

Michelle L. Boutin, ABA No. 8611097
JERMAIN, DUNNAGAN & OWENS
3000 A Street, Suite 300
Anchorage, Alaska 99503
Telephone (907) 563-8844
Facsimile (907) 563-7322
Attorneys for Plaintiff Independence Bank

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF ALASKA**

In re:

WRANGELL SEAFOODS, INC.,

Debtor.

Case No. K09-00012-DMD
Chapter 11

INDEPENDENCE BANK, a Rhode Island
banking corporation,

Plaintiff,

vs.

WRANGELL SEAFOODS, INC., a
Washington corporation, and ALASKA
GROWTH CAPITAL BIDCO, INC., an
Alaska corporation,

Defendants.

Adv. Case No. _____

COMPLAINT FOR DECLARATORY RELIEF
[TO DETERMINE LIEN PRIORITY]

COMES NOW INDEPENDENCE BANK, a Rhode Island banking corporation ("Plaintiff"), and states its Complaint against Defendants WRANGELL SEAFOODS, INC., a Washington corporation doing business in Alaska, and ALASKA GROWTH CAPITAL BIDCO, INC., an Alaska corporation ("Defendants") as follows.

I. JURISDICTION AND VENUE

1. This adversary proceeding arises out of and is related to the Chapter 11 case *In re Wrangell Seafoods, Inc.*, Case No. K09-00012-DMD. This adversary proceeding is brought pursuant to Bankruptcy Rule 7001.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1334(b); and 28 U.S.C. § 2201. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

II. PARTIES

4. Plaintiff, Independence Bank, is a Rhode Island banking corporation in good standing whose principal address is 1370 South Country Trail, East Greenwich, Rhode Island 02818. Plaintiff has standing to bring this action.

5. Wrangell Seafoods, Inc. (“Wrangell Seafoods”) is the Chapter 11 debtor-in-possession and is a Washington corporation in good standing whose principal address is 64 Shakes Street, Wrangell, Alaska 99929, and mailing address is P.O. Box 908, Wrangell, Alaska 99929.

6. Alaska Growth Capital BIDCO, Inc. (“AGCBI”) is an Alaska corporation in good standing whose principal office address is 3900 C Street, Suite 302, Anchorage, Alaska 99503.

III. FACTS RELEVANT TO ALL CAUSES OF ACTION

7. Plaintiff realleges and incorporates paragraphs 1 through 6.

8. On May 27, 2007, a Business Loan Agreement was entered into between Wrangell Seafoods and AGCBI, and Wrangell Seafoods executed a Promissory Note to AGCBI in the amount of \$5,600,000.

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9. At about the same time that AGCBI committed to lend \$5,600,000 to Wrangell Seafoods, on or about May 23, 2007, AGCBI contacted the U. S. Small Business Administration and subsequently Independence Bank requesting a loan be made to Wrangell Seafoods for an operating line of credit.

10. Wrangell Seafoods and AGCBI represented to the U. S. Small Business Administration and to Independence Bank that the AGCBI \$5,600,000 loan to Wrangell Seafoods was a U. S. Department of Agriculture (“USDA”) ninety percent (90%) guaranteed loan.

11. The U. S. Small Business Administration and Independence Bank approved a loan of \$1,500,000 to Wrangell Seafoods based upon and in reliance upon the representation made by Wrangell Seafoods and AGCBI that the AGCBI loan of \$5,600,000 to Wrangell Seafoods was a USDA guaranteed loan. But for the representation that the \$5,600,000 loan to Wrangell Seafoods was a USDA guaranteed loan and that Wrangell Seafoods would meet the conditions precedent to maintain and secure the USDA guaranty, neither the U. S. Small Business Administration nor Independence Bank would have agreed to make the \$1,500,000 loan to Wrangell Seafoods.

12. On June 29, 2007, a Loan Agreement was entered into by and between Independence Bank, Wrangell Seafoods and guarantors. A true and correct copy of the Loan Agreement is attached hereto as Exhibit A.

13. Pursuant to the Loan Agreement, Independence Bank agreed to lend Wrangell Seafoods as Borrower, the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) on a revolving loan basis and on June 29, 2007. The Loan Agreement states that the revolving line of credit shall be utilized by Wrangell Seafoods for the purchase of inventory to be exported, and when the line is drawn upon, it shall be paid in full by the next incoming sales wire. In addition to the

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purchase of inventory, at the request of Wrangell Seafoods and with urging of AGCBI, approval was granted by U. S. Small Business Administration and Independence Bank to Wrangell Seafoods for draw(s) on the line of credit for purchase of equipment and services necessary to its plant refurbishing and business operations.

14. On June 29, 2007, Wrangell Seafoods, by and through Terrence D. Montford, President, executed a Note to the U. S. Small Business Administration in the amount of \$1,500,000 (“SBA Note”). A true and correct copy of the SBA Note is attached as Exhibit B.

15. On the representation of Wrangell Seafoods and AGCBI that the AGCBI \$5,600,000 loan to Wrangell Seafoods was a USDA guaranteed loan and was also secured by a prior perfected security interest in inventory, accounts, and equipment owned by Wrangell Seafoods, the Loan Agreement states that the SBA Note is secured by: a first position security interest under the Uniform Commercial Code in all inventory of any kind and accounts receivable now owned or hereafter acquired or created, including all substitutions and accessions thereto and the proceeds thereof; a second position security interest under the Uniform Commercial Code in all equipment of any kind now owned or hereafter acquired or created, including all substitutions and accessions thereto and the proceeds thereof; an assignment and first position security interest under the Uniform Commercial Code in all of Wrangell Seafoods’ contracts and proceeds thereof; and a deed of trust on real property owned by Wrangell Seafoods located at 641 Shakes Street, Wrangell, Alaska.

16. On the representation of AGCBI and Wrangell Seafoods that the “USDA Note and its lien positions have priority over the SBA Note and its lien positions,” on June 26, 2007, a Lien Subordination Agreement and Intercreditor Agreement was entered into by and between Independence Bank and AGCBI. Pursuant to the Lien Subordination Agreement, AGCBI

subordinates in interest in inventory and receivables to Independence Bank: “Alaska Growth Capital BIDCO, Inc., subordinates to Independence Bank any security interest, lien, claim or other interest it may have pursuant to that certain Promissory Note and Security Agreement dated May 25, 2007, in the original principal amount of \$5,600,000.00 in and to the following property . . . all export inventory described as unprocessed seafood inventory; work in process seafood inventory; finished seafood inventory; Export Accounts Receivable; whether presently held or owned or acquired at any time in the future.” A true and correct copy of the Lien Subordination Agreement is attached hereto as Exhibit C. A true and correct copy of the Intercreditor Agreement is attached hereto as Exhibit D.

17. Neither the Lien Subordination Agreement nor the Intercreditor Agreement were entered into or intended to subordinate any superior interest held by Independence Bank to any interest of AGCBI. Neither the Lien Subordination Agreement nor the Intercreditor Agreement states that Independence Bank subordinates any interest of Independence Bank to that of AGCBI.

18. The Intercreditor Agreement recites that AGCBI loaned Wrangell Seafoods \$5,600,000 as evidenced by a USDA Guaranteed Promissory Note dated May 25, 2007. The Intercreditor Agreement states that “[i]f and in the event that either party hereto shall send notice of any kind or nature to the Debtor concerning the USDA Loan Documents of the SBA Loan Documents, the party sending notice to the Debtor shall send a copy of said notice to the other creditor.”

19. The stated conditions precedent to the Lien Subordination Agreement and Intercreditor Agreement were in fact mistaken, false, untrue and/or misleading, including, but not limited to the representation that the loan from AGCBI to Wrangell Seafoods was a USDA

guaranteed loan; that AGCBI had a prior perfected UCC security interest in equipment to secured the \$5,600,000 loan.

20. On July 6, 2007, Independence Bank filed a UCC Financing Statement with the Washington State Department of Licensing, filing No. 2007-190-2981-5, a true and correct copy of which is attached hereto as Exhibit E.

21. On October 25, 2007, AGCBI filed a UCC Financing Statement with the Washington State Department of Licensing, filing No. 2007-298-5898-6, asserting collateral interests to secure the \$5,600,000 loan. A true and correct copy of State of Washington on line information concerning AGCBI's UCC filing dated October 25, 2007, is attached hereto as Exhibit F (AGCBI filed no documentation in support of its two proof of claims filed in Case No. K09-00012-DMD, one for the \$5,600,000 Note; one for the note purchased from the City of Wrangell).

22. At some point, AGCBI purchased a note from the City of Wrangell. That note is secured by a UCC financing statement filed in the State of Washington on March 1 or March, 2005, and upon information and belief the security interest was assigned to AGCBI. The interest assigned from the City of Wrangell to AGCBI is not subject of this Complaint.

23. On April 4, 2008, a Notice of Acceleration and Demand for Payment on the SBA Note was sent to Wrangell Seafoods. A true and correct copy of the April 4, 2008, Notice of Acceleration and Demand for Payment is attached hereto as Exhibit G.

24. Despite demand for payment, Wrangell Seafoods failed and or refused to pay the amounts due on the SBA Note prior to the date of the filing of the Chapter 11 petition. Wrangell Seafoods filed its petition for relief on January 9, 2009. As of January 9, 2009, the amount due on

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the SBA Note was \$452,571.11 in principal; \$162,348.39 in unpaid interest; \$7,822.95 in late fees; \$25,380.10 in costs, for a total of \$648,122.50 which continues to accrue interest.

IV. FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF AND DETERMINATION, LIEN PRIORITY VOIDING THE SUBORDINATION AGREEMENT – USDA GUARANTY

25. Plaintiff realleges and incorporates paragraphs 1 through 24.

26. The Subordination Agreement and Intercreditor Agreement was entered into by Independence Bank based upon the representations made by Wrangell Seafoods and AGCBI that the loan from AGCBI to Wrangell Seafoods is a USDA guaranteed loan and that Wrangell Seafoods would be held by AGCBI to all the conditions precedent to maintain the USDA guaranty.

27. The SBA loan from Independence Bank to Wrangell Seafoods was made in reliance upon the representations made by Wrangell Seafoods and AGCBI that the loan from AGCBI to Wrangell Seafoods was a USDA guaranteed loan and that Wrangell Seafoods would be held by AGCBI to all the conditions precedent to maintain the USDA guaranty.

28. The loan from AGCBI to Wrangell Seafoods is not in fact a USDA guaranteed loan.

29. The loan from ACGBI to Wrangell Seafoods may have preliminarily held a USDA commitment to guaranty the loan, but Wrangell Seafoods failed to perform conditions precedent to secure the USDA guaranty commitment and AGCBI failed to monitor and hold Wrangell Seafoods to the conditions precedent to secure the USDA guaranty.

30. The Subordination Agreement and Intercreditor Agreement are based upon the fact and representation that the loan from AGCBI to Wrangell Seafoods was and would be USDA guaranteed, which is mistaken, false, untrue and/or misleading.

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31. AGCBI was required to provide Independence Bank with “notice of any kind or nature to the Debtor concerning the USDA Loan Documents. . .”

32. AGCBI failed to provide Independence Bank with notice of Wrangell Seafoods non compliance with the USDA loan guaranty requirements and failed to keep Independence Bank informed of the pending and eventual loss of the USDA guaranty.

33. The Subordination Agreement and Intercreditor Agreement should be found void as AGCBI breached its obligations under the Intercreditor Agreement.

34. The Subordination Agreement and Intercreditor Agreement should be found void as Independence Bank entered into the agreements based upon facts which are mistaken, false, untrue and/or misleading.

35. An Order should be entered voiding the June 26, 2007, Lien Subordination Agreement and Intercreditor Agreement.

V. SECOND CAUSE OF ACTION IN THE ALTERNATIVE FOR DECLARATORY RELIEF AND DETERMINATION, LIEN PRIORITY VOIDING THE SUBORDINATION AGREEMENT – NO PRIOR UCC FILING

36. Plaintiff realleges and incorporates paragraphs 1 through 35.

37. The Subordination Agreement and Intercreditor Agreement were entered into by Independence Bank based upon the representations made by Wrangell Seafoods and AGCBI that the loan from AGCBI to Wrangell Seafoods was secured by a first position perfected UCC security interest.

38. The loan from AGCBI to Wrangell Seafoods is not in fact secured by a first position perfected UCC security interest, as AGCBI failed to record a UCC financing statement in

Washington State, Wrangell Seafoods' place of incorporation, until October 25, 2007, to secure the \$5,600,000 loan.

39. The Subordination Agreement and Intercreditor Agreement are based upon facts, the prior perfected UCC security interest, which is mistaken, false, untrue and/or misleading.

40. The Subordination Agreement and Intercreditor Agreement should be found void as Independence Bank entered into the agreements based upon facts which are mistaken, false, untrue and/or misleading.

41. An Order should be entered voiding the June 26, 2007, Lien Subordination Agreement and Intercreditor Agreement.

VI. THIRD CAUSE OF ACTION FOR DETERMINATION OF LIEN PRIORITY RANKING PURSUANT TO THE UNIFORM COMMERCIAL CODE

42. Plaintiff realleges and incorporates paragraphs 1 through 41.

43. Pursuant to the Uniform Commercial Code ("UCC"), as codified by the Alaska Statutes, security interests in the same collateral rank according to priority in time of filing or perfection.

44. The SBA Note is secured by a prior perfected interest under the Uniform Commercial Code, recording dated July 6, 2007, prior in time to the UCC filing of AGCBI, recording dated October 25, 2007.

45. The mechanics of the ranking of UCC security interests in the same collateral is not altered by knowledge of one creditor of another creditor's prior in time, but unrecorded, security agreement.

46. An Order should be entered that, pursuant to the Uniform Commercial Code, as codified by the Alaska Statutes, the SBA Note is secured by a first and prior security interest by virtue of the July 6, 2007 recording, to the security interest of AGCBI in personal property owned by Wrangell Seafoods, including inventory, equipment and receivable, recording dated October 26, 2007.

VII. FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF AND DETERMINATION, LIEN PRIORITY APPLYING THE PLAIN MEANING OF THE SUBORDINATION AGREEMENT AND INTERCREDITOR AGREEMENT

47. Plaintiff realleges and incorporates paragraphs 1 through 46.

48. Pursuant to the plain reading of the Subordination Agreement and Intercreditor Agreement, AGCBI simply subordinated its UCC security interest in accounts receivable and seafood inventory to the UCC security interest of Independence Bank in accounts receivable and inventory.

49. Neither the Subordination Agreement nor the Intercreditor Agreement state the converse, that Independence Bank subordinates its perfected security interest in equipment pursuant to the Uniform Commercial Code to that of AGCBI.

50. Pursuant to the plain reading of the language of the Subordination Agreement and Intercreditor Agreement, only the security interest of AGCBI in inventory and receivables is subordinated to the UCC security interest in inventory and receivables of owned by Wrangell Seafoods held by Independence Bank.

51. Pursuant to the plain reading of the language of the Subordination Agreement and Intercreditor Agreement, Independence Bank did not agree to subordinate its interest in equipment to that of Wrangell Seafoods.

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52. Independence Bank recorded its interest in equipment owned by Wrangell Seafoods prior in time to the UCC financing statement recorded by AGCBI.

53. Independence Bank has a prior in time perfected UCC financing statement in equipment owned by Wrangell Seafoods and the plain reading of the Subordination Agreement and Intercreditor Agreement does not alter the UCC ranking.

54. An Order should be entered that pursuant to the plain reading of the language of the Subordination Agreement and Intercreditor Agreement, Independence Bank did not agree to subordinate its interest in equipment to that of Wrangell Seafoods.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for the following relief:

A. An Order voiding the June 26, 2007, Lien Subordination Agreement and Intercreditor Agreement as AGCBI breached its obligations under the Intercreditor Agreement and also the same were entered into based upon the fact and representation that the loan from AGCBI to Wrangell Seafoods was and would be USDA guaranteed, which is mistaken, false, untrue and/or misleading.

B. In the alternative, an Order voiding the June 26, 2007, Lien Subordination Agreement and Intercreditor Agreement as the same were entered into based upon the fact and representation that the loan from AGCBI to Wrangell Seafoods was secured by a prior perfected UCC security interest, which is mistaken, false, untrue and/or misleading.

C. An Order that pursuant to the Uniform Commercial Code, as codified by the Alaska Statutes, the SBA Note is secured by a first and prior position UCC security interest by virtue of the July 6, 2007 recording, to that of AGCBI in personal property and equipment

