

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH**

**Plymouth, ss**

**Superior Court Department  
Civil Action No.:**

**CANNAVANA INC.**

*Plaintiff,*

**v.  
HARBOUR GRACE TEWKSBURY LLC,  
BELLA LUNA LLC,  
CARBONEAR LLC,  
PATRICK M. NICHOLS individually,  
DAVID O'BRIEN individually, and  
DEAN GRAFFEO individually,**

*Defendants.*

**VERIFIED COMPLAINT  
AND JURY DEMAND**

**INTRODUCTION**

This is a civil action for money damages arising from a breach of a commercial loan agreement.

**JURISDICTION**

The original jurisdiction of this Honorable Court for this case is pursuant to G. L. c. 212, § 3, and is appropriate as the amount in controversy exceeds \$50,000.00. Personal jurisdiction of the Defendants is based upon the Defendants collective actions of transacting business and causing tortious injury by an act or omission in the Commonwealth under G.L. c. 223A, § 3. Venue is appropriate because of the geographic location of the Plaintiff's business and the transaction or occurrence that is the subject of this suit being a commercial loan agreement (hereinafter "subject loan").

**PARTIES**

1. The Plaintiff, Cannavana Inc. (hereinafter “Plaintiff” or “Cannavana”), is a Massachusetts Corporation with a principal place of business of 256 Weymouth Street, Rockland, Massachusetts.

2. The Defendant, Harbour Grace Tewksbury, LLC, (hereinafter “Harbour Grace Tewksbury”) is a Massachusetts limited liability company with a principal office of 170 Main Street, Suite 201, Tewksbury, Massachusetts.

3. The Defendant, Bella Luna LLC (hereinafter “Bella Luna”), is a Massachusetts limited liability company with a principal office of 170 Main Street, Suite 201, Tewksbury, Massachusetts.

4. The Defendant, Carbonear LLC (hereinafter “Carbonear”), is a Massachusetts limited liability company with a principal office of 52 Pinnacle Street, Tewksbury, Massachusetts.

5. The Defendant, Patrick M. Nichols, is an individual with a principal address of 100 Florence Ave., Tewksbury, Massachusetts.

6. Patrick M. Nichols is a manager of Bella Luna.

7. The Defendant, David O’Brien, is an individual with a principal address of 67 MacArthur Road, Concord, MA 01742.

8. The Defendant, Dean Graffeo, is an individual with a principal address of 52 Pinnacle St., Tewksbury, Massachusetts.

9. Dean Graffeo is the manager of Carbonear.

**FACTS COMMON TO ALL COUNTS**

10. Plaintiff repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

11. On March 7, 2023 The Town of Tewksbury opened its application process to operate a retail marijuana dispensary at only three locations.
12. Multiple cannabis companies compete for these limited and coveted retail licenses as there is a tremendous financial reward to success.
13. David O'Brien is the President and CEO of the Massachusetts Cannabis Business Association (MassCBA). <https://www.masscba.com/teamboard>.
14. The MassCBA's stated goal is to support the cannabis industry by advocating for specific cannabis industry topics, leveraging their network, and creating professional connections. <https://www.masscba.com/mission-vision-values>.
15. For a fee of \$5,000, \$10,000 or even \$15,000, one can become a MassCBA member which provides the opportunity to network, present at events, and various professional services.
16. The MassCBA is a well-known organization within the Massachusetts cannabis industry and is headed by important individuals in the field.
17. On or about late April, 2023, David O'Brien showed up unannounced to Cannavana's marijuana retail store asking to see its owner to discuss a potential business opportunity.
18. At this first contact, Defendant O'Brien presented an opportunity to Cannavana to leverage his (O'Brien's) personal connections in the industry to secure a retail marijuana license in Tewksbury.
19. Defendant O'Brien assured Cannavana that it was a guaranteed success because he would leverage personal connections within Tewksbury, having grown up there, and through his significant contacts as the president and CEO of the MassCBA.
20. Shortly after this initial meeting the Parties visited the potential site of a retail marijuana store at 890 Main Street, in Tewksbury. Defendant O'Brien again assured Cannavana that

obtaining the approvals was a sure thing, and that he would introduce Cannavana to an individual named “Dean” who would help smooth the process with Tewksbury.

21. Defendant O’Brien requested a cash payment of \$250,000 to obtain the proper approvals from Tewksbury for the site. Defendant O’Brien stated, however, he could not be listed on any paperwork, or the entities obtaining the loan, for an unstated reason, but he knew of someone who could act on their behalf, Patrick Nichols and Dean Graffeo, through their entities listed above. Defendant O’Brien stated his role would be to work “behind the scenes” to guarantee the project’s success.

22. It is Cannavana’s information and belief that Dean Graffeo is the individual named “Dean” whom Defendant O’Brien mentioned at the original site visit, and the same individual who participated in the ruse.

23. Based on Defendant O’Brien’s assurances and suggestions, on or about May 5, 2023, Plaintiff and Defendants, Grace Harbour, Bella Luna, and Carbonear entered into a loan agreement for \$180,000.

24. Defendant O’Brien did not sign the loan document, but facilitated and verbally guaranteed the loan.

25. Defendant O’Brien and Nichols enticed Cannavana into providing the loan with the prospect of ownership in the enterprise, which included 6% of the gross revenue and 9.9% of the equity in the new companies. The Defendants never honored this offer once they received the loan proceeds.

26. Cannavana entered into the Commercial Loan Agreement based on representations made by Defendant O’Brien and Nichols that they would use the loan proceeds to obtain a Host

Community Agreement in the town of Tewksbury for an adult-use marijuana retail establishment.

27. Defendant O'Brien and Nichols made verbal personal loan guarantees to Cannavana.

28. Based on the Defendant's complete refusal to provide a financial accounting of the use of funds, it is Cannavana's information and belief the Defendants did not use the funds as they promised, however, instead they misappropriated the funds for their personal gain.

29. The Defendants failed to make an accounting of the use of funds, made additional promises to Cannavana regarding repayment, and misused the funds for inappropriate and illegal purposes such as texting minors about selling marijuana, and attempting to smear the reputation of a local board member responsible for approving their business.

30. The Plaintiff was kept in the dark about the Defendants activities, who, once they received the funds, made off with the proceeds and refused to engage Cannavana in any accounting of their use or location.

31. Cannavana was forced to proceed with the transaction in Tewksbury or face further financial loses and reputational harm.

32. In exchange for continuing the relationship, the Defendants made several assurances to Cannavana that they would provide a breakdown of the use of funds soon, that they were confident they could obtain a host community agreement, and in any event, they would repay the loan. None of that was true or occurred.

33. Unfortunately, The Defendants committed catastrophic and blatant errors in their attempts to obtain a Host Community Agreement which received a firm rebuke from the town officials and quickly terminated their hopes of success.

34. The Defendants course of action which led to the failure of the project included texting minor children about their marijuana project and distributing pamphlets rallying against a fellow business owner to turn the town against their competition.

35. These actions were directly related to the Town of Tewksbury's denial of the Defendant's application.

36. In the fallout from the Town's decision, both Defendant O'Brien and Nichols told Cannavana it would make repayment of the total loan amount, plus interest, and provide an accurate accounting of the use of funds, but as of the filing of this complaint they never did.

37. The Defendants ignored multiple requests for an accounting of the use of funds and for any timeline on repayment.

38. The Defendants ignored the Plaintiff's request for bank statements to account for the use of the loan proceeds.

39. The Defendants knew or should have known that their intention all along was to accept Cannavana's loan and use the funds for their own personal gain regardless of whether they obtained a host community agreement or not.

## **COUNT I – BREACH OF CONTRACT**

### **All Defendants**

40. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

41. Cannavana entered into a Commercial Loan Agreement with the Defendants.

42. Cannavana performed all of its required contractual obligations to the Defendants pursuant to that agreement.

43. The Defendants nevertheless breached the terms of the agreement through repudiation, non-payment, deceit, and unfair and deceptive acts or practices.

44. Cannavana has suffered damages due to Defendant's breach including loss of payment under the original agreement, loss of interest payments, the loss of the possibility of opening a business in Tewksbury, and reputational harm in the cannabis industry.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

## **COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

### **All Defendants**

45. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

46. A duty of good faith and fair dealing is implied in the Commercial Loan Agreement between Cannavana and the Defendants.

47. The Defendants breached the covenant of good faith and fair dealing by acting with a dishonest purpose, a conscious of wrong doing, and a breach of duty through motive of self-interest or ill will.

48. The Defendants' conduct was motivated by a desire to enrich themselves at the expense of Cannavana and had the effect of injuring its rights to fruit of the Commercial Loan Agreement.

49. The Defendants demonstrated bad faith by misappropriating Cannavana's funds, which were explicitly allocated for establishing a business in Tewksbury, and failing to utilize them as intended.

50. The Defendants made verbal promises to pay back Cannavana while they spent the loan proceeds for inappropriate or illegal reasons, including, but not limited to their personal gain.

51. The Defendants accepted a large loan from Cannavana then squandered and misappropriated the funds, and subsequently repudiating the contractual terms, and has now refused to make the required loan repayment.

52. The Defendants acted in bad faith by making verbal promises, refusing to provide an accounting on the lent funds, and refusing to communicate with Cannavana.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

### **COUNT III – UNJUST ENRICHMENT**

#### **All Defendants**

53. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

54. The Defendants received a substantial benefit from their dealings with Cannavana in the form of receiving the Commercial Loan Agreement.

55. The Defendants were aware of the benefits they received because of the Commercial Loan Agreement.

56. The Defendants obtained the benefit of the loan to the detriment of the Plaintiff who has received no payment on the loan.

57. The Defendants have continued to repudiate the agreed upon consideration for Cannavana even though Cannavana did not breach its contractual obligations.

58. The Defendants continue to retain the benefits of the loan from Cannavana and refuse to make the agreed upon payment.

59. The Defendants retention of such benefits under the circumstances is inequitable.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

#### **COUNT IV – MISREPRESENTATION**

##### **All Defendants**

60. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

61. The Defendants made material misrepresentations to Cannavana, upon which Cannavana relied to its detriment, resulting in damages.

62. The Defendants made false statements that they had an ability to make repayment under the loan.

63. The Defendants made false promises to pay Cannavana after the Town denied the project to induce Cannavana to not take action to its own detriment.

64. Patrick Nichols made promises relative to the transaction and that Cannavana would be paid.

65. The Defendants told Cannavana that they would use the loan proceeds to procure a host community agreement in Tewksbury.

66. The Defendants told Cannavana they would keep an accurate accounting of the loan proceeds.

67. All of the Defendants statements were false.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**COUNT V – FRAUD AND DECEIT**

**All Defendants**

68. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

69. The Defendants made false representations of material fact relative to the loan entered with Cannavana and their intent to use the loan proceeds.

70. Cannavana reasonably relied on the statements made by the Defendants in deciding to make the loan.

71. Cannavana's reliance was reasonable because the Defendants made assurances they would repay the loan.

72. The Plaintiff acted upon the Defendants' false representations and thereby the Plaintiff was damaged to its detriment.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**COUNT VI – UNFAIR AND DECEPTIVE TRADE PRACTICES; M.G.L. C. 93A § 11 All**

**Defendants**

73. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

74. The Defendants engaged in unfair or deceptive business practices to the detriment of Cannavana.

75. The Defendants improperly represented its intent to use the loan proceeds in a deceptive way to induce Cannavana into loaning the money, which is improper in commerce.

76. The totality of the actions of the Defendants requires punitive damages so that the Defendants are prevented from doing this again.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

#### **COUNT VII – DOCTRINE OF CORPORATE DISREGARD**

#### **TO PIERCE THE CORPORATE VEIL FOR FRAUD**

**Patrick Nichols, David O'Brien and Dean Graffeo**

77. Cannavana repeats and re-alleges all the above paragraphs of this Complaint as if each were restated in the entirety herein.

78. The individually named Defendants personally participated in the wrongs alleged in this Complaint.

79. The individually named Defendants acted outside the scope of his officer position while committing these wrongs.

80. The individually named Defendants controlled, directed, approved, and ratified all acts that injured the Plaintiff.

81. The individually named Defendants acted for their own personal gain by siphoning the loan proceeds from the business for their personal use.

82. The individually named Defendants failed to provide Cannavana financial statements or bank statements on the use of the loan proceeds.

83. The individually named Defendants caused the Plaintiff damage by misappropriating the loan proceeds and refusing to pay back the loan.

WHEREFORE, the Plaintiff prays that, after trial, a judgment be entered in its favor and against The individually named Defendants, and that damages be awarded to the Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Honorable Court grant the following relief:

1. Enter judgment in favor of the Plaintiff on all counts of the Complaint;
2. Assess Money damages against the Defendants, doubled or trebled, with interest, attorneys' fees and the costs of this action; and
3. All available relief at law and equity and other further relief as this Honorable Court may deem just and proper.

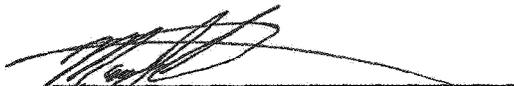
**CANNAVANA HEREBY RESPECTFULLY DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE BEFORE A JURY.**

#### **VERIFICATION OF COMPLAINT CERTIFICATION**

I, Mario Chiuccariello, under penalty of perjury, hereby affirm, certify, and state as follows: (a) I am the President of the Plaintiff identified in this Verified Complaint; (b) I have read the foregoing Verified Complaint; (c) this verification is upon my own personal knowledge, information and belief; (d) I have reasonable basis to believe in the truth of the allegations

asserted based on my knowledge, information and belief; and (e) therefore, I believe the facts stated therein are true and that no material facts have been omitted therefrom.

Signed under the penalties of perjury on this 30 day of January, 2024.



Mario Chiuccariello

Respectfully submitted,  
Plaintiff, Cannavana Inc.,  
By its Attorneys,

/s/Nicholas A. Gomes

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/s/Sean Coleman

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