

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO (Cincinnati)**

FIRST PREMIER CAPITAL LLC)	
)	Case No. 1:11-cv-237
Plaintiff,)	
)	Judge Beckwith
v.)	Magistrate Judge Bowman
)	
VONLEHMAN & COMPANY, INC.,)	
BRIAN MALTHOUSE, and BRANDON POWERS))	
)	
Defendants.)	

COMPLAINT

NOW COMES PLAINTIFF FIRST PREMIER CAPITAL LLC (“FPC”), by and through its counsel, and for its Complaint against VONLEHMAN & COMPANY, INC. (“VonLehman”), BRIAN MALTHOUSE (“Malthouse”) and BRANDON POWERS (“Powers”) (collectively, the “Defendants”), states as follows:

PARTIES

1. FPC is a limited liability company registered under the laws of the State of South Dakota, with its principal place of business located at 5201 Eden Avenue, Suite 180, Edina, Minnesota 55436. First Premier’s three members are: Steve Alpeter, a citizen of the State of Minnesota who resides in Edina, Minnesota; Bill Kelly, a citizen of the State of Minnesota who resides in Edina, Minnesota; and Denny Sanford, citizen of the State of South Dakota who resides in Sioux Falls, South Dakota.

2. VonLehman is an Ohio corporation with its principal place of business located at 4755 Lake Forest Drive, Cincinnati, Ohio 45242. VonLehman is an accounting and management consulting firm providing accounting and auditing services for its clients.

3. Malthouse is a citizen of the State of Ohio residing at 7410 Briarpatch Lane, Cincinnati, Ohio 45236. Currently and at all relevant times described in this Complaint, Malthouse was a shareholder in VonLehman and supervised the audit work performed by VonLehman at issue in this action.

4. Powers is a citizen of the State of Kentucky residing at 10279 Highmeadow Lane, Independence, Kentucky 41051. Currently and at all relevant times described in this Complaint, Powers was a shareholder in VonLehman and supervised the audit work performed by VonLehman at issue in this action.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(1), because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 .

6. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(a)(1) and (2), as the Defendants all reside in this District and a substantial part of the events or omissions giving rise to FPC's claim occurred in this District.

BACKGROUND

7. In late 2004 or early 2005, non-party Equipment Acquisition Resources, Inc. ("EAR") approached FPC to finance equipment.

8. On or about May 16, 2005, EAR entered into Master Lease Agreement No. EQU051605 (the "Master Lease") with FPC for the lease of certain equipment. A true and correct copy of the Master Lease is attached hereto as Exhibit 1.

9. Subsequently, pursuant to the Master Lease, EAR and FPC entered into twenty three (23) Lease Schedules (collectively, the “Leases”) between May 2006 and August 2009 for the lease of various equipment. True and correct copies of the Leases are attached hereto as Exhibits 2-24.

10. During FPC’s due diligence inquiry regarding EAR, FPC reviewed EAR’s 2005 audited balance sheet and the 2006-2008 audited financial statements and other accounting related documents prepared by VonLehman. FPC also reviewed the 2007 and 2009 audited balance sheets of Sheldon Player (“Player”) and Donna Malone (“Malone”), EAR’s principals, prepared by VonLehman. True and correct copies of the audited balance sheets and audited financial statements prepared by VonLehman are attached hereto as Group Exhibit 25.

11. Three of FPC’s employees – Craig Hallet, Steve Berglund and Stephen Alpeter – advised Malthouse and Powers on numerous occasions that FPC was a creditor interested in financing equipment for EAR.

12. Craig Hallet, Steve Berglund and Stephen Alpeter of FPC communicated directly with Malthouse and Powers of VonLehman on numerous occasions via email and telephone from early 2006 to 2009 regarding VonLehman’s preparation of EAR’s 2005 audited balance sheet, EAR’s 2006-2008 audited financial statements, and the 2007 and 2009 audited balance sheets of Player and Malone, and other accounting-related documents. True and correct copies of a portion of the emails between Craig Hallet at FPC and Powers and/or Malthouse at VonLehman are attached hereto as Group Exhibit 26.

13. Through the course of these conversations and emails, Malthouse and Powers at VonLehman were made aware that FPC intended to rely on EAR’s 2005 audited balance sheet,

EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents, all prepared by VonLehman, in deciding whether to do business with EAR.

14. Based on FPC's review of EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by VonLehman, and in reliance of the same, FPC funded the Leases with EAR.

15. On October 29, 2009, EAR filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois as Case No. 09-39937.

16. During the course of EAR's bankruptcy, FPC and other creditors discovered that EAR engaged in fraudulent activities, including, without limitation, double-pledging and overvaluing of collateral, and fraudulently transferring EAR's assets by EAR's officers and shareholders. EAR, Malone, Player, Mark Anstett ("Anstett"), Machine Tools Direct, Inc. ("Machine Tools") and George Ferguson ("Ferguson") (collectively, the "Perpetrators") engaged in a Ponzi scheme to defraud EAR's creditors. Under the scheme, Machine Tools and Ferguson sent fabricated invoices for equipment to FPC and other equipment finance companies, when the equipment was (a) never manufactured; (b) pledged more than once to a particular lender/lessor; (c) never supplied by Machine Tools to EAR; and/or (d) identified by fake serial numbers created by the Perpetrators to deceive lenders.

17. Machine Tools and Ferguson sent fabricated invoices for equipment to FPC and other equipment finance companies, though they never intended to supply any equipment for

EAR when they issued the invoices, to defraud FPC and other equipment finance companies. Machine Tools and Ferguson also pretended to supply and deliver equipment to EAR in order to defraud FPC and other equipment finance companies.

18. EAR, through Player's, Malone's and Anstett's direction and control, falsely represented in writing that the equipment was delivered and falsely represented that the equipment leases were bona fide transactions.

19. Just before filing for bankruptcy protection, EAR retained William Brandt of Development Specialists, Inc. as its Chief Restructuring Officer to replace the Debtor's existing management. Based on his investigation of EAR's operations and financials, Brandt concluded that EAR ran a Ponzi scheme, costing creditors approximately \$150 million. Brandt has also represented that the FBI and the U.S. Attorney's Office are investigating the matter.

20. VonLehman, Malthouse and Powers, in preparing EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents, had a duty to conduct audits which would detect any material accounting misstatements, misrepresentations, irregularities and fraud.

21. VonLehman, Malthouse and Powers had a duty to perform audits of EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents in accordance with applicable auditing standards, accounting principals and all applicable professional and regulatory standards, including generally accepted auditing standards.

22. VonLehman, Malthouse and Powers had a duty to exercise reasonable and professional care expected from members of the accounting and/or auditing profession.

23. VonLehman, Malthouse and Powers duties of care were owed to FPC, because they had actual knowledge that FPC intended to rely on EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by them in making FPC's decision to extend credit to EAR.

24. VonLehman, Malthouse and Powers failed to exercise reasonable and professional care in performing audits of EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and the preparation of other accounting-related documents in accordance with applicable auditing standards, accounting principals and all applicable professional and regulatory standards, including generally accepted auditing standards.

25. VonLehman, Malthouse and Powers failed to exercise reasonable and professional care and diligence in discovering that EAR was a Ponzi scheme.

26. FPC would not have entered into the Leases with EAR had it known that the information contained in EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents was erroneous and/or false.

27. As a direct and proximate cause of Defendants' breaches of their duties of care, FPC suffered damages in the amount of \$30,365,556.29, the remaining balance due under the Leases.

COUNT I
PROFESSIONAL NEGLIGENCE AS ASSERTED BY A THIRD PARTY

28. FPC repeats and re-alleges Paragraphs 1 through 26 as though fully set forth herein.

29. FPC is a member of a limited, definable class of creditors who relied on EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by Defendants.

30. Defendants failed to perform their duties in auditing EAR's balance sheet and financial statements with reasonable care.

31. FPC's reliance on EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by Defendants was specifically foreseen by the Defendants, as evidenced by FPC's numerous telephone conversations and emails with Defendants regarding the audited balance sheet and financial statements.

32. Defendants were aware, by more than a mere possibility, that EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by Defendants would be submitted directly to FPC.

33. FPC actually and justifiably relied on EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by Defendants.

34. FPC would not have entered into the Leases with EAR had it known that the information contained in EAR's 2005 audited balance sheet, EAR's 2006-2008 audited financial statements and Player's and Malone's 2007 and 2009 audited balance sheets and other accounting-related documents prepared by the Defendants was erroneous and/or false.

35. As a direct and proximate cause of Defendants' breaches of their duties of care, FPC suffered damages in the amount of \$30,365,556.29, the remaining balance due under the Leases.

WHEREFORE, FIRST PREMIER CAPITAL, LLC respectfully requests that this Court enter Judgment in its favor and against VONLEHMAN & COMPANY, INC., BRIAN MALTHOUSE and BRANDON POWERS, jointly and severally, as follows:

- a. Awarding money damages in the amount of \$30,365,556.29; and
- b. Awarding FIRST PREMIER CAPITAL, LLC such other and further relief as this Court deems just.

FIRST PREMEIR CAPITAL, LLC demands a trial by jury.

FIRST PREMIER CAPITAL LLC

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