

STATEMENT OF THE CASE

Initially, in February of 2000, Bret Pugh, Loan Development Officer for Wells Fargo Bank (hereinafter **Bank**) solicited a business loan to Rebecca Adams (hereinafter **Adams**).

This business loan was for Adams to expand a sand and gravel business in Decatur County, Iowa. Adams needed production equipment to enable her to produce the quality of materials in the quantities that were needed in the area. Pugh gave assurances to Adams that the loan would be for a United States Small Business Administration (hereinafter **SBA**) guaranteed loan. Mr. Pugh gave even further assurances to Adams that the loan would be administered through the Bank's Preferred Lender Program with SBA. Adams was informed by Pugh that the loan would only take four to six weeks to complete.

A prerequisite placed on Adams for this loan by the Bank was that Adams would be required to incorporate her business before the Bank could consider her for participation in their Preferred Lender Program. Pugh informed Adams that incorporation was merely a way for SBA to separate personal assets from company assets. He further stated that "We need to know who we are dealing with."

Pugh requested some form of written documentation from Adams that would enable him to put together some form of an understanding of what Adams was trying to accomplish. Adams had files stored in boxes in her home and Pugh picked out of the boxes any documents that he felt may be of help to him.

In early March of 2000, Adams contacted attorney Robert Fulton and requested that he incorporate a business for her. Adams provided Pugh with the signature documents that he required in early March of 2000, and the application process for Adams SBA loan began.

In April of 2000, Mr. Pugh returned to the Adams home and retrieved more documents. When asked about the status of her loan, Pugh informed Adams that the loan was approved.

In early May, Pugh again returned to the Adams home and requested labor receipts from Adams concerning work performed by family members and friends that had helped with the sand and gravel business. He requested that each family or friend write out a receipt of work they had performed and to document the hours worked to be donated to Adams as a sweat equity. Pugh informed Adams that SBA would accept these as an asset injection into the business for the sweat equity. He asked for all receipts for repairs performed to date on Adams husband's equipment. Pugh informed Adams that SBA would accept these repair receipts also as a type of equity in the business.

Near the end of May 2000, Pugh returned yet another time for documentation from Adams and was informed at this time by Adams that she was being offered lease options from equipment and machinery supply companies. If the loan was not to be approved, she had other options available.

Pugh once again returned in early June of 2000, and requested pay records from a former business Adams had in Idaho. Pugh also requested at this time that he needed personal Bank statements from Idaho as well.

On June 29, 2000, Pugh again returned to the Adams home and had Adams sign what he referred to as "loan commitment" documents. (See Defendants Exhibit (E and J together) and Defendants Exhibit (G)).

Bret Pugh called Becky a few weeks later and said there was a problem in SBA with the loan but not to worry, the bank had everything under control. It was just a few glitches to be worked out. At this time Pugh explained to Adams that since the SBA had held her loan off all summer and there was so much wasted time, that he had the name of a banker in Des Moines, Iowa, at the local Wells Fargo Bank office on Army Post Road that would help her. Pugh gave Adams the name of Dan Weninger and stated that he had worked with Weninger before. Mr. Weninger would make her a "bridge loan to tide you over until your SBA loan comes through." When Adams and her husband questioned Pugh more in depth about this purported "bridge loan", Pugh explained to them both that the Wells Fargo Des Moines Bank would help Adams. With the files he had taken from Adams for Idaho and the excellent credit payment history that the Bank had received concerning both Adams and her husband that this loan would not be a problem. He gave Adams Dan Weninger's telephone number and encouraged Adams to call Dan Weninger. Pugh assured Adams that he had made all of the arrangements. Pugh told Adams that SBA would pay off the loan for her. Adams and her husband agreed that once underway and producing material the personal loan would not be a problem to pay off irregardless of SBA.

In mid July of 2000, Pugh once again returned to Adams home to see about income tax related information. Adams was attempting to submit income tax records

for the completion of her income tax filings. Pugh told Adams not to worry about it at that time. The Bank had enough and SBA was still moving forward on her loan. Pugh told Adams that the loan was being worked out with SBA and the Bank. Her loan was still approved.

On July 25, 2000, a man named Craig Hilpipre came to Adams home. He introduced himself to Adams in her driveway as Craig Hilpipre and handed her a card that said Hilpipre Auction Co. on it. He informed Adams that he was sent down by the Bank to do an inspection. Adams did not understand how an auctioneer could be doing an inspection for the Bank by appraising the house and the shop that Adams and her husband lived in. Adams then called Bret Pugh to find out what the Bank was doing. Pugh was gone and only an answering machine was on for messages. Adams then called Paul Loveless when she could not reach Bret Pugh on the phone. Paul Loveless was not there either and again an answering machine answered so Adams left a message on Paul Loveless's phone message.

Adams then called the SBA office in Des Moines to find out what was going on with this auctioneer that the Bank had sent. Adams was concerned when this man started asking personal questions and inquiring about her husband's construction equipment and machinery. Adams called SBA after not being able to reach Paul Loveless or Bret Pugh on the phone. The lady at the SBA office in Des Moines told Adams that she would have to talk to the Bank because Adams was supposed to be dealing with the Bank not SBA. Adams told the lady that she had tried to contact the bank and neither Bret Pugh nor Paul Loveless were available. Adams relayed to the woman at SBA that she was concerned about the collateral. What was the Bank

doing about collateral for her SBA loan and why did the Bank send an auctioneer to her home for an inspection. The woman wouldn't answer any questions about collateral or Adams file at SBA. The woman was upset about Adams talking with the Bank's underwriter. The woman asked Adams why was she dealing with the Bank's underwriter. She was not supposed to be talking to the Bank's underwriter. Adams explained to the lady that Bret Pugh had instructed her to deal with Paul Loveless for any further Bank business. Pugh's portion of the loan had been completed and Loveless would be the new contact for Adams at the Bank. Paul Loveless' office was in Minnesota. Later that same afternoon Paul Loveless received Adams' recorded message and returned her call. Loveless assured Adams that the inspection really did not mean anything. Don't worry about it. It was just another hoop the Bank had to jump through with SBA.

On July 26, 2000, Dan Weninger called to have Adams and her husband come to Des Moines. Dan Weninger had both sign for an unsecured loan with the Bank. In the interim, Bret Pugh told Adams to call Paul Loveless concerning any further questions.

On July 26, 2000, both Adams and her husband met with Dan Weninger in Des Moines at the Army Post Road branch of the Wells Fargo Iowa Bank. Both Adams and her husband signed for a short term unsecured signature loan. Dan Weninger made a partial payment of these loan funds to Adams so that he could open a checking account for Adams at his Bank in Des Moines.

After getting back home that day Adams sent a check to Orlando tractor for \$1,000.00 for the Hitachi excavator. (see Plaintiff's exhibit 10) The people at

Orlando tractor were getting fussy about waiting for the money on the machine Rod had gone to Florida in April to buy. She also sent a check to Ronald Adams to pay a down payment on a 966 Caterpillar loader.

Dan Weninger called Adams the first week in August of 2000. Weninger told Adams that he needed her to sign more Bank papers. Weninger told her that he had not had her sign the papers correctly when she and her husband signed on July 26. Weninger said he would find out how to disburse the bridge loan amount before he could release anymore funds for equipment to Adams.

Weninger called Adams again and asked if she would be coming to Des Moines again anytime soon. He said he had over looked getting a few other papers signed also. Adams went to Des Moines to see Weninger at the Bank. Weninger had Adams sign two UCC papers. (See Plaintiff's exhibit 21) When Adams wanted to know what the two papers were, Weninger explained to her that the UCC papers were like titles on vehicles. He also stated to her that the UCC paper would be cancelled when the SBA loan was finalized. The temporary loan was only for 60 days so Weninger released enough funds on August 23, 2000, to enable Adams to pay the remainder of money that was owed on the Hitachi excavator and the Caterpillar loader. (See Plaintiff's Exhibit 10)

Adams called Bret Pugh to find out when her SBA loan would be final. He explained to her that there were still some "glitches" that the Bank had encountered with SBA on the loan and SBA was still holding the loan up. Adams was concerned having to make their Komatsu loader payment and now the added monthly payment on the temporary loan with winter so close.

On August 27, 2000, Adams received a Bank notice for a late payment on the temporary loan made with Dan Weninger. This temporary loan was now supposed to have been for \$150,000.00. Adams had not spent that much of it yet. Wells Fargo Bank was now holding back the remainder of the \$150,000.00. This late notice was very disturbing and Adams didn't understand why the Bank was holding back the money.

The following day, Adams called Bret Pugh and asked him what the status on the SBA loan? She specifically asked Bret Pugh did she have an SBA loan or not? Pugh relayed to Adams that it may take another week or two before the loan was approved. They just had a few glitches to work out. SBA was holding up the loan. Adams told Pugh that she would have to do something because she was not prepared to make payments on the Komatsu loader that she had substantial equity in and they had been paying on for two years and now also had to pay for the bridge loan while SBA and the Bank could not decide if the loan was approved or not approved! Adams had been told since May of 2000 that the loan was approved and then that it wasn't, then it was and then it wasn't. Back and forth. Enough was enough!!!

With winter coming on Adams had some decisions to make. At this point, Adams could still have secured a personal loan that would not have been near the financial burden that the Bank had put her in with the 60 day bridge loan.

Adams called the SBA office in Des Moines again. She wanted to know what was going on with SBA. She had a loan paper that Bret Pugh had shown her that said SBA had approved this loan months ago. She could not understand why a loan

was approved and now it was not approved. The lady at SBA told her that SBA had approved the loan. The lady at SBA told her she needed to talk to her banker. The lady instructed Adams to call her banker.

Adams called Bret Pugh again. Pugh reassured her the loan was approved and the bank was just working through their paperwork. Adams reiterated to Pugh that she was not willing to be put off to the point that she could not pay the obligation that he had encouraged her to commit on. (the bridge loan) Pugh assured her that it should not take much longer on her SBA loan.

Adams next received e-mails from Bret Pugh. (see Defendants Exhibit Z) Adams called Pugh and left a message on his answering machine. Pugh forwarded Adams the e-mails he had received from Paul Loveless. Adams responded to these e-mails and spoke with Paul Loveless over the phone. The last e-mail she received was on September 1, 2000, this is Exhibit Z, the e-mail that Paul Loveless told her that he would be sending the closing package down to Pugh in one day mail. Later in the afternoon Pugh called Adams to tell her he would be down on the following Tuesday. Pugh said his office would be closed Saturday and he had other appointments on Monday. He asked Adams if Tuesday was ok for her.

Amy Smith from The Conveyor Company called Adams complaining about the machine that had been ordered in May and that she had not received a timely payment for yet. Adams called Paul Loveless and asked him if she could refer The Conveyor company calls to him. He told her that would be fine. (See Plaintiff's Exhibit 10) Invoice from The Conveyor Company, fax note, dated 9-1-00)

September 5, 2000, Adams signed the loan documents Pugh brought to her on Tuesday. She returned all of the telephone calls to those she had been receiving from equipment suppliers wanting final payment on equipment that she had committed to purchase.

On September 11, Paul Loveless called to tell Adams a document had been missed in the package he had sent down with Bret Pugh. He informed Adams that he would be sending it to her in one-day mail. He instructed her to sign the document when it got there and return it in the one day package that he had prepared and provided in the package and get it back to him as soon as possible.

This concludes the history of the events and all of the documents that Adams ever signed for closing her SBA loan with Wells Fargo Bank Minnesota, N.A..