

**IN THE CHANCERY COURT OF MARION COUNTY, TENNESSEE**

TANGO NOVEMBER, LLC, THUNDER  
DEVELOPMENT, INC., JOHN C.  
THORNTON, SR., MTRA, LLC, JOHN CALVIN  
THORNTON, JR., DANE BRADSHAW, PAUL  
SPELMAN, PAUL D. KELLY, JR. MARY JANE  
KELLY, FERRIS KELLY ROBINSON, ELIZABETH  
KELLY KELLEY and PAUL D. KELLY III,

Plaintiffs,

v.

CHATTANOOGA AGRICULTURAL CREDIT  
ASSOCIATION, LLC, TRUST FINANCIAL,  
A MORTGAGE COMPANY, LLC, and  
HARRY R. CASH, as SUCCESSOR TRUSTEE,

Defendants.

No. \_\_\_\_\_

JURY DEMAND

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**SWORN COMPLAINT FOR DECLARATORY JUDGMENT AND FOR  
INJUNCTIVE AND OTHER RELIEF**

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The Plaintiffs, through counsel, sue the Defendants, Chattanooga Agricultural Credit Association, LLC, Trust Financial, a Mortgage Company, LLC, and Harry R. Cash, as Successor Trustee, for a declaratory judgment and other relief. In support of this action, Plaintiffs would show:

1. Tango November, LLC ("Tango") is a Tennessee limited liability company with its principal place of business in Hamilton County and Marion County, Tennessee. Tango owns land in Marion County known as "Jasper Mountain."
2. Thunder Development, Inc. ("Thunder Development") is a Tennessee corporation with its principal place of business in Hamilton County and Marion

County, Tennessee.

3. John C. Thornton, Sr. ("Thornton") is a resident of Hamilton County, Tennessee and is the owner of Tango and Thunder Development.

4. MTRA, LLC ("MTRA") is a Tennessee limited liability company with its principal place of business in Hamilton County and Marion County, Tennessee.

5. John Calvin Thornton, Jr. ("Thornton, Jr.") is a resident of Hamilton County, Tennessee.

6. Dane Bradshaw ("Bradshaw") is a resident of Hamilton County, Tennessee.

7. Paul Spelman ("Spelman") is a resident of the State of Maryland.

8. Paul D. Kelly, Jr., Mary Jane Kelly, Ferris Kelly Robinson, Elizabeth Kelly Kelley and Paul D. Kelly, III (collectively, "Kelly") are residents of Hamilton County, Tennessee with property interests in Marion County.

9. Defendant Chattanooga Agricultural Credit Association, LLC ("AgCredit") is a Tennessee limited liability company and does business in Marion County, Tennessee. AgCredit may be served with process at 2826 Amnicola Hwy., Chattanooga, TN 37406, c/o Gary Keith.

10. Defendant Trust Financial, a Mortgage Company, LLC ("Trust Financial") is a Texas limited liability company and does business in Marion County, Tennessee. Trust Financial may be served with process at 13300 Old Blanco Road, Suite # 321, San Antonio, Texas 78216, c/o the Tennessee Secretary of State pursuant to the Tennessee Long Arm Statute.

11. AgCredit and Trust Financial may be referred to collectively as the "Lender."

12. Defendant Harry R. Cash is the Successor Trustee pursuant to an appointment of the Lender recorded on Book 439, Page 366 in the Register's Office of Marion County, Tennessee on June 6, 2012.

13. Harry R. Cash may be served at the law firm of Grant, Konvalinka and Harrison, P.C. Republic Centre, Ninth Floor, 633 Chestnut Street, Chattanooga, TN 37450.

14. Jurisdiction and venue are proper in this court.

15. On or about January 31, 2008, Tango entered into a loan in the original principal amount of \$10,160,000 for development of Jasper Mountain in Marion County, and the loan was secured by a deed of trust on the property. Thornton is a guarantor on the debt.

16. The note was assigned to Lender on or about February 13, 2008. Tango made periodic payments on the note to Lender, including interest.

17. The Lender is in the business of making only agricultural loans per their charter and operational or governing rules and/or documents.

18. Historically, the Lender made loans for large tracts of agricultural land, which may be utilized for development by entities such as Tango.

19. These arrangements require the Lender to periodically release segments of the collateral from the lien or liens in exchange for payments on the debt. The owner would then be allowed to develop the released segments.

20. This method is utilized because the Lender is forbidden to continue lending for property held for development due to the nature of their loan structure, which allows loans only for agricultural purposes.

21. The segmented release procedure was recognized and followed between Tango and the Lender through documents executed to facilitate the development of Jasper Mountain, including the initial development of an adjacent parcel known as Jasper Highlands owned by Thunder Development and Thornton.

22. The agreements provided for a “release per acre” as each portion was developed.

23. Due to the severe economic downturn, Tango’s loan has been in technical default at times.

24. However, the Lender, as a course of conduct, has continued to work with Tango on repayment of the loan by making certain accommodations, extensions, and forbearance arrangements. The parties executed a forbearance agreement in October of 2011.

25. Lender worked with Tango for a period of over four years and approved releases of property.

26. Tango made payments to the Lender in exchange for these accommodations. A release price of \$1,810 per acre was based on a \$15,680,000 appraisal of the property obtained by the Lender.

27. A more recent appraisal of the property obtained by Lender was allegedly below \$15 million, even though the economic situation for real estate has improved

recently and the property has been improved with clearings and road construction. The investment in such property exceeds the appraisal.

28. On or about October 17, 2011, Tango paid Lender \$1,000,000 on the debt to release Jasper Highlands, a 560.9 acre tract of land now owned by Thunder Development.

29. The current amount owed on the loan is approximately \$10,193,000 with accumulated penalties, interest, and other charges.

30. Thunder Development has since undertaken efforts to construct a road through Jasper Highlands and into the Jasper Mountain property. Thunder Development recently posted appropriate bonds and letters of credit for the road construction. The road is, in essence, the gateway to developing the entire mountain.

31. Thornton, as the owner of Tango and Thunder Development, expended a large amount of time and expense to obtain approval for the road construction and in presale efforts for the development of the property, including a well-advertised presale event.

32. Marion County, Tango, Thunder Development, and Thornton have expended a tremendous amount of energy, time and money to enable the building of the road and development of the Jasper Mountain property.

33. The development activities of Tango, Thunder Development and Thornton were taken in reliance on the prior course of conduct of Lender.

34. Tango submitted, and continues to submit, contracts to the Lender for a release per acre price, in line with the Lender's course of conduct throughout the

parties' relationship.

35. Recently, three new contracts for the sale and release of tracts, including land on which a hydroponics business will be built, were submitted for approval.

36. MTRA has a contract with Thunder Development to purchase two parcels, Fullerton Bluff and Roberts Bluff, and such contract was submitted to Lender so that the property could be released.

37. There are over 40 lots that have been presold for residential development, at a value in excess of \$2 million, for Jasper Highlands. Plaintiffs Thornton, Jr., Bradshaw, and Spelman have contractual rights to purchase lots in Jasper Highlands.

38. Tango submitted the proposed contracts to Lender, with the only caveat being that the release per acre price would continue in accordance with the previously-established practice.

39. Despite the Lender's long established course of conduct, acquiescence and accommodation, the Lender, in bad faith, refused to consent to the property releases for the contracts and initiated foreclosure proceedings on the non-released property.

40. At the time Lender initiated the foreclosure, Lender was aware of the presale activities by Tango, Thunder Development and Thornton and their efforts to obtain the necessary approvals and bonds to construct a road in the development.

41. The remainder of the Jasper Mountain property was advertised by the Substitute Trustee in the local paper (see Exhibit 1), and the property is set for auction on July 3, 2012.

42. Kelly holds title to property on the mountain adjacent to the property

owned by Tango and Thunder Development. Kelly originally owned the Jasper Mountain property currently owned by Tango. Kelly has an agreement with Tango regarding access to Kelly's property, which requires completion of infrastructure to access Kelly's property. Such agreement is recorded in the Marion County Register's Office at Book 420, page 987.

43. Tango, Thunder Development, and Thornton are informed and believe that other financial institutions may have played a role in the bad faith foreclosure and interference with Plaintiffs' rights, including a pending merger partner known as Jackson Purchase Agricultural Credit Association, a Kentucky association, and other financial institutions which are participating on the loan. Plaintiffs reserve the right to add such entities as additional defendants.

44. The Lender has indicated an intent to bid less than the full value of the property at the foreclosure sale and seek a deficiency even though Lender could not obtain a deficiency under Tenn. Code Ann. § 35-5-118 since the market value of the property exceeds the amount of the debt.

### **COUNT I - Declaratory Judgment**

45. The Lender has acted in bad faith and with unclean hands, has breached the release per acre agreements it made with Tango, and has waived or is estopped from asserting any right under the parties' agreements to initiate foreclosure at the present time.

46. The Lender unreasonably moved to foreclose on the Jasper Mountain property despite receiving periodic payments by Tango and despite the established

course of conduct of the parties.

47. Tango seeks a declaratory judgment, pursuant to T.C.A. §29-14-101, et seq., that Defendants are required to continue with their prior practice of releasing tracts covered by purchase contracts established through course of dealing and acquiescence. Thornton, Jr., Bradshaw, and Spelman join in such declaratory judgment request.

48. MTRA seeks a declaratory judgment that its contract with Thunder Development is enforceable and that Lender is obligated to release the property covered by the contract.

49. If the foreclosure sale is allowed to proceed, Tango and Thornton seek a declaratory judgment that they have no liability on any deficiency since the value of the property exceeds the amount of the debt.

### **COUNT II – Injunctive Relief**

50. Tango will suffer irreparable harm if the foreclosure sale is permitted to go forward prior to a hearing on Tango's claims in view of the time and expense it has expended in connection with development of the property. Sale of the property at foreclosure will also cause irreparable harm to Marion County and individuals who have contracted to purchase property on Jasper Mountain or in Jasper Highlands, including MTRA, Thornton, Jr., Bradshaw, and Spelman, and such Plaintiffs join in the request for injunctive relief.

51. Kelly will suffer irreparable harm if injunctive relief is not granted. A foreclosure of Tango's property will diminish the value of Kelly's property and interfere



with and delay the completion of infrastructure to access Kelly's property.

52. There is no potential injury to Defendants if the foreclosure is delayed pending a hearing. There is no damage or wasting to the property. It is raw land. Instead, Tango has provided improvements to the property through clearings and road construction. Thus, no bond should be required.

53. The public interest weighs heavily in favor of injunctive relief in view of the economic benefit that the project would provide to Marion County.

### **COUNT III – Breach of Contract**

54. Lender had an agreement with Tango, established through the parties' course of dealing, regarding the release of tracts covered by purchase contracts.

55. Lender owed a duty to act in good faith with respect to the parties' agreement. Lender breached the agreement by initiating foreclosure proceedings and refusing to consent to the additional release of properties which have willing buyers. Tango has suffered damages as a result of the breaches by Lender.

56. Thunder Development and Thornton are third party beneficiaries of this agreement and are entitled to recover the damages they have suffered due to Lender's breach.

### **COUNT IV – Interference with Contract and Business Relations**

57. Tango, Thunder Development and Thornton have prospective relationships and/or contracts with identifiable third parties to sell real property in Jasper Highlands and on Jasper Mountain. MTRA has a contract with Thunder Development to purchase property on Jasper Mountain. Plaintiffs Thornton, Jr.,

Bradshaw, and Spelman have contracted to purchase lots in Jasper Highlands. Kelly has a contract with Tango requiring the construction of infrastructure to access Kelly's property.

58. Lender had knowledge of these relationships and contracts. Tango submitted the purchase contracts to Lender for approval. Tango, Thunder Development and Thornton warned Lender prior to the filing of foreclosure proceedings that the mere filing of the proceedings would damage the project.

59. By the filing of foreclosure proceedings, Lender intended to cause the breach, interference or termination of the business relationship and contracts.

60. Lender had an improper motive or used improper means to interfere with the prospective business relationships and contracts.

61. Tango, Thunder Development and Thornton have suffered and continue to suffer damages from the tortious interference by Lender. MTRA will suffer damages if the Court finds that the contract is unenforceable due to Lender's lack of consent. Thornton, Jr., Bradshaw, and Spelman will suffer damages if the property is sold at foreclosure and they are unable to complete their purchases of lots they have agreed to purchase or if there are delays to the construction of amenities that have been promised for the development. Kelly will suffer damages if the property is foreclosed due to delays or impairment of the infrastructure that Kelly has contracted to receive for the benefit of Kelly's property.

#### **COUNT V – Negligent Misrepresentation**

62. Lender, through its acts and statements, established that it would allow

release of properties covered by purchase agreements as long as Tango made reasonable payments on the loan. This included the transfer of Jasper Highlands to Thunder Development.

63. Tango, Thunder Development, and Thornton reasonably relied upon these representations in making large outlays of time and money to develop Jasper Highlands and Jasper Mountain.

64. These representations were false and Lender failed to exercise due care in making the representations.

65. Lender's false representations were the direct and proximate cause of damages to Tango, Thunder Development, and Thornton.

#### **COUNT VI - Haskew Tract**

66. On or about December 15, 2011, Lender loaned an additional \$36,000 to Tango, which was secured by a separate deed of trust on property known as the Haskew tract. The Haskew tract was not covered under the original deed of trust.

67. Tango has tendered payment of the loan to Lender, but Lender has refused to execute a release of the deed of trust, alleging that the property is also collateral for the original loan.

68. Tango is entitled to a declaratory judgment that the Lender is required to release the lien on the Haskew tract upon payment of the \$36,000 note.

#### **PRAYER**

WHEREFORE, Plaintiffs respectfully pray that the Defendants be served with this Complaint on their agents and, after all due proceedings, judgment be entered in

Plaintiffs' favor and against Defendants as follows:

- a. That the Court enter a temporary restraining order and preliminary injunction prohibiting, restraining and enjoining Defendants, as well as its agents, servants, employees, representatives, attorneys, and any person(s) in active concert with them, from proceeding with the foreclosure sale during the pendency of this case;
- b. That the Court waive the bond for the injunctive relief;
- c. That the Court enter a declaratory judgment that Defendants are required to continue with their prior practice of releasing tracts covered by purchase contracts established through course of dealing and acquiescence and are required in good faith to approve the pending contracts;
- d. That the Court enter a declaratory judgment as requested regarding the Haskew tract;
- e. That Plaintiffs recover compensatory damages in an amount to be determined at trial;
- f. That Plaintiffs recover costs, including discretionary costs;
- g. That a jury trial be had on all issues triable by jury;
- h. That the Court award such other legal and equitable relief to which Plaintiffs may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE. NO OTHER JUDGE HAS DENIED THE RELIEF SOUGHT HEREIN.

Respectfully submitted,

HORTON BALLARD & PEMERTON

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STATE OF TENNESSEE   )  
COUNTY OF MARION    )

I, John C. Thornton, President of Tango November, LLC, plaintiff in the above action, after first being sworn according to law make oath that the facts and matters stated in the foregoing Sworn Complaint are true to the best of my knowledge, information, and belief.

TANGO NOVEMBER, LLC

By: \_\_\_\_\_

Before me, a Notary Public, duly appointed, commissioned and qualified in and for the State and County aforesaid, personally appeared John C. Thornton, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be President of Tango November, LLC, and that he, being authorized to do so, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself as President.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the \_\_\_\_\_ day of June, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_



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