

IN THE DISTRICT COURT OF KINGFISHER COUNTY  
STATE OF OKLAHOMA

Kingfisher County, Oklahoma

**FILED**

DEC 15 2004

YVONNE DOW, COURT CLERK  
BY \_\_\_\_\_  
DEPUTY

WAYNE K. JANZEN; DUSTIN E. COLE; )  
MICHAEL ROSS; FOR THEMSELVES )  
AND ALL OTHERS SIMILARLY SITUATED, )

Plaintiffs, )

V. )

GOLD BANC CORPORATION, INC.; )  
GBC KANSAS, INC., AND GOLD )  
BANK, A KANSAS BANK. )

Defendants. )

Case Number CJ-2004-181

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**FIRST AMENDED PETITION**

Plaintiffs, on behalf of themselves and a class of all those similarly situated, sue the above-named defendants and state:

**INTRODUCTION**

1. This class action is brought to recover damages and attorney fees for violations of statutory and common law committed by Gold Banc Corporation, Inc. ("Gold Banc"); GBC Kansas, Inc., and Gold Bank, a Kansas Bank ("Gold Bank").

2. Gold Bank serves as a "Preferred Lender" in the Farm Service Agency ("FSA") guaranteed loan program ("GLP"), in which qualifying agricultural loans are guaranteed by the United States of America for up to 95% of the loan principal. Gold Bank participates in the FSA Interest Assist Program ("IAP") that provides for a 4% direct interest subsidy payment on guaranteed loans which must be credited to the borrower. For both programs, federal law requires that Gold Bank charge interest rates and fees that do not exceed the interest rates and fees it charges to its average agricultural customer ("AAR"). Gold Bank has engaged in a pattern and practice of charging interest rates and fees in excess of its AAR in conjunction with both the GLP and IAP. FSA funds which were paid to Gold Bank and/or Gold Banc for assistance to its agricultural borrowers participating in the IAP and/or GLP have instead been usurped by Gold Bank and Gold Banc pursuant to this scheme.

3. Gold Banc and Gold Bank have fraudulently concealed from the Plaintiffs material facts, giving rise to the causes of action described in this Petition, which constitute an implied exception to the Statute of Limitations, postponing the commencement of the running of any Statute of Limitations until discovery.

**PLAINTIFFS**

4. Plaintiff, Wayne K. Janzen, is a resident of Blaine County and was a participant in the FSA GLP.

5. Plaintiff, Dustin E. Cole, is a resident of Woodward County and was a participant in the FSA GLP.

6. Plaintiff, Michael Ross, is a resident of Alfalfa County and was a participant in the FSA GLP.

#### **DEFENDANTS**

7. Gold Banc Corporation, Inc., is a Kansas corporation which owns and operates Gold Bank Kansas, Inc., a Kansas Corporation, which owns and operates Gold Bank, a Kansas Bank, which operates banks throughout the states of Kansas and Oklahoma, including Kingfisher County, Oklahoma, under the name Gold Bank.

8. Gold Bank, a Kansas Bank, is the successor to Gold Bank, an Oklahoma Bank, organized and existing under the laws of the State of Oklahoma. Gold Bank, an Oklahoma Bank, previously conducted commercial banking business as People First Bank and, prior to that, as First National Bank of Hennessey.

#### **JURISDICTION AND VENUE**

9. Jurisdiction and venue are proper in Kingfisher County, Oklahoma, because the Defendants have property and transact business in said County, and because the causes of action described in this Petition, or parts thereof, arose in said County.

#### **PLAINTIFFS' CLASS ACTION ALLEGATIONS**

10. Plaintiffs bring this action individually and as the representatives of all members of a plaintiff class pursuant to 12 O.S. §2023(B)(3). The class of persons represented by Plaintiffs is composed of all those Gold Bank agricultural borrowers with loans that are or were guaranteed by the United States of America through the FSA GLP.

11. On information and belief, Plaintiffs allege that such persons number in the hundreds and constitute a class so numerous that joinder of all class members is impracticable.

12. Plaintiffs' claims are typical of the claims of the class. Plaintiffs are adequate representatives of the class because their interests do not conflict with the interests of the class and because they are represented by counsel both skilled and experienced in class actions and commercial banking litigation.

13. Questions of law and fact common to the Plaintiffs' class include:

- a. Did the class member participate in the FSA GLP and/or IAP serviced by Gold Bank?
- b. Was the class member charged interest rates and/or fees on FSA guaranteed loans in excess of the AAR?
- c. Did Gold Bank's actions with respect to the transactions with class members constitute a breach of contract?

- d. Was Gold Bank and/or Gold Banc unjustly enriched through its participation in the FSA GLP and/or IAP at the expense of the class member?
- e. Was Gold Bank and/or Gold Banc negligent in respect to its duty to the class member?
- f. Did Gold Bank's and/or Gold Banc's actions constitute constructive fraud, fraud and/or deceit?
- g. Did the class member suffer damages as a result of Gold Bank's and/or Gold Banc's actions?
- h. Was Gold Bank's and/or Gold Banc's conduct with respect to the FSA GLP and/or IAP in reckless disregard for the rights of others, intentional and/or with malice such that the award of punitive damages is appropriate?

14. These questions of law and fact are common to the plaintiff class and predominate over questions affecting only individual members. A class action is superior to other available methods for a fair and efficient adjudication of the controversy because such action is uniquely suited to determining the rights of and damages to hundreds of similarly situated individuals while minimizing the amount of legal resources which must be utilized to resolve the controversy.

**COUNT I**  
**(Breach of Contract)**

15. Plaintiffs reallege and incorporate by reference the allegations made in paragraphs 1-14 of this Petition.

16. Implied in every contract under Oklahoma law is the obligation of good faith and fair dealing.

17. Also implied in every contract under Oklahoma law is the obligation to perform the duties agreed to be done with care, skill, reasonable experience and faithfulness.

18. Through the acts described above, Gold Bank and Gold Banc have breached their contracts with the class with respect to the FSA guaranteed loans.

19. The class should receive more than \$10,000.00 for the damages suffered as a result of the Defendants' actions.

**COUNT II**  
**(Negligence)**

20. Plaintiffs reallege and incorporate by reference the allegations made in paragraphs 1 through 19 of this Petition.

21. Gold Bank and Gold Banc have been negligent in the performance of their duties in servicing FSA guaranteed loans with respect to the class.

22. The class should receive more than \$10,000.00 for damages suffered as a result of Defendants' actions.

23. Gold Bank and Gold Banc have been guilty of reckless disregard for the rights of the class, have acted intentionally and with malice toward the class, entitling the class to an award of punitive damages in excess of \$10,000.00.

**COUNT III**  
**(Unjust Enrichment)**

24. Plaintiffs reallege and incorporate by reference the allegations made in paragraphs 1-23 of this Petition.

25. Gold Bank and Gold Banc were unjustly enriched by realizing increased profits from their wrongful conduct; and such enrichment was at the expense of the class members.

26. There is no justification for such enrichment or impoverishment.

27. It is contrary to equity and good conscience for Gold Bank and Gold Banc to retain the benefits from the federal program which has come at the expense of the class.

28. The class should receive more than \$10,000.00 for the damages suffered as a result of the Defendants' actions.

**COUNT IV**  
**(Constructive Fraud/Fraud/Deceit)**

29. Plaintiffs reallege and incorporate by reference the allegations made in paragraphs 1-28 of this Petition.

30. Gold Bank and Gold Banc were fully aware of the rules and regulations governing the FSA GLP. Nevertheless, Gold Bank engaged in a pattern and practice of charging its borrowers participating in the FSA GLP interest rates and fees in excess of its AAR.

31. Gold Bank and Gold Banc did not disclose to its borrowers participating in the FSA GLP that Gold Bank was charging interest rates and fees in excess of its AAR.

32. The class members were misled to their detriment by the actions of Gold Bank and/or Gold Banc, and, as a consequence, class members have suffered damages in excess of \$10,000.00 as a result of the Gold Bank's and/or Gold Banc's fraud, constructive fraud and/or deceit.

33. In connection with Gold Bank's and/or Gold Banc's fraud, constructive fraud and/or deceit, Gold Bank and Gold Banc have been guilty of reckless disregard for the rights of the class members, have acted intentionally and with malice toward the class members, entitling the class members to an award of punitive damages in excess of \$10,000.00.

**COUNT V**  
**(Usury)**

34. Plaintiffs reallege and incorporate by reference the allegations made in paragraph 1-33 of this Petition.

35. Gold Bank charged class members interest rates and fees on FSA guaranteed loans in excess of its AAR in violation of FSA Rules and Regulations.

36. Gold Bank's charging class members unlawful interest rates and fees on FSA guaranteed loans constitutes usury.

37. The class should receive more than \$10,000.00 for damages suffered as a result of Defendants' actions.

38. Gold Banc and Gold Bank have been guilty of reckless disregard for the rights of the class members, have acted intentionally and with malice toward the class members, entitling class members to an award of punitive damages in excess of \$10,000.00.

39. In addition to the damages claimed in paragraphs 38 and 39 above, and as a result of Gold Bank's charging usurious interest rates and fees on FSA guaranteed loans, class members are entitled to the remedies provided in the Constitutions and Statutes of the States of Oklahoma and Kansas.

**COUNT VI**  
**(Injunction)**

40. Plaintiffs reallege and incorporate by reference the allegations made in paragraphs 1-39 of this Petition.

41. The actions of Gold Bank and/or Gold Banc complained of in paragraph 2 above are continuing to the detriment of class members still obligated on guaranteed loans to Gold Bank, and this Court should invoke its equitable powers to enjoin Gold Bank and/or Gold Banc from continuing their pattern and practice of charging the borrowers participating in the FSA GLP interest rates and fees in excess of its AAR.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs demand:

A. Judgment against each of the Defendants in favor of the Plaintiffs and each member of the plaintiff class for damages, both actual and punitive, in an amount in excess of \$10,000.00 each, as have been sustained by the Plaintiffs and each member of the plaintiff class, together with interest and their costs of suit, including a reasonable attorney's fee; and

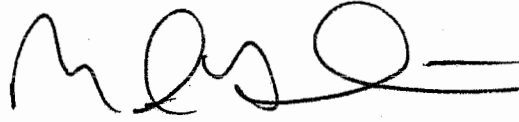
B. Injunctive relief against each of the Defendants enjoining them from continuing their pattern and practice of charging their borrowers participating in the Farm Service Agency Guaranteed Loan Program interest rates and fees in excess of its average agricultural rate; and

C. Such other and further relief as may be necessary and appropriate.

Respectfully submitted,

**MITCHELL & DECLERCK, P.L.L.C.**

By:



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**ATTORNEY LIEN CLAIMED**

**CERTIFICATE OF MAILING**

This is to certify that on the 15<sup>th</sup> day of December, 2004, I mailed and deposited in the United States Post Office at Enid, Oklahoma, a true and correct copy of the above and foregoing, postage prepaid thereon, to:

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A handwritten signature in black ink, appearing to read 'M. C. Bigheart', written over a horizontal line.

Michael C. Bigheart