

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COACTIV CAPITAL PARTNERS, INC.
655 Business Center Drive, Suite 250
Horsham, PA 19044

Plaintiff,

v.

IFC CREDIT CORPORATION
8700 Waukegan Road, Suite 100
Morton Grove, IL 60053

and

IFC CAPITAL FUNDING I, LLC
8700 Waukegan Road, Suite 100
Morton Grove, IL 60053

and

RUDOLPH D. TREBELS
343 Country Lane
Glenview, IL 60025

and

MARC LANGS
135 Oakmont Drive
Deerfield, IL 60015

Defendants.

CIVIL ACTION

NO.

COMPLAINT

Plaintiff, CoActiv Capital Partners, Inc., through its undersigned counsel, hereby asserts the following claims against Defendants, and avers as follows:

1. Plaintiff CoActiv Capital Partners, Inc. ("CoActiv") is a Delaware corporation with its principal place of business at 655 Business Center Dr., Suite 250, Horsham, PA 19044.

2. Defendant IFC Credit Corporation ("IFC") is an Illinois corporation with its principal place of business at 8700 Waukegan Road, Suite 100, Morton Grove, IL. 60053.

3. Defendant IFC Capital Funding I, LLC ("IFCI"), is an Illinois corporation with its principal place of business at 8700 Waukegan Road, Suite 100, Morton Grove, IL. 60053.

4. Defendant Rudolph D. Trebels is the President of both IFC and the Manager of IFCI and resides at 343 Country Lane, Glenview, IL 60025.

5. Defendant Marc Langs is the Chief Financial Officer of IFC and IFCI and resides at 135 Oakmont Drive, Deerfield, IL 60015.

6. Diversity jurisdiction pursuant to 28 U.S.C.A. § 1332 et seq. and venue are proper in this Court as the parties are citizens of different states, the matters in controversy are in excess of \$75,000.00, the Defendants have entered into contracts and obligations within the region of the United States District Court for the Eastern District of Pennsylvania, and agreements between the parties consent to jurisdiction and venue in this Court.

BACKGROUND

7. Beginning in June 2007 CoActiv purchased certain leases and assets related thereto from IFC pursuant to several agreements, as amended, including the June 2007 Sale and Assignment Agreement between CoActiv and IFC and the November 2007 Master Purchase Agreement between CoActiv and IFC. See Sale and Assignment Agreement and Master Program Agreement attached hereto as Exhibits "A" and "B", respectively.

8. As part of the November 2007 transaction, IFC and CoActiv entered into a Servicing Agreement (the "Purchase Servicing Agreement") whereby IFC agreed to perform certain services for IFC related to the administration of each lease and the accounting of funds related to each individual lease. See Purchase Servicing Agreement attached hereto as Exhibit "C".

9. In December 2007, IFC, IFCI, and CoActiv were parties to a loan transaction wherein CoActiv provided funding to IFCI by means of a \$25,000,000.00 credit facility for IFCI to purchase certain leases from IFC. As part of that transaction, IFC and IFCI entered into an Assignment of Servicing Agreement (the "IFCI Servicing Agreement") wherein IFC assumed IFCI's servicing requirements and agreed to service and administer the leases for the benefit of CoActiv. See Loan Agreement and IFCI Servicing Agreement attached hereto as Exhibits "D" and "E", respectively.

10. In March of 2008, due to various defaults by IFC of its obligations under the aforementioned agreements, an Omnibus Amendment Agreement ("Omnibus Agreement") was entered into by the parties to further define their obligations and the relationship between the parties. See Omnibus Agreement attached hereto as Exhibit "F".

11. Collectively, the Servicing Agreement and the IFCI Servicing Agreement, each as amended, will be referred to as the "Servicing Agreements".

12. Pursuant to the Servicing Agreements, IFC was obligated to use its best efforts to ensure that all lease payments and related charges were directed in to a lockbox account to be held under CoActiv's sole control. See, e.g., Exhibit "C", Purchase Servicing Agreement, Section 2.2(a).

13. Pursuant to the Servicing Agreements, and the Sale and Assignment Agreement, IFC was obligated monthly to advise CoActiv of all lease payments and related charges received by IFC for the prior month and provide a detailed accounting of all such funds. See, e.g., Exhibit "C", Purchase Servicing Agreement, Section 2.2(c); Exhibit "A", Sale and Assignment Agreement, Section 5.6.

14. Pursuant to Section 2.2(d) of the Purchase Servicing Agreement, IFC was not permitted to agree to any termination of a lease by a lessor without CoActiv's prior written consent.

15. Pursuant to the Omnibus Agreement, IFC agreed that all of the Servicing Reports would “evidence all activity that occurred with respect to the leases and other assets” during the preceding month. See Exhibit “F”, Section 4(b) of the Omnibus Agreement.

16. In performing these duties, IFC agreed that it would act pursuant to “applicable law and prudent, customary and usual procedures of financial institutions” with a view “to the maximization of timely recovery of amounts Owing” on the leases. See Exhibit “C”, Purchase Servicing Agreement, Section 2.1(a).

17. Subsequent to the entry of the Omnibus Agreement, IFC continued to provide monthly Servicing Reports to CoActiv pursuant to the terms of the parties’ contractual agreements.

18. Each Servicing Report was to be executed by both IFC’s Controller, David Keenan, as well as by Marc Langs, IFC’s Chief Financial Officer.

19. Pursuant to the Omnibus Agreement, Mr. Langs and Mr. Keenan were to be “Certifying Officers” who were obligated to provide “complete, correct and accurate[e]” financial data concerning all payments on the leases or other assets. See Exhibit “F”, Omnibus Agreement, Section 4(c).

20. Further, pursuant to the Omnibus Agreement, Mr. Langs and Mr. Keenan were charged with making such certifications in their “individual capacities” and not merely as agents of IFC.

21. Upon information and belief, Mr. Trebels, the Chief Executive Officer of IFC, reviewed each Servicing Report and was aware of what information was being provided to CoActiv.

22. Beginning in approximately mid-2008, the Servicing Reports ceased to show that any leases were being terminated by lessors and failed to show that IFC was

receiving and depositing into other accounts the monies related to the early termination of the leases owned by CoActiv.

23. The Servicing Reports specifically contain a category for the entry of such collections.

24. Upon information and belief, Mr. Trebels instructed Mr. Langs and/or Mr. Keenan to falsify the Servicing Reports.

25. In late March of 2009, CoActiv became aware that numerous leases were being terminated but that no payments were being credited to CoActiv's lockbox account.

26. CoActiv provided IFC with all applicable notices under the agreements concerning IFC's failure to timely make payments.

27. Despite demand, IFC has failed to remit the sums due for termination payments to CoActiv.

28. As of April 10, 2009, IFC has acknowledged that it wrongly withheld and retained over \$1.6 million dollars in termination payments due to CoActiv.

29. Further, CoActiv has determined that IFC has failed to make almost \$400,000 in other payments due and owing to CoActiv under the terms of the Servicing Agreements.

30. Upon a review of IFC's financial situation, CoActiv believes, and therefore avers that IFC has been essentially insolvent over the past year and has been utilizing funds belonging to CoActiv to satisfy cash flow requirements.

31. IFC's failure to transfer funds belonging to CoActiv pursuant to the Agreements between them is a clear breach of IFC's obligations.

32. Mr. Trebels and Mr. Langs, as officers of IFC, were at all times aware of the funds received by IFC for termination of the leases as well as what information as contained on the Servicing Reports being provided to CoActiv.

33. Mr. Trebels and Mr. Langs, as officers of IFC, were at all times aware that funds belonging to CoActiv were being dissipated and utilized by IFC without the knowledge of or permission of CoActiv.

34. Mr. Trebels and Mr. Langs knew at all times that the information being provided to CoActiv was false and misleading.

35. Section 13.1 of the Omnibus Agreement provides that Defendants shall pay all attorneys fees, costs, and expenses incurred by CoActiv arising from the enforcement of CoActiv's rights under the Omnibus Agreement.

36. Mr. Trebels and Mr. Langs knew that CoActiv relied on the information contained in the Servicing Reports as well as on the veracity of the reporting by IFC under the direction and control of Mr. Trebels and Mr. Langs.

COUNT I - CONVERSION

CoActiv v. IFC and IFCI

37. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

38. Defendants IFC and IFCI were obligated to collect lease payment and remit said payments to CoActiv pursuant to the parties' contractual agreements.

39. Instead, Defendants IFC and IFCI retained and converted the lease payments belonging to CoActiv in violation of the parties' contracts and wrongly utilized the funds for their own benefit.

40. The actions of Defendants IFC and IFCI were without right and justification and deprived CoActiv of the rightful possession of its funds.

41. CoActiv has been damaged as a result of Defendants IFC's and IFCI's conversion in an amount exceeding \$2,000,000.00 plus interests, fees, and costs.

WHEREFORE, CoActiv hereby demands judgment in its favor and against IFC and IFCI for an amount exceeding \$75,000.00, plus interest, costs of suit, attorneys fees, and such other relief as the Court deems just and proper.

COUNT II - ACCOUNTING

CoActiv v. IFC and IFCI

42. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

43. Defendants IFC and IFCI are required to administer the servicing of the leases in a commercially reasonable manner.

44. Defendants IFC and IFCI have clearly failed to act in a commercially reasonable manner as illustrated by the over \$2,000,000.00 in unpaid servicing charges and lease termination charges that have not been remitted to CoActiv.

45. Defendants IFC and IFCI have failed to act in a commercially reasonable manner in that they failed to report the early terminations to CoActiv in the Servicing Reports.

46. In order for CoActiv to determine the extent of Defendants IFC's and IFCI's defaults, CoActiv demands an accounting of IFC's and IFCI's books and records.

47. CoActiv is entitled to an accounting of IFC's receipts and disposition of revenues from January 1, 2008 to the present.

48. CoActiv is entitled to an accounting of all expenses and disbursements, including salary and distributions to Defendants Trebles and Langs, since January 1, 2008.

WHEREFORE, CoActiv hereby demands an accounting of IFC's and IFCI's books and records, plus other relief as deemed just and proper by the Court.

COUNT III – BREACH OF CONTRACT

Plaintiff v. IFC and IFCI

49. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

50. IFC and IFCI were contractually obligated to use their best efforts to ensure that all payments of, taxes, and charges relating to each lease payment were properly accounted for and distributed to, inter alia, CoActiv.

51. IFC and IFCI failed to properly distribute nearly \$400,000 in payments collected and reported on leases owned by CoActiv for which IFC and IFCI were collecting under the terms of the Servicing Agreement, as well as over \$1.6 million in payments collected on leases owned by CoActiv for which IFC and IFCI were servicing under the terms of the Servicing Agreement.

52. IFC and IFCI's failures as set forth above constitute a breach of the parties' contractual agreements.

53. CoActiv has been damaged by IFC's and IFCI's breach.

54. IFC's and IFCI's breach was intentional and without justification.

55. CoActiv has been damaged in amount exceeding \$2,000,000.00 as a result of IFC's and IFCI's actions.

56. Section 14 of the Sale and Assignment Agreement attached hereto as Exhibit "A" provides that an Event of Default occurs if, inter alia, Sellers fails to remit any amount required to CoActiv.

57. Upon such an Event of Default, CoActiv is entitled to "court costs and reasonable attorneys' fees" from IFC.

WHEREFORE, CoActiv hereby demands judgment in its favor and against IFC and IFCI for an amount exceeding \$75,000.00, plus interest, costs of suit, attorneys fees, and such other relief as the Court deems just and proper.

COUNT IV - FRAUD

CoActiv v. All Defendants

58. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

59. The Omnibus Agreement specifically requires Defendants to accurately keep account of all payments and financial activity related to the leases and other assets.

60. Defendants intentionally failed to keep proper records of the sums paid and to accurately remit all sums due to CoActiv.

61. Defendants knew at all times that the sums were due and owing to CoActiv and that they were falsely reporting the sums due and owing on the Servicing Reports.

62. Defendants Trebels and Langs knew the Servicing Reports were materially false and inaccurate, yet Defendant Langs, under Defendant Trebels' direct control and supervision, and upon information and belief with his express approval, signed the Servicing Reports on behalf of Defendants IFC and IFCI and actively participated in the fraud.

63. Defendants acted fraudulently towards CoActiv in order to falsely inflate the condition of Defendants IFC's and IFCI's financial operations.

64. Defendants' Trebels and Lang benefited from the fraud since it allowed them to maintain their positions at IFC and IFCI, as well as receiving financial and other benefits related to their positions.

65. Upon information and belief, if they had not engaged in the fraud, Trebels and Lang would have lost their respective positions with Defendants and thus been financially damaged.

66. CoActiv has been damaged by Defendants' fraud.

67. Defendants intentionally and maliciously engaged in the fraud knowing that their conduct would harm CoActiv. An award of punitive damages against Defendant is therefore justified.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor and against Defendants in an amount greater than \$75,000.00 plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT V - UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

CoActiv v. All Defendants

68. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

69. Defendants have received the benefit of retaining over \$2,000,000 that belonged to CoActiv, and Defendants' retention of that benefit would severely prejudice CoActiv.

70. Defendants retention of these funds was unjustified and without authority.

71. Defendants had no right to the funds and, indeed, retained them in breach of the parties' contractual agreements.

72. A constructive trust should be imposed preventing Defendants from utilizing or disposing of the funds in order to protect CoActiv's interest in said funds.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor, plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT VI – BREACH OF FIDUCIARY DUTY

CoActiv v. Rudy Trebels and Marc Langs

73. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

74. Upon information and belief, IFC has been essentially insolvent for at least the past year.

75. Upon the insolvency of IFC, Defendants Trebels and Langs owed a fiduciary duty to the creditors of IFC to protect available assets in favor of the creditors.

76. Trebels and Langs breached this duty to CoActiv not only by dissipating the assets of IFC, but by dissipating and utilizing assets belonging to CoActiv without the knowledge of or permission of CoActiv.

77. CoActiv has been damaged due to the breach of fiduciary duty by Defendants Trebels and Langs.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor in an amount greater than \$75,000.00, plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT VII – NEGLIGENCE

CoActiv v. All Defendants

78. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

79. Defendants IFC and IFCI were obligated through their contracts with CoActiv to remit all sums due under the Servicing Agreements to CoActiv.

80. At all relevant times, Defendants Trebels and Langs were in control of Defendants IFC's and IFCI's operations and owed a duty, together with Defendants IFC and IFCI to CoActiv to ensure IFC's compliance with the terms of the Contracts.

81. Defendants Trebels and Langs acted negligently and without justification in causing IFC and IFCI to represent to CoActiv false information on the Servicing Reports as well as by causing IFC and IFCI to fail to remit all sums due to CoActiv.

82. Defendants IFC and IFCI acted negligently and without justification by presenting false information on the Servicing Reports as well as by failing to remit all sums due to CoActiv.

83. CoActiv has been damaged by Defendants' negligence.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor in an amount greater than \$75,000.00, plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT VIII – CIVIL CONSPIRACY

CoActiv v. All Defendants

84. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

85. Defendants acted with a common purpose to wrongfully further their own interests and to damage CoActiv.

86. As a direct and proximate result of the actions of Defendants, and each of them, CoActiv has been severely damaged.

87. Defendants' actions were intentional and targeted to damage CoActiv.

88. Defendants' actions were not performed pursuant to any privilege.

89. The actions of Defendants were intentional, willful, wanton, and reckless.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor in an amount greater than \$75,000.00, plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT IX – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

CoActiv v. All Defendants

90. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

91. Pursuant to the parties' contracts, Defendants, and each of them had a duty to act pursuant to "applicable law and prudent, customary and usual procedures of financial institutions" with a view "to the maximization of timely recovery of amounts Owning" on the leases. See Exhibit "C", Purchase Servicing Agreement, Section 2.1(a).

92. Pursuant to the parties' contracts, IFC was obligated, through Mr. Langs and Mr. Keenan as "Certifying Officers" to provide "complete, correct and accurat[e]" financial data concerning all payments on the leases or other assets. See Exhibit "F", Omnibus Agreement, Section 4(c).

93. Defendants had an obligation to do and perform those things according to reason and justice they should do in order to carry out the purpose for which the parties' contracts were made, and to refrain from doing anything that would destroy or injure the rights of CoActiv to receive the just benefits of the contracts.

94. Defendants owe CoActiv a duty of good faith and fair dealing in the performance of the contracts.

95. Defendants abused their powers and usurped CoActiv's rights by wrongfully withholding the aforementioned payments from CoActiv.

96. Defendants acted in bad faith when they wrongfully withheld the aforementioned payments from CoActiv.

97. As a direct and proximate result of Defendants reckless, intentional, wanton, and willful conduct, coactive has suffered extensive and severe damages.

98. The actions of Defendants were performed with reckless indifference to the financial needs and health of CoActiv and constituted outrageous conduct.

WHEREFORE, CoActiv respectfully requests that judgment be entered in its favor in an amount greater than \$75,000.00, plus costs of suit and attorneys fees, as well as punitive damages, plus such other relief as the Court deems fair and just.

COUNT X – NEGLIGENT MISREPRESENTATION

CoActiv v. All Defendants

99. Plaintiff incorporates by reference as if fully set forth herein the averments of the preceding paragraphs.

100. Defendants had a duty to provide accurate information to CoActiv in the Servicing Reports.

101. Defendants knowingly failed to provide accurate information to CoActiv in the Servicing Reports.

102. Defendants knew, or reasonably should have expected, that CoActiv would rely on the information contained in the Servicing Reports.

103. Defendants negligently misrepresented the financial information set forth in the Servicing Reports with the express purpose of causing CoActive damage.

104. CoActiv has been damaged by Defendants' actions.

