

IN THE FRANKLIN COUNTY COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO

James E. Arnold & Associates, LPA  
115 West Main Street, 4th Floor  
Columbus, OH 43215,

Plaintiff,

v.

Carlo M. Croce,  
2140 Cambridge Boulevard  
Upper Arlington, OH 43221,

And

Huntington National Bank  
P.O. Box 122620-SW30  
Covington, KY 41012-9956,

And

Fifth Third Bank National Association,  
Successor in interest  
To Fifth Third Mortgage Company  
c/o Corporate Service Company  
50 West Broad Street, Suite 1330  
Columbus, OH 43215,

And

Franklin County Treasurer  
373 South High Street, 17<sup>th</sup> Flr  
Columbus, OH 43215,

Defendants.

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

**COMPLAINT**

Now comes plaintiff, James E. Arnold & Associates, LPA (“JEAA”) and for its complaint against defendants Carlo M. Croce (“Croce”), Huntington National Bank (“HNB”), Fifth Third Bank National Association (“FNB”), and the Franklin County Treasurer hereby states:

FACTS COMMON TO ALL CLAIMS

1. JEAA is a legal professional association organized under the laws of the State of Ohio. Its principal place of business is located at 115 West Main Street, Columbus, Franklin County, OH.

2. Croce is an individual residing at 2140 Cambridge Boulevard, Upper Arlington, OH.

3. HNB is a national banking association and named as a defendant herein because it has an interest in the property located at 2140 Cambridge Boulevard, Upper Arlington, OH (“the Property”) by virtue of its Open-End Mortgage recorded with the Franklin County Recorder on September 29, 2017, and assigned instrument number 201709290136198. HNB is thus so situated that the disposition of this action in its absence may impair or impede its ability to protect that interest.

4. FNB is a national banking association and successor in interest to Fifth Third Mortgage Company. It is named as a defendant herein because it has an interest in the Property by virtue of its Mortgage recorded with the Franklin County Recorder on March 25, 2015, and assigned instrument number 201503250037323. FNB is thus so situated that the disposition of this action in its absence may impair or impede its ability to protect that interest.

5. Venue is proper in this Court under Ohio R. Civ. P. 3(C)(1), (C)(3) and (C)(5) as Franklin County is the County in which the Defendant resides, is the county in which the Defendant conducted activity giving rise to the claims herein, and is the county in which property that is the subject of this action is situated.

6. This Court has subject matter jurisdiction over this matter under Ohio Rev. Code §2305.01 because the sum and matter in dispute exceeds the exclusive jurisdiction of the county municipal court.

7. On October 18, 2018, Croce engaged JEAA and its lawyers to provide Croce with legal representation and services in multiple matters. The first matter was a case pending in the United States District Court for the Southern District of Ohio, styled, *Croce v. New York Times et.al*, case no. 2:17cv 00402 (the *New York Times* case”), a case in which Croce had sued the New York Times and its employees over allegedly defamatory statements in its newspaper. The case had originally been filed by the law firm of Kegler, Brown, Hill & Ritter (“KBHR”), but because, like here, Croce failed to pay KBHR legal fees and expenses he owed to it, KBHR withdrew from representing Croce and has now filed suit against Croce for unpaid fees and expenses in the Franklin County Common Pleas Court in the case styled *Kegler, Brown, Hill & Ritter v. Croce*, case no. 20CV0033954.

8. The second matter on which Croce engaged JEAA and its lawyers was to provide Croce with legal representation in a case pending in the United States District Court for the Southern District of Ohio, styled, *Croce v. Sanders*, case. No. 2:17 cv 00338 (“the *Sanders* case”), a case in which Croce had sued David Sanders, an assistant professor at Purdue University, for allegedly false and defamatory statements that Croce had engaged in research misconduct. Like the *New York Times* case, the case was originally filed by KBHR but, because of Croce’s failure to pay KBHR legal fees and expenses he owed to it, KBHR withdrew from representing Croce.

9. The third matter on which Croce engaged JEAA and its lawyers was to represent Croce in connection with an investigation being conducted by The Ohio State University into the allegations made by Sanders and the New York Times (the “Research Misconduct Investigation”).

Once again, the defense of that matter was first conducted by KBHR, but because of Croce's failure to pay KBHR legal fees and expenses he owed to it, KBHR withdrew from representing Croce.

10. Finally, the fourth matter on which Croce engaged JEAA and its lawyers was to represent Croce in connection with The Ohio State University's attempted removal of Croce as the Chair of the Department of Cancer Biology and Genetics because of the allegations of research misconduct made against him. As a result of that attempted removal, JEAA filed suit on behalf of Croce in the Franklin County Common Pleas Court in a case styled, *Croce v. The Board of Trustees of The Ohio State University*, case no. 18-cv-010788 ("*Board of Trustees case*").

11. Despite Croce's failure to pay KBHR, his prior lawyers, JEAA undertook the engagements referenced in the preceding paragraphs based upon Croce's repeated affirmative representations that, unlike his treatment of KBHR, he would pay JEAA the legal fees and expenses incurred in connection with the legal services provided to him. This agreement was memorialized in an Engagement Letter dated October 18, 2018, a true and accurate copy of which is attached as Exhibit A.

12. The Engagement Letter sets forth the terms under which JEAA agreed to provide legal services to Croce. It required Croce to pay statements for legal services rendered within 30 days of presentation, in the absence of which Croce further agreed to pay 1.5% interest monthly on any unpaid balance. The Engagement Letter explicitly referred to the *New York Times* case and the *Sanders* case, JEAA and Croce further agreed and understood that the terms thereof also applied to the services performed by JEAA and its lawyers on the Research Misconduct Investigation and the *Board of Trustees* case.

13. Initially Croce met his obligations to pay JEAA the legal fees and expenses incurred in connection with its representation of Croce. However, as he did with KBHR, Croce eventually stopped paying JEAA's statements for services rendered.

14. Each time JEAA requested payment of Croce's increasingly delinquent payments, Croce falsely and repeatedly promised JEAA that he would pay for the services rendered, in order to entice and persuade JEAA to continue providing legal services. However, after Croce's repeated failures to meet his obligations under the Engagement Letter and his representations of forthcoming payment, on August 5, 2019, JEAA informed Croce that it would no longer provide legal services to him and that it was withdrawing from all matters in which it represented him.

15. On September 13, 2019, JEAA and its lawyers filed their Motion to Withdraw in the *Sanders* case, and on September 20, 2019, JEAA and its lawyers filed their Motion to Withdraw as Croce's counsel in the *Board of Trustees* case. No motion to withdraw was filed or necessary in the *New York Times* case, because that matter had already been fully litigated to completion months before.

16. Thereafter, Croce falsely represented to JEAA that he would bring all matters current no later than December 1, 2019, and that to assure full payment he would provide JEAA with a note secured by a mortgage on his home. In order to assure that Croce would not default, Croce was given an additional two weeks beyond December 1, 2019, to December 16, 2019, by which payment had to be made.

17. In order to secure payment of all past due payments and future services to be performed for Croce, a Non-Negotiable Revolving Promissory Note ("Note") was prepared and Croce was referred to and consulted with another lawyer to represent him in connection with

executing the Note. Croce signed the Note, a true and accurate copy of which is attached hereto as Exhibit B.

18. In order to further secure payment of all past due payments and future legal services to be performed for Croce, a Balloon Mortgage, Assignment of Leases and Rents and Security Agreement (hereafter “Mortgage”) securing the Note was also prepared. Once again, Croce had separate legal representation to review and provide counsel before signing the Mortgage. A true and accurate copy of the Mortgage signed by Croce is attached hereto as Exhibit C.

19. The Mortgage securing the Note was duly recorded with the Franklin County Recorder on October 18, 2019, as instrument number 2019101801388891.

20. As a result of Croce’s assurances that he would pay JEAA in full no later December 16, 2019, JEAA withdrew the previously filed Motions to Withdraw in the *Sanders* and *Board of Trustees* cases, and continued to represent Croce in those cases as well as in the Research Misconduct Investigation by, among other things, taking depositions, opposing motions for summary judgment, attending committee interviews and related matters, all in reliance on Croce’s representations that full payment would be forthcoming no later than December 16, 2019.

21. On December 16, 2019, notwithstanding his prior repeated representations of payment, Croce defaulted on his obligations and failed to pay the sums due under the Note or the Engagement Letter, which sums remain unpaid as of the date of filing this Complaint.

22. As a result of Croce’s failure to pay the Note and otherwise meet his payment obligations to JEAA, on December 17, 2019, JEAA terminated the attorney-client relationship its lawyers had with Croce, and advised Croce that it and its lawyers were (again) immediately filing Motions to Withdraw in the *Sanders* and *Board of Trustees* matters, which they did that day. Because the *New York Times* matter was concluded and there was nothing from which to withdraw,

no motion was necessary in that matter, and similarly no Motion to Withdraw was necessary in the Research Misconduct case because the court had granted summary judgment to OSU the day before. JEAA also advised Croce that its lawyers would perform no further services for Croce from that day forward; and that he should immediately retain substitute counsel for any other matters on which JEAA or its lawyers had previously represented him that needed further legal work.

**FIRST CLAIM – BREACH OF CONTRACT (ENGAGEMENT LETTER)**

23. Plaintiff incorporates by reference paragraphs 1 through 22 as if fully restated herein.

24. Under the terms of the Engagement Letter, Croce agreed to pay statements for services rendered to Croce within 30 days of presentation.

25. Under the terms of the Engagement Letter, Croce further agreed to pay interest at the rate of 1.5% per month on all unpaid balances not paid within 30 days until paid in full.

26. Croce has failed to pay statements for services rendered within 30 days of presentation and has thereby breached his promises to pay as set forth in the Engagement Letter.

27. JEAA and its lawyers have performed all of their obligations under the Engagement Letter or said obligations have been expressly or impliedly waived by Croce.

28. As a direct and proximate result of Croce's breach of his obligations under the Engagement Letter, JEAA has suffered damages in the present amount of \$694,594.94, and will continue to suffer damages in the future at the rate of 18% per year on all unpaid balances until JEAA is paid in full.

SECOND CLAIM – BREACH OF NOTE

29. Plaintiff incorporates by reference paragraphs 1 through 28 as if fully restated herein.

30. Under the terms of the Note, JEAA agreed to lend up to \$800,000 to Croce, or such amount as was then due and payable to JEAA by Croce, to be repaid no later than December 16, 2019.

31. On December 16, 2019, Croce owed JEAA the sum of \$578,488.72.

32. Croce failed to pay JEAA on or before December 16, 2019, and is therefore in default under in Section 5 of said Note and breached the terms of the Note.

33. In addition to any sums due under the Note, Croce further agreed, in Section 5 of the Note, to pay all costs and expenses incurred by JEAA, including reasonable attorneys' fees, if JEAA was required to institute an action to enforce or collect sums due under the Note.

34. As a direct and proximate result of Croce's default under the Note, JEAA has suffered damages in the amount of \$694,594.94 (which includes the interest that has accrued since default); will continue to suffer damages in amounts to be determined at trial for accrued interest at the rate of 21% per year on all unpaid balances; and has further suffered damages in an amount to be determined at trial for all costs, including attorneys' fees, incurred for having to enforce and collect sums due under the Note.

THIRD CLAIM – UNJUST ENRICHMENT

35. JEAA incorporates by reference paragraphs 1 through 34 as if fully restated herein.

36. JEAA and its lawyers conferred a benefit upon Croce by provided legal services and advancing costs and expenses in reasonable reliance on Croce's repeated assurances that he would pay JEAA for the services and costs and expenses advanced on his behalf.

37. Croce knew that JEAA's lawyers were conferring a benefit upon Croce by performing legal services and advancing costs and expenses on his behalf, and further knowingly accepted the benefit of those services and expenses.

38. Croce has wrongfully retained the benefits and value of the services provided by the JEAA lawyers and the costs and expenses advanced by JEAA on his behalf without paying for them.

39. As a direct and proximate of Croce's misconduct, Croce has been unjustly enriched and JEAA has been damaged in the amount of \$694,594.94.

#### FOURTH CLAIM – FORECLOSURE OF MORTGAGE

40. JEAA incorporates by reference paragraphs 1 through 39 as if fully restated herein.

41. To secure his obligations under the Note, Croce executed and delivered to JEAA the Mortgage encumbering the Property commonly known as 2140 Cambridge Boulevard, Upper Arlington, OH, as more fully described in the Mortgage attached as Exhibit C.

42. JEAA owns and holds the Mortgage and the indebtedness secured thereby, and by reason thereof has a good and valid lien on the Property to secure the balance of the amounts due under the Note.

43. Croce failed to pay JEAA under the terms of the Note and thereby breached his obligations under the Note.

44. Under Section 19(a) of the Mortgage, an "Event of Default" occurs under the Mortgage if Croce failed to pay in accordance with the terms of the Note.

45. It is also an Event of Default under Section 19(b) of the Note by making material representations that were false and misleading at the time they were made.

46. It is further an Event of Default under Section 19(i) of the Note by failing to pay his debts generally as they fall due.

47. Croce has failed to pay in accordance with the terms of the Note, made material misrepresentations that were false and misleading at the time they were made and has further failed to pay his debts generally as they fall due, thereby causing Events of Default under the Note.

48. As a direct and proximate result of Croce failing to pay the Note and causing the Events of Default stated above, Croce breached the terms of the Mortgage and, under Section 20 of the Mortgage, JEAA is entitled to, among other things, foreclose on the mortgage and obtain any other right or remedy available to it in law or in equity.

WHEREFORE, James E. Arnold & Associates, LPA, demands judgment against Carlo M. Croce as follows:

- 1) On its First Claim, for compensatory damages in the amount of \$694,594.94, and prejudgment and post-judgment interest at the rate of 18% per annum until paid in full;
- 2) On its Second Claim, for compensatory damages in the amount of \$694,594.94, and prejudgment and post-judgment interest at the rate of 18% per annum until paid in full;
- 3) On its Third Claim, for compensatory damages in the amount of \$694,594.94, prejudgment and post-judgment interest at the rate of 18% per annum and all attorneys' fees, costs and expenses incurred to enforce and collect all sums due under the Note, in an amount to be determined at trial;
- 4) On its fourth Claim:
  - a. that the Mortgage be declared a valid and subsisting lien on the Property, securing all sums owed to JEAA up to and including \$800,000;
  - b. for prejudgment and post-judgment interest at the rate of 21% until paid in full;
  - c. all attorneys' fees, costs and expenses incurred to enforce the Mortgage;

- d. that the lien of the Mortgage be declared to be subject in priority only to the liens of Huntington National Bank, Fifth Third Bank and the Franklin County Treasurer for any unpaid real estate taxes, assessments, penalties and interest that may be owed;
- e. that the equity of redemption, if any, of Croce be foreclosed and forever barred;
- f. that all defendants be required to establish their liens and the priorities thereof or be forever barred from asserting them;
- g. that the Property be sold, and all amounts due to JEAA be paid from the proceeds of sale; and

For its costs, attorneys' fees, and all and any other relief, whether legal or equitable, that this Court deems just and proper.

Respectfully submitted,

/s/ James E. Arnold

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|--------------------|-----------|
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