

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

FILE NO.: 23-CVS-____

THE FIDELITY BANK,
Plaintiff

v.

TC CORRIHER IMPLEMENT
COMPANY, INC.,
LANDSHARK ATTACHMENTS, LLC
and THEODORE H. CORRIHER,
DefendantsVERIFIED COMPLAINT
(COMP)(MNYO)(POPP)

Plaintiff The Fidelity Bank ("Plaintiff" or "Fidelity Bank"), complaining of Defendants TC Corriher Implement Company, Inc. ("TC Corriher"), Landshark Attachments LLC ("Landshark"), and Theodore H. Corriher ("T. Corriher") (collectively, "Defendants"), says and avers:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff The Fidelity Bank is a financial institution organized and existing under the laws of the State of North Carolina with a principal place of business in Wake County, North Carolina.

2. Defendant TC Corriher, sometimes doing business as Everything Attachments, is a North Carolina corporation with its principal place of business in Catawba County, North Carolina.

3. Defendant Landshark is a North Carolina limited liability company with its principal place of business in Catawba County, North Carolina.

4. Defendant T. Corriher is over the age of 18, and is a citizen and resident of Catawba County, North Carolina. Defendant is also sole owner, and President of TC Corriher Implement Company, Inc. and sole member and manager of Landshark Attachments, LLC.

5. T. Corriher is not in the military or on active-duty status, and the filing of this action is not prohibited by the Servicemembers' Civil Relief Act (50 U.S.C. § 501, *et seq.*).

6. This Court has jurisdiction over the parties and subject matter.

7. Venue is proper in this Court.

8. All conditions for bringing this lawsuit have been satisfied.

FIRST CLAIM FOR RELIEF
(Collection on a Line of Credit and Guaranties)
The Line of Credit

9. On or about October 28, 2021, TC Corriher, as borrower, and for valuable consideration, executed and delivered to Fidelity Bank a Promissory Note in the original principal amount of \$1,500,000.00 ("Line of Credit"). A copy of Loan 6965 is attached as **"Exhibit A."**

10. As security for the Line of Credit, and for valuable consideration, T. Corriher and Landshark executed and delivered to Fidelity Bank Commercial Guaranty agreements, through which they guaranteed repayment of all indebtedness of TC Corriher to Fidelity Bank. Copies of the Guaranty Agreements are attached as **"Exhibit B."**

11. As security for the Line of Credit, TC Corriher executed and delivered to Kevin J. Rock, as Trustee for Fidelity Bank, a Deed of Trust Securing Future Advances dated October 28, 2021, and recorded in Book 3699 at Page 588 in the Office of the Register of Deeds of Catawba County (the "LOC Deed of Trust"), encumbering the real property and improvements located at 1506, 1318, 1714 Emmanuel Church Road, Conover, North Carolina, 301 S. McLin Creek Road, Conover, North Carolina and Catawba County Parcel No. 374112850512, Conover, Catawba County, North Carolina (the "Real Property Collateral"). A copy of the LOC Deed of Trust is attached as **"Exhibit C."**

12. As security for the Line of Credit, Defendant TC Corriher executed and delivered to Plaintiff a Commercial Security Agreement dated October 28, 2021, (the "Security Agreement"), which granted Plaintiff a blanket lien security interest in all inventory, whether owned or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; and all records of any kind relating to any of the foregoing (the "Inventory Collateral"). A copy of the Security Agreement is attached as **"Exhibit D."**

13. The security interest in the Inventory Collateral is perfected by a UCC-1 Financing Statement filed May 3, 2023 in the office of the North Carolina Secretary of State under file no. 20230056502G. A copy of the UCC-1 Financing Statement is attached as **"Exhibit E."**

14. The Line of Credit was modified and extended by several Change in Terms Agreements, the last dated March 1, 2023. A copy of the Change in Terms Agreements are attached as **"Exhibit F."**

15. The Line of Credit, the Guaranty Agreements, the LOC Deed of Trust, the Security Agreement, the UCC-1 Financing Statement and the Change in Terms Agreements shall be referred to collectively as the "LOC Loan Documents."

16. Fidelity Bank is the holder of the LOC Loan Documents.

17. On June 15, 2023, the indebtedness owed under the Construction Loan (defined below) was accelerated due to Defendants' default under the Construction Loan, as described in more detail below.

18. On June 15, 2023, pursuant to the cross-default provisions contained in the LOC Loan Documents, Plaintiff also accelerated the indebtedness under the Line of Credit.

19. Even without such acceleration, the Line of Credit matured on October 4, 2023.

20. Despite repeated demands, Defendants have failed and refused to pay the indebtedness owing under the Line of Credit.

21. As of October 5, 2023, Defendants owe Plaintiff under the Line of Credit the sum of \$1,540,729.17, plus interest from and after October 5, 2023 at the Default Rate of 15% per annum until paid in full.

22. Fidelity Bank is entitled to a judgment against Defendants TC Corriher, Landshark and T. Corriher, jointly and severally, under the LOC Loan Documents for the sum of \$1,540,729.17, plus interest at the rate of 15% per annum from and after October 5, 2023 until the date of entry of judgment, plus reasonable attorneys' fees and the costs of this action.

SECOND CLAIM FOR RELIEF
(Collection on a Note and Guaranties)
The Construction Loan

23. Fidelity Bank incorporates by reference the allegations in the preceding Paragraphs as if fully set forth.

24. On or about October 28, 2021, TC Corriher d/b/a Everything Attachments ("Borrower") and Plaintiff entered into a Construction Loan Agreement in the original principal amount of \$8,500,000.00 ("Construction Loan Agreement") for the purpose of constructing a building with improvements. A copy of the Construction Loan Agreement is attached as **"Exhibit G."**

25. On or about October 28, 2021, pursuant to the terms of the Construction Loan Agreement and in exchange for the construction loan TC Corriher, as borrower, and for valuable consideration, executed and delivered to Fidelity Bank a Promissory Note in the original principal amount of \$8,500,000.00 ("the Construction Loan"). A copy of the Construction Loan is attached as **"Exhibit H."**

26. As security for the Construction Loan, TC Corriher executed and delivered to Kevin J. Rock, as Trustee for Fidelity Bank a Construction Deed of Trust Securing Future Advances dated October 28, 2021, and recorded in Book 3699 at Page 570 in the office of the Register of Deeds of Catawba County ("Deed of Trust 1"),

encumbering the Real Property Collateral. A copy of Deed of Trust 1 is attached as **"Exhibit I."**

27. The Construction Loan Agreement, the Construction Loan, the T. Corriher Guaranty and Deed of Trust 1, shall be referred to collectively as the "Construction Loan Documents."

28. Fidelity Bank is the holder of the Construction Loan Documents.

Construction Loan Default

29. TC Corriher engaged Neill Grading and Construction Co., Inc. ("Neill Grading") as general contractor to build it a new manufacturing facility on the Real Property Collateral. Upon information and belief, construction began in October 2021.

30. On or about November 5, 2021, Plaintiff advanced construction loan funds to TC Corriher at its request under the Construction Loan in the amount of \$1,918,643.47 to pay off another lender's prior deed of trust on the Real Property Collateral.

31. From November 2021 through August 2022, TC Corriher submitted to Plaintiff at least eleven (11) applications for payment of construction expenses under the Construction Loan (each a "Payment Application," together the "Payment Applications").

32. Plaintiff advanced construction loan funds to TC Corriher at its request under the Construction Loan to pay those portions of Payment Applications 1 through 3 related to the manufacturing facility being constructed.

33. Plaintiff advanced construction loan funds to TC Corriher at its request under the Construction Loan to pay in full Payment Applications 4 through 11, which were for the manufacturing facility being constructed.

34. The total amount disbursed to TC Corriher at its request under the Construction Loan to pay the Payment Applications was \$6,034,455.82.

35. The total aggregate amount disbursed to TC Corriher at its request under the Construction Loan, including amounts to pay off the prior deed of trust and the Payment Applications, was \$7,953,099.29.

36. On September 2, 2022, Neill Grading filed two Claims of Lien against the Real Property Collateral in the Superior Court Clerk's Office in Catawba County, North Carolina bearing File Nos. 22-M-235 (\$999,195.00) and 22-M-236 (\$1,062,498.97). The Claims of Lien are attached as **"Exhibit J."**

37. The Construction Loan specifically requires TC Corriher to remove all claims of lien against the Real Property Collateral.

38. In the event TC Corriher disputes any claim of lien against the Real Property Collateral, the Construction Loan specifically requires TC Corriher, within ten (10) days of filing of the lien, to provide Plaintiff with a surety bond sufficient to release the claim of lien. Some of the relevant language in the Construction Loan provides:

Payment of Claims and Removal of Liens. (1) Cause all claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (4) take all reasonable steps necessary to remove all claims of liens against the Collateral, the Improvements or any part of the Collateral or Improvements, or any rights or interests appurtenant to the Collateral or Improvements. Upon Lender's request, Borrower shall make such demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements, which demands or claims shall under the laws of the State of North Carolina require diligent assertions of lien claims upon penalty of loss or waiver thereof. Borrower shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, provide Lender with a surety bond issued by a surety acceptable to Lender sufficient to release the claim of lien or deposit with Lender an amount satisfactory to Lender for the possibility that the contest will be unsuccessful. If Borrower fails to remove any lien on the Collateral or Improvements or provide a bond or deposit pursuant to this provision, Lender may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Lender's reasonable attorneys' fees.

39. TC Corriher disputes Neill Grading's Claims of Lien.

40. At the request of TC Corriher, Plaintiff agreed to extend the deadline for TC Corriher to discharge Neill Grading's Claim of Lien bearing Catawba County Filing No. 22-M-235 (commonly referred to as the "Site Work Lien") to June 9, 2023.

41. To date, TC Corriher has not provided Plaintiff with a surety bond sufficient to release either of Neill Grading's Claims of Lien.

42. To date, TC Corriher has not caused either of Neill Grading's Claims of Lien to be cancelled and discharged by posting a surety bond or otherwise.

43. TC Corriher has breached the Construction Loan by failing to cancel and discharge Neill Grading's Claims of Lien and failing to provide a surety bond sufficient to release the Claims of Lien.

44. Between June and August 2022, TC Corriher requested and received from Plaintiff under the Construction Loan \$1,062,525.97 corresponding to Neill Grading's Payment Applications 9 -11 ("Withheld Funds"). TC Corriher withheld this money from Neill Grading but did not inform Plaintiff, did not otherwise return the funds to Plaintiff, and refuses to provide Plaintiff with an accounting of the Withheld Funds.

45. Plaintiff made specific written demand on TC Corriher to cure its default by letters dated April 21, 2023, June 8, 2023, June 15, 2023 and July 10, 2023. A copy of the Demand Letters are attached as "**Exhibit K.**"

46. The June 15, 2023 Demand letter accelerated the Construction Loan balance and demanded payment in full of the Line of Credit and the Construction Loan.

47. TC Corriher is also in default of the Construction Loan for additional reasons, as described in the July 10 Demand Letter.

48. The construction of the subject manufacturing facility was not completed by October 28, 2022.

49. The construction of the subject manufacturing facility has ceased.

50. The construction of the subject manufacturing facility remains incomplete.

51. As of October 5, 2023, Defendants TC Corriher and T. Corriher owe Plaintiff under the Construction Loan the sum of \$7,883,293.57, plus interest from and after October 5, 2023 at the Default Rate of 15% per annum until paid in full.

52. Defendants' breaches and defaults under the Loan Documents have damaged Fidelity Bank.

53. Fidelity Bank is entitled to a judgment against Defendants TC Corriher and T. Corriher, jointly and severally, under the Construction Loan for the sum of \$7,883,293.57, plus interest at the rate of 15% per annum from and after October 5, 2023 until paid in full, plus reasonable attorneys' fees and the costs of this action.

THIRD CLAIM FOR RELIEF
(Contractual Attorneys' Fees)

54. Fidelity Bank incorporates by reference the allegations in the preceding Paragraphs as if fully set forth.

55. The LOC Loan Documents and Construction Loan Documents both contain provisions that entitle Fidelity Bank to recover its reasonable attorneys' fees and other legal expenses from the Defendants if Fidelity Bank incurs such expenses to enforce the LOC Loan Documents and the Construction Loan Documents.

56. As a result of Defendants' default under the Loan Documents, Fidelity Bank has and continues to incur attorneys' fees and other legal expenses related to its enforcement of the LOC Loan Documents and Construction Loan Documents.

57. Pursuant to the provisions of North Carolina General Statutes Section 6-21.2, the June 15, 2023 Demand Letters notified Defendants that attorneys' fees in the amount of fifteen percent (15%) of the outstanding indebtedness on Line of Credit and the Construction Loan would be collected if payment of the outstanding balances were not made within five days from the date of said notification.

58. The outstanding balances have not been paid and over five days have elapsed since the mailing of the notification.

59. Pursuant to the provisions of North Carolina General Statutes Section 6-21.2, demand is hereby made again upon Defendants and Defendants are

notified that attorneys' fees in the amount of 15% of the outstanding indebtedness owing on the Line of Credit and the Construction Loan will be requested of the Court if payment of the outstanding balance is not made within five days of mailing of this Complaint.

60. Fidelity Bank is entitled to a judgment against Defendants, jointly and severally, for its reasonable attorneys' fees incurred as a result of their default.

FOURTH CLAIM FOR RELIEF
(Possession of Collateral)

61. Fidelity Bank incorporates by reference the allegations in the preceding Paragraphs as if fully set forth.

62. The terms of the Security Agreement expressly state that, upon default, Plaintiff is entitled to possession of the Inventory Collateral described therein.

63. Defendants remain in possession of the Inventory Collateral.

64. Defendants have defaulted on their obligations to Plaintiff arising under the Line of Credit.

65. As a result, Plaintiff is entitled to possession of the Inventory Collateral, so that Plaintiff can sell or otherwise dispose of the Inventory Collateral and apply the net proceeds to Defendants' indebtedness under the LOC Loan Documents in accordance with Plaintiff's contractual rights and state law.

FIFTH CLAIM FOR RELIEF
(Accounting of Withheld Funds)

66. Fidelity Bank incorporates by reference the allegations in the preceding Paragraphs as if fully set forth.

67. Between June and August 2022, TC Corriher requested and received under the Construction Loan the Withheld Funds. TC Corriher withheld

this money from its general contractor (Neill Grading) but did not inform Plaintiff, did not otherwise return the funds to Plaintiff, and refuses to provide Plaintiff with an accounting of the funds.

68. Fidelity Bank is entitled to a complete accounting of the Withheld Funds.

WHEREFORE, Plaintiff Fidelity Bank prays unto the Court:

1. That on its First Claim for Relief under the Line of Credit, Plaintiff Fidelity Bank have and recover from Defendants TC Corriher, Landshark and T. Corriher, jointly and severally, under the LOC Loan Documents the sum of \$1,540,729.17, plus interest at the rate of 15% per annum from and after October 5, 2023 until paid in full.

2. That on its Second Claim for Relief, Plaintiff Fidelity Bank have and recover from Defendants TC Corriher and T. Corriher, jointly and severally, under the Construction Loan the sum of \$7,883,293.57, plus interest at the rate of 15% per annum from and after October 5, 2023 until paid in full.

3. On its Third Claim for Relief, Plaintiff Fidelity Bank have and recover of Defendants TC Corriher, T. Corriher and Landshark, jointly and severally, reasonable attorneys' fees in the amount of fifteen percent (15%) of the outstanding balance owing on the Line of Credit (\$231,109.37) and the Construction Loan (\$1,182,494.03) as of the date this Complaint is filed.

4. On its Fourth Claim for Relief, that Defendant TC Corriher, and all those acting in concert with them, be ordered to immediately deliver possession of the Inventory Collateral to Plaintiff, so that Plaintiff may dispose of same pursuant to the LOC Loan Documents and applicable state law.

5. On its Fifth Claim for Relief, that Defendants TC Corriher, T. Corriher and Landshark, and all those acting in concert with them, be ordered to immediately provide to Plaintiff Fidelity Bank a full and complete accounting of the \$1,062,595.97 Withheld Funds.

6. That Plaintiff Fidelity Bank have and recover of Defendants TC Corriher, T. Corriher and Landshark, jointly and severally, the costs of this action.

7. That Plaintiff Fidelity Bank have and recover such other and further relief as to the Court may seem just and proper.

This the 5th day of October, 2023.

/s/ Paul A Fanning

Paul A. Fanning

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*This email address must be used in order to effectuate service under Rule 5 of the North Carolina Rules of Civil Procedure.

** Email address to be used for all communications other than service.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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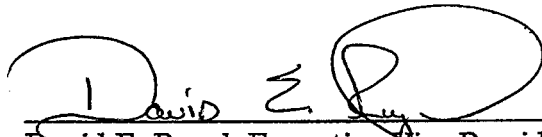
THE FIDELITY BANK,
Plaintiff

v.

TC CORRIHER IMPLEMENT
COMPANY, INC.,
LANDSHARK ATTACHMENTS, LLC
and THEODORE H. CORRIHER,
Defendants

VERIFICATION

DAVID E. ROYAL, being duly sworn, deposes and says that he is Executive Vice President of The Fidelity Bank, and as such is authorized to make this verification; that he has read the foregoing COMPLAINT, and the same is true of his own knowledge, except as to those matters and things stated on information and belief, and, as to those, he believes them to be true.




David E. Royal, Executive Vice President

Harnett mw
WAKE COUNTY, NORTH CAROLINA

Sworn to (or affirmed) and subscribed before me this day by David E. Royal

Date: October 5, 2023

Official Seal
WISDOM
NOTARY PUBLIC
HARNETT COUNTY, NC
My Commission Expires March 14, 2026


Signature of Notary Public

My commission expires: 3/14/2026