.

51. Mallegni knew that Fiorillo was unable to pay this extra amount and wanted to foreclose on this property in retaliation for Fiorillo's refusal to give Massad the deed to the Airline Lewis Building.

52. Shortly thereafter, in or about May 2006, Mallegni initiated foreclosure proceedings on 249 Lincoln Street even though he did not have the legal right to do so under the terms of the mortgage. As a result, Fiorillo ceased receiving the rental payments from Dinny's Pub, the Doo-Wop Laundromat, and the other tenants, and has not received any money from them since.

53. Fiorillo then initiated his own legal proceedings in Massachusetts state court to halt the RICO Defendants' foreclosure on 249 Lincoln Street. During the litigation, Massad and Mallegni directed an associate, known locally as an individual with a reputation for violence, to scare and intimidate Fiorillo into ending the litigation. Fearing for his safety, the safety of his family, and the safety of his business partners, as well as the constant fear of economic reprisals by the RICO Defendants on other

properties he owned, Fiorillo was forced to settle the state court proceedings in October 2006 by, *inter alia*, allowing the foreclosure on 249 Lincoln Street to proceed.

**C. FACTS RELATING TO THE 88 SHREWSBURY STREET SCHEME**

54. In late 2004, SSDC/Fiorillo entered into a contract to purchase 88 Shrewsbury Street from two businessmen (unrelated to the RICO Defendants and/or any of their entities) for commercial development. The purchase price was \$601,000. The building was located in a popular and trendy commercial district of the City of Worcester.
55. In or about December 2004, SSDC/Fiorillo approached Mallegni about financing the purchase of this building.
56. In order to purchase this building, Mallegni promised SSDC/Fiorillo a mortgage from LBM Financial for \$650,000 at 12% interest, and two points.
57. At the closing, on or about December 16, 2004, Mallegni presented SSDC/Fiorillo with a different loan package than originally promised. The new loans would be for \$800,750 at 12% and 6.25%, respectively, with the extra money (above and beyond the purchase price) to be used for interest reserve and capital improvements. Mallegni also demanded that he and Michael Norris receive 55% ownership interest in the building or they would not lend the money to close.
58. SSDC/Fiorillo reluctantly and unwillingly acquiesced to this deal to keep from losing its down payment. Additionally, SSDC/Fiorillo also had no other choice but to close on the purchase for fear of being sued from the seller for specific performance.
59. After the loan closed, and as a 55% owner in the property, Mallegni was responsible for administering the loan and handling the building's finances. Mallegni

used his role in administering the mortgage to misappropriate nearly \$150,000 in loan proceeds which was supposed to be used for capital improvements.

60. At or around the time SSDC/Fiorillo had the rights to purchase 88 Shrewsbury Street (in full), there were three commercial tenants in the building: a) Verizon Wireless was in a three-year lease for approximately \$1,460/month; b) Concord Electrical Supply was in a ten-year lease for approximately \$2,480/month; and c) Home Surplus Liquidators was in a five-year lease for approximately \$2,750 (collectively, approximately \$6,690/month).

61. These tenants represented 50% of the commercial space, and SSDC/Fiorillo intended to lease the remaining space out for the same amount, for a total monthly rental of approximately \$14,000/month.

62. SSDC/Fiorillo should have begun collecting these rents once SSDC/Fiorillo owned the building (per the contract to purchase), but because Mallegni now owned a controlling interest in the property, he received the rent checks, misappropriated them, and SSDC/Fiorillo never saw any of this money.

63. Over the next few months, Fiorillo also invested an additional \$7,000 of his own money to renovate and improve the building.

64. In or about May 2006, after the meeting described above in Paragraph 37, Mallegni, through his attorney Michael Norris, sent a notice of foreclosure to SSDC/Fiorillo claiming that SSDC/Fiorillo owed LBM Financial over \$800,000 on the 88 Shrewsbury Street mortgage. Mallegni claimed that the loan was in default from the beginning and was charging SSDC/Fiorillo late fees and default interest rates. Mallegni was aware this demand violated the mortgage agreement and was well in excess of the

actual amount due on the loan, which was only approximately \$615,000. Repayment of the amount demanded by Mallegni would have resulted in an annual effective interest rate of over 28%.

65. Mallegni knew SSDC/Fiorillo was unable to pay this extra amount and wanted to foreclose on this property in retaliation for Fiorillo's refusal to give Massad the deed to the Airline Lewis Building (described above).

66. Shortly thereafter, Mallegni threatened foreclosure proceedings on this property even though he did not have the legal right to.

67. As stated above, Fiorillo then initiated his own legal proceedings in Massachusetts state court to halt the various foreclosure proceedings taking place (as described, in part, herein) by the RICO Defendants. During the litigation, Massad and Mallegni directed an associate, known locally as an individual with a reputation for violence, to scare and intimidate Fiorillo into ending the litigation. Fearing for his safety, the safety of his family, and the safety of his business partners, as well as the constant fear of economic reprisals by the RICO Defendants on other properties Fiorillo owned, Fiorillo was forced to settle the state court proceedings in October 2006 by, *inter alia*, turning over the remaining 45% interest in the property to Mallegni.

68. As a result, SSDC/Fiorillo never received any portion of the \$14,000 monthly rental income (for any month) of which it would have otherwise been entitled to receive the full amount.

#### **D. FACTS RELATING TO THE 425B SALISBURY STREET SCHEME**

69. In or around May 2003, Fiorillo and Krowel purchased a single family home at 425B Salisbury Street, Worcester, Massachusetts. This was to be their personal home.

70. Fiorillo and Krowel initially partially financed the purchase of this home through Entrust Financial, a financial entity owned and operated by Massad and an associate. Fiorillo and Krowel made an initial down payment of approximately \$50,000.
71. In or about May 2004, through fear of foreclosure on other Fiorillo owned properties, Massad forced Fiorillo and Krowel to refinance the mortgage on 425B Salisbury Street through Commerce Bank with two new loans. Fiorillo and Krowel were lulled into the refinancing with a promise of a conventional 5.5% loan only to arrive at the closing and be presented with a much different loan package. The terms of the new loan(s) would be: a) a five year Adjustable Rate Mortgage (“ARM”) for \$330,700 with an interest rate as high as 11.5% interest; and b) a home equity line of credit for \$216,300 with an interest rate as high as 18% for five years.<sup>5</sup>
72. In or about November 10, 2005 (at the time the refinance was taking effect) Mallegni also demanded that Fiorillo and Krowel take a second mortgage on 425B Salisbury Street for \$1,010,000 as collateral for another project. In the summer of 2006, Fiorillo repaid LBM the total amount due on this second mortgage, but Mallegni never discharged Fiorillo and Krowel from the loan and claimed the money was still owed. Mallegni later used this threat of an unpaid loan as further coercion to induce Fiorillo to settle the legal proceedings (described throughout) on extremely unfavorable terms.
73. In late spring of 2006/early summer 2006, following the meeting described above in Paragraph 37, and following an unfavorable newspaper article about Massad’s

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<sup>5</sup> The reason Massad forced Fiorillo and Krowel to accept two different loans was to force them to write Massad a personal check for \$35,000 from the home equity line of credit, which would not have been possible if there was only a mortgage (and not a line of credit). Massad claimed the \$35,000 was personal debt, but that claim was false. Massad forced Krowel and Fiorillo to pay him this money anyway based on fear of foreclosure of other properties and the threat of not closing the loan for 425B Salisbury Street.



business practices, Massad called up Fiorillo and threatened him with physical violence and foreclosure. Massad said: “If I read my name in the paper again, the next time your name is in the paper will be in the obituaries. Don’t fuck with me. Give me the deed to the Airline Lewis Building or else I will kill you and put your family out on the street [foreclose on 425B Salisbury Street].”

74. A few days later, Massad had Commerce Bank issue a demand letter to Fiorillo “calling the note” on 425B Salisbury Street for the first mortgage and home equity line of credit, even though the loan was not yet due and Fiorillo and Krowel were current on it. Soon thereafter, Massad initiated foreclosure proceedings for which he did not have a legal right to do under the terms of the mortgage.

75. In or about March 2007, Fiorillo and Krowel transferred title to 425B Salisbury Street to Fiorillo’s father, Frank Fiorillo. Frank Fiorillo was able to refinance the loan through First Federal Savings Bank (an entity not owned/controlled by the RICO Defendants). In order to discharge the loan, Massad demanded \$589,000, which was an amount well in excess of the actual amount due on the loan, which was only \$545,000. This payoff figure represented an effective annual interest rate of approximately 23%. The Debtors and Frank Fiorillo paid this extra amount because they were scared of Massad and feared losing their family home if they did not comply with the Defendants’ demands.

76. On or about December 9, 2008, Frank Fiorillo transferred title to 425B Salisbury Street to the Fiorillo Family Trust, with Frank Fiorillo as its Trustee.

77. In or about the end of 2008, Massad then directed his associate, Santo Arcuri, to obtain an illegitimate preliminary injunction/temporary restraining order (“TRO”) on

425B Salisbury Street, by filing a sham lawsuit against Fiorillo. In the lawsuit, Arcuri claimed that Fiorillo still owed him \$200,000 from the loan he gave him on 157 Shrewsbury Street, when Massad and Arcuri both knew that the loan had been repaid and discharged years ago in exchange for Fiorillo giving Arcuri his interest in an Italian restaurant. Massad and Arcuri obtained this illegitimate preliminary injunction/TRO on Fiorillo's home to retaliate against Fiorillo for not deeding Massad the Airline Lewis Building, to attempt to coerce him to settle the RICO case that was now ongoing (*Fiorillo et al. v Massad et al.*, 07-40015-FDS (D. Mass 2007)), and as a way to force Fiorillo to pay them more money than they were entitled to.

78. Massad and Arcuri would not remove/revoke the preliminary injunction/TRO (and give free and clear title), unless Fiorillo paid them \$200,000, which they were not owed. They also demanded that Fiorillo dismiss his RICO claim as a condition for removing/revoking the preliminary injunction/TRO.

79. The \$200,000 preliminary injunction/TRO on this property prevented the Fiorillo Family Trust from selling this property to Notre Dame Academy for at least \$735,000 in 2009. The sale of this property would have resulted in a \$200,000 profit.

80. Eventually, after judicial intervention, the Fiorillo Family Trust was permitted to sell 425B Salisbury Street to a different buyer as a "short sale" only because the sale was for a loss and only because Fiorillo and FFT did not gain any money from the transaction.

#### **E. FACTS RELATING TO THE 49 OLD COLONY DRIVE SCHEME**

81. On May 26, 2009, Fiorillo and Krowel effected the purchase of a new home at 49 Old Colony Drive through the Old Colony Trust (which was for the Fiorillo Family

Revocable Trust beneficiaries, the Fiorillo children). This was to be their personal residence. The Trustee of the Old Colony Trust was originally Erik Krowel, but John Raimo became the Trustee in 2011.

82. The purchase price of 49 Old Colony Drive was \$398,000.
83. The Debtors arranged a mortgage to pay for the house, which was not through any of the RICO Defendants and/or their entities. The mortgage was a one year loan at 12% interest and three points.
84. Once the purchase of 49 Old Colony Drive was completed, on or about January 2011, Massad then directed his associate, Santo Arcuri, to once again obtain an illegitimate lien on this property for \$200,000 by filing a sham lawsuit against Fiorillo and his wife in Massachusetts State Court. Like before, Arcuri claimed that Fiorillo and his wife still owed him \$200,000 from the loan on 157 Shrewsbury Street, when Massad and Arcuri both knew that the loan had been repaid and discharged years ago in exchange for Fiorillo giving Arcuri his interest in an Italian restaurant.
85. Similarly, Massad and Arcuri also refused to give the Old Colony Trust free and clear title on 49 Old Colony Drive unless they were paid \$200,000 in money they were not owed and had no legal right to.
86. The lien prevented the Old Colony Trust from refinancing the mortgage. The Debtors and the Old Colony Trust were forced to get a one year extension on the existing mortgage, which resulted in paying approximately \$75,000 in higher interest payments and points during this time period. Despite attempts to have the lien removed, it still remains at this time.

**F. FACTS RELATING TO THE 23 ABCD NORTH QUINSIGAMOND AVENUE SCHEME**

87. In or about 1997, Fiorillo purchased four homes located at 23 ABCD North Quinsigamond Avenue in Worcester, Massachusetts for \$217,000. Fiorillo made a down payment of approximately \$10,000 and obtained a multi-year loan from Commerce Bank at 8% interest.
88. At the time Fiorillo purchased this property, he was receiving approximately \$5,000/month in rental income from them. Fiorillo knew this would be valuable land and intended to keep this property as rental income and enjoy the appreciation of this real estate over the long term (of which today is worth in excess of \$1,000,000).
89. Sometime in 1999, Massad, and his associate Freddie Carrozza, summoned Fiorillo to a meeting outside Commerce Bank.
90. At the meeting, Massad and Carrozza told Fiorillo that they were upset that a previous joint venture was not going as planned/not as profitable as they would have liked, and that Fiorillo owed them \$150,000 as compensation and interest. Massad and his associates forced Fiorillo to deed over the properties at 23 ABCD North Quinsigamond Avenue to another associate of theirs as “repayment.” Massad said: “Do the right thing, you don’t want to embarrass me and end up getting yourself hurt.”
91. Fiorillo was scared and reluctantly and unwillingly acquiesced. From that point on, Fiorillo no longer received any of the rental payments and Massad and his associate controlled the property.

92. On information and belief, after Fiorillo deeded Massad's associate the properties located 23 ABDC North Quinsigamond Avenue, Massad never discharged the mortgage until November 2008.

93. On information and belief, Massad, knowing Fiorillo was still listed on the mortgage, purposely had his associate not make timely mortgage payments. Additionally, through Commerce Bank, Massad and his associates also encumbered the property with an additional \$500,000 in mortgages. This was done for the sole purpose of hurting Fiorillo's credit rating, preventing him from borrowing money from a conventional/traditional bank up through the present.

**THE RICO VIOLATIONS COMMITTED  
BY DEFENDANTS MASSAD AND MALLEGNI**

94. The preceding paragraphs are incorporated herein as though set forth in full.

95. Massad and Mallegni's actions violated MGLA 265 § 25, 18 U.S.C. §1951, 18 U.S.C. §892, and 18 U.S.C. §894, which are made "racketeering activity" by 18 U.S.C. §§1961(1)(A) and (B), respectively. Massad and Mallegni's actions violated these statutes in the following ways:

96. MGLA 265 § 25 states, in pertinent part:

Whoever...by a verbal or written or printed communication maliciously threatens an injury to the person or property of another...with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both.

97. 18 U.S.C. § 1951 states, in pertinent part:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

98. Massad and Mallegni's threats and ultimate refusal to give the Debtors and their related entities (as applicable) free and clear title as to the properties located at 157 Shrewsbury Street, 249 Lincoln Street, 88 Shrewsbury Street, 425B Salisbury Street, 49 Old Colony Drive, and 23 ABCD North Quinsigamond Avenue, and/or their threats and demands to take ownership interests in these properties, unless they were paid hundreds of thousands of dollars to which they were not entitled, are violations of MGLA 265 § 25 and 18 U.S.C. §1951.

99. Additionally, Massad and Mallegni's threats to foreclose on these properties if the Debtors and their related entities (as applicable) did not pay them hundreds of thousands of dollars in excess of the amount due on the loan, is also a violation of MGLA 265 § 25 and 18 U.S.C. §1951.

100. 18 U.S.C. §892 state, in pertinent part:

Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

101. 18 U.S.C. §894, states, in pertinent part:

Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means (1) to collect or attempt to collect any extension of credit, or (2) to punish any person for the nonrepayment thereof, shall be fined under this title or imprisoned not more than 20 years, or both.

102. Massad and Mallegni violated §§892 and 894 by offering loan(s)/requiring repayment of loans to the Debtors and their related entities (as applicable) in relation to

157 Shrewsbury Street, 249 Lincoln Street, 88 Shrewsbury Street, and 425B Salisbury Street that were: in excess of an annual rate of 45 per cent; the Debtors reasonably believed that one or more extensions of credit by Massad and Mallegni had been collected or attempted to be collected by extortionate/violent means in the past; the Debtors reasonably believed that Massad and Mallegni had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof; Massad and Mallegni threatened physical and economic harm if the credit/loans were not repaid; and/or that as a result, the repayment of such debt would not be enforceable through civil proceedings in Massachusetts.

103. Additionally, as stated above, Massad and Mallegni violated §894 by threatening the Debtors and their related entities (as applicable) with violence and illegal foreclosures on these properties in order to collect, or attempt to collect, payment on these usurious loans.

### **THE RICO ASSOCIATION-IN-FACT ENTERPRISE**

104. The Defendants committed these RICO violations through an association-in-fact enterprise, consisting of RICO Defendants Massad and Mallegni, and non-RICO Defendants Michael Norris, Pamela Massad, Commerce Bank, and LBM Financial (hereafter referred to as “Real Estate Financing Enterprise”).

105. This group is an association-in-fact enterprise pursuant to 18 U.S.C. §1961(4) because the members have associated together for several years for the purpose of extorting money from the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, through real estate scams. Each member of the enterprise plays a role in the targeting of victims, the issuance of loans on terms that will not be honored, the

preparation of loan and mortgage documents, the recording of these documents, and the subsequent threats to foreclose if the victim does not consent to new/additional terms which are more favorable to the RICO Defendants or pay the RICO Defendants money to which they are not entitled.

106. This enterprise has made, and distributed, millions of dollars to the members over its long duration. Much of this money is the proceeds of the extortionate crimes perpetrated by the RICO Defendants. The RICO Defendants continue to associate with the enterprise, and the enterprise continues to carry out its crimes to this day and will continue to victimize more people in more real estate deals until halted by judicial intervention.

107. Pamela Massad is a citizen of Massachusetts. Pamela Massad is not a Defendant in the RICO case, but at all relevant times, she was an attorney licensed to practice law in the Commonwealth of Massachusetts. Ms. Massad is the daughter of Massad and has represented the RICO Defendants and the RICO Defendants' entities in the transactions listed above.

108. Michael Norris is a citizen of Massachusetts. Michael Norris is not a Defendant in the RICO case, but at all relevant times, he was an attorney licensed to practice law in the Commonwealth of Massachusetts, and has represented the RICO Defendants and the RICO Defendants' entities in the transactions listed above.

109. Commerce Bank is a federally insured financial institution headquartered in Worcester, Massachusetts. Commerce Bank is not a RICO Defendant, but at all relevant times, was part of the association-in-fact RICO enterprise.



110. LBM Financial is a Massachusetts limited liability company with a principal place of business located at 171 Locke Drive, Marlboro, Massachusetts. LBM Financial is not a RICO Defendant, but at all relevant times, was part of the association-in-fact RICO enterprise.

**COUNT I AGAINST DEFENDANTS MASSAD AND MALLEGNI**  
**FOR VIOLATIONS OF 18 U.S.C. 1962(C)**

111. The preceding paragraphs are incorporated herein as though set forth in full. Massad and Mallegni violated 18 U.S.C. §1962(c), as described below.

112. Massad is a "person," within the meaning of 18 U.S.C. §§1961(3) and 1962(c). Mallegni is a "person," within the meaning of 18 U.S.C. §§1961(3) and 1962(c).

113. At all relevant times the Real Estate Financing Enterprise was an association-in-fact enterprise within the meaning of 18 U.S.C. §§1961(4) and 1962(c).

114. Massad and Mallegni committed a pattern of racketeering activity, consisting of repeated and continuous violations of MGLA 265 § 25, 18 U.S.C. §1951, 18 U.S.C. §892, and 18 U.S.C. §894, through their participation and operation of the Real Estate Financing Enterprise. They began their racketeering activity through this enterprise since at least 1999 and it is still open and ongoing. Massad committed all of the above acts of racketeering as an owner/manager of Commerce Bank. Mallegni committed all of the above racketeering activity as an owner/manager of LBM Financial.

115. Additionally, both Massad and Mallegni were the main financial backers of their respective lending entities.

116. Each refusal by Massad and Mallegni to give clear title to the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust (and their threats regarding same),

and/or their threats/demands for ownership interests in these properties, unless they were paid hundreds of thousands of dollars of which they were not entitled to, constitutes separate violations. Similarly, each illegal foreclosure (and threat to do so) by the RICO Defendants on property owned by the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, unless they were paid hundreds of thousands of dollars of which they were not entitled to, also constitutes a separate violation.

117. Additionally, each extension of credit to the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, with effective annual interest rates exceeding 45% and/or which included threats of violence and/or illegal foreclosures as collection methods, is also a separate violation.

118. Massad and Mallegni's violations of MGLA 265 § 25, 18 U.S.C. §1951, 18 U.S.C. §892, and 18 U.S.C. §894, enumerated above, in furtherance of the Scheme, proximately damaged the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, in their business or property, pursuant to 18 U.S.C. §1964(c).

119. As stated below, the RICO Defendants' violations were the sole cause of these damages at the following properties:

a. 157 Shrewsbury Street, damages in excess of \$156,000, which include:

- i. \$156,000 in usurious interest paid; and
- ii. Costs of defending the illegal foreclosure.

b. 249 Lincoln Street, damages in excess of \$500,000, which include:

- i. Costs in defending the illegal foreclosure; and
- ii. Lost rental income of approximately \$109,000/year since August 2006.

c. 88 Shrewsbury Street, damages in excess of \$650,000, which include:

- i. Costs in defending the illegal foreclosure; and

- ii. Lost rental income of \$14,000/month for the past four years.
  - d. 425B Salisbury Street, damages of at least \$200,000, which include the \$200,000 lost profit when the RICO Defendants interfered with sale in 2009.
  - e. 49 Old Colony Drive, damages in excess of \$275,000, which include:
    - i. \$200,000 on illegitimate lien on property; and
    - ii. \$75,000 in higher interest rate and points paid because lien prevented Old Colony Trust from refinancing at lower rate.
  - f. 23 ABCD North Quinsigamond Avenue, damages in excess of \$300,000, which include:
    - i. Lost yearly rental income of \$60,000 since August 2006; and
    - ii. Fiorillo's ruined credit rating.
120. Massad and Mallegni's pattern of racketeering activity described above, directly and proximately damaged the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, in their business or property, pursuant to 18 U.S.C. §1964(c), in excess of \$2 million.
121. WHEREFORE, Plaintiffs demand judgment against Massad and Mallegni for threefold these damages, costs and attorney's fees, and an injunction against Massad and Mallegni from further RICO violations, dissolution of the enterprise, ordering their divestment of any interests they have in any business entities, and any other relief deemed just, pursuant to 18 U.S.C. §1964(a). Plaintiffs also request a jury trial.

**COUNT II AGAINST DEFENDANTS MASSAD AND MALLEGNI FOR VIOLATIONS OF §1962(D) (RICO CONSPIRACY)**

122. The preceding paragraphs are incorporated herein as though set forth in full.
123. Massad and Mallegni agreed to cooperate with each other in committing the Scheme against the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust, through the Real Estate Financing Enterprise. This agreement began when the RICO

Defendants started doing business with Fiorillo over ten years ago and has continued until this day.

124. As described above, Massad and Mallegni purposely coordinated their illegal activities against these individuals/entities in order to extort them out of title to property and money.

125. As such, each of the RICO Defendants violated 18 U.S.C. §1962(d), by conspiring to violate 18 U.S.C. §1962(c).

126. As a direct and proximate result of, and by reason of their agreement to commit the RICO predicate acts alleged through the Real Estate Financing Enterprise, the Debtors, SSDC, the Fiorillo Family Trust, and the Old Colony Trust have been injured in their business or property, within the meaning of 18 U.S.C. §1964(c), in an amount in excess of \$2 million, as enumerated above in Paragraph 119.

127. As co-conspirators, each RICO Defendant is jointly and severally liable for all damages.

128. WHEREFORE, Plaintiffs are entitled to recover against Massad and Mallegni threefold the damages sustained, with costs, and attorneys' fees, and an injunction against the RICO Defendants from further RICO violations, dissolution of the enterprise, ordering their divestment of any interest they have in any business entities, and any other relief deemed just, pursuant to 18 U.S.C. §1964(a). Plaintiffs also request a jury trial.

**COUNT III AGAINST DEFENDANTS MASSAD, MALLEGNI, COMMERCE BANK, AND LBM FINANCIAL FOR BREACH OF CONTRACT**

129. The preceding paragraphs are incorporated herein as though set forth in full.

130. Fiorillo and his entities, including SSDC, entered into a number of oral and written contracts with Massad, Mallegni, Commerce Bank, and LBM Financial for commercial lending/financing at the following properties: 157 Shrewsbury Street, 249 Lincoln Street, and 88 Shrewsbury Street.
131. Under the terms of contract, the Defendants loaned money to Fiorillo and his entities to purchase real estate and develop it. As described above, the agreements specified the interest rates of the loans and the time period when repayment of the loans were required.
132. The Defendants breached these contracts when they required the repayment of the loans at higher interest rates than agreed to and/or at an earlier time than agreed to. This resulted in payoff figures that well exceeded what the Defendants knew was actually owed on the loan(s). Similarly, the Defendants breached these contracts when they initiated foreclosure proceedings on these properties after Fiorillo and his entities were unable to pay the higher interest rates as demanded.
133. As a result, the Defendants materially breached their contracts with Fiorillo/Fiorillo's entities, which ultimately resulted in foreclosure proceedings taking place and/or lost sales at 157 Shrewsbury Street, 249 Lincoln Street, and 88 Shrewsbury Street.
134. As a result of these material breaches and any ensuing foreclosure proceedings, Fiorillo and his entities lost these properties/lost sales opportunities, and/or the monthly income that these properties generated. (As detailed above, this amount exceeds \$1 million at these three properties.)

135. WHEREFORE, Plaintiffs demand judgment against the Defendants for breach of contract for more than \$1,000,000, plus interest, the costs of this action, and for such other relief as the Court may direct. Plaintiffs also request a jury trial.

**COUNT IV AGAINST DEFENDANTS MASSAD, MALLEGNI, COMMERCE BANK AND LBM FINANCIAL FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

136. The preceding paragraphs are incorporated herein as though set forth in full.

137. As stated above, Fiorillo and his entities entered into a number of oral and written contracts with Massad, Mallegni, Commerce Bank, and LBM Financial for commercial lending/financing, at the following properties: 157 Shrewsbury Street, 249 Lincoln Street, and 88 Shrewsbury Street (the “Contracts”).

138. The Contracts included implied covenants of good faith and fair dealing between the parties to it. Under these covenants, neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the benefits/rights of/under the contract.

139. The acts of Mallegni and Massad, and said individuals’ use of Commerce Bank and LBM Financial, in breach of the terms of said Contracts, and in commission of RICO predicate acts, and acts to extort money from, and/or harm Fiorillo and his entities, were committed with dishonest purpose, conscious doing of wrong, and/or breach of a duty through motive of self-interest or ill will.

140. The acts of Mallegni and Massad, Commerce Bank and LBM Financial, constituted a violation of the implied covenant of good faith and fair dealing inherent in the Contracts with Fiorillo and his entities.

141. Fiorillo and his entities were harmed by the breach and violation of said covenant.

142. WHEREFORE, Plaintiffs demand judgment against the Defendants for breach of covenant of good faith and fair dealing for more than \$1,000,000, plus interest, the costs of this action, and for such other relief as the Court may direct. Plaintiffs also request a jury trial.

Plaintiffs,  
JONATHAN R. GOLDSMITH,  
TRUSTEE IN BANKRUPTCY FOR  
NICHOLAS J. FIORILLO, and,  
JOSEPH H. BALDIGA,  
TRUSTEE IN BANKRUPTCY FOR  
TRACY L. KROWEL  
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