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Couple files suit over business deals

Depietris claim rates on loans were illegally high

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WORCESTER— A local developer and his wife have filed a racketeering lawsuit against Commerce Bancshares Corp. Chairman David G. Massad and others, claiming that business deals over a number of years left them paying illegally high interest rates on loans and battling this week to save their home from foreclosure.

The civil lawsuit, filed last week in U.S. District Court in Worcester by Worcester residents Robert Depietri Jr. and his wife, Kimbrly, names Mr. Massad, his daughter, lawyer Pamela A. Massad, Commerce Bank and Trust Co., Marcello Mallegni of Southboro and LBM Financial Inc. of Marlboro. LBM is a real estate investment and development business, and Mr. Mallegni has been listed as its manager, according to state corporation records.

Also named are financial entities Gamewell Realty Inc. of Northboro and Wolfpen Financial LLC of Marlboro, and Michael Norris, a lawyer.

The lawsuit is connected to two other racketeering lawsuits pending in federal court. In one, Worcester businessman Nicholas J. Fiorillo claims Gamewell, an entity connected to Ms. Massad, loaned him money at illegally high rates to redevelop the former Airline Lewis window blinds manufacturing building at 267 Shrewsbury St. in Worcester. The second lawsuit, also filed by Mr. Fiorillo, is similar but names additional defendants including Mr. Massad, and alleges that Mr. Fiorillo and his wife were threatened with the foreclosure of their home.

A motion seeking to combine the Fiorillo cases and add Mr. and Mrs. Depietri to the action is pending before Judge F. Dennis Saylor IV. But the new Depietri lawsuit case came with a sense of urgency this week because the couple sought to block a foreclosure auction of their home that had been scheduled for yesterday. LBM Financial, which holds a second mortgage on the home at 4 North Pond Road, had sought the auction.

Ian Crawford, a lawyer for the Massads and Gamewell Realty, said yesterday his clients had not been served with the Depietri complaint. He said the lawsuit makes no allegations against Ms. Massad and that he believed the lawsuit was directly aimed at Mr. Mallegni and LBM Financial.

"If this case goes forward, we have every intention of defending it vigorously," Mr. Crawford said.

Jeffrey D. Ganz, a lawyer for Mr. Mallegni and LBM Financial, declined to comment.

Mr. Massad, well known as "Duddie," is a businessman who has owned area automobile dealerships and made large donations to local causes, including the construction of an emergency wing at the UMass Memorial Medical Center — University Campus in Worcester.

Both the Depietri and Fiorillo lawsuits paint a picture of a circle of individuals and financial entities involved at different times in deals going back to at least 1998 to develop properties in Worcester, Leicester, Marlboro, Northboro, Westboro and Framingham. The Depietris claim in their 90-page complaint that Mr. Depietri, in seeking financing from LBM Financial for various projects, was pushed to pay high interest rates and sometimes give up ownership stakes in projects to Mr. Mallegni.

In 2005, the Depietris claim, the couple were pushed to sign over a second mortgage on their home to get a \$200,000 business loan from LBM Financial. They also claim that about \$23,000 of the proceeds was given to Mr. Mallegni without their consent, and that he signed a standard real estate closing form created by the U.S. Department of Housing and Urban Development that failed to disclose the payment.

Mr. Ganz, lawyer for Mr. Mallegni, has said in court he understood that the \$23,000 payment was for a debt Mr. and Mrs. Depietri owed Mr. Mallegni.

The Depietris claim their losses total more than \$30 million, and they are seeking \$90 million.

During a hearing Tuesday, Judge Saylor granted a temporary restraining order blocking LBM Financial from auctioning off the Depietri home at 4 North Pond Road.

Judge Saylor said in his ruling that he was troubled by allegations of "ugly" interest rates and an inaccurate closing document, as well as the \$23,000 payment to Mr. Mallegni.

He scheduled a hearing for Nov. 1, but also warned Mr. and Mrs. Depietri that they might not ultimately succeed in their case.

"It is not my position to rewrite lending agreements unless someone has violated the law," Judge Saylor said. "People have to live with their agreements."

Robert S. Sinsheimer, lawyer for Mr. and Mrs. Depietri, said in court that the couple have other assets to satisfy LBM Financial, and the case need not result in forcing them from their home.

Separately, the Depietris may also seek to dismiss their lawsuit if they can be added to the Fiorillo cases.

"In the original case, we asked that the complaint be amended to include the Depietris," Mr. Sinsheimer said yesterday. "If that is allowed, this new case more likely than not would be dismissed."

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