



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

TITAN INVESTMENT FUND II, LP,)
)
 Plaintiff,)
)
 v.)
)
 FREEDOM MORTGAGE CORPORATION,)
)
 Defendant.)

C.A. No. _____

COMPLAINT

Nature of the Action

1. This is a classic case of buyer’s remorse. In early 2009, the mortgage industry was in an “extraordinary” situation. As a result of historically low interest rates, homeowners were refinancing mortgages in record numbers. In fact, consumer demand was so significant that mortgage banks like defendant Freedom Mortgage Corporation (“Freedom”) did not have enough money to meet the overwhelming demand. The global economic crisis had frozen the credit markets and left Freedom – which must borrow the money that it uses to originate its mortgages – without access to sufficient capital to meet the unprecedented consumer demand.

2. While other lenders were scared off by the credit crisis, Plaintiff Titan Investment Fund II, LP (“Titan”) was not. Titan knew that it had both the financial experience and the access to capital to operate successfully in these uncertain times.

3. In early 2009, Titan and Freedom began discussions concerning Titan establishing a credit facility for Freedom. These discussions resulted in an April 7, 2009

letter agreement (the “Letter Agreement”), by which Freedom retained Titan to provide the “warehouse” credit facility that Freedom needed. A true and correct copy of the Letter Agreement is attached as Exhibit A.

4. Under the Letter Agreement, Freedom agreed, *inter alia*, to pay seventeen percent interest on the entire warehouse facility (which was to start at \$25 million and could grow, at Titan’s election, to as much as \$100 million) over its life, regardless of how much of the facility it utilized.

5. After Freedom signed the Letter Agreement, the credit markets began to thaw, increasing the availability (and, correspondingly, decreasing the price) of funds for mortgage banks like Freedom. As a result, Freedom received offers to borrow money at lower rates than it agreed to pay Titan under the Letter Agreement.

6. In late July 2009, in light of the availability of cheaper funds, Freedom decided it would not honor its contract with Titan. Stan Middleman, the CEO of Freedom, candidly explained that because he could no longer “take advantage of [the] short lived refinance boom that seemingly has run out of steam,” “the cost is just too high.” Freedom unilaterally – and impermissibly – walked away from the Letter Agreement, “instruct[ing its] staff to . . . do no more work on the subject” and refusing to review draft documents provided by Titan pursuant to the Letter Agreement.

7. After Titan refused Freedom’s request to terminate the Letter Agreement, Freedom purported to terminate the Letter Agreement for Titan’s alleged failure to comply with its contractual obligations.

8. Contrary to Freedom's claims, however, Titan had complied with its obligations required up to that date under the Letter Agreement and, as it informed Freedom, was willing and able to fully perform its remaining contractual obligations. As a result of Freedom's breach of contract, Titan has suffered damages in excess of \$30 million.

The Parties

9. Titan is a Delaware limited partnership with its principal place of business at 1300 Virginia Drive, Suite 225, Fort Washington, PA 19034.

10. Freedom is a New Jersey corporation, with its principal place of business at 907 Pleasant Valley Avenue, Suite 3, Mount Laurel, NJ 08054. Freedom is one of the largest independent mortgage companies in the country. Upon information and belief, in 2009, Freedom's sales will exceed \$5 billion. Freedom is registered to do business in the State of Delaware and has appointed The Corporation Trust Company as its registered agent for service of process.

The Mortgage Industry

Mortgage Banks And Warehouse Credit Facilities

11. Every year in the United States, homeowners borrow approximately \$2 trillion of residential mortgages. The vast majority of these loans are originated by savings banks and mortgage banks. Savings banks use deposits from their customers to originate mortgages. Mortgage banks, in contrast, are non-depository institutions.

Without customer deposits, they must rely upon outside sources for the capital that they need to originate their mortgages.

12. Traditionally, warehouse credit facilities provided mortgage banks with the capital that they require to originate mortgage loans. A warehouse credit facility is, essentially, a line of credit that is drawn upon to finance the origination of a new mortgage. A mortgage bank charges and earns origination fees on each new mortgage originated. Once a mortgage is originated, it is sold off and the proceeds of the sale are used to pay down the warehouse facility. By repeatedly utilizing the warehouse facility proceeds in this manner, mortgage banks are able to charge origination fees, over and over, and earn profits even if the interest rate on the warehouse facility exceeds the prevailing mortgage rates.

***The Disappearance Of Warehouse Credit Facilities
And The Mortgage Refinance Boom***

13. As a result of the recent global economic turmoil, warehouse lending – like other lending activity – ground virtually to a halt. According to the Mortgage Banker Association (the “MBA”), “the national association representing the real estate finance industry,” warehouse lending capacity fell more than 85 percent between 2007 and 2008.

14. The disappearance of warehouse lending capacity threatened the viability of mortgage banks. In early 2009, the MBA sent a letter to the Secretary of the Treasury seeking assistance in remedying the situation. The MBA explained that the reduction in warehouse lending capacity left many mortgage banks “without adequate and viable sources of capital,” “struggl[ing] to maintain their ability to serve borrowers.”

15. The disappearance of warehouse lending capacity could not have come at a worse time. The same financial crisis that cut off access to warehouse lending facilities drove thirty year fixed mortgage interest rates to near-record lows. As a result, refinance market opportunities exploded beginning in November 2008. Over the next five months, according to the MBA, refinance activity increased more than five-fold.

Freedom And Titan Agree Upon The Terms For A Warehouse Line Of Credit

16. Anxious to profit from this booming business, and with access to capital markets significantly restricted, Freedom needed to find alternate means for financing its operations. As a result, Freedom began discussions with Titan in January regarding a warehouse credit facility.

17. In March 2009, Freedom and Titan agreed upon a term sheet for the provision of a warehouse facility. Because it needed to secure funding for its rapidly growing business, Freedom agreed to the following terms:

- A provision requiring Freedom to pay seventeen percent interest (which was consistent with then prevailing rates in similar risk transactions) on the entire warehouse facility during the entire life of the loan (two years), regardless of how much of the funds it utilized;
- A provision permitting Titan, in its sole discretion, to increase the facility from an initial level of \$25 million to \$100 million, and requiring Freedom to pay the same seventeen percent interest on any increase in the facility for another two years;
- A provision requiring Freedom to pay a one percent commitment fee at closing;
- A provision requiring Freedom to pay costs and expenses incurred by Titan in connection with the provision of the warehouse credit facility; and,

- A provision granting Titan a lien on not only those mortgage loans funded using the warehouse facility, but also on “all tangible and intangible assets” of Freedom, to the extent permitted by its other agreements.

18. During this time, Freedom’s mortgage origination activity continued to grow significantly, and on April 7, 2009, the parties signed the Letter Agreement, which incorporates the terms in the term sheet.

19. The Letter Agreement gave Titan 90 days to obtain \$25 million in “written and binding” commitments to fund the warehouse credit facility. On June 29, Freedom agreed to extend that deadline to July 24, 2009.

Freedom’s Buyer’s Remorse And Its Decision To Abandon The Deal

20. By July 2009, however, credit markets were thawing and mortgage banks enjoyed greater access to funds. The increase in available funds drove down the market rates that mortgage banks paid on warehouse facilities.

21. As a result, by mid-July, Freedom was unhappy with the deal that it struck during the credit crisis. Freedom could now borrow money at a lower rate than it had agreed to pay Titan. Freedom advised Titan that it had received several offers to establish warehouse credit facilities at the then-prevailing market rates. In breach of its obligations under the Letter Agreement, Freedom refused to provide copies of those offers to Titan.

22. The Letter Agreement made clear, however, that the existence of these other offers “in no way modifie[d], change[d] or eliminate[d]” Freedom’s obligations to Titan under the Letter Agreement.

23. On July 21, 2009, Titan provided Freedom with a draft repurchase agreement contemplated by the Letter Agreement. By that point, however, Freedom had decided that it would not honor its agreement and would not close the transaction. The following day, after “a somewhat cursory” review of the document, Freedom CEO Stan Middleman advised Titan that because of his “concerns . . . concerning the price,” he had “instructed [his] staff to put this project on hold and to do no more work on the subject.” Middleman candidly explained that “th[e] transaction was based on an extraordinary event whose time may well have passed.” While the parties were still within the time permitted by the Letter Agreement to complete the transaction, Middleman felt that “[s]peed to market was a driving force and we were not able to get this done quickly enough to take advantage of a short lived refinance boom that seemingly has run out of steam.” A true and correct copy of the e-mail from Middleman is attached as Exhibit B. Hoping to induce Titan to surrender its valuable contractual right, Freedom offered to reimburse Titan fully for all expenses incurred in connection with the Letter Agreement.

24. Minutes later, Titan informed Freedom that it had been “diligently working to fulfill the terms of the term sheet which [Freedom] signed” and would continue to do so. A true and correct copy of Titan’s email to Freedom is attached as Exhibit C. Although not relevant to the parties’ obligations under the Letter Agreement, Titan also addressed an “issue” Middleman raised following his “cursory” review of the draft agreement. Middleman had complained that the draft was “twice as long as” an agreement Freedom was using for an existing warehouse credit facility. Titan advised

Middleman that its draft repurchase agreement was “the exact same length” as the existing agreement.

25. By July 24, 2009, Titan secured the required “written and binding” commitments for \$25 million to be used to fund the Freedom warehouse credit facility. Those commitments were in accordance with industry standards for such binding commitments. That same day, Titan informed Freedom of the commitments and provided copies of them to Freedom. A true and correct copy of Titan’s letter to Freedom, which includes true and correct copies of the commitments, is attached as Exhibit D.

26. By July 24, 2009, Titan had also lined up and had available the \$75 million in funding it would use to increase the facility to \$100 million.

27. Unable to secure Titan’s consent to terminate the agreement, on August 5, 2009, Freedom claimed (inaccurately) that Titan failed to comply with its obligations under the Letter Agreement and, on that pretext, purported to terminate the Letter Agreement. The letter from Freedom’s counsel purporting to terminate the agreement made clear that Freedom never reviewed the draft repurchase agreement and was unwilling to close the transaction.

28. Freedom’s refusal to close the transaction was a violation of its obligations under the Letter Agreement. As a result of this breach, Titan lost its bargained for right to interest on the warehouse credit facility and suffered total damages in excess of \$30 million.

COUNT I
Breach of Contract

29. The allegations in Paragraphs 1 through 28 are incorporated by reference as if set forth in full below.

30. The Letter Agreement is a valid, enforceable contract.

31. Titan fully performed its then-existing obligations under the Letter Agreement before Freedom purported to terminate the contract.

32. Freedom's actions constitute breach of the Letter Agreement.

33. Titan has been injured by Freedom's breach of the Letter Agreement.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Titan respectfully requests that the Court award it the following relief:

- A. A declaration that Freedom is in breach of the Letter Agreement;
- B. An award of damages in an amount to be proven at trial, plus prejudgment and post-judgment interest under law;
- C. An award of Titan's fees and expenses in connection with this action; and
- D. Such other and further relief as the Court deems just and proper.

CONNOLLY BOVE LODGE & HUTZ LLP

/s/ David E. Ross

Collins J. Seitz, Jr. (No. 2237)

David E. Ross (No. 5228)

Connolly Bove Lodge & Hutz LLP

1007 North Orange Street

P.O. Box 2207

Wilmington, DE 19899-2207

Tel: (302) 658-9141

*Attorneys for Plaintiff Titan Investment
Fund II, LP*

Dated: October 28, 2009