

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

SAEHAN BANK,)
)
 Plaintiff,)
)
)
 v.)
)
)
 STEVE YONG KIM; YOUNG SOON KIM;)
 THE LODGING, INC., an Oklahoma)
 corporation; and the SMALL BUSINESS)
 ADMINISTRATION, an agency of the)
 UNITED STATES OF AMERICA)
)
 Defendants.)
)
 _____)

Case No. 09-CV-740-TCK-PJC

**AMENDED ANSWER, COUNTERCLAIM, AND AMENDED CROSSCLAIM OF
DEFENDANT UNITED STATES OF AMERICA
on behalf of its Agency, the Small Business Administration¹**

The United States of America, on behalf of its agency the Small Business Administration (hereinafter the United States), by Thomas Scott Woodward, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, pursuant to Fed. R. Civ. P. 15(a)(2) and Scheduling Order item 2. [Dkt.#15], as last amended by Order [Dkt.#25], hereby amends its answer [Dkt.#8] to incorporate its answer [Dkt.#8], to include the following stated counterclaim against Saehan Bank, and to amend its Crossclaim against Steve Yong Kim and Young Soon Kim [Dkt.#9].

¹ The United States is the proper party defendant under 28 U.S.C. Sec. 2410. Request is made hereby to change the style to reflect the United States as Defendant.

I. INTRODUCTION

1. The United States, by its undersigned attorneys, brings these counterclaims against Saehan Bank under the False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 12 U.S.C. § 1833a, and under the common law theories of breach of written contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment.

2. The United States, by its undersigned attorneys, brings these amended crossclaims against Steve Yong Kim and Young Soon Kim (hereinafter the Kims) under the False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 12 U.S.C. § 1833a.

3. This action arises from the conduct of Saehan Bank and the Kims in withholding material information from and making false statements to the Small Business Administration (hereinafter SBA) to induce the SBA to fund a loan under the 504 loan program (13 C.F.R. §§ 120.800-120.991) to the Kims in order to fully repay a loan in the amount of \$1,650,000.00 made by Saehan Bank to the Kims, secured by a mortgage on the Kims' property known as the Ramada Inn, located at 1010 North Garnett Road in Tulsa, Oklahoma, being one and the same as the property described in Paragraph 7 of Plaintiff Saehan Bank's Petition [Dkt.#2-2] (hereinafter "the property").

II. THE PARTIES

4. The United States brings these counterclaims and amended crossclaims on behalf of the Small Business Administration, a federal agency.

5. Plaintiff and counterclaim-defendant Saehan Bank is a corporation that was doing business in the Northern District of Oklahoma at all times material to this action.

6. Defendants and crossclaim-defendants the Kims reside in the Northern District of Oklahoma and were doing business in this District at all times material to this action.

III. JURISDICTION AND VENUE

7. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3732. The Court possesses supplemental jurisdiction to entertain the common law and equitable causes of action pursuant to 28 U.S.C. § 1367(a). The Court may exercise personal jurisdiction over Saehan Bank and the Kims pursuant to 31 U.S.C. § 3732(a) and because they transact business in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as a substantial part of the events giving rise to the claims described herein occurred in this District.

IV. STATEMENT OF FACTS

A. The 504 Loan Program

9. The SBA's 504 Loan Program offers small-businesses long-term, fixed-rate financing to acquire major fixed assets for expansion or modernization.

10. A Certified Development Company (CDC) is a nonprofit corporation certified by the SBA that generates, closes, and services 504 loans.

11. Financing of 504 projects typically consists of (1) a contribution from the borrower covering approximately 10 percent of the project costs; (2) a loan obtained from a CDC and assigned to the SBA, covering approximately 40 percent of the project costs and certain administrative costs, collateralized by a second lien on the project property; and (3) a loan secured from a private sector lender covering the remainder of the project costs (approximately 50 percent) and collateralized by a first lien on the project property. 13 C.F.R. § 120.801, § 120.900.

12. In general, a borrower applies for 504 financing through a CDC. If the SBA approves the loan application, the SBA issues a loan authorization agreeing to guarantee part of the financing for the project if certain conditions are met. After the loan authorization, projects usually require interim financing before the completion of the 504 project. This interim financing is often provided by the same private sector lender that provides a portion of the permanent financing. Once the 504 project is completed, the CDC is responsible for closing the 504 loan. If all the requirements of the loan authorization are met, the loan is bundled with other loans and sold on the public market as a debenture. The debenture is guaranteed 100 percent by the SBA with the full faith and credit of the United States. Proceeds from the sale of the debenture fund the 504 loan and pay off the interim loan.

13. Before the 504 loan closing, the interim lender, the borrower, and the CDC must certify that since the date of the loan application there has been no unremedied substantial adverse change in the borrower's financial condition or ability to repay the 504 loan. 13 C.F.R. § 120.892.

14. The SBA may decline to close the debenture, direct the transfer of the 504 loan to another CDC, or cancel its guarantee of the debenture prior to sale if the CDC, third party lender, or the borrower failed to disclose or misrepresented a material fact to the SBA regarding the project or the 504 loan, or if the SBA determines that there has been an unremedied material adverse change since the 504 loan was approved. 13 C.F.R. § 120.960.

B. False Claims and False Statements in Connection with the Kims' 504 Loan

15. On August 30, 2007, the SBA issued a 504 loan authorization for the Kims' purchase of the property. On the same date, Saehan Bank made two loans to the Kims, secured by mortgages on the property. The first loan ("third party loan"), Loan #9793191, was in the amount of \$3,025,000.00, and the second loan ("interim loan"), Loan #9793193, was in the amount of \$1,650,000.00. The interim loan was to be paid off by the 504 SBA loan proceeds once the SBA 504 loan closed and was funded by public debenture sale. Proceeds from the sale of the debenture would also be used to pay administrative costs, bringing the total debenture amount to \$1,697,000.00.

16. Under the terms of the third party loan, the Kims were to make regular monthly payments of \$25,134.82 beginning September 30, 2007. The Kims were to make regular monthly payments of all accrued interest on the interim loan beginning September 30, 2007.

17. Loan documents for both the third party loan and the interim loan defined default to include failure to make any payment when due.

18. The Kims were not timely in making each of the first three required payments on both the third party loan and the interim loan, incurring automatic late charges each month.

19. On January 23, 2008, the SBA, through the CDC, entered into two written agreements with Saehan Bank concerning the property: a Third Party Lender Agreement [Dkt.#8-2 at 25-32] and an Interim Lender Certification. A true and correct copy of said Interim Lender Certification is attached as Exhibit A. These documents are pled as to their terms and substance as though set forth in full in this paragraph.

20. Under the terms of paragraph 7 of the Third Party Lender Agreement, Saehan Bank was required to give the SBA and the CDC written notice within thirty days in the event of default by the Kims on the third party loan. Saehan Bank was also required to give the SBA and the CDC written notice at least sixty days prior to foreclosure upon the property.

21. Under the terms of paragraph 3 of the Third Party Lender Agreement, Saehan Bank represented that all information provided to the CDC was accurate to the best of its knowledge and that it had not withheld any material information.

22. Under the terms of paragraph 6 of the Interim Lender Certification, Saehan Bank represented that it had no knowledge of any unremedied substantial adverse change in the financial condition of the Kims; that it had disclosed all material information to the CDC to ensure that the Interim Lender Certification was not misleading; and that the Kims were

current on their payments under said loan and were not otherwise in default on the interim loan.

23. Saehan Bank acknowledged in the Third Party Lender Agreement and in the Interim Lender Certification that the SBA and the CDC were relying on the information provided by Saehan Bank. Saehan Bank further acknowledged in the Third Party Lender Agreement that the CDC was acting on behalf of the SBA, an agency of the United States Government, and that any false statements made to the CDC could be considered false statements to the SBA.

24. The certifications identified in paragraphs 22 and 23 above were false. The Kims were not current on the interim loan at the time Saehan Bank executed the Interim Lender Certification, because the December 30, 2007 payment on the interim loan was overdue and was not paid until on or around February 7, 2007. Saehan Bank did not disclose to the CDC that the Kims had not been timely in making its first three payments on both the third party loan and the interim loan.

25. After January 23, 2008, the Kims repeatedly made late and partial payments on both the interim loan and the third party loan.

26. On or around July 29, 2008, Saehan Bank paid Steve Yong Kim \$100,000. This money was applied toward repayment of the third party loan and the interim loan.

27. On October 7, 2008, Saehan Bank provided the Kims a working capital loan, Loan #9793481, in the principal amount of \$120,000.00. The Kims used this money to pay delinquent taxes, including taxes relating to the property.

28. On October 10, 2008, the Kims and Saehan Bank entered into a Change in Terms Agreement under the third party loan that lowered the interest rate on the loan and reduced the monthly payment amount.

29. The 504 loan closed on November 6, 2008. The CDC executed the CDC Certification, certifying that there had been no unremedied substantial adverse change in the Kims' financial condition since the date of the application for the 504 loan.

30. On November 6, 2008, the Kims executed the Borrower and Operating Company Certification, certifying to the CDC and the SBA that there had been no unremedied substantial adverse change in the Kims' financial condition since the date of their application for the 504 loan. The Kims also certified that they were current on all federal, state, and local taxes.

31. The Kims' Borrower and Operating Company Certification was false.

32. Prior to the closing of the 504 loan, neither Saehan Bank nor the Kims notified the CDC or the SBA of any of the Kims' late payments on the third party loan or the interim loan. Prior to the closing of the 504 loan, neither Saehan Bank nor the Kims disclosed to the SBA or the CDC Saehan Bank's \$100,000 payment made to Mr. Kim on or around July 29, 2008. Prior to the closing of the 504 loan, neither Saehan Bank nor the Kims notified the CDC or the SBA of the \$120,000 loan to Mr. Kim to pay delinquent taxes (Loan #9793481). Prior to the closing of the 504 loan, neither Saehan Bank nor the Kims notified the CDC or the SBA of the Change in Terms Agreement.

33. The information regarding the Kims' financial circumstances that Saehan Bank and the Kims withheld from, or misrepresented to, the CDC and the SBA was material and had a natural tendency to influence the CDC's decision to close the 504 loan and the SBA's decision to fund the 504 loan.

34. If the SBA had known the information regarding the Kims' financial circumstances that Saehan Bank and the Kims withheld or misrepresented, the SBA would not have funded the 504 loan and expended the associated administrative costs.

35. On February 11, 2009, the SBA 504 loan funded, and \$1,650,000.00 was transmitted to the Kims' account at Saehan Bank to pay off the interim loan. On or about March 16, 2009, Saehan Bank released its second mortgage of the property.

36. Saehan Bank and the Kims knowingly presented or caused to be presented a false claim or claims for payment or approval to the United States.

37. Saehan Bank and the Kims were unjustly enriched in the amount of at least \$1,650,000.00.

**COUNTERCLAIMS AGAINST PLAINTIFF SAEHAN BANK
AND CROSSCLAIMS AGAINST DEFENDANTS THE KIMS**

FIRST CAUSE OF ACTION

(False Claims Act: Presentation of False Claims)

(Against Saehan Bank and the Kims)

36. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

37. Saehan Bank and the Kims knowingly presented or caused to be presented a false or fraudulent claim or claims for payment or approval to an officer, employee or agent of the United States, in violation of 31 U.S.C. § 3729(a)(1).

38. By virtue of the false or fraudulent claims that Saehan Bank and the Kims made or caused to be made, the United States is entitled to recover multiple damages and penalties under the False Claims Act.

SECOND CAUSE OF ACTION

(False Claims Act: Making or Using False Record or Statement)

(Against Saehan Bank and the Kims)

39. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

40. Saehan Bank and the Kims knowingly made, used, or caused to be made or used false records or statements material to a false or fraudulent claim or claims in violation of 31 U.S.C. § 3729(a)(1)(B).

41. By virtue of the false records or statements that Saehan Bank and the Kims made or caused to be made, the United States is entitled to recover multiple damages and penalties under the False Claims Act.

THIRD CAUSE OF ACTION

(FIRREA: Making False Statement to the SBA)

(Against Saehan Bank and the Kims)

42. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

43. By virtue of the conduct described above, Saehan Bank and the Kims knowingly made false statements to the SBA for the purpose of obtaining a loan; for the purpose of influencing the action of the SBA; or for the purpose of obtaining money, property, or anything of value, in violation of 15 U.S.C. § 645(a).

44. The false statements made by Saehan Bank and the Kims resulted in a pecuniary loss to the SBA. Under 12 U.S.C. § 1833a(b), Saehan Bank and the Kims are liable for a civil penalty not to exceed either \$1.1 million or the amount of the pecuniary loss to the SBA, whichever is greater.

FOURTH CAUSE OF ACTION

(Breach of Written Contract)

(Against Saehan Bank)

45. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

46. Saehan Bank committed material breaches of the Third Party Lender Agreement by failing to inform the SBA and the CDC in writing of the Kims' default within thirty days thereof, by failing to inform the SBA and the CDC in writing of intent to foreclose on the property at least sixty days beforehand, and by misrepresenting or failing to disclose material information regarding the Kims' financial circumstances.

47. By reason of Saehan Bank's material breaches of the Third Party Lender Agreement, the United States has been damaged.

FIFTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith
and Fair Dealing)

(Against Saehan Bank)

48. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

49. Saehan Bank, by gross recklessness and wanton negligence, breached the covenant of good faith and fair dealing that the law implies in every contract by failing to inform the SBA and CDC of the adverse change in the Kims' financial condition, their

failure to make the payments as required under the terms of the third party loan and the interim loan, their failure to pay the property taxes when due, and by providing inaccurate information as to the Kims' financial condition.

50. As a direct and proximate result of the acts and omissions of Saehan Bank, as described herein, and its breach of the covenant of good faith and fair dealing, the United States sustained monetary damages.

SIXTH CAUSE OF ACTION

(Unjust Enrichment and Restitution)

(Against Saehan Bank)

51. The United States repeats and realleges each allegation in paragraphs 1 through 37 as if fully set forth herein.

52. Because of the acts and omissions of Saehan Bank, including its breach of contract and breach of the implied covenant of good faith and fair dealing, as described herein, the SBA paid money to Saehan Bank which it was not entitled to receive.

53. Saehan Bank has therefore been unjustly enriched and the United States has been damaged.

54. The United States is entitled to restitution, such amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that judgment be entered in its favor against Saehan Bank and/or the Kims, jointly and severally, as follows:

1. On the First and Second Causes of Action under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties as required by law, and such other and further relief as the Court deems just and proper.

2. On the Third Cause of Action under FIRREA, for a civil penalty up to maximum amount allowed under FIRREA, and such other and further relief as the Court deems just and proper.

3. On the Fourth and Fifth Causes of Action, for monetary damages, plus interest, costs, and expenses, and such other and further relief as the Court deems just and proper.

4. On the Sixth Cause of Action, for restitution in the amount by which the United States was damaged and/or Saehan Bank was unjustly enriched, plus interest, costs, and expenses, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMAS SCOTT WOODWARD
United States Attorney

s/ Wyn Dee Baker

WYN DEE BAKER, OBA #465
Assistant U. S. Attorney
110 West 7th Street, Suite 300
Tulsa, Oklahoma 74119-1013
(918) 382-2700 (telephone)
(918) 560-7939 (facsimile)
wyndee.baker@usdoj.gov (e-mail)

OF COUNSEL:

Joyce R. Branda, Esq.
Renée Brooker, Esq.
Anna M. Dittmer, Esq.
U.S. Department of Justice
Civil Division, Commercial Litigation Branch
Fraud Section
601 D Street NW, Room 9702
Washington, DC 20004
(202) 353-8297

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Richard Mark Petrich
mpetrich@hallestill.com
Attorney for Plaintiff, Saehan Bank

Dwight L. Smith
dls@dlstulsalaw.com
Attorney for Defendants, Steve Yong Kim, Young Soon Kim, and
The Lodging, Inc.

s/ Santita S. Ogren
Santita S. Ogren
Legal Assistant



U.S. Small Business Administration

INTERIM LENDER CERTIFICATION

SBA Loan #	29656960-01
SBA Loan Name	Ramada Inn - Airport
Borrower(s)	Steve Y Kim and Young S Kim dba Ramada Inn - Airport
Operating Company	N/A
CDC	Tulsa Economic Development Corporation
Interim Lender	Saehan Bank
Amount of Interim Loan	\$1,650,000.00
Address of Project Property	1010 N. Garnett Road, Tulsa, OK 74116-2001
Date	January 23, 2008

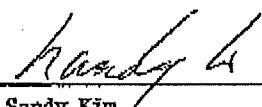
CDC has agreed to make a loan (the 504 Loan) to Borrower and Co-Borrower, if any (Borrower) for purposes of financing the Project described in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (the Authorization). The 504 Loan will be funded by a debenture issued by CDC and guaranteed by the U.S. Small Business Administration (SBA). One of the conditions for the 504 Loan is that Interim Lender executes this Interim Lender Certification. Interim Lender acknowledges that CDC will rely upon this Interim Lender Certification in making the 504 Loan and that SBA will rely upon this Interim Lender Certification in guaranteeing the debenture.

Interim Lender certifies, to the best of its knowledge, information and belief, that:

1. The Interim Loan in the amount of \$1,650,000.00 has been fully advanced except for \$_____, which will be placed in escrow until completion of the Project.
2. The Interim Loan has been disbursed in reasonable compliance with the Authorization.
3. Borrower has contributed to the Project the cash, land or other property required by the Authorization.
4. If the Interim Loan includes construction financing, the Project has been completed in accordance with the final plans and specifications.

- 5. Project cost overruns, if any, have been paid by Borrower with cash, representing additional injection of equity; or with proceeds of a separate note secured by additional collateral which is not a part of the Interim Loan; or by other source described here: _____.
- 6. Interim Lender has no knowledge of any unremedied substantial adverse change in the condition of Borrower and Operating Company (if any) since the date of loan application to Interim Lender. Borrower is current on its payments to Interim Lender and not otherwise in default on the Interim Loan.
- 7. Upon receipt, Interim Lender will apply the Net Debenture Proceeds to pay off Interim Lender's share of Interim Financing stated in the Authorization, and Interim Lender will reduce the principal balance of Interim Lender's debt to an amount not to exceed the amount of the Third Party Lender Loan stated in the Authorization or cancel the Interim Loan note, as appropriate, and will provide CDC evidence of such reduction or cancellation. As appropriate, Interim Lender will record or cause to be recorded partial or full releases of any recorded lien instruments (including without limitation mortgages, deeds of trust, deeds to secure debt, trust indentures, UCC financing statements) in favor of Interim Lender and securing the Interim Lender's share of Interim Financing, and will provide CDC with recorded copies of these releases.
- 8. Interim Lender has disclosed to CDC all material information known to Interim Lender and necessary to ensure that this Interim Lender Certification is not misleading.

SAEHAN BANK, INTERIM LENDER



 By: Sandy Kim
 Title: AVP & Loan officer