

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

DZ BANK AG DEUTSCHE ZENTRAL-	)	
GENOSSENSCHAFTSBANK, FRANKFURT	)	
AM MAIN, NEW YORK BRANCH,	)	
	)	Case No.
Plaintiff,	)	
	)	Claim: \$222,824.10
v.	)	
	)	Breach of Contract
LISSA M. PALMES,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK, FRANKFURT AM MAIN, NEW YORK BRANCH, (“DZ Bank”), by and through its undersigned attorney, and sues defendant LISSA M. PALMES (“Palmes”), and alleges:

**PARTIES**

1. DZ Bank is a bank organized and registered under the laws of the Federal Republic of Germany that maintains a place of business in the United States of America at 609 5<sup>th</sup> Avenue, New York, New York 10017.

2. Palmes is a resident of Polk County, Florida, resident residing at 2415 Riverwood Drive, Mulberry, Florida 33860.

**JURISDICTION AND VENUE**

3. Jurisdiction is appropriate in this Court pursuant to 28 U.S.C. §1332(a)(2) because this is an action between a citizen of a State and a citizen or subject of a foreign state, and the amount in controversy exceeds \$75,000.00 exclusive of interest and cost.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(a) because the

Middle District of Florida is the district where Palmes resides and because a substantial part of the events or omissions giving rise to DZ Bank's claim occurred in this district.

### **BACKGROUND**

5. On December 28, 2006, Brooke Credit Corporation (now known as Aleritas Capital Corporation) ("BCC") and Palmes executed a Promissory Note, Loan No. 5830 (the "Original Loan") in which BCC agreed to loan Palmes \$195,000.00.

6. On November 30, 2007, BCC and Palmes executed a Promissory Note, Loan No. 6673, whereby BCC agreed to refinance the Original Loan in the amount of \$229,552.18, plus interest at the rate of 3.5% above the Prime Rate as published in *The Wall Street Journal*, adjusted daily (i.e., the day after each change of the published Prime Rate). A true and correct copy of the Loan as well as an Agreement for Advancement of Loan (collectively, the "Loan") is attached hereto as Exhibit 1.

7. BCC assigned the Loan to Brooke Credit Funding, LLC ("BCF"), and BCF pledged the Loan to its lenders as security.

8. BCF's senior secured creditors are DZ Bank and Autobahn Funding Company, LLC ("Autobahn"). By written agreement Autobahn appointed DZ Bank as its agent, authorizing DZ Bank to enforce its rights under the Loan in DZ Bank's name.

9. BCF defaulted on its obligations to DZ Bank.

10. On October 30, 2008, DZ Bank, BCC, and BCF entered into a Surrender of Collateral, Consent to Strict Foreclosure, Release and Acknowledgment Agreement (the "Surrender of Collateral"). A true and correct copy of the Surrender of Collateral is attached hereto as Exhibit 2. The Loan is included in the Surrender of Collateral.

11. Under Section 1.3.1 of the Surrender of Collateral and other provisions thereof, DZ Bank has full ownership of the Loan.

12. On October 31, 2008, DZ Bank and BCF entered into an Omnibus Assignment Agreement whereby BCC further confirmed that DZ Bank has full ownership of BCF's rights as BCC's assignee under the Loan. A true and correct copy of the Omnibus Assignment Agreement is attached as Exhibit 3.

13. Palmes defaulted under the Loan by failing to make payments when due.

14. DZ Bank demanded payment from Palmes for the outstanding balance of \$222,824.10, but Palmes failed and refused to pay the same.

15. Pursuant to the Loan, DZ Bank is entitled to attorneys' fees, costs and interest.

16. The Loan is governed by the laws of the State of Kansas.

**CLAIM FOR RELIEF - BREACH OF CONTRACT**

17. DZ Bank realleges and reasserts Paragraphs 1 through 16 of its Complaint as though fully set forth in Paragraph 17 of its Complaint.

18. Due to Palmes' default under the Loan, DZ Bank has been damaged in the amount of \$222,824.10, plus attorneys' fees, costs and interest.

WHEREFORE DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK FRANKFURT AM MAIN, NEW YORK BRANCH demands judgment against LISSA M. PALMES, individually, in the amount of \$222,824.10, plus attorneys' fees, costs and interest, as well as all other relief which this Court deems just.

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