

05-1279-CD
Joseph L. Kruckow et al vs BBK Financial Inc.

Joseph Kruckow et al vs BBK Financial, Inc.
2005-1279-CD

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. KRUCKOW and
JOANN M. KRUCKOW and
PLAYTIME PIZZA, INC.,
Plaintiffs

No. 05-1279 CD

vs.

BBK FINANCIAL, INC.,
Defendant

Type of Pleading:

COMPLAINT

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

Date: 8/22/05

FILED *2cc*
Atty Bowers
Atty pd.
AUG 23 2005
William A. Shaw
Prothonotary/Clerk of Courts
85.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

JOSEPH L. KRUCKOW, II, and	:	
JCANN M. KRUCKOW and	:	
PLAYTIME PIZZA, INC.,	:	
Plaintiffs	:	
vs.	:	No. _____
BBK FINANCIAL, INC.,	:	
Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

JOSEPH L. KRUCKOW, II, and	:	
JOANN M. KRUCKOW and	:	
PLAYTIME PIZZA, INC.,	:	
Plaintiffs	:	
	:	
vs.	:	No. _____
	:	
BBK FINANCIAL, INC.,	:	
Defendant	:	

COMPLAINT

AND NOW, comes the Plaintiffs, JOSEPH L. KRUCKOW, II, JOANN M. KRUCKOW and PLAYTIME PIZZA, INC., by and through their attorneys, HANAK, GUIDO AND TALADAY, who file this Complaint and in support thereof aver the following:

1. Plaintiffs JOSEPH L. KRUCKOW, II and JOANN M. KRUCKOW (hereinafter the "Kruckows"), are husband and wife, and reside at 609 Green Glen Drive, DuBois, Clearfield County, Pennsylvania, 15801.
2. Plaintiff PLAYTIME PIZZA, INC., (hereinafter "Playtime Pizza") is a business corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 150 McCracken Run Road, DuBois, Clearfield County, Pennsylvania, 15801, and is engaged in the business of selling pizza and related food items and hosting children's parties.

3. The Defendant, BBK FINANCIAL, INC., is believed to be a corporation with business offices located at 16255 Ventura Boulevard, Suite 1106, Encino, California, 91436.

4. The Kruckows are part owners and full-time operators of Playtime Pizza, Inc.

5. The Kruckows wished to restructure the debt on Playtime Pizza's real estate located at 150 McCracken Run Road, DuBois, Clearfield County, Pennsylvania.

6. Beginning in October of 2004, the Kruckows and the Defendant engaged in several discussions regarding the restructuring of Playtime Pizza's debt.

7. In the course of these discussions, representatives of Defendant indicated to the Kruckows that Defendant would provide financing to the Kruckows and Playtime Pizza in the amount of Two Hundred Fourteen Thousand Five Hundred and 00/100 (\$214,500.00) Dollars provided that the Kruckows pay Defendant a refundable performance deposit in the amount of \$7,500.00.

8. By letter dated November 19, 2005, the Defendant proposed to lend the Kruckows and Playtime Pizza \$214,500.00.

9. Plaintiffs accepted the proposal by executing same in Clearfield County on or about November 26, 2005. A true and correct copy of the agreement is attached and marked as Exhibit "A".

10. Pursuant to the Agreement, the Kruckows forwarded a refundable performance deposit to Defendant in the amount of \$7,500.00.

11. This performance deposit was to be credited against a consultation fee in the amount of five (5%) percent of the loan proceeds payable to Defendant at the closing of the subject loan.

12. The Defendant made representations that the deposit would be refunded in the event that the loan did not close unless the Kruckows a material misrepresentation in their effort to acquire said financing.

13. The Defendant required the Kruckows to provide an estimate of the value of their personal residence located at 609 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.

14. The Kruckows did not know the value of their personal residence, so the Kruckows contacted their insurance agency to determine what value the insurance company placed on the house.

15. The Kruckows were informed that the house was insured in the amount of \$175,400.00. The Kruckows used this number in response to Defendant's inquiry as to the value of the residence. At this time, the Kruckows also informed the Defendant as to how they determined this value.

16. The Kruckows residence was subsequently appraised at approximately \$105,000.00.

17. Defendant refused to close the loan.

18. The Defendant also refused to return the \$7,500.00 deposit to the Kruckows on the basis that the discrepancy between the Kruckows' estimate of the value of their residence and the appraised value constituted a material representation.

19. Despite the Kruckows' repeated request, the Defendant continues to refuse to return the performance deposit.

COUNT I

Breach of Contract

20. Plaintiffs incorporate all prior paragraphs herein.

21. By failing to return the refundable performance deposit, the Defendant has breached the written contract between the parties.

22. As a direct result of Defendant's breach, Plaintiffs have sustained a loss in excess of \$7,500.00.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in the amount in excess of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars, together with interest and cost of suit.

COUNT II

Unjust Enrichment

23. Plaintiffs incorporate all prior paragraphs herein.

24. As set forth above, the Defendant has been unjustly enriched in the amount of \$7,500.00 at the expense of Plaintiffs.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in the amount in excess of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars, together with interest and cost of suit.

COUNT III

Fraud

25. Plaintiffs incorporate all prior paragraphs herein.
26. As set forth above, the Defendant made representations to Plaintiffs that the subject performance deposit was refundable.
27. The Plaintiffs believe and therefore aver that Defendant made such representation knowing it was materially false and intending that Plaintiffs would rely on same.
28. In reliance on Defendant's misrepresentations, Plaintiffs advanced \$7,500.00 to the Defendant.
29. The Plaintiffs would not have advanced said funds if they knew that the deposit was not refundable.
30. As a direct result of Defendant's misrepresentations, Plaintiffs suffered damages in excess of \$7,500.00.
31. The Defendant's disregard for the truth is so wanton and reckless so as to entitle Plaintiffs to punitive damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against the Defendant in an amount in excess of Twenty-five Thousand and 00/100 (\$25,000.00) Dollars, together with interest and cost of suit.

JURY TRIAL DEMANDED.



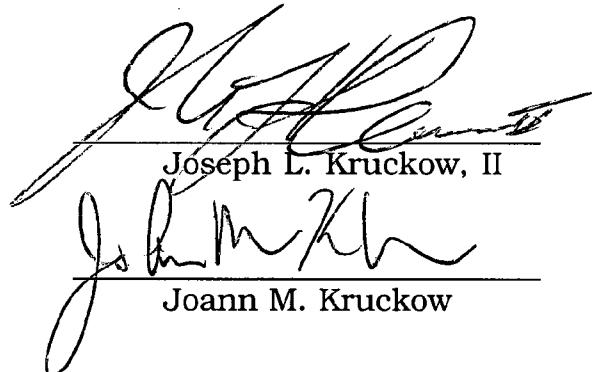
S. Casey Bowers
Attorney for Plaintiff
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

VERIFICATION

We, JOSEPH L. KRUCKOW, II and JOANN M. KRUCKOW, hereby verify that the statements contained in the foregoing COMPLAINT are correct to the best of our personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

DATE: 8/10/05



Joseph L. Kruckow, II

Joann M. Kruckow

VERIFICATION

I, Joseph L. Kruckow II, President of PLAYTIME PIZZA, INC., do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 8/10/05


Joseph L. Kruckow, II President



FINANCIAL, INC.

16255 Ventura Boulevard, Ste 1106, Encino CA 91436 Tel: (800) 770 1114 Fax: (800) 579 7161

November 19, 2004

**PROPRIETARY AND CONFIDENTIAL, NOT TO BE DISTRIBUTED OUTSIDE OF
PLAYTIME PIZZA, INC. AND ITS AFFILIATES**

VIA ELECTRONIC MAIL

Mr. & Mrs. Joseph Kruckow
Playtime Pizza, Inc.
150 McCracken Run Road
Du Bois, PA 15801
C/o Roberta Moritz at Seaside Capital Partners
seaside loans@sbcglobal.net

RE: Loan Proposal/Term Sheet

Total Project Amount: \$286,000

Requested Loan Amount: \$214,500

Dear Mr. & Mrs. Kruckow:

BBK Financial, Inc. ("BBK") is pleased to offer Playtime Pizza, Inc. a loan proposal/term sheet based on information provided by Roberta Moritz, which contains the following terms and conditions:

BORROWER:	Playtime Pizza, Inc.
GUARANTORS:	All owners
COLLATERAL:	Land and building known as Playtime Pizza located at 150 McCracken Run Road, Du Bois, PA and all other assets of the business
CONTINGENCIES:	Subject to credit review and acceptable real estate appraisal
PROJECT AMOUNT:	\$286,000
LOAN AMOUNT:	\$214,500 (not to exceed 75% of appraised value of real estate)

OPTION ONE

LOAN STRUCTURE: Loan amortized over 20 years with the unpaid balance due at the end of the 10th year, fixed interest rate

Los Angeles • Newport Beach • Fort Lauderdale

EXHIBIT "A"

Mr. & Mrs. Joseph Kruckow
Playtime Pizza, Inc.
C/o Roberta Moritz at Seaside Capital Partners
seaside loans@sbcglobal.net
November 19, 2004
Page 2

TERM: 10 years

RATE: Fixed at 5.70%

OPTION TWO

LOAN STRUCTURE: Loan amortized over 20 years with the unpaid balance due at the end of the 10th year, variable interest rate

TERM: 10 years

RATE: Variable at a per annum rate equal to 311 basis points plus LIBOR
Rate as of today = 5.20%

MONTHLY PAYMENT: \$1,439.41, with the unpaid balance of \$134,466.99 due at the end of the 120th month

USE OF FUNDS: To refinance existing debt

LENDERS POINTS TO CLOSE: 1/2 point

**REFUNDABLE PERFORMANCE
DEPOSIT:**

A refundable Performance Deposit will be paid by Borrower in the sum of \$7,500. Except as provided below, in the event that the loan is not approved, the deposit, which will not bear interest, will be returned in full. If (a) the loan is approved on substantially the same terms and conditions as outlined above, or such other terms as are accepted by your signature, and you elect not to proceed for any reason; (b) if the Borrower causes any undue delay in providing data requested by analysts in their due diligence process ; or (c) in the event that you make a misrepresentation during the process, then the deposit will be retained by BBK in its entirety as compensation for expenses incurred by BBK in the proposed transaction.

CONSULTATION FEE:

In the event that a loan closes (either in the form proposed or as later modified by mutual agreement or by lender's commitment accepted by you), whether in part or in whole, you agree to compensate BBK for its consultation services provided in the sum of five percent (5%) of Gross Funds, less refundable Performance Deposit. Gross Funds shall mean such amounts as are funded or committed on or before closing. Should you thereafter borrow any additional sums for a period of three (3) years from date of execution of this proposal/term sheet from the same BBK source,

Mr. & Mrs. Joseph Kruckow
Playtime Pizza, Inc.
C/o Roberta Moritz at Seaside Capital Partners
seaside.loans@sbcglobal.net
November 19, 2004
Page 3

you agree to pay BBK a consultation fee equal to two and one half percent (2.5%) of the additional amounts borrowed. All fees shall be due and payable on closing.

JURISDICTION:

This Agreement shall be governed by, interpreted under and construed in accordance with the internal laws of the State of California. The parties further agree to accept Los Angeles County, California as the proper venue for any action relating to this Agreement.

CONFIDENTIALITY:

Both BBK and Borrower intend to disclose confidential information to each other. In the case of BBK such confidential information includes, but is not limited to, the identity of BBK's sources, financing strategies, methods developed for Borrower, BBK Programs, clients or brokers, ("BBK Confidential Information"). In the case of Borrower, such confidential information includes but is not limited to, financial statements, projections, research and development techniques and marketing ("Borrower Confidential Information"). Hereafter, BBK Confidential Information and Borrower Confidential Information will be jointly referred to as "Confidential Information." In consideration of the disclosure of the Confidential Information between the Parties, the Parties mutually agree that they will not at any time prior to the third anniversary date of the later of (a) the last Financing for Borrower from a Lender or (b) the termination of this Agreement, attempt in any manner to commercially exploit any of the Confidential Information without the other Party's prior written consent, that may be given or withheld by the other Party in their sole discretion.

Please indicate your acceptance of this proposal by executing an original copy of this letter and return it along with the refundable Performance Deposit, payable to BBK Financial, Inc. This summary of proposed terms and amounts does not purport to cover every term and provision that may be contained in the final definitive documentation. Please note this proposal is subject to review of additional financial information and final credit approval. This Proposal will remain in effect until close of business, Friday, December 3, 2004.

Mr. & Mrs. Joseph Kruckow
Playtime Pizza, Inc.
C/o Roberta Moritz at Seaside Capital Partners
seaside loans@sbcglobal.net
November 19, 2004
Page 4

We appreciate the opportunity to submit this proposal for your review and approval. Should you have any questions, please feel free to contact me at (800) 770-1114.

Very truly yours,

BBK FINANCIAL, INC.

MICHAEL A. BENDER
Chief Executive Officer

AGREED & ACCEPTED:

PLAYTIME PIZZA, INC.

BY:

Joseph Kruckow II
Title: _____

Date

Joann M. Kruckow

Date

Joseph Kruckow II

Date

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JOSEPH L. KRUCKOW and
JOANN M. KRUCKOW and
PLAYTIME PIZZA, INC.,
Plaintiffs

No. 05-1279-CD

vs.

BBK FINANCIAL, INC.,
Defendant

Type of Pleading:

AFFIDAVIT OF SERVICE

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

Date: 9-29-2005

FILED ^{NO cc}

110:44201
OCT 03 2005
W

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

JOSEPH L. KRUCKOW, II, and :
JOANN M. KRUCKOW and :
PLAYTIME PIZZA, INC., :
Plaintiffs :
vs. :
: No. 05-1279-CD
BBK FINANCIAL, INC., :
Defendant :
:

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA
SS:
COUNTY OF CLEARFIELD

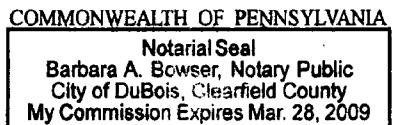
The undersigned, S. CASEY BOWERS, hereby swears and affirms that the Defendant, BBK FINANCIAL, INC., was duly served with a copy of the Complaint in the above matter at its principal place of business of 16255 Ventura Blvd., Suite 1106, Encino, California, 91436, by the United States Postal Service, Certified Mail, the return receipt, No. 7003 1010 0005 2745 3969, is attached hereto, postmarked September 3, 2005.



S. Casey Bowers

Sworn and subscribed before me
this 28th day of Sept, 2005.

Barbara A. Bowser
Notary Public



Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION

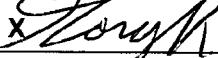
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BBK Financial, Inc.
16255 Ventura Blvd., Suite 1106
Encino CA 91436

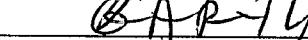
COMPLETE THIS SECTION ON DELIVERY

A. Signature



Agent
 Addressee

B. Received by (Printed Name)



C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7003 1010 0005 2745 3969

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

FILED

OCT 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

Notice of Proposed Termination of Court Case

February 1, 2012

RE: 2005-01279-CD

Joseph L. Kruckow II
Joann M. Kruckow
Playtime Pizza, Inc.

Vs.

BBK Financial, Inc.

FILED
FEB 01 2012
William A. Shaw
Prothonotary/Clerk of Courts

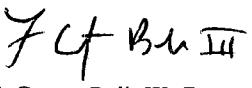
To All Parties and Counsel:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **April 2, 2012**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,


F. Cortez Bell, III, Esq.
Court Administrator

Bowers
Def

FILED

FEB 01 2012

William A. Shaw
Prothonotary/Clerk of Courts

05-1279-C0

William A. Shaw
Prothonotary/Clerk of Courts
P O Box 549
Clearfield, PA 16830

RECEIVED
FEB 13 2012
COURT OF COMMON PLEAS
CLERK'S OFFICE

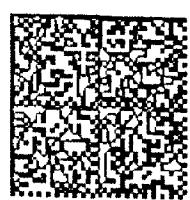
William A. Shaw
Prothonotary/Clerk of Courts

BBK Financial, Inc.
16255 Ventura Blvd., Ste. 1106
Encino, CA 91436

NIXIE 913 5E 1 00 02/07/12

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 16830054949 *1173-06415-01-99
[REDACTED]



Hasler
02/01/2012
Mailed From 16830
US POSTAGE

016426524836

\$00.450

02/01/2012

Notice of Proposed Termination of Court Case

February 1, 2012

RE: 2005-01279-CD

Joseph L. Kruckow II
Joann M. Kruckow
Playtime Pizza, Inc.

Vs.

BBK Financial, Inc.

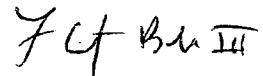
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By the Court,



F. Cortez Bell, III, Esq.
Court Administrator

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

JOSEPH L. KRUCKOW, II, JOANN M. KRUCKOW,
PLAYTIME PIZZA, INC.,
Plaintiffs
vs.
BBK FINANCIAL, INC.
Defendant

ORDER

FILED

MAR 18 2013

019:60 (W193)

William A. Shaw
Prothonotary/Clerk of Courts

NOW, this 15th day of March, 2013, upon the Court's review of the record, with the Court noting from the docket there has been no activity in the case since October 3, 2005, and that a Notice of Proposed Termination of Court Case had been mailed to the parties February 1, 2012 with no response having been received, pursuant to the provisions of Rule of Judicial Administration 1901 the case is hereby DISMISSED for inactivity. The Prothonotary shall code the case in Full Court as Z-1901A.

BY THE COURT,

~~FREDRIC J. AMMERMAN~~
President Judge