

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

American Bank of St. Paul,

Plaintiff,

vs.

Louis J. Pearlman, individually, TOTP,
LLC, a Florida limited liability company,
Trans Continental Records, Inc., a Florida
corporation, Trans Continental Airlines,
Inc., a Florida corporation,

Defendants.

Case No. 07cv 137
JNE/SRN

COMPLAINT

Plaintiff American Bank of St. Paul for its Complaint against Defendants Louis J. Pearlman, TOTP, LLC, Trans Continental Records, Inc., and Trans Continental Airlines, Inc. states and alleges as follows:

PARTIES

1. Plaintiff American Bank of St. Paul ("American Bank") is a Minnesota state banking corporation with its principal place of business in St. Paul, Minnesota.
2. Defendant Louis J. Pearlman ("Pearlman") is a citizen and a resident of the state of Florida.
3. Defendant Trans Continental Records, Inc. ("TCR") is a Florida corporation with its principal place of business located in Orlando, Florida.
4. Defendant Trans Continental Airlines, Inc. ("TCA") is a Florida corporation with its principal place of business located in Orlando Florida.
5. Defendant TOTP, LLC ("TOTP") is a Florida limited liability company with its principal place of business located in Orlando, Florida.

SCANNED

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U.S. DISTRICT COURT MPLS

JURISDICTION AND VENUE

6. This action is a civil action over which this Court may retain original jurisdiction pursuant to 28 U.S.C. §1332. The amount in controversy in this action exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states.

7. Venue is proper as the parties have expressly consented to jurisdiction and venue in this judicial district.

GENERAL ALLEGATIONS

Multiple-Advance Term Loan Agreement and Promissory Note

8. On March 27, 2006, defendants Pearlman, TCR and TOTP executed a Multiple-Advance Term Loan Agreement (“Loan Agreement”) and Promissory Note in the principal amount of up to \$28,500,000.00 (“Note”). The Loan Agreement and Note are attached hereto as **Exhibits A and B**, respectively.

9. American Bank, as lead bank, loaned funds, on behalf of itself and participating banks, to Pearlman, TCR and TOTP for, on information and belief, the purchase of a British television program known as “Top of the Pops” (“Program”) and to refinance certain other existing indebtedness owed to another bank.

10. Pursuant to the terms of the Note, Pearlman, TCR and TOTP were required to make interest payments on the outstanding principal balance on the first day of each calendar month, commencing on May 1, 2006 through and including July 1, 2006. Thereafter, principal and interest payments were due on the first of each calendar month, with the final payment due on July 1, 2011.

11. Pursuant to the terms of the Loan Agreement, failure to “pay any or all of the indebtedness arising out of [the Loan Agreement] or the other Loan Documents (the ‘Obligations’) when due, and such failure shall continue for a period of five (5) days after such payment becomes due,” constitutes an “Event of Default.” (*See Section 7.a. of the Loan Agreement.*)

12. Upon the occurrence of an Event of Default, the Loan Agreement provides that American Bank “may declare all unmatured Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand.” (*See Section 8.a. of the Loan Agreement.*)

13. In addition, the Loan Agreement requires that Pearlman, TCR and TOTP:

. . . reimburse [American Bank], upon demand, for all costs and expenses actually incurred, including without limitation attorney’s fees paid or incurred by [American Bank] in connection with: . . .

c. The enforcement by [American Bank] during the term hereof or thereafter of the rights or remedies of [American Bank] hereunder or under any of the foregoing documents, instruments or agreements, including without limitation reasonable costs and expenses of collection, whether or not suit is filed with respect thereto and whether such costs are paid or incurred, or to be paid or incurred, prior to or after entry of judgment. (*See Section 14.c. of the Loan Agreement.*)

14. Moreover, in the Loan Agreement, Pearlman, TCR and TOTP expressly agreed that the laws of the State of Minnesota should govern the Loan Agreement and loan related documentation as defined in Section 1 of the Loan Agreement. (*See Sections 1, 25 of the Loan Agreement.*)

15. Further, in the Loan Agreement, Pearlman, TCR and TOTP consented to the jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to the Loan Agreement. (*See Section 11 of the Loan Agreement.*)

16. Finally, in the Note, Pearlman, TCR and TOTP expressly agreed that the laws of the State of Minnesota should govern the Note, and Pearlman, TCR and TOTP explicitly consented to the jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to the Note, and other related loan documents. (*See Sections 15, 16 of the Note.*)

Pearlman Securities Pledge Agreement

17. In order to secure repayment of the loan, Pearlman executed a Securities Pledge Agreement dated March 27, 2006 (“Pledge Agreement”). A copy of the Securities Pledge Agreement is attached hereto as **Exhibit C**.

18. Pursuant to the terms of the Pledge Agreement, Pearlman granted American Bank a first priority pledge and security interest in 190,000 shares of preferred stock of TCA and 347,925 shares of common stock of TCA (collectively referred to as the “Shares”).

19. In connection with the Pledge Agreement, Pearlman and TCA also executed a Repurchase Agreement dated March 27, 2006, whereby TCA agreed to repurchase the Shares following the occurrence of an Event of Default under the Loan Agreement.

TOTP Security Agreement

20. On March 27, 2006, TOTP also executed a Security Agreement in favor of American Bank. A copy of the Security Agreement is attached hereto as **Exhibit D**.

21. Pursuant to the terms of the Security Agreement, TOTP granted American Bank a first priority security interest in all accounts, receivables and other amounts arising out of or relating to the Program.

TCR Collateral Assignment

22. On March 27, 2006, TCR granted American Bank a security interest in, among other things, all rights and interests of TCR in and to certain royalties, accounts and other receivables. A copy of the Collateral Assignment is attached hereto as **Exhibit E**.

Guaranty by TCA

23. As a condition to making the loan, American Bank required that TCA absolutely and unconditionally guarantee to American Bank the full and prompt payment of the obligations of Pearlman, TCR and TOTP to American Bank. As a result, TCA executed a Guaranty of Corporation on March 27, 2006 ("Guaranty"), a copy of which is attached hereto as **Exhibit F**.

24. In addition, in the Guaranty, TCA expressly agreed that the Guaranty shall be governed by the laws of the State of Minnesota and consented "to the personal jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to this Guaranty." (*See Section 13 of the Guaranty.*) Further, TCA agreed that any dispute arising from to the Guaranty between the parties should be venued in either Hennepin County District Court of this Court. (*Id.*)

Default by Pearlman, TCR and TOTP

25. Pearlman, TCR and TOTP have defaulted under the terms of the Loan Agreement and Note for among other things their failure to make payments when due.

26. On or about December 15, 2006, American Bank served Pearlman, TCR and TOTP a notice of default and demand for cure of all past due amounts. A similar notice was also served on TCA. A copy of the default letters are attached hereto as **Exhibit G**.

27. As a consequence of the default and defendants' failure to cure, American Bank served its notice of demand for repurchase of TCA Shares upon Pearlman and TCA. A copy of the demand letter is attached hereto as **Exhibit H**.

28. American Bank also served another notice of default on defendants and accelerated all amounts due and owing under the Loan Agreement and Note.

29. To date, Pearlman, TCR, TOTP and TCA have failed and refused to pay all amounts due and owing under the Loan Agreement, Note and related loan documents.

30. As of January 10, 2007, the total amount of indebtedness due and owing American Bank is \$27,770,040.00, plus costs and fees.

COUNT I
BREACH OF CONTRACT
(Pearlman, TCR and TOTP)

31. American Bank reasserts and realleges the allegations contained in the preceding Paragraphs as if fully restated herein.

32. Pursuant to the terms and conditions of the Loan Agreement, Pearlman, TCR and TOTP promised to, among other things, make payments for its debts. Despite demand by American Bank, Pearlman, TCR and TOTP have failed and refused to pay all obligations due under the Note and Loan Agreement. The aforementioned conduct constitutes an event of Default and a material breach of the Loan Agreement and Note.

33. Due to the default by Pearlman, TCR and TOTP under the Loan Agreement and Note, American Bank is entitled to a judgment against Pearlman, TCR and TOTP, jointly and severally, in the amount of at least \$27,700,040.00, together with additional interest, costs, attorneys' fees and disbursements.

COUNT II
BREACH OF CONTRACT
(TCA)

34. American Bank reasserts and realleges the allegations contained in the preceding Paragraphs as if fully restated herein.

35. Pursuant to the terms and conditions of the Guaranty, TCA promised to, among other things, absolutely and unconditionally guarantee full and prompt payment of the obligations of Pearlman, TCR and TOTP to American Bank pursuant to the Note and Loan Agreement. Despite demand by American Bank, TCA has failed and refused to pay all obligations due under the Note and Loan Agreement. The aforementioned conduct constitutes a material breach of the Guaranty.

36. Due to the default by TCA under the Guaranty, American Bank is entitled to a judgment against TCA, in the amount of at least \$27,700,040.00, together with additional interest, costs, attorneys' fees and disbursements.

COUNT III
REPLEVIN
(TCR and TOTP)

37. American Bank reasserts and realleges the allegations contained in the preceding Paragraphs as if fully restated herein.

38. Pursuant to the terms and conditions of the Loan Agreement, Security Agreement and Collateral Assignment, Pearlman, TCR and TOTP's breach of the Loan Agreement and Note constitutes an event of default and entitles American Bank to immediate possession of all its collateral described in the Security Agreement and Collateral Assignment.

39. American Bank has retained the services of Rider Bennett, LLP to prosecute this action on its behalf and has and will incur attorneys' fees, costs and disbursements.

COUNT IV
TURNOVER OF BOOKS AND RECORDS
(Pearlman, TCR, TOTP and TCA)

40. American Bank reasserts and realleges the allegations contained in the preceding Paragraphs as if fully restated herein.

41. Pursuant to the terms of the Loan Agreement, Pearlman, TCR and TOTP agreed to:

permit any officer, employee, attorney or accountant for [American Bank] or any Participant to review, make extracts from, copy any and all corporate and financial books and records of [Pearlman, TCR and TOTP] and/or TCA at all times during ordinary business hours, . . . After the occurrence of an Event of Default, no prior notice to [Pearlman, TCR and TOTP] shall be required for [American Bank] to exercise its rights hereunder. (*See Section 5.f. of the Loan Agreement.*)

42. American Bank requires immediate access to the books and records of Pearlman, TCR, TOTP and TCA in order to exercise its right to recover on its collateral under the Security Agreement, Collateral Assignment, Pledge Agreement and Repurchase Agreement.

43. Accordingly, American Bank respectfully requests that the court enter an order compelling Pearlman, TCR, TOTP and TCA to immediately produce all books and records necessary for American Bank to recover on its collateral.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands Judgment against Pearlman, TCR, TOTP and TCA as follows:

1. Finding that Pearlman, TCR and TOTP have breached the terms and conditions of the Loan Agreement and Note, and awarding damages to American Bank and against Pearlman, TCR and TOTP, jointly and severally, in an amount in excess of \$27,770,040.00 less proceeds

realized from the disposition of collateral, along with applicable interest and an award of costs, disbursements, interest, and reasonable attorneys' fees;

2. Finding that TCA has breached the terms and conditions of the Guaranty, and awarding damages to American Bank and against TCA, in an amount in excess of \$27,770,040.00 less proceeds realized from the disposition of collateral, along with applicable interest and an award of costs, disbursements, interest, and reasonable attorneys' fees;

3. Finding that Pearlman, TCR, and TOTP have defaulted under the Loan Agreement and Note and that American Bank is entitled to immediate possession of its collateral under the Security Agreement and Collateral Assignment;

4. Finding that Pearlman, TCR, TOTP and TCA have defaulted under the Loan Agreement, Note and Guaranty and that American Bank is entitled to immediate possession of all the books and records of Pearlman, TCR, TOTP and TCA necessary for American Bank to recover on its collateral and ordering Pearlman, TCR, TOTP and TCA to immediately turnover said books and records to American Bank;

5. For American Bank's costs and expenses, including, without limitation, reasonable attorneys' fees associated with this action; and

6. For such other and further legal and equitable relief as the court deems just and proper.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

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