

CIVIL SUIT NO.: _____
DIVISION “ _____ ”

BOM BANK

9TH JUDICIAL DISTRICT COURT

V.

PARISH OF RAPIDES

ENGLAND ECONOMIC DEVELOPMENT
AND INDUSTRIAL DISTRICT

STATE OF LOUISIANA

**PETITION FOR DECLARATORY JUDGMENT
AND FOR DAMAGES**

The Petition of BOM BANK, a Louisiana state banking association formerly known as Bank of Montgomery, respectfully represents:

1.

Made defendant herein is England Economic and Industrial Development District (“EEIDD”), a political subdivision and corporate body of the State of Louisiana, which may be served through its Chairman, Charles S. Weems, III.

2.

EEIDD was created by Act No. 142 of 1991 in connection with the closure of the former England Air Force Base and the transitioning of certain assets from the Department of Air Force to civilian use. EEIDD’s object and purpose is “to replace and enhance the economic benefits generated by the former air base with diversified activities, including, but not limited to, activities and planned land uses to foster creation of new jobs, economic development, industry, health care, commerce, manufacturing, tourism, relocation of people and businesses to the area, aviation, military, warehousing, transportation, offices, recreation, housing, and conservation, the acquisition of land and improvements, and the construction, operation, and maintenance of facilities, improvements and infrastructure, including buildings, runways, roads, bridges, drainage, and utilities.” La. R.S. 33:130.132.

NATURE OF THE ACTION

3.

This matter concerns (1) an action for declaratory judgment as to a certain Act of Sale and Assignment of May 24, 2017 and multiple underlying and related agreements providing for lease rights and obligations for operation of a hotel and restaurant on the premises of EEIDD (collectively, the “Hotel and Restaurant Agreements”), and (2) for damages caused by EEIDD’s unreasonable delay, obstruction and withholding of consent to the assignment of such rights and obligations by a *bank* that acquired these rights and obligations with EEIDD’s consent during a

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bankruptcy proceeding. Although obligated by the Hotel and Restaurant Agreements to facilitate the transfer of BOM BANK's leasehold interest and obligations to a qualified hotel and restaurant operator ("consent will not be unreasonably refused"; "consent or approval shall not be unreasonably withheld or delayed"), EEIDD has blocked BOM BANK's efforts to complete a transaction on commercially reasonable terms by engaging in predatory actions to leverage a better deal for itself.

FACTS

The Agreements

4.

On July 1, 1999, EEIDD entered a Sublease with Landco of Louisiana Management & Development, Inc. ("Landco") for use of the former Officer's Club building and property for operation of the Bistro on the Bayou Restaurant (the "Bistro") (the "Restaurant Lease").

5.

On June 29, 2001 and July 2, 2001, respectively, EEIDD entered into a Hotel Development Agreement ("Development Agreement") and a Ground Sublease ("Hotel Ground Lease") with Parc England Hotel L.L.C, for the purpose of developing, constructing and operating the Parc England Hotel ("Parc England") on the premises of EEIDD adjacent to the Bistro.

6.

To encourage and support private investment on its premises, EEIDD loaned Parc England, L.L.C. \$600,000 under a Promissory Note and Multiple Indebtedness Mortgage, dated October 15, 2001, effective, October 12, 2002.

7.

On March 18, 2002, Landco assigned to Parc England Hotel L.L.C. its rights, obligations, title and interest under the Restaurant Lease.

8.

The Restaurant Lease, Hotel Development Agreement, and Ground Lease were amended on October 15, 2002 ("Addendum Number 1"), January 27 and April 5, 2005 ("Addendum Number 2"), May 1, 2010 ("Addendum Number 3"), and December 20, 2012 ("Addendum Number 4").

9.

Addendum Number 3 of May 1, 2010 provided for certain amendments to the Hotel and Restaurant Agreements in connection with efforts by Parc England Hotel L.L.C. to secure conventional financing, including the subordination of EEIDD's Promissory Note and Owner's Mortgage to allow a lender to secure a first mortgage; the adjustment of rent rates and schedules; and the payment of past due rent and principal and interest on the Promissory Note.

10.

During or about January 2011, BOM BANK was approached to provide financing for Parc England Hotel L.L.C through a rural development loan backed by the United States Department of Agriculture (the "Parc England Loan"). Several influential business leaders and public officials expressed support for Parc England and the Bistro, including EEIDD Executive Director, Jon W. Grafton, who, on January 18, 2012, issued a letter emphasizing the role of Parc England and the Bistro to EEIDD's long-term Master Plan and future capital investments, as follows:

Dear Mr. Rosenfeld:

I have been asked to relate the importance of the Parc England/Bistro on the Bayou facilities to the economic redevelopment of England Airpark. As you probably know, England Airpark was born out of the closure of the England Air Force Base. Our primary purpose is to redevelop the former military facilities for civilian purposes. Over the last 18 years, we have created a multi-use facility that is recognized as an important economic development asset to the State of Louisiana.

From the very beginning, the element of a hospitality business was important to England's Master Plan. That element is important as we work to attract, maintain and grow business in our area. But this is more than just an "inn" for the evening concept. It provides a focal point for the campus atmosphere that emphasizes not only a great place to work but also a great place to stay. For today's successful communities emphasize a "quality of life" for their users.

Parc England/Bistro has met that quality niche we were seeking. Over the years it has hosted national, state and foreign dignitaries. It has played a key role in hosting industrial prospects in our community as we conducted the recruitment process. The evidence of a quality facility on our redeveloping campus has played an important role in convincing industry that our area was able to support their business. One comes immediately to mind, Union Tank Car. That successful recruitment brought 600 jobs and \$100 million investment to our community. Just last month, a \$450 million deal was closed over dinner at the Bistro with the subjects staying at Parc England.

The need for the Parc England/Bistro complex will increase as we continue to develop the economy of Central Louisiana. England Airpark's Master Plan anticipates significant capital investment over the next twenty years to support the growing business activity on our campus facility.

11.

Grafton's promotions regarding Parc England and the Bistro were material representations designed to encourage approval of the Parc England Loan.

12.

Addendum Number 4, entered December 20, 2012, provided for certain amendments to the Hotel and Restaurant Agreements in connection with the assignment of rights from Parc England Hotel L.L.C. to a successor entity, Parc England Holding, L.L.C.; EEIDD's consent to the use of leasehold rights of Parc England Holding L.L.C. as collateral for the Parc England Loan; payment in full of all indebtedness to EEIDD incident to the Promissory Note and Owner's Mortgage *from the proceeds of the Parc England Loan*; increased rent rates; and extended terms.

13.

That same day, December 20, 2012, BOM BANK loaned to Parc England Holding, L.L.C. the principal sum of \$4,000,000 under a Promissory Note and Mortgage in leasehold rights in the Hotel and Restaurant Agreements.

14.

As required by Addendum Number 4, EEIDD was paid in full from the proceeds of the Parc England Loan.

The Demise of Parc England and the Bistro

15.

Revenues for Parc England and the Bistro steadily declined from 2013 through 2015 due in part to a lack of economic activity on the EEIDD property.

16.

To keep Parc England and the Bistro afloat during 2015, BOM BANK made rent payments to EEIDD in the amount of \$72,546.74. By the end of that year, closure was eminent.

17.

The Bistro closed September 2016. Parc England remained open, but operating well below capacity and without adequate resources.

The Bankruptcy Proceeding

18.

On March 8, 2016, Parc England Holding, L.L.C. filed for protection under Chapter 11 of the United States Bankruptcy Code.

19.

On July 11, 2016, EEIDD notified BOM BANK that Parc England Holding L.L.C. owed past due rent in the amount of \$53,948.88 and that EEIDD intended to request termination of the Hotel and Restaurant Agreements if the full sum was not paid within thirty (30) days, which would effectively extinguish all leasehold rights and return the property free and clear to EEIDD.

20.

On August 10, 2016, BOM BANK paid the sum demanded by EEIDD to preserve its rights.

21.

On September 7, 2016, an Order was issued by the Bankruptcy Court appointing ALLA Associates, LLC ("ALLA") as the sole and exclusive manager of the hotel and restaurant and authorizing a Hotel and Management Agreement between Parc England Holding, L.L.C. and ALAA. The Order reserved all outstanding rights of BOM BANK and EEIDD.

22.

On April 18, 2017, the Bankruptcy Court issued an Order permitting the assets of Parc England Holding L.L.C. to be marketed and sold at public auction with a minimum bid price of \$650,000.00 and subject to the rights of BOM BANK and EEIDD.

23.

On May 3, 2017, BOM BANK purchased the property from Parc England Holding L.L.C. for the minimum bid price of \$650,000.00.

24.

On May 24, 2017, the Bankruptcy Court approved the sale subject to consent by EEIDD as provided in the Agreements.

25.

On July 27, 2017, EEIDD's governing board adopted a Resolution to approve the Act of Sale and Assignment effective May 24, 2017.

26.

When granting consent to the Act of Sale and Assignment, EEIDD knew full well that BOM BANK is a *bank* without experience or expertise in hotel and restaurant operations and that BOM BANK intended to assign its rights and obligations to a qualified owner and operator on commercially reasonable terms as quickly as possible.

EEIDD Stifles Negotiations and Denies Consent

27.

Soon after the initiation of the bankruptcy proceedings, BOM BANK was informed about a reputable hotel developer with interest in purchasing Parc England and the Bistro. This inquiry led to a Letter of Intent inviting negotiations toward a sale to RFK Investments, LLC (“RFK”) for \$1,750,000, cash. The proposed Letter of Intent was delivered to EEIDD Executive Director Grafton on October 18, 2016, inviting input and expressing the BOM BANK’s desire to present the proposal to the Bankruptcy Judge for consideration.

28.

On October 27, 2016, counsel for EEIDD acknowledged the proposal and requested additional information.

29.

On November 4, 2016, BOM BANK provided a package to EEIDD with information regarding RFK’s financial position and experience in the hotel industry and information about the management company, Barmaper & Associates, responsible for day to day operations. In the transmittal, BOM BANK informed EEIDD:

Attached for presentation to the England Authority is additional information regarding the potential purchaser and management company for Parc England/Bistro on the Bayou. Bank of of Montgomery believes the financial strength of the potential purchaser and the extensive experience of the management company warrant approval of the potential purchaser by the England Authority and would like to move forward with discussions as soon as possible. The Bank will be contacting Mr. Barmaper to obtain the earliest available date that he could meet with the Authority regarding this deal.

30.

Despite repeated requests from BOM BANK and Barmaper, EEIDD failed to accept invitations for meetings and avoided all substantive discussions regarding the RFK offer.

31.

The RFK offer was withdrawn on February 14, 2017 due to the lack of engagement by EEIDD.

32.

After its acquisition of rights under the Hotel and Restaurant Agreements on May 3, 2017, BOM BANK made multiple efforts to engage EEIDD in negotiations with potential purchasers and to obtain EEIDD's consent to transfer rights and obligations.

33.

On May 12, 2017, BOM BANK relayed an offer to EEIDD by the "Freeman Entity" to purchaser the Hotel Ground Lease for \$500,000 with cancelation of the Restaurant Lease and demolition of the building. BOM BANK requested that the matter be considered formally by the EEIDD governing board at its meeting of May 25, 2017. On information and belief, Freeman was negotiating directly with EEIDD. BOM BANK does not know how these negotiations ended.

34.

On November 17, 2017, following an auction of its interest, BOM BANK entered an Agreement for Sale and Purchase of the Property with P. K. Kaimal for \$675,000. EEIDD Executive Director Grafton was informed of the agreement, requested information regarding the purchaser, and met with representatives for the purchaser. On February 22, 2018, BOM BANK received notice of cancelation of the agreement based on the purchaser's inability to secure financing, reportedly due in part to concern by lenders about EEIDD's involvement.

35.

Following a second auction, on February 22, 2018, BOM BANK executed an Agreement for Sale and Purchase of the Property with James Greer for \$275,000. EEIDD Executive Director Grafton was informed of the agreement, requested information regarding the purchaser, and met with the purchaser. The agreement was canceled by Greer following his meeting with Grafton.

36.

Following a third auction, on August 29, 2018, BOM BANK executed an Agreement for Sale and Purchase of the Property with Christopher Soprano for \$25,000 ("Soprano Purchase Agreement"). On November 6, 2018, BOM BANK formally notified EEIDD of its desire to assign its rights and obligations under the Hotel Ground Lease and Restaurant Lease to Soprano and delivered information about the financial and professional history of the principal participants, as requested by EEIDD. Thereafter BOM BANK and Soprano responded fully to

all requests for information concerning the proposed transaction and related parties and participants.

37.

On January 24, 2019, the EEIDD governing board formally rejected the Soprano Purchase Agreement.

38.

BOM closed Parc England Hotel on the following day, January 25, 2019.

39.

EEIDD's actions have effectively prevented BOM BANK from selling and assigning its rights and obligations as contemplated by the Act of Sale and Assignment of May 24, 2017.

40.

On information and belief, EEIDD is engaging in predatory, self-dealing actions designed to force BOM BANK to relinquish (further) its leasehold rights or the value thereof.

41.

For causes beyond BOM BANK's control, BOM BANK is unable to operate either Parc England Hotel or the Bistro for the permitted uses under the Hotel and Restaurant Agreements.

42.

BOM BANK has spent approximately \$2,403,788 for rent, maintenance, and related expenses to fulfill its obligations under the Hotel and Restaurant Agreements.

DECLARATORY JUDGMENT

43.

BOM BANK adopts and re-urges the allegations and information in paragraphs 1-42.

44.

Section 8.1 of Restaurant Lease, as amended, provides that Lessee "shall not assign, mortgage or encumber this Sublease, or underlet or permit all or any part of the Leased Premises to be used or occupied by others, without Lessor's prior written consent which consent will not be unreasonably refused." Section 35 of the Restaurant Lease reiterates that "approval or consent" under the terms of the agreement "shall not be unreasonably withheld or delayed" and that the parties "agree to act reasonably and not in an arbitrary or capricious manner in performing their respective obligations and in enforcing their respective rights under the Sublease."

45.

Similarly, Section 14.1 of the Hotel Ground Lease, as amended, provides for Lessor's written consent to assignment "which consent will not be unreasonably refused," except for reasons that do not apply here. And Section 37 likewise provides that "consent or approval shall not be unreasonably withheld or delayed" and that the parties agree to "act reasonably and not in an arbitrary or capricious manner in performing their respective obligations and in enforcing their respective rights under the Ground Lease.

46.

BOM BANK seeks a declaration from the Court concerning the scope and extent of EEIDD's right to consent to BOM BANK's assignment of interest under the Hotel and Restaurant Agreements, as amended; in particular, whether EEIDD is permitted to use such authority to effectively compete for acquisition of rights held by the BOM BANK.

DAMAGES FOR BAD FAITH BREACH OF CONTRACT

47.

BOM BANK adopts and re-urges the allegations and information in paragraphs 1-42.

48.

EEIDD's has attempted to gain an unfair advantage over BOM BANK by delaying, obstructing, and denying BOM BANK's efforts to assign its rights and obligations under the Hotel and Restaurant Agreements. EEIDD's actions have been arbitrary and unreasonable.

49.

EEIDD actions are in breach of its obligations of good faith and reasonableness under the Hotel and Restaurant Agreements.

50.

EEIDD is liable to BOM BANK for all damages caused by its breach of contract, including rent payments, maintenance and other operational expenses, and the loss of value to its leasehold interest.

WHEREFORE, Plaintiff, BOM BANK prays:

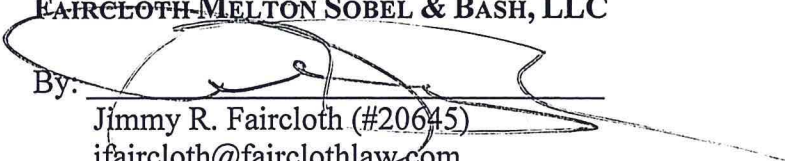
1. That this Petition be served on Defendant, England Economic and Industrial Development District, through its Chairman, Charles S. Weems, III;
2. That Defendant, England Economic and Industrial Development District, be cited to appear, answer and respond to the same;
3. That after due proceedings had there be judgment in favor of BOM BANK and against Defendant, England Economic and Industrial Development District, for

declaratory relief as requested herein and for all damages reasonable in the premises; and

4. That there be trial by jury on all issues as permitted by law.

Respectfully submitted by,

~~FAIRCLOTH-MELTON SOBEL & BASH, LLC~~

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