

HONORABLE THOMAS S. ZILLY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FIRST SOUND BANK, a Washington corporation,

Plaintiff,

v.

LARASCO, INC., a Washington corporation;
LOUIS A. SECORD, JR., an individual; and
RICHARD A. SECORD, an individual,

Defendants.

NO. C09-0056 TSZ

ANSWER TO INTERVENOR COWLITZ BANK'S COMPLAINT

COWLITZ BANK, a Washington corporation,

Intervening Plaintiff,

v.

FIRST SOUND BANK, a Washington corporation; and LARASCO, INC., a Washington corporation,

Defendants via Intervention.

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ANSWER TO INTERVENOR COWLITZ BANK'S COMPLAINT
NO. C09-0056 TSZ - 1

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Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

1 **TO: COWLITZ BANK, Plaintiff-Intervenor,**

2 **AND TO: BALL JANIK LLP, its attorneys.**

3 For its Answer to Intervenor Cowlitz Bank's ("Cowlitz") Complaint, and without
4 waiving defenses as to jurisdiction or venue, Larasco, Inc., ("Larasco") responds as follows:

5 **PARTIES**

6 1. Answering Paragraph 1, Larasco lacks knowledge or information sufficient to
7 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

8 2. Answering Paragraph 2, Larasco admits the allegations.

9 3. Answering Paragraph 3, Larasco admits that Puget Sound Leasing Company, Inc.
10 ("PSL") conducted a business whereby it financed the acquisition of personal property to
11 primarily small businesses through the issuance of equipment leases. Larasco further admits that
12 PSL sold most of its assets to First Sound Bank ("FSB") pursuant to an Asset Purchase
13 Agreement ("APA") dated September 24, 2007 and a sale that closed on March 1, 2008. Larasco
14 further admits that PSL changed its name to Larasco, Inc. as part of the asset sale. Unless
15 specifically admitted, Larasco denies all other allegations.

16 **JURISDICTION AND VENUE**

17 4. Answering Paragraph 4, Larasco asserts that this paragraph contains legal
18 conclusions and statements to which no response is required. To the extent an answer is
19 required, Larasco denies the allegations.

20 5. Answering Paragraph 5, Larasco asserts that this paragraph contains legal
21 conclusions and statements to which no response is required. To the extent an answer is
22 required, Larasco admits the allegations.

23 **FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

24 **(AGAINST FIRST SOUND BANK)**

25 6. Answering Paragraph 6, Larasco repeats and realleges herein the responses and
26 averments in each of the preceding paragraphs.

ANSWER TO INTERVENOR COWLITZ BANK'S
COMPLAINT
NO. C09-0056 TSZ - 2

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1 7. Answering Paragraph 7, Larasco denies the allegations. Larasco denies that it has
2 ever actively been in the business of financing the acquisition of personal property to small
3 businesses through the issuance of equipment leases. Rather than restate this denial in each
4 paragraph, Larasco denies all of the allegations contained in this Complaint to the extent that
5 they impute the prior activities and business of PSL to Larasco. By way of further answer,
6 Larasco admits that, prior to the sale of the majority of PSL's assets to FSB, PSL was in the
7 business of financing the acquisition of personal property to small businesses through the
8 issuance of equipment leases. Larasco further admits that PSL generated income through selling
9 payment streams from its leases to third parties, from servicing these leases, and from its own
10 portfolio of held leases. Unless specifically admitted, Larasco denies the remaining allegations.

11 8. Answering Paragraph 8, Larasco admits that PSL sold lease payment streams to
12 banks and other financial institutions ("Investor Banks") and entered into agreements with
13 Investor Banks, including agreements entitled Program Agreements. By way of further answer,
14 Larasco asserts that the terms of the agreements with Investor Banks or other financial
15 institutions speak for themselves. Larasco denies the allegations to the extent they are
16 inconsistent with the terms of the agreements. Unless specifically admitted, Larasco denies all
17 other allegations.

18 9. Answering Paragraph 9, Larasco admits that PSL and Cowlitz entered into a
19 Program Agreement dated April 27, 2006. By way of further answer, Larasco asserts that the
20 terms of the Program Agreement speak for themselves. Larasco denies the allegations to the
21 extent they are inconsistent with the terms of the Program Agreement. Unless specifically
22 admitted, Larasco denies all other allegations.

23 10. Answering Paragraph 10, Larasco asserts that the terms of the Program
24 Agreement speak for themselves. Larasco denies the allegations to the extent they are
25 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
26 denies all other allegations.

1 11. Answering Paragraph 11, Larasco asserts that the terms of the Program
2 Agreement speak for themselves. Larasco denies the allegations to the extent they are
3 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
4 denies all other allegations.

5 12. Answering Paragraph 12, Larasco asserts that the terms of the Program
6 Agreement speak for themselves. Larasco denies the allegations to the extent they are
7 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
8 denies all other allegations.

9 13. Answering Paragraph 13, Larasco asserts that the terms of the Program
10 Agreement speak for themselves. Larasco denies the allegations to the extent they are
11 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
12 denies all other allegations.

13 14. Answering Paragraph 14, Larasco asserts that the terms of the Program
14 Agreement speak for themselves. Larasco denies the allegations to the extent they are
15 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
16 denies all other allegations.

17 15. Answering Paragraph 15, Larasco lacks knowledge or information sufficient to
18 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

19 16. Answering Paragraph 16, Larasco admits that PSL sold most of its assets to FSB
20 pursuant to an APA dated September 24, 2007 and a sale that closed on March 1, 2008. By way
21 of further answer, Larasco asserts that Louis Secord, officer of PSL and Larasco, had multiple
22 conversations with Cowlitz's officers regarding the sale of PSL's assets to FSB and Cowlitz
23 voiced no objection. Larasco lacks knowledge or information sufficient to form a belief as to the
24 truth of the remaining allegations in this paragraph and therefore denies the same.

25 17. Answering Paragraph 17, Larasco asserts that the terms of the Program
26 Agreements and the APA and its Schedules speak for themselves. Larasco denies the allegations

1 to the extent they are inconsistent with the terms of the Program Agreement and the APA and its
2 Schedules. Unless specifically admitted, Larasco denies all other allegations.

3 18. Answering Paragraph 18, Larasco denies the allegations.

4 19. Answering Paragraph 19, Larasco lacks knowledge or information sufficient to
5 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

6 20. Answering Paragraph 20, Larasco lacks knowledge or information sufficient to
7 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

8 21. Answering Paragraph 21, Larasco lacks knowledge or information sufficient to
9 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

10 22. Answering Paragraph 22, Larasco asserts that the terms of the Program
11 Agreement speak for themselves. Larasco denies the allegations to the extent they are
12 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
13 denies all other allegations.

14 23. Answering Paragraph 23, Larasco asserts that the terms of the Program
15 Agreement speak for themselves. Larasco denies the allegations to the extent they are
16 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
17 denies all other allegations.

18 **SECOND CLAIM FOR RELIEF – BREACH OF CONTRACT**
19 **(AGAINST FIRST SOUND BANK AND LARASCO)**

20 24. Answering Paragraph 24, Larasco repeats and realleges herein the responses and
21 averments in each of the preceding paragraphs.

22 25. Answering Paragraph 25, Larasco admits that PSL employed a practice whereby
23 PSL paid all amounts due under the leases underlying the lease payment stream portfolios
24 (referred to by Cowlitz as the “no-loss practice”). Larasco further admits that PSL affirmed its
25 no-loss practice to Cowlitz and that its course of conduct was consistent with that practice.
26 Unless specifically admitted, Larasco lacks knowledge or information sufficient to form a belief

1 as to the truth of any allegations in this paragraph regarding Cowlitz or FSB and therefore denies
2 the same.

3 26. Answering Paragraph 26, Larasco admits that PSL employed a practice whereby
4 PSL paid all amounts due under the leases underlying the lease payment stream portfolios
5 (referred to by Cowlitz as the “no-loss practice”). Larasco further admits that PSL affirmed its
6 no-loss practice to Cowlitz and that its course of conduct was consistent with that practice.
7 Unless specifically admitted, Larasco lacks knowledge or information sufficient to form a belief
8 as to the truth of any allegations in this paragraph regarding Cowlitz or FSB and therefore denies
9 the same.

10 27. Answering Paragraph 27, Larasco admits that PSL intended its portfolios to be
11 valuable to Investor Banks because of the minimal risk of non-payment which resulted from the
12 no-loss practice. Larasco further admits that the no-loss practice also served as the primary
13 reason the Investor Banks were willing to provide favorable terms to PSL to purchase the lease
14 payment streams. Unless specifically admitted, Larasco denies all other allegations.

15 28. Answering Paragraph 28, Larasco asserts that any documents referred to in this
16 paragraph speak for themselves. Larasco denies the allegations to the extent they are
17 inconsistent with those documents. Unless specifically admitted, Larasco denies all other
18 allegations.

19 29. Answering Paragraph 29, Larasco admits that the no-loss practice also served as
20 the primary reason the Investor Banks were willing to provide favorable terms to PSL to
21 purchase the lease payment streams. Unless specifically admitted, Larasco denies all other
22 allegations.

23 30. Answering Paragraph 30, Larasco admits that PSL employed a practice whereby
24 PSL paid all amounts due under the leases underlying the lease payment stream portfolios
25 (referred to by Cowlitz as the “no-loss practice”). Larasco further admits that PSL affirmed its
26 no-loss practice to Cowlitz and that its course of conduct was consistent with that practice.

1 Larasco further admits that FSB continued the no-loss practice after the sale of the majority of
2 PSL's assets to FSB. Larasco denies that PSL's Program Agreement with Cowlitz obligated
3 PSL to undertake or continue its no-loss practice. Unless specifically admitted, Larasco denies
4 all other allegations.

5 31. Answering Paragraph 31, Larasco admits that Louis A. Secord, Jr. and Richard A.
6 Secord executed the Agreement to Clarify Operating Procedures ("Clarification Agreement")
7 with FSB. By way of further answer, Larasco asserts that the terms of the Clarification
8 Agreement speak for themselves. Unless specifically admitted, Larasco denies all other
9 allegations.

10 32. Answering Paragraph 32, Larasco asserts that any documents referred to in this
11 paragraph speak for themselves. Larasco denies the allegations to the extent they are
12 inconsistent with those documents. Unless specifically admitted, Larasco denies all other
13 allegations.

14 33. Answering Paragraph 33, Larasco asserts that this paragraph contains legal
15 conclusions and statements to which no response is required. To the extent an answer is
16 required, Larasco denies the allegations.

17 34. Answering Paragraph 34, Larasco denies the allegations.

18 35. Answering Paragraph 35, Larasco lacks knowledge or information sufficient to
19 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

20 36. Answering Paragraph 36, Larasco asserts that this paragraph contains legal
21 conclusions and statements to which no response is required. Larasco further asserts that the
22 terms of the Program Agreement speak for themselves. Larasco denies the allegations to the
23 extent they are inconsistent with the terms of the Program Agreement. Unless specifically
24 admitted, Larasco denies all other allegations.

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**THIRD CLAIM FOR RELIEF – BREACH OF CONTRACT
(AGAINST LARASCO)**

37. Answering Paragraph 37, Larasco repeats and realleges herein the responses and averments in each of the preceding paragraphs.

38. Answering Paragraph 38, Larasco asserts that the terms of the Program Agreement speak for themselves. Larasco denies the allegations to the extent they are inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco denies all other allegations.

39. Answering Paragraph 39, Larasco admits that PSL sold most of its assets to FSB pursuant to the APA. Larasco further admits that PSL changed its name to Larasco, Inc. as part of the asset sale. Unless specifically admitted, Larasco denies all other allegations.

40. Answering Paragraph 40, Larasco lacks knowledge or information sufficient to form a belief as to the truth the allegations in this paragraph and therefore denies the same.

41. Answering Paragraph 41, Larasco asserts that this paragraph contains allegations to which no response is required.

42. Answering Paragraph 42, Larasco asserts that this paragraph contains legal conclusions and statements to which no response is required. Larasco further asserts that the terms of the Program Agreement speak for themselves. Larasco denies the allegations to the extent they are inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco denies all other allegations.

**FOURTH CLAIM FOR RELIEF – TORTIOUS INTERFERENCE
(AGAINST FIRST SOUND BANK)**

43. Answering Paragraph 43, Larasco repeats and realleges herein the responses and averments in each of the preceding paragraphs.

44. Answering Paragraph 44, Larasco admits that PSL and Cowlitz entered into a Program Agreement dated April 27, 2006. By way of further answer, Larasco asserts that this

1 paragraph contains legal conclusions and statements to which no response is required. Larasco
2 further asserts that the terms of the Program Agreement speak for themselves. Unless
3 specifically admitted, Larasco denies all other allegations.

4 45. Answering Paragraph 45, Larasco admits that FSB had knowledge of PSL's
5 contracts prior to FSB's acquisition of assets. Unless specifically admitted, Larasco denies all
6 other allegations.

7 46. Answering Paragraph 46, Larasco asserts that the terms of the Program
8 Agreement speak for themselves. Larasco denies the allegations to the extent they are
9 inconsistent with the terms of the Program Agreement. Unless specifically admitted, Larasco
10 denies all other allegations.

11 47. Answering Paragraph 47, Larasco asserts that the terms of the APA and its
12 Schedules speak for themselves. Larasco denies the allegations to the extent they are
13 inconsistent with the terms of the APA and its Schedules. Unless specifically admitted, Larasco
14 denies all other allegations.

15 48. Answering Paragraph 48, Larasco asserts that the terms of the APA and its
16 Schedules speak for themselves. Larasco denies the allegations to the extent they are
17 inconsistent with the terms of the APA and its Schedules. Larasco admits that FSB knowingly
18 and volitionally entered into the APA and closed the asset purchase. Unless specifically
19 admitted, Larasco denies all other allegations.

20 49. Answering Paragraph 49, Larasco lacks knowledge or information sufficient to
21 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

22 50. Answering Paragraph 50, Larasco lacks knowledge or information sufficient to
23 form a belief as to the truth the allegations in this paragraph and therefore denies the same.

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PRAYER FOR RELIEF

1
2 Answering Cowlitz’s Prayer for Relief, Larasco respectfully requests that the Court deny
3 Cowlitz its requested relief against Larasco entirely and that Plaza Bank take nothing as a result of
4 these allegations.

AFFIRMATIVE DEFENSES

5
6 Cowlitz’s claims may be barred in whole or in part by one or more of these affirmative
7 defenses:

- 8 1. Cowlitz’s Complaint fails to state a claim upon which relief can be granted as to
9 Larasco.
- 10 2. Cowlitz’s request for relief is barred by the equitable doctrines of unclean hands,
11 waiver, estoppel, modification of contract, and accord and satisfaction.
- 12 3. Cowlitz’s damages, if any, were cause by the acts or omissions of third parties
13 over which Larasco had no control.

RESERVATIONS

14
15 Larasco reserves the right to amend this Answer, to assert additional affirmative defenses,
16 join additional parties, and assert counterclaims as additional facts are obtained through further
17 investigation or discovery.

REQUEST FOR RELIEF

18
19 WHEREFORE, Larasco requests judgment as follows:

- 20 1. For an order dismissing all of Cowlitz’s claims with prejudice;
- 21 2. For a judgment against Cowlitz reflecting an award of Larasco’s reasonable
22 attorneys’ fees and costs to the extent provided by law; and,
- 23 3. For such other and further relief as the Court deems just and equitable.

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1 DATED this 1st day of June, 2009.

2 CAIRNCROSS & HEMPELMANN, P.S.

3
4 /s/ Diana S. Shukis

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ANSWER TO INTERVENOR COWLITZ BANK'S
COMPLAINT
NO. C09-0056 TSZ - 11

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Certificate of Service

I certify that on June 1, 2009, I electronically filed this document entitled Answer to Intervenor Cowlitz Bank's Complaint using the CM/ECF system which will send notification of such filing to the following persons:

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DATED this 1st day of June, 2009, at Seattle, Washington.

/s/ Greta A. Huhta
Greta A. Huhta, Legal Assistant