

ENTERED  
JAN 15 2001

FILED  
JAN 15 PM 4:01  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH  
**00797**

JOHN G. SCHLEINING AND CATHY P. SCHLEINING,  
  
Plaintiffs,  
  
vs.  
  
BANK OF THE CASCADES, an Oregon chartered commercial bank, MARTIN E. HANSEN, and FRANCIS, HANSEN & MARTIN, LLP,  
  
Defendants.

No.  
**0801-00797**  
**COMPLAINT**  
**(Defamation, False Light Invasion of Privacy, Invasion of Privacy by Public Disclosure of Private Facts, Breach of Contract)**  
**(CLAIMS NOT SUBJECT TO MANDATORY ARBITRATION)**

For their complaint against Defendant Bank of the Cascades ("Defendant"), plaintiffs John G. Schleining and Cathy P. Schleining ("Plaintiffs") allege as follows:

**PARTIES**

1.

Plaintiffs are husband and wife and citizens and residents of the State of Oregon.

2.

Defendant Bank of the Cascades is an Oregon chartered commercial bank which maintains an office and conducts regular business in Multnomah County, Oregon.

3.

Defendant Martin E. Hansen ("Hansen") is an attorney admitted to practice law in the State of Oregon and maintains an office in Bend, Oregon.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

4.

Defendant Francis Hansen & Martin, LLP ("FHM") is a limited liability partnership established for the practice of law. Defendant Hansen is a partner and an agent of FHM in his practice of law.

5.

Defendant FHM, through its partner and agent, Defendant Hansen, has represented Defendant Bank of the Cascades in connection with certain loans issued by Bank of the Cascades to Plaintiffs or to others that were guaranteed by Plaintiffs.

6.

Defendant Hansen was acting as an agent for Defendant FHM at all times in representing Defendant Bank of the Cascades in connection with the matters alleged in this Complaint.

7.

As attorneys for Bank of the Cascades, Defendants Hansen and FHM acted as agents of the Bank of the Cascades in communicating to Plaintiffs and others regarding loans by Bank of the Cascades to Plaintiffs or to others that were guaranteed by Plaintiffs.

**FIRST CLAIM FOR RELIEF**  
**(Defamation)**

8.

Plaintiffs reallege paragraphs 1 to 7.

9.

On December 28, 2007, Defendant Hansen, on behalf of Defendant FHM, as agent for Defendant Bank of the Cascades, sent at least five separate letters in which certain assertions of fact were made of and concerning Plaintiffs.

10.

The December 28, 2007 letters were sent to Plaintiffs and to several other

1 persons and entities with whom Plaintiffs have had business relationships, including, but not  
2 limited to, Siskiyou Properties, LLC, Jacquelin Estates, LLC, Powder River, Inc., Lara  
3 Schleining, Buntin Construction, LLC, Terry and Diane Buntin, Keywest Properties, and  
4 Larvan, Inc.

5 11.

6 The December 28, 2007 letters concerned certain loans and letter of credit  
7 agreements for which Plaintiffs John and/or Cathy Schleining were obligors or guarantors.

8 12.

9 The December 28, 2007 letters contained statements of and concerning  
10 Plaintiffs that were false and injurious to their reputations.

11 13.

12 In each letter, Defendants declare a default of a loan or letter of credit  
13 agreement for which plaintiffs are obligors or guarantors.

14 14.

15 In the course of describing Plaintiffs' alleged defaults under the various loans  
16 or guarantee agreements, four of the five letters of December 28, 2007 state: "Additionally,  
17 we have recently learned that in May of 2007, the Schleining's [*sic*] transferred nearly  
18 \$3,000,000 of BOTC [Bank of the Cascades] loan proceeds to a local branch of a Swiss  
19 bank. The sizeable transfer of funds was contrary to the intended purpose of the loan  
20 agreement and in breach of the covenants made by the borrowers and guarantees for the use  
21 of those loan proceeds."

22 15.

23 The fifth letter of December 28, 2007 contains nearly identical language, but  
24 references letter of credit agreements. It states: "Additionally, we have recently learned that  
25 in May of 2007, the Schleining's [*sic*] transferred nearly \$3,000,000 of BOTC [Bank of the  
26 Cascades] loan proceeds to a local branch of a Swiss bank. The sizeable transfer of funds

1 was contrary to the intended purpose of the letter of credit agreements and in breach of the  
2 covenants made by the borrowers and guarantees for the use of those loan proceeds.”

3 16.

4 Defendants’ assertions in the December 28, 2007 letters were and are false in  
5 one or more of the following ways:

6 A. Defendant Bank of the Cascades did not just recently learn that  
7 Plaintiffs had transferred approximately \$3,000,000 to a securities account maintained by  
8 Plaintiffs at UBS Financial Services Inc. in Medford, Oregon in May 2007. Defendant Bank  
9 of the Cascades knew this fact when the transfers were made, because the disbursements  
10 were made directly by wire transfer and check from Bank of the Cascades to UBS Financial  
11 Services Inc.;

12 B. UBS Financial Services Inc. is not a local branch of a Swiss bank.  
13 UBS Financial Services Inc. is a Delaware corporation, with its principal place of business in  
14 New Jersey. UBS Financial Services Inc. is a registered broker/dealer regulated by the  
15 Financial Industry Regulatory Authority (“FINRA”) (formerly NASD Regulation) under the  
16 authority of the Securities and Exchange Commission and licensed to do business in the State  
17 of Oregon under the authority of the Division of Finance and Corporate Securities of the  
18 Oregon Department of Consumer and Business Services;

19 C. The transfer of funds to Plaintiffs’ UBS Financial Services Inc.  
20 account was not contrary to the intended purpose of any loan agreement or letter of credit  
21 agreement; nor was it in breach of any covenants made by Plaintiffs or any other obligor on  
22 the loans or letter of credit agreements declared to be in default by Defendants. Nothing in  
23 the loan documents prohibited or restricted Plaintiffs from transferring funds to a securities  
24 account maintained at UBS Financial Services Inc.

25 17.

26 Defendants, in their December 28, 2007 letters, intended to assert or imply

1 and did assert or imply one or more of the following:

2 A. Plaintiffs intended to conceal the transfer of funds to UBS Financial  
3 Services Inc.;

4 B. Plaintiffs intended to steal or abscond with the \$3,000,000 by  
5 purportedly transferring the funds to the local branch of a "Swiss bank" implying that, by  
6 allegedly putting the money in a "Swiss bank," Plaintiffs were attempting to place the funds  
7 beyond the reach of Bank of the Cascades and other creditors of plaintiffs;

8 C. Plaintiffs were intentionally seeking to divert the \$3,000,000 to their  
9 own personal uses in violation of obligations that Plaintiffs had to the persons and businesses  
10 other than Plaintiffs to whom the letters were addressed and sent; and

11 D. Plaintiffs were intentionally seeking to divert the \$3,000,000 to their  
12 own personal uses in violation of their legal obligations under certain note agreements and  
13 guarantees.

14 18.

15 Defendants' intended implications in their December 28, 2007 letters were  
16 absolutely and entirely false.

17 19.

18 Defendants' allegations regarding Plaintiffs have been spread in the  
19 community and several individuals have contacted Plaintiffs to indicate that they no longer  
20 wish to do business with Plaintiffs.

21 20.

22 On information and belief, Defendants have further broadly publicized the  
23 assertions made in the December 28, 2007 letters, described in paragraphs 14 to 17 above, to  
24 other persons and entities in the communities in which Plaintiffs live and work, including to  
25 other creditors of Plaintiffs.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

21.

Defendants' statements have brought Plaintiffs into disrepute by falsely accusing them of dishonesty and a lack of integrity in their personal and business endeavors.

22.

Defendants' statements are defamatory *per se*.

23.

Defendant Hansen is liable for the defamatory statements in the letters he authored and for any other publication by him of those defamatory statements.

24.

Defendant FHM is jointly and severally liable for the defamatory statements of its partner and agent, Defendant Hansen.

25.

Defendant Bank of the Cascades is jointly and severally liable for the defamatory statements of its attorneys, Hansen and FHM, acting as its agent in communicating about the alleged defaults and defaming Plaintiffs on its behalf.

26.

Plaintiffs are entitled to recover both general and specific damages resulting from Defendants' malicious and intentional defamation.

27.

Plaintiffs are entitled to recover both general and specific damages resulting from Defendants' defamatory statements.

28.

Plaintiffs have stellar reputations for honesty and integrity in their community, both in their personal and business endeavors. They have been very successful in business over the years. Their reputations have been seriously and severely damaged by the defamatory assertions by Defendants set forth above. Because of the magnitude of their

1 potential business losses and the potential business lost from their inability now to do  
2 business with individuals who have been improperly influenced by Defendants' defamatory  
3 statements, Plaintiffs have suffered general damages in excess of \$10,000,000 as a direct  
4 result of Defendants' defamatory statements.

5 29.

6 Plaintiffs have also suffered and will suffer specific losses in their business  
7 activities in an amount believed to exceed \$5,000,000, including the loss of future business  
8 prospects directly resulting from Defendants' defamatory statements.

9 **SECOND CLAIM FOR RELIEF**

10 **(False Light Invasion of Privacy)**

11 30.

12 Plaintiffs reallege paragraphs 1 to 29.

13 31.

14 By broadly publishing their assertions about Plaintiffs purportedly transferring  
15 nearly \$3,000,000 of Bank of the Cascades loan proceeds to a local branch of a "Swiss bank"  
16 and asserting that the transfer was contrary to the intended purpose of the loan and letter of  
17 credit agreements and in breach of the covenants made by the borrowers and guarantees for  
18 the use of those loan proceeds, as alleged above, Defendants have given publicity to a matter  
19 concerning Plaintiffs that places Plaintiffs before the public in a false light by accusing them  
20 of dishonesty and lack of integrity in their personal and business dealings.

21 32.

22 The false light in which Plaintiffs were placed would be highly offensive to a  
23 reasonable person and has been highly offensive to Plaintiffs, causing Plaintiffs substantial  
24 distress and anguish.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

33.

Defendants had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiffs would be placed.

34.

Plaintiffs have suffered emotional distress and anguish as a direct result of Defendants' knowing or reckless invasion of their privacy by placing Plaintiffs in a false light.

35.

Defendant Hansen is liable for the false statements in the letters he authored and for any other publication by him of those false statements.

36.

Defendant FHM is jointly and severally liable for the false statements of its partner and agent, Defendant Hansen.

37.

Defendant Bank of the Cascades is jointly and severally liable for the false statements of its attorneys, Hansen and FHM, acting as its agent in communicating about the alleged defaults and placing Plaintiffs in a false light on its behalf.

38.

Plaintiffs are entitled to recover damages for their emotional distress and anguish in an amount to be established at trial and for which Plaintiffs seek damages of \$5,000,000.

**THIRD CLAIM FOR RELIEF**

**(Invasion of Privacy by Public Disclosure of Private Facts)**

39.

Plaintiffs reallege paragraphs 1 to 38.



Defendant Bank of the Cascades publishes a privacy policy on its web site at:  
<https://www.botc.com/index.cfm?objectid=11C135E3-CC38-9867-BD5CCF651F900F02&flushcache=1&showdraft=1>, which states:

**“Privacy Notification**

Our mission is to deliver the best in banking for the financial well being of our shareholders and customers. We believe that protecting your privacy, together with your financial assets, is critical to its fulfillment. It is the foundation for the trust necessary for us to build the relationships between us. As such,

**WE DO NOT DISCLOSE ANY NON-PUBLIC PERSONAL INFORMATION ABOUT OUR CUSTOMERS OR FORMER CUSTOMERS TO ANYONE, EXCEPT AS PERMITTED OR REQUIRED BY LAW.**

- Information we receive from applications or other forms;
- Information about transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

**Protection of Information via Established Security Procedures**

We are committed to the security of financial and personal information. All of our operational and data processing systems are in a secure environment that protects account information from being accessed by third parties.

We restrict access to non-public personal information to those employees who need to know that information to provide products or services to those consumers. We maintain physical,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

42.

Defendants' public disclosure was wrongful apart from causing Plaintiffs' emotional distress and anguish, because Defendants' disclosure was made in violation of Defendant Bank of the Cascade's privacy policy and obligations to maintain information about Plaintiffs and Plaintiffs' transactions in confidence.

43.

Plaintiffs have suffered emotional distress and anguish as a direct result of Defendants' knowing or reckless invasion of their privacy by the public disclosure of private facts about their banking transactions.

44.

Defendant Hansen is liable for the public disclosure of private facts in the letters he authored and for any other publication by him of those private facts.

45.

Defendant FHM is jointly and severally liable for the public disclosure of private facts about Plaintiffs by FHM's partner and agent, Defendant Hansen.

46.

Defendant Bank of the Cascades is jointly and severally liable for the public disclosure of private facts about Plaintiffs by its attorneys, Hansen and FHM, acting as its agent in communicating about the alleged defaults and invading Plaintiffs' privacy on its behalf.

47.

Plaintiffs are entitled to recover damages for their emotional distress and anguish in an amount to be established at trial and for which Plaintiffs seek damages of \$5,000,000.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Breach of Contract – Bank of the Cascades)**

3 48.

4 Plaintiffs reallege paragraphs 1 to 47.

5 49.

6 The promises in Defendant Bank of the Cascades’ published privacy policy,  
7 as alleged in paragraph 40 above, are part of the consideration for the contractual banking  
8 relationship between Plaintiffs and Defendant Bank of the Cascades

9 50.

10 The promises in Defendant Bank of the Cascades’ published privacy policy  
11 are binding contractual obligations on Defendant Bank of the Cascades.

12 51.

13 Defendant Bank of the Cascades breached its contractual privacy obligations  
14 by disclosing information regarding Plaintiffs’ transactions when it broadly published  
15 information about transfers that Plaintiffs had made by wire transfer and check from their  
16 personal line of credit at Bank of the Cascades to UBS Financial Services Inc. in May 2007.

17 52.

18 By disclosing Plaintiffs’ private transactional information, Defendant Bank of  
19 the Cascades directly caused Plaintiffs to suffer economic harm and business losses by  
20 falsely impugning Plaintiffs’ integrity and interfering with Plaintiffs’ current and future  
21 business pursuits. Because of the magnitude of their potential business losses and the  
22 potential business lost from their being unable to do business with individuals who have been  
23 improperly influenced by Defendant Bank of the Cascades’ breach of its privacy policy,  
24 Plaintiffs have suffered damages in excess of \$5,000,000 as a direct result of Defendants’  
25 disclosures.

1 WHEREFORE, Plaintiffs pray for judgment on their Complaint as follows:

2 1. On the First Claim for Relief against Defendants jointly and severally  
3 for general damages of at least \$10,000,000 and specific damages of \$ 5,000,000;

4 2. On the Second Claim for Relief against Defendants jointly and  
5 severally for damages of at least \$5,000,000;

6 3. On the Third Claim Claim for Relief against Defendants jointly and  
7 severally for damages of at least \$5,000,000;

8 4. On the Fourth Claim for Relief against Defendant Bank of the  
9 Cascades for damages of at least \$5,000,000;

10 5. An award of Plaintiffs' reasonable costs and disbursements incurred  
11 herein; and

12 6. Such other and further relief as the court deems just and appropriate.

13 DATED: January 15, 2008.

14 Respectfully submitted,

15 TONKON TORP LLP

16  
17 By 

18 **Steven M. Wilker**, Trial Attorney

19 OSB No. 91188

20 Direct Dial: 503.802.2040

21 Direct FAX: 503.972.3740

22 Email: [steven.wilker@tonkon.com](mailto:steven.wilker@tonkon.com)

23 Attorney for Plaintiffs  
24  
25  
26