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FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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STEPHEN H. LUDWIG, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

1st SOURCE BANK,)
)
Plaintiff,)
)
v.)
)
DIVINE SEVEN, LLC, and)
MICHAEL VICK,)
)
Defendants.)

3:07CV046173

Civil No. _____

COMPLAINT

The plaintiff, 1st Source Bank, for its cause of action against the defendants, DIVINE SEVEN, LLC, and Michael Vick, states:

Nature of Action, Jurisdiction, and Venue

1. This is an action for breach of contract.
2. Jurisdiction over the subject matter of this action is based on 28 U.S.C. § 1332 in that complete diversity of citizenship exists between 1st Source Bank and the defendants, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
3. 1st Source Bank is a state bank organized and existing under the laws of Indiana and has its principal place of business in Indiana.
4. Defendant DIVINE SEVEN, LLC ("Divine Seven"), is a limited liability company organized and existing under the laws of Georgia and has its principal place of business in Georgia. The members of Divine Seven are Michael Vick and Arthur Washington (and may also include Jennifer Washington and Keith Kawano). All of the members of Divine Seven are residents and

citizens of either Georgia or Virginia.

5. Defendant Michael Vick is a resident and citizen of Virginia.

6. Venue of this action in the Northern District of Indiana, South Bend Division, is based on 28 U.S.C. § 1391 and 28 U.S.C. § 94(a)(2). A substantial part of the events or omissions giving rise to this action occurred in St. Joseph County, Indiana. Moreover, the parties have contractually agreed that this action may be brought in a court of competent jurisdiction located in St. Joseph County, Indiana.

General Allegations

7. On or about January 31, 2007, 1st Source Bank and Divine Seven entered into a written contract entitled "LOAN AND SECURITY AGREEMENT" dated January 30, 2007.

8. A genuine and authentic copy of the LOAN AND SECURITY AGREEMENT is attached and incorporated as Exhibit No. 1.

9. The LOAN AND SECURITY AGREEMENT was executed on behalf of Divine Seven by its CFO, Michael Vick.

10. On or about January 31, 2007, Divine Seven also executed a "TERMS ADDENDUM," which by its express provisions "is part of the Loan and Security Agreement dated January 30, 2007."

11. A genuine and authentic copy of the TERMS ADDENDUM is attached and incorporated as Exhibit No. 2.

12. The TERMS ADDENDUM was executed on behalf of Divine Seven by its CFO, Michael Vick.

13. On or about February 8, 2007, 1st Source Bank and Divine Seven executed an "AMENDMENT AGREEMENT" dated February 7, 2007, a genuine and authentic copy of which is attached and incorporated as Exhibit No. 3.

14. On or about February 14, 2007, 1st Source Bank and Divine Seven executed an "AMENDMENT AGREEMENT" dated February 13, 2007, a genuine and authentic copy of which is attached and incorporated as Exhibit No. 4.

15. On or about April 13, 2007, 1st Source Bank and Divine Seven executed an "AMENDMENT AGREEMENT" dated April 13, 2007, a genuine and authentic copy of which is attached and incorporated as Exhibit No. 5.

16. Divine Seven also executed numerous documents entitled "SCHEDULE 'A'", each of which by its express provisions "is part of the Loan and Security Agreement dated January 30, 2007."

17. A genuine and authentic copy of these SCHEDULE A's executed by Divine Seven are attached and incorporated as Exhibit No. 6.

18. Pursuant to the LOAN AND SECURITY AGREEMENT (and its accompanying addendums, amendments, and schedules), 1st Source Bank loaned money to Divine Seven, subject to certain terms and conditions.

19. Divine Seven has failed to repay the loans described in the LOAN AND SECURITY AGREEMENT (and its accompanying addendums, amendments, and schedules) and is in breach of the agreement.

20. As a direct and proximate result of Divine Seven's breach of the LOAN AND SECURITY AGREEMENT, 1st Source Bank has sustained damages in the sum of at least Two

Million Dollars (\$2,000,000).

21. On or about February 12, 2007, 1st Source Bank, Divine Seven, and PRG Group, LLC, entered into a written contract entitled "LOAN ASSUMPTION AGREEMENT."

22. A genuine and authentic copy of the LOAN ASSUMPTION AGREEMENT is attached and incorporated as Exhibit No. 7.

23. The LOAN ASSUMPTION AGREEMENT was executed on behalf of Divine Seven by its CFO, Michael Vick.

24. Pursuant to the LOAN ASSUMPTION AGREEMENT, Divine Seven (as Assignee) agreed and promised, *inter alia*, (a) to assume certain indebtedness, duties, and obligations of PRG Group, LLC, owing to 1st Source Bank and (b) "to pay the Present Balance in accordance with the terms of the Assumed Contracts."

25. A genuine and authentic copy of the LOAN AND SECURITY AGREEMENT dated August 15, 2006 (and its accompanying amendments and schedules), entered into between PRG Group, LLC, and 1st Source Bank is attached and incorporated as Exhibit No. 8.

26. Divine Seven has failed to satisfy its obligations under the LOAN ASSUMPTION AGREEMENT (Exhibit No. 7) and is in breach of the agreement.

27. As a direct and proximate result of Divine Seven's breach of the LOAN ASSUMPTION AGREEMENT, 1st Source Bank has sustained damages.

28. On or about January 31, 2007, Defendant Michael Vick executed a "GUARANTY OF PAYMENT" in favor of 1st Source Bank.

29. A genuine and authentic copy of the GUARANTY OF PAYMENT is attached and incorporated as Exhibit No. 9.

30. Under the terms of the GUARANTY OF PAYMENT, Defendant Vick agreed and promised to pay 1st Source Bank the "Obligations" (including "all existing and future indebtedness") of Divine Seven "now due and owing or hereafter due and owing" to 1st Source Bank.

31. Defendant Vick is in breach of the GUARANTY OF PAYMENT and has failed to pay the Obligations and indebtedness owed by Divine Seven to 1st Source Bank under the LOAN AND SECURITY AGREEMENT.

32. As a direct and proximate result of Defendant Vick's breach of the GUARANTY OF PAYMENT, 1st Source Bank has sustained damages in the sum of at least Two Million Dollars (\$2,000,000).

33. 1st Source Bank has performed and satisfied all conditions to its enforcement of the LOAN AND SECURITY AGREEMENT (and its accompanying addendums, amendments, and schedules), the LOAN AND SECURITY AGREEMENT, and the GUARANTY OF PAYMENT.

34. On or about August 24, 2007, 1st Source Bank made written demand for payment upon the defendants; however, to date, the defendants have failed and refused to pay 1st Source Bank the sums due and owing.

WHEREFORE, 1st Source Bank respectfully requests judgment against the defendants, jointly and severally; an award of damages to compensate 1st Source Bank for its losses; prejudgment interest; an award of attorneys' fees and costs; and all other just and proper relief.

Respectfully submitted:



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