

UNITED STATES DISTRICT COURT

for the
Middle District of Florida

WELLS FARGO BANK, N.A.

Plaintiff

v.

BLUE SPRINGS ANIMAL CLINIC, LLC and ERIC J.
ORR

Defendant

1. Date of Service: 3-28-11
2. Time of Service: 3:25 PM
3. Server Initials: DP
4. Server Signature: [Signature]
2010-0522-PR

Civil Action No.

6:11-cv-411-28 KRS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* ERIC J. ORR
425 Black Ironwood Drive
DeLand, Florida 32724

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

JASON H. BARUCH
101 E. Kennedy Blvd., Suite 2700
Tampa, Florida 33602
jbaruch@trenam.com
Trenam, Kemker, Scharf,
Barkin, Frye, O'Neill & Mullis

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

March 23, 11

[Signature]

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) ERIC ORR
was received by me on (date) 3-28-11.

☐ I personally served the summons on the individual at (place) _____
on (date) _____; or

☒ I left the summons at the individual's residence or usual place of abode with (name) CHERYL ORR,
a person of suitable age and discretion who resides there,
on (date) 3-29-11, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
designated by law to accept service of process on behalf of (name of organization) _____
on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 3-29-11

BILL PHILIPS
Server's signature

BILL PHILIPS - PROCESS SERVER
Printed name and title

1228 N. U.S. 1 - ORMOND BEACH, FL.
Server's address

Additional information regarding attempted service, etc:

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2011 MAR 22 PM 1:10
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

WELLS FARGO BANK, N.A.,)
)
Plaintiff,)
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v.)
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BLUE SPRINGS ANIMAL CLINIC, LLC and)
ERIC J. ORR,)
)
Defendants.)
)

CIVIL ACTION NO. _____

1. Date of Service: 3-29-11
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4. Server Signature: Bill Phillips
2010-0922-DIV

COMPLAINT

Plaintiff Wells Fargo Bank, N.A. ("WFB"), by and through its attorneys, as and for its Complaint, respectfully alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the amount in controversy is in excess of \$75,000, exclusive of interest and costs, and there is diversity between the parties.

2. Venue is proper pursuant to 28 U.S.C. § 1391(a)(1) and (2).

THE PARTIES

3. WFB is a national banking association chartered under the laws of the United States of America with its main office and principal place of business in Sioux Falls, South Dakota, and is therefore deemed to be a citizen of the State of South Dakota for diversity jurisdiction purposes.

4. Defendant Blue Springs Animal Clinic, LLC ("BSAC") is a Florida limited liability company, with its main office and principal place of business located at 732 N. Volusia Avenue, Orange City, FL (the Office"), which premises is located in the Middle District of Florida. Upon information and belief, none of the members of BSAC are citizens of South Dakota. Upon information and belief, Defendant Eric J. Orr ("Orr" and together with BSAC, collectively, the "Defendants") is the sole member of BSAC and, as such, BSAC, is therefore deemed to be a citizen of the State of Florida for diversity jurisdiction purposes.

5. Orr is an individual who is a citizen of the State of Florida and whose principal residence is 425 Black Ironwood Drive, DeLand, Florida, which premises is located in the Middle District of Florida, and is therefore deemed to be a citizen of the State of Florida for diversity jurisdiction purposes.

FACTS

6. On or about May 22, 2007, WFB's predecessor-in-interest, Greater Bay Bank, N.A. ("GBB"), for good and valuable consideration, agreed to lend certain funds to BSAC for use in connection with its veterinary practice, and GBB and BSAC entered into that certain Master Equipment Financing Agreement, dated May 22, 2007 described as Master Agreement No. 3004804 (and as any time modified and/or amended, the "Master Agreement"). (A true and correct copy of the Master Agreement is attached hereto as **Exhibit "1"** and the terms and conditions thereof are incorporated herein by reference.)

7. On or about May 22, 2007, and in order to induce GBB to execute the Master Agreement, and for other good and valuable consideration, Orr executed that certain Secured

Guaranty dated May 22, 2007 (as at any time amended, the "Guaranty"), pursuant to which he unconditionally guaranteed to GBB (and its successors), the prompt payment, observance, and performance of the Obligations (as that term is hereinafter defined). (A true and correct copy of the Guaranty is attached hereto as **Exhibit "2"** and the terms and conditions thereof are incorporated herein by reference.)

8. On or about June 6, 2007, for good and valuable consideration, and in accordance with the terms of the Master Agreement, GBB and BSAC entered into that certain Schedule To Master Equipment Financing Agreement, described as Schedule No. 3004804-001 (and as any time modified and/or amended, including by the terms of that certain Modification Agreement dated January 21, 2010, the "Schedule" and together with the Master Agreement, collectively, the "Loan Documents"), whereby GBB lent certain amounts to BSAC in accordance with the terms of the Master Agreement and BSAC agreed to repay those amounts by making certain monthly payments to GBB (and its successors) on the terms and in the amounts set forth therein. (A true and correct copy of the Schedule (as modified by the aforementioned Modification Agreement) is attached hereto as **Exhibit "3"** and the terms and conditions thereof are incorporated herein by reference.)

9. By the terms of the Loan Documents, BSAC granted to GBB (and its successors) a security interest in and to all of its right, title and interest in and to all of its (a) accounts, chattel paper, and other rights to payment, whether then owned or thereafter acquired; (b) all of its inventory, whether then owned or thereafter acquired; (c) all of its equipment, whether then owned or thereafter acquired; (d) all of its general intangibles and contract rights, including without limitation all patient records and patient charts, whether

then owned or thereafter acquired; and (e) all of its substitutions and replacement for and products of any of the foregoing personal property, together with all accessions, attachments, parts and modifications, and repairs then or thereafter attached or affixed to or used in connection with any such personal property (collectively, the "BSAC Collateral").

10. In order to secure the obligations of Orr under the terms of the Guaranty, Orr granted to GBB (and its successors) a security interest in and to, *inter alia*, his personal (a) Accounts (as that term is defined in the Uniform Commercial Code (the "UCC")), Chattel Paper (as that term is defined in the UCC), and other rights to payment, whether then owned or thereafter acquired; (b) Inventory (as that term is defined in the UCC), whether then owned or thereafter acquired; (c) Equipment (as that term is defined in the UCC), whether then owned or thereafter acquired; (d) General Intangibles (as that term is defined in the UCC) and Contract Rights (as that term is defined in the UCC), whether then owned or thereafter acquired; and (e) substitutions and replacement for and products of any of the foregoing personal property, together with all accessions, attachments, parts and modifications, and repairs then or thereafter attached or affixed to or used in connection with any such personal property (collectively, the "Orr Collateral" and together with the BSAC Collateral, collectively, the "Collateral").

11. In or about 2008, WFB acquired GBB (and including its unincorporated division, Matsco) by merger and, as a result, became the successor-in-interest to GBB with respect to the Loan Documents, the Guaranty and the Collateral. As successor-in-interest to GBB with respect to the Loan Documents and the Guaranty, WFB is entitled to enforce the terms thereof. WFB is currently the holder and owner of the Loan Documents and the

indebtedness due thereunder.

FIRST COUNT
(Breach Of Contract Against BSAC)

12. WFB repeats and realleges the allegations set forth in Paragraphs "6", "8", "9" and "11" of this Complaint as if fully set forth herein.

13. BSAC breached and defaulted under the terms of the Loan Documents when it failed to make the required monthly payments due to WFB under the terms of the Loan Documents.

14. Thereafter, and in accordance with the terms of the Loan Documents, the entire balance of all unpaid monies due under the terms of the Loan Documents was declared to be immediately due and payable (collectively, the "Obligations").

15. As of February 28, 2011, the total of the Obligations was in amount not less than \$1,014,179.96, plus interest, late charges, attorneys' fees, costs and any other amounts due under the Loan Documents.

16. Despite the foregoing and demand by WFB, BSAC has failed to pay any of the Obligations to WFB.

17. WFB has performed all terms and conditions precedent on its part, to the extent that there are any, to be performed pursuant to the terms of the Loan Documents.

18. By reason of the foregoing, WFB is entitled to judgment as against BSAC (i) in an amount not less than \$1,014,179.96, plus interest, late charges, attorneys' fees, costs and any other amounts due under the Loan Documents and (ii) awarding WFB the right to take possession of the BSAC Collateral.

SECOND COUNT
(Breach Of Contract Against Orr)

19. WFB repeats and realleges the allegations set forth in Paragraphs "6", "7", "8", "11" and Paragraphs "13" through "17" of this Complaint as if fully set forth herein.

20. Pursuant to the terms of the Guaranty, Orr is obligated to pay all of the Obligations to WFB.

21. Despite the foregoing and demand by WFB, Orr has failed to pay any of the Obligations to WFB.

22. By reason of his failure to pay the Obligations to WFB, Orr has breached the terms of the Guaranty.

23. WFB has performed all terms and conditions precedent on its part, to the extent that there are any, to be performed pursuant to the terms of the Guaranty.

24. By the reason of the foregoing, WFB is entitled to judgment as against Orr in an amount not less than \$1,014,179.96, plus interest, plus attorneys' fees, costs and any other amounts due under the Loan Documents and the Guaranty, all of which will continue to accrue.

THIRD COUNT
(Replevin Against Defendants)

25. WFB repeats and realleges the allegations set forth in Paragraphs "6" through "11", Paragraphs "13" through "17" and Paragraphs "20" through "23" of this Complaint as if fully set forth herein.

26. Upon information and belief, the Collateral is located in or about the Office and is presently in the possession and control of one or more of the Defendants.

27. Upon information and belief, the in-place and in-use value of the Collateral is an amount less than the Obligations.

28. A description of the Collateral pledged to GBB (and its successors) is set forth in the Loan Documents and the Guaranty.

29. By reason of BSAC's default under the terms of the Loan Documents and Orr's default under the Guaranty, WFB is entitled to immediate possession of all of the Collateral.

30. Despite demand for surrender, the Defendants have wrongfully retained the Collateral.

31. Upon information and belief, the Defendants have refused to surrender Collateral in order that they continue to profit from its use.

32. Upon information and belief, the Collateral has not been taken for a tax, assessment, or fine pursuant to law or under an execution or attachment.

33. By reason of the foregoing, WFB is entitled to a judgment (i) awarding it the right to take possession of the Collateral, wherever located and (ii) against Defendants, jointly and severally, in an amount to be determined at the time of trial, but not less than the money damages sustained by reason of Defendants' continued wrongful detention of the Collateral.

WHEREFORE, WFB respectfully demands relief as follows:

(a) Judgment in favor of WFB and against BSAC on the First Count (Breach of Contract), in an amount not less than \$1,014,179.96, plus interest, late charges, attorneys' fees, costs and any other amounts due under the Loan Documents;

(b) Judgment in favor of WFB and against Orr on the Second Count (Breach of Contract), in an amount not less than \$1,014,179.96, plus interest, late charges, attorneys' fees, costs and any other amounts due under the Loan Documents and the Guaranty;

(c) Judgment in favor of WFB and against Defendants, jointly and severally, on the Third Count (Replevin), (i) awarding it the right to take possession of the Collateral, wherever located and (ii) against Defendants, jointly and severally, in an amount to be determined at the time of trial, but not less than the money damages sustained by reason of Defendants' continued wrongful detention of the Collateral;

(d) for costs of suit against the Defendants, jointly and severally; and

(e) for such other and further relief which as to this Court seems just and proper.

Respectfully submitted this 21st day of March, 2011.



JASON H. BARUCH
Florida Bar No. 10280

JUSTIN J. HORAN
Florida Bar No. 0060871

TRENAM, KEMKER, SCHARF, BARKIN,
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