

1 between Mr. and Mrs. Rehder and Mr. and Mrs. Hostetter subsequent to March 19, 2003 arise
2 out of , and flow from, obligations arising out of the March 19, 2003 contract entered into by
3 these parties.

4 3.

5 Based upon the facts asserted in Defendants' counterclaims, Mr. and Mrs. Rehder had
6 no reasonable alternative but to sign the contract placed before them by Plaintiffs Mr. and
7 Mrs. Hostetter on March 19, 2003. As is explained in Defendants' counterclaim, Plaintiffs
8 Hostetter, acting in concert with counterclaim Defendant Community Bank created an
9 artificial loan transaction, whereby Defendants Rehder were forced, by compulsion, to either
10 sign the March 19, 2003 contract presented by Plaintiffs Hostetter or lose five hundred
11 thousand dollars (\$500,000) in earnest money.

12 4.

13 The contract entered into by Defendants Rehder and Plaintiffs Hostetter dated March
14 19, 2003, and all subsequent contracts and/or promissory notes entered thereafter between
15 these same parties should be rescinded because the agreements were not entered into through
16 the exercise of free will, but rather coerced through economic compulsion.

17
18 SECOND AFFIRMATIVE DEFENSE - FRAUD

19 5.

20 Based upon the facts asserted in Defendants Rehders' counterclaims against all
21 Defendants, set forth *infra*, the contract entered into by Defendants Rehder and Plaintiffs
22 Hostetter dated March 19, 2003 was procured through fraud. Plaintiffs Hostetter, acting in
23 concert with counterclaim Defendant Community Bank, engaged in a series of material
24 misrepresentations which were justifiably relied upon by Defendants Rehder to their
25 substantial detriment, and which, cumulatively, resulted in the creation of the March 19, 2003
26 contract

1 6.

2 As a result of Plaintiffs' fraud, the March 19, 2003 contract and all subsequent
3 agreements, including the promissory notes, which are the subject of Plaintiffs' claim, should
4 be declared unenforceable and rescinded.

5
6 THIRD AFFIRMATIVE DEFENSE - UNCONSCIONABILITY

7 7.

8 Based upon the factual assertions set forth in Defendants' counterclaim against
9 Plaintiffs Rehder and counterclaim Defendant Community Bank, set forth *infra*, the terms of
10 the agreement given the circumstances surrounding the formation of the contract between
11 Defendants Rehder and Plaintiffs Hostetter dated March 19, 2003 are so one-sided as to be
12 oppressive and the benefits and obligations flowing therefrom bear no reasonable relationship
13 to the business risks involved. Therefore, the contract should be deemed unconscionable and
14 all sums
15 claimed by Plaintiffs Rehder to be due and owing to them arising out of obligations flowing
16 from that contract should be declared unenforceable.

17
18 COUNTERCLAIMS AGAINST PLAINTIFFS HOSTETTER
19 AND COUNTERCLAIM DEFENDANT COMMUNITY BANK

20 Parties

21 1.

22 Counterclaimants William Rehder and D'Anne Rehder are residents of Umatilla
23 County, Oregon. For many years, they have been engaged in the business of buying and
24 selling large tracts of rural land, selectively selling timber on that land, selling the timber to
25 reduce the cost of acquisition of the land, and thereafter subdividing the land for resale.

26 ///

1 2.

2 Counterclaim Defendant Community Bank, upon information and belief, is an Oregon
3 chartered bank with its principal place of business in Wallowa County, Oregon. Community
4 Bank, (hereafter "The Bank") was and is engaged in the general business of banking and
5 performs substantial business in numerous counties in central and eastern Oregon, including
6 Umatilla County and Morrow County, the county where the Opal Butte property, which is
7 described in this law suit, is located.

8 3.

9 Plaintiffs and Counterclaim Defendants Rahn and Rebecca Hostetter, upon
10 information and belief, reside in Enterprise, Oregon, where Mr. Hostetter engages in the
11 practice of law, and where he maintains his primary office.

12 Prior Course of Dealings

13 4.

14 Commencing in January, 2001, Defendants Rehder and The Bank established a
15 significant business relationship concerning the financing of real property acquisitions by the
16 Rehders. From January, 2001 through September, 2004, these parties entered into over twenty
17 (20) loan transactions involving the lending of over eleven million dollars (\$11,000,000).

18 5.

19 Through this extensive course of business transactions, the bank, acting each time
20 through its president, Mr. Bruce Penowski, encouraged Rehders to use Community Bank as
21 their primary source for the banking funds which are critical for Plaintiffs' business
22 enterprises.

23 6.

24 Community Bank actively solicited Rehders' trust and confidence in its ability to
25 successfully fund Plaintiffs' real property acquisitions and to follow through with
26 commitments it made related to the funding of those acquisitions.

1 7.

2 Community Bank also became privy to substantial financial and operational
3 information about Plaintiff's business, including investment strategies and potential
4 investment properties, all of which were proprietary and confidential in nature and were
5 provided to Community Bank with a reasonable expectation that such information would be
6 used by The Bank solely for the purpose of funding loans to Rehders, and that such
7 information would not be shared with any other person or entity.

8 Opal Butte Transaction

9 8.

10 In December, 2002, Rehders entered into a real estate purchase and sale agreement to
11 buy approximately eighteen thousand (18,000) acres of undeveloped timber land located in
12 Morrow County and commonly referred to by the parties to this lawsuit as The Opal Butte
13 Property (hereafter referred to as "Opal Butte"). The transaction was structured, in pertinent
14 part, as follows:

- 15 a. Rehders paid two hundred thousand dollars (\$200,000) refundable
16 earnest money on signing the deal;
- 17 b. Rehders had until January 31, 2003 to perform due diligence in the
18 form of timber cruise and appraisal of the property. If Rehders were not
19 satisfied with the results of their due diligence, they could withdraw
20 from the transaction and receive back all earnest money deposited;
- 21 c. In the event they elected to proceed to purchase the property, they were
22 required to deposit another three hundred thousand dollars (\$300,000)
23 and the total of all deposited funds, namely five hundred thousand
24 dollars (\$500,000), became nonrefundable. Rehders then had another
25 thirty-five (35) days, until March 5, 2003, to close the transaction.

26 ///

1 9.

2 Rehders paid two hundred thousand dollars (\$200,000) earnest money on execution of
3 the real estate purchase and sale agreement and commenced their due diligence. They
4 obtained an appraisal. They performed a timber cruise. They contacted Community Bank to
5 arrange financing to close the loan on the aggressive schedule established in the real estate
6 purchase and sale agreement.

7 10.

8 Shortly after signing the deal, and during the appraisal period, Community Bank, once
9 again acting through its president, Bruce Penowski, first informed Rehders that The Bank had
10 maximum aggregate loan limits which The Bank could lend to any one borrower, that Rehders
11 exceeded that aggregate loan amount as a result of prior transactions with Community Bank
12 and that due to this restriction, The Bank would use creative financing to figure out a way to
13 complete the Opal Butte transaction.

14 11.

15 First, The Bank suggested using Rehder's brother-in-law and sister to act as borrowers
16 on the Opal Butte transaction. The Bank required an infusion of equity from the Rehders in
17 the sum of one million two hundred fifty thousand dollars (\$1,250,000) and proposed to lend
18 the sum of three million nine hundred thousand dollars (\$3,900,000) on the Opal Butte
19 transaction. The Bank further proposed that the \$3,900,000 loan be secured by a Deed of
20 Trust on the Opal Butte property. Initially, these borrowers agreed to participate in the
21 transaction, but within weeks, they decided to withdraw from the deal.

22 12.

23 Community Bank then informed the Rehders that the best way to finance the
24 transaction was to remove Rehder's loan limit restriction described in Paragraph 10 above by
25 selling off The Bank's portfolio of Rehder's outstanding loans to other financial institutions,
26 thereby making room for the Opal Butte transaction under The Bank's maximum loan limit

1 for any one customer. The Bank expressly agreed to do so. The Rehders, in return, agreed to
2 continue to seek their financing on the Opal Butte transaction solely from Community Bank,
3 even though they would have been able to obtain financing to close the transaction from
4 another financial institution.

5 13.

6 At the same time, and to keep the Opal Butte transaction moving forward, Community
7 Bank loaned Rehders two hundred seventy thousand dollars (\$270,000) to complete the
8 second earnest money payment due on February 1, 2003. By doing so, the Rehders and The
9 Bank were keenly aware that by making this payment, all of Rehders' \$500,000 earnest money
10 became nonrefundable. (See Paragraph 8, *supra*)

11 14.

12 Coincident with the events described in Paragraph 13 above and due to issues
13 involving the creation of a snow park by Morrow County, which was carved out of the Opal
14 Butte property, the seller extended the deadline to close the transaction to March 21, 2003.
15 Therefore, both Rehders and Community Bank knew that they had seven (7) weeks to obtain
16 financing to close the deal. During this period of time, The Bank repeatedly assured Rehders
17 that it was actively working to sell Rehder's other loans in The Bank's portfolio to other
18 financial institutions to eliminate the loan limit restriction described in Paragraph 10. At no
19 time did The Bank suggest to Rehders that they seek financing from another financial
20 institution because The Bank did not want to lose its exclusive banking relationship with
21 Rehders, thereby maintaining the right to earn the significant loan fees and interest on the
22 Opal Butte transaction.

23 15.

24 In mid-March 2003, approximately one week before the deadline for closing the Opal
25 Butte transaction, The Bank informed Rehders that it had made a diligent effort to sell
26 Rehders' other loans to make room under the maximum loan limit, but had not been

1 successful and therefore, could not directly lend Rehders the money to complete the deal.
2 However, The Bank informed Rehders that it would lend the money Rehders needed to
3 another borrower of The Bank's nomination. Mr. Rehder was sent to a lawyer in Enterprise,
4 Defendant Rahn Hostetter. The Bank, acting through Mr. Penowski, advised Mr. Rehder that
5 The Bank would be willing to loan Mr. Hostetter the funds necessary to complete the Opal
6 Butte transaction, thereby eliminating the dire prospect that Rehders would not be able to
7 close the deal on time, in which event they would forfeit their \$500,000 nonrefundable earnest
8 money.

9 16.

10 In the one-week period between March 14, 2003 and March 21, 2003 (the deadline for
11 closing the Opal Butte transaction), Community Bank and Defendant Hostetter, acting in
12 concert with each other, orchestrated a "straw man" transaction whereby, in name only,
13 Defendant Hostettters borrowed the funds from The Bank which Rehders needed to close the
14 Opal Butte transaction. In fact, The Bank relied on Rehders' equity investment in the property
15 of over one million dollars (\$1,000,000) and Rehders' financial strength and operational
16 experience and success in making the loan. That Rehders were, in fact, the borrower on the
17 loan is evidenced by the following:

- 18 a. Rehders made an equity investment of over one million dollars
19 (\$1,000,000) to acquire the property;
- 20 b. Rehders paid all loan fees to Community Bank, in an amount exceeding
21 one hundred thousand dollars (\$100,000) – Defendant Hostettters paid
22 nothing;
- 23 c. Rehders had all the significant operational and financial experience
24 necessary to successfully timber and redevelop the land – Defendant
25 Hostettters had none;

26 ///

- 1 d. Rehders' were credit worthy for a loan of \$3.7 million – Defendant
2 Hostetters were not;
- 3 e. Under the terms of the contract between Rehders and Hostetters dated
4 March 19, 2003, Rehders were required to make all payments on the
5 loan and to pay off the loan, which they did – Defendant Hostetters
6 paid nothing on the loan;
- 7 f. In making the loan to Defendant Hostetter, The Bank relied on the
8 proprietary information it had obtained from Rehders regarding their
9 ability to log, subdivide and then resell the Opal Butte property – The
10 Bank did not rely on any information provided by Defendant Hostetters
11 in agreeing to fund the closing of the Opal Butte transaction.

12 17.

13 Defendant Hostetter, The Bank's nominee borrower, required Rehders to sign a
14 contract on March 19, 2003, two (2) days before the scheduled closing deadline on the Opal
15 Butte transaction, whereby Rehders gave up significant rights in the ownership and
16 development of the Opal Butte property in exchange for Defendant Hostetter to act as the
17 straw man in the loan transaction. Rehder had no alternative. If Rehder failed to close, he
18 would lose all of his \$500,000 earnest money. He had previously agreed not to seek financing
19 from any other bank. Rehder's executed this contract only because they had no reasonable
20 alternative. As a result of signing this agreement, Rehders were ultimately forced to "buy out"
21 Defendants Hostetter at a cost of \$1,250,000. This loss was caused by the improper conduct
22 of Hostetter and Community Bank, acting in concert with each other.

23 18.

24 In the artifice that resulted in Rehders' execution of the March 19, 2003 contract, as
25 well as the "straw man" loan to Defendant Hostetter by The Bank, both parties intentionally
26 withheld from Rehder that Defendant Hostetter was a lawyer regularly employed by The Bank

1 over a period of many years. In similar fashion, The Bank conveyed to Mr. Hostetter much of
2 Rehders' confidential financial and proprietary information, both orally and in writing, such
3 that when Rehders first appeared in the office of Mr. Hostetter, he already had all of their
4 financial statements, tax returns and other documents which were provided by The Bank, in
5 violation of its duties to Rehders.

6 19.

7 Both Hostetter and The Bank, working in concert with each other, took extreme
8 advantage of Rehder's no-win situation – a situation they created – whereby Rehders were
9 forced to either sign the deal presented by Plaintiff Hostetter or lose \$500,000 in earnest
10 money.

11 20.

12 All subsequent contracts between Plaintiffs Hostetter and Defendants Rehder represent
13 attempts by the Rehders to extricate themselves from the March 19, 2003 contract. Any and
14 all monies paid to Hostetter prior to the filing of this lawsuit and pursuant to contracts entered
15 into subsequent to March 19, 2003 represent losses flowing from improper conduct of
16 Plaintiffs Hostetters and Community Bank as described in this Complaint.

17 21.

18 In September, 2004, Rehders were contacted by Mr. Hostetter and by Community
19 Bank regarding an investigation of the Opal Butte transaction by The Bank's auditors and
20 Board of Directors. Mr. Rehder became concerned and began to investigate some of the
21 bank's conduct. Rehder then learned that The Bank never made any attempt to sell Rehder's
22 loans to other institutions to make room for Rehders to borrow the money necessary to close
23 the Opal Butte transaction directly from The Bank. Instead, Rehders learned that The Bank,
24 working through Mr. Penowski, had orchestrated an improper and dishonest scheme to keep all
25 of his business and earn all of its fees and interest on all of Rehder's loans, including the Opal
26 Butte loan (despite The Bank's loan limits) by forcing Rehders to enter into a contract with its

1 nominee borrower, Plaintiff Hostetter, instead of telling him the truth – that The Bank never
2 made a *bona fide* attempt to sell his loan portfolio so that it could loan him the money directly.
3 Instead, The Bank and its lawyer orchestrated a straw man loan and forced Rehders to sign the
4 March 19, 2003 contract with Hostetter. By doing so, they each placed their financial interests
5 ahead of the Rehders' and made a great deal of money at Rehders' expense.

6
7 FIRST CLAIM FOR RELIEF

8 (Against Community Bank)

9 (Breach of Contract)

10 22.

11 Counterclaimants Rehders reassert all the factual allegations of their counterclaim, in
12 full, herein.

13 23.

14 Counterclaim Defendant Community Bank breached its contract with Defendants
15 Rehders when it failed to make any *bona fide* attempt to sell its portfolio of Rehders loans to
16 other financial institutions as is more fully described in the body of this counterclaim. The
17 Bank's agreement was secured by good and valuable consideration consisting of Rehder's
18 agreement to maintain an exclusive banking relationship with Community Bank and to
19 continue to seek financing on the Opal Butte transaction solely from Community Bank,
20 thereby entitling The Bank to earn loan fees in excess of \$100,000 and significant profits on
21 interest earned on the \$3,700,000 loan made on the Opal Butte transaction. As a result of The
22 Bank's breach of its agreement with Rehder, Rehders were denied the opportunity to either
23 borrow the funds necessary to close the Opal Butte transaction directly from The Bank, and/or
24 were denied the opportunity to obtain financing from another financial institution to
25 accomplish the same result. Instead, the Rehders were forced to borrow the money from The
26 Bank indirectly, through the straw man transaction described in this complaint. As a

1 consequence of that transaction and subsequent transactions entered into with Plaintiffs
2 Hostetter, Defendants Rehders suffered losses in the sum of \$1,250,000, the sum of money
3 necessary to buy out the straw men, Mr. and Mrs. Hostetter.
4

5 SECOND CLAIM FOR RELIEF

6 (Against Counterclaimant Community Bank)

7 (Breach of Implied Contract of Good Faith and Fair Dealing)

8 24.

9 Counterclaimants Rehders reassert all the factual allegations of their counterclaim, in
10 full, herein.

11 25.

12 Based upon the conduct of Community Bank, as is fully described in the body of this
13 counterclaim, The Bank breached its duty to fulfill its contractual obligations to Defendants
14 Rehders in good faith and through a course of fair dealing. Rather, The Bank engaged in
15 conduct designed to defeat Rehder's reasonable expectation that it would act in a manner that
16 would protect Rehder's interests in the Opal Butte transaction when, in fact, The
17 Bank acted to promote its own interests at the expense of Rehder' expense, by forcing Rehders
18 to participate in the straw man loan transaction described in this counterclaim and by forcing
19 Rehders to enter into the March 19, 2003.contract with Plaintiffs Hostetter, to their detriment.

20 26.

21 As a result of Community Bank's breach of its duty to act in good faith and with fair
22 dealing, Defendants Rehders have suffered losses in the sum of \$1,250,000.

23 ///

24 ///

25 ///

26 ///

1 THIRD CLAIM FOR RELIEF

2 (Against Counterclaim Defendant Community Bank)

3 (Breach of Fiduciary Duty – Loyalty)

4 Counterclaimants Rehders reassert all the factual allegations of their counterclaim, in
5 full, herein.

6 27.

7 As is more fully described in the section of this counterclaim entitled “Prior Course of
8 Dealings”, Defendant Rehder and Counterclaim Defendant Community Bank established over
9 a course of several years an extensive banking relationship whereby Defendants Rehders came
10 to rely on and repose trust and confidence in Community Bank to protect Rehders’ financial
11 interest in each and every transaction involving The Bank. That trust and confidence included
12 an expectation by Rehder that The Bank would provide them with honest information and
13 would, in every circumstance, exercise its conduct in a manner which would protect Rehders’
14 financial interest .

15 28.

16 Community Bank breached its fiduciary duty of loyalty to Defendants Rehders when it
17 acted to place its financial interests ahead of the financial interests of Rehder. It did so by
18 falsely reporting to Rehder that The Bank was making a *bona fide* attempt to sell the portfolio
19 of Rehders loans held by The Bank to other financial institutions so that Rehder would fall
20 under The Bank’s loan limits for individual borrowers. Instead, The Bank engaged in a
21 pattern of deception and forced Rehder to participate in a straw man loan transaction and
22 subsequent contracts with Plaintiff Hostetter, for the purpose of keeping all of Rehder’s
23 business, with The Bank being the recipient of all of the loan fees and interest earned on the
24 Opal Butte loan. By doing so, The Bank placed its own interests ahead of the interests of
25 Rehders.

26 ///

1 29.

2 As a result of The Bank's breach of its fiduciary duty to Rehder, they have suffered
3 economic losses in the sum of \$1,250,000.

4
5 FOURTH CLAIM FOR RELIEF

6 (Against Plaintiffs Hostetter and Counterclaim Defendant Community Bank)

7 (Fraud)

8 30.

9 Counterclaimants Rehders reassert all the factual allegations of their counterclaim, in
10 full, herein.

11 31.

12 Rehder's entry into the March 19, 2003 contract with Plaintiffs Hostetter was the result
13 of fraud perpetrated on them by counterclaim Defendant Community Bank, acting in concert
14 with Plaintiffs Hostetter. Community Bank misrepresented to the Rehders that it had made a
15 *bona fide* attempt to loan them the money necessary to close the Opal Butte transaction
16 directly, when in fact, The Bank made no such attempt. Instead, The Bank, acting in concert
17 with Plaintiff Hostetter, created a straw man loan transaction whereby, in name only, Plaintiff
18 Hostetter borrowed the funds necessary to close the Opal Butte transaction from The Bank,
19 even though the borrower, in fact, was the Rehders. This transaction was fraudulent in its very
20 nature and resulted in subsequent contracts between Plaintiffs Hostettters and Defendant
21 Rehder, including the March 19, 2003 contract which ultimately cost Defendant Rehders'
22 economic damages in the sum of \$1,250,000.

23 32.

24 Defendants Rehders justifiably relied on the representations of The Bank, as well as
25 the omissions of The Bank and Plaintiff Hostetter regarding the fact that Hostetter was the
26 lawyer for The Bank, and such justified reliance proved to be detrimental to Defendants

1 Rehders. At the time that The Bank's and Hostetter's representations and omissions were
2 made, they knew them to be false and/or misleading and that Defendants Rehders would rely
3 on those representations to their detriment. Had Rehders known the true facts regarding the
4 artifice to defraud, Rehders would have taken the Opal Butte transaction to another financial
5 institution and would have succeeded in obtaining financing directly from another bank. This
6 would have eliminated any need to enter into any form of contract with Plaintiff Hostetter,
7 who was up until one week prior to closing, a complete stranger to this transaction

8 33.

9 In addition to their economic damages, and as to all of the claims for relief set forth in
10 this counterclaim, Defendants Rehders are also entitled to the recovery of prejudgment
11 interest.

12
13 FIFTH CLAIM FOR RELIEF

14 (Against Plaintiffs Hostetter and Community Bank)

15 (Economic Duress)

16 34.

17 Counterclaimants Rehders reassert all the factual allegations of their counterclaim, in
18 full, herein.

19 35.

20 Rehder's entry into the March 19, 2003 contract with Plaintiffs Hostetter was the result
21 of economic duress perpetrated on them by counterclaim Defendant Community Bank, acting
22 in concert with Plaintiffs Hostetter. Community Bank misrepresented to the Rehders that it
23 had made a *bona fide* attempt to loan them the money necessary to close the Opal Butte
24 transaction directly, when in fact, The Bank made no such attempt. Instead, The Bank, acting
25 in concert with Plaintiff Hostetter, orchestrated a straw man loan transaction whereby, in name
26 only, Plaintiff Hostetter borrowed the funds necessary to close the Opal Butte transaction from

1 The Bank, even though the borrower, in fact, was the Rehders. But for the Bank's and
2 Hostetter's conduct, Rehders would have taken the Opal Butte transaction to another financial
3 lending institution and would have succeeded in obtaining financing directly from another
4 bank, thereby eliminating any need for entering into any form of contract with Plaintiff
5 Hostetter, including the March 19, 2003 contract.

6 36.

7 Mr. and Mrs. Rehder had no reasonable alternative but to sign the contract placed
8 before them by Hostetter dated March 19, 2003 and other subsequent contracts. Through the
9 counterclaim Defendants' artifice, Rehders were forced to either sign the March 19, 2003
10 agreement or forfeit \$500,000 in earnest money. This would have caused them severe
11 financial distress.

12 As a consequence of the economic duress perpetrated by the counterclaim defendants,
13 Rehders have suffered economic damage in the sum of \$1,250,000.

14 37.

15 In addition to their economic damages, and as to all of the claims for relief set forth in
16 this counterclaim, Defendants Rehders are also entitled to the recovery of prejudgment
17 interest.

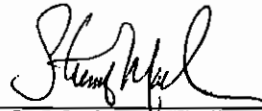
18 WHEREFORE, Defendants William and D'Anne Rehders respectfully pray for relief
19 from this honorable court in the following particulars:

- 20 1. Rahn and Rebecca Hostetter take nothing by virtue of their complaint against
21 Defendants Rehders;
- 22 2. That Defendants Rehders be awarded economic damages of \$1,250,000, plus
23 prejudgment interest at the rate established by law, said interest to commence
24 on the date that monetary damages were, in fact, incurred by Defendants in
25 payment of obligations arising to Plaintiffs Hostetter, and;

26 ///

1 3. That Defendants Rehders be awarded their costs of prosecuting this claim.

2 DATED this 20 day of July, 2005.

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5 Steven G. Marks, OSB #90087
6 Attorney for Defendants and
7 Counterclaim Plaintiffs Rehders
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