

## VERDICTS & SETTLEMENTS

# Judge: borrower misused loan for unrelated venture

### \$6.87 million award

Beginning in the summer of 2008, the plaintiff company entered into a series of loan agreements with the defendant and his various companies. The loans were intended to be short-term in nature and were secured by personal guarantees and junior mortgage interests in the defendant's property.

The plaintiff claimed that the defendant had repeatedly represented, orally and in writing, that its loaned funds would be placed into a "blocked cash" or escrow account to be held solely for the purpose of meeting certain underwriting requirements of a construction lender for one of the defendant's building projects.

The judge found that when arrangements with the construction lender fell



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apart, the defendant, acting in a "reckless and indiscriminate" manner, misused the loaned funds for purposes "entirely unconnected" to the underlying transaction in a "surreal and desperate effort to save his development project."

The judge found the "actions by [the defendant to] constitute conversion of [the plaintiff's] funds, and unfair and deceptive business practices, in addition to fraud and breach of contract."

The judgment included a requirement that the defendant and his entities repay the full amounts required by the outstanding promissory notes, including those amounts that technically exceeded the legal limit of interest that may be charged under Massachusetts law and prohibited by the Massachusetts usury statute. In that regard, the

judge held that the parties to the transaction were "sophisticated businessmen, well aware of the risks of their profession and well able to arrive at terms appropriate to those respective risks."

The judgment also included an award of attorneys' fees, as required by Chapter 93A.

**Action:** Contract

**Injuries alleged:** Breach of contract, financial loss

**Case name:** 50 Thomas Patton Drive, LLC v. Fustolo, et al.

**Court/case no.:** Suffolk Superior Court, No. 09-3567-BLS2

**Jury and/or judge:** Christine M. Roach

**Amount:** \$6.87 million

**Date:** Sept. 28, 2011

**Attorney:** David H. Rich, Todd & Weld, Boston (for the plaintiff)