

**Thomas Knapp and Jodi Knapp v. TOUSA Homes, Inc., Preferred Home Mortgage Company and Suntrust Bank: Adversary Complaint for Declaratory Judgment and Damages.**

Thomas Knapp and Jodi Knapp (together, the “Knapps”) filed a complaint (the “Complaint”) commencing an adversary proceeding against (i) TOUSA Homes, Inc. (“TOUSA Homes”); (ii) Preferred Home Mortgage Company (“Preferred”), a non-Debtor affiliate of TOUSA, and (iii) Suntrust Bank (“Suntrust”). The Complaint seeks: (x) a declaratory judgment ordering the return of Knapp’s \$72,347 deposit (the “Deposit”) relating to the purchase of a home which was to be financed by Preferred and (y) damages (in the form of the return of the Deposit) against TOUSA Homes under the Florida Unfair and Deceptive Trade Practices Act (the “Act”).

On March 1, 2007, the Knapps entered into a contract (the “Contract”) with TOUSA Homes for the purchase of a home in Broward County, Florida for \$701,990 – \$561,592 of which was to be financed by the Knapps. To finance the purchase, the Knapps applied for a loan from Preferred. On July 29, 2007, Preferred issued a “Notice of Conditional Loan Approval” (the “Conditional Approval”) which required, as a condition of final loan approval, that the Knapps sell their Orlando residence (the “Orlando Residence”) for at least \$620,000, less real estate commissions and closing costs. The Knapps, however, have been unable to sell the Orlando Residence. Based on the foregoing, on February 1, 2008, Preferred denied the Knapps’ loan application on a final basis. On February 8, 2008, the Knapps made a written demand on TOUSA Homes for return of the Deposit. On March 11, 2008, TOUSA Homes denied the request asserting the Contract contained a financing contingency (the “Financing Contingency”), which was satisfied when the Knapps received the Conditional Approval.

The Knapps allege that, although TOUSA Homes’ sales representative (the “Representative”) informed the Knapps that the Contract contained the Financing Contingency, at the time of such representation, the Representative knew or should have known that there was really no Financing Contingency in the Contract because TOUSA Homes was aware that Preferred, TOUSA Homes’ non-Debtor affiliate, would issue the Conditional Approval with certain conditions, some of which would be beyond the Knapps’ control. The Knapps asserts that, because TOUSA Homes drafted the Contract, under principals of adverse construction, (i) the very provision granting the Knapps a Financing Contingency is irreconcilable with the provision that the Knapps shall not be excused from performance under the Contract for the Knapps’ failure or inability to satisfy any contingency required by the Conditional Approval and (ii) the Financing Contingency is irreconcilable with the Contract provision requiring that the Knapps allow TOUSA Homes to indefinitely extend the closing date to allow the Knapps time to obtain financing, thereby rendering the Contract void for lack of mutuality of performance. The Knapps argue that they have performed all obligations and duties required of them pursuant to the Contract, have been unable to qualify for a mortgage and, thus, are entitled to an immediate return of the Deposit.

On these allegations, the Knapps request a declaratory judgment that (i) the Financing Contingency was illusory and rendered the Contract void or voidable; (ii) the Financing Contingency was not met, or could not be met, thereby rendering the contract void or voidable; (iii) Suntrust (who currently holds the Deposit as escrow agent) must immediately return the Deposit to the Knapps; (iv) awards the Knapps costs and attorneys fees; and (v) grants such other relief as the Bankruptcy Court deems appropriate.

Further, the Knapps allege that TOUSA Homes' conduct is covered by the Act. The Knapps argue that the Conditional Approval effectively removed the Financing Contingency from the Contract by making final loan approval contingent upon the sale of the Orlando Residence. According to the Knapps, the Financing Contingency and the Conditional Approval, when read together, render the Contract illusory, and constitute an unconscionable act or deceptive act or practice in the conduct of trade or commerce under the Act. The Knapps demand the return of the Deposit as compensation for damages.

***Under the Federal Rules of Bankruptcy Procedure, the Debtors are required to file an answer to the Complaint by July 17, 2008.***