

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

1. BANK OF AMERICA, N.A., a national banking association,	)	
	)	
Plaintiff,	)	Case No. 08-CV-432-CVE-PJC
	)	
vs.	)	
	)	
1. THOMAS L. KIVISTO, as Trustee of THE THOMAS L. KIVISTO TRUST, an Oklahoma trust; and	)	
	)	
2. THOMAS L. KIVISTO, an individual,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff, Bank of America, N.A. (the "Bank"), a national banking association, for its claims against Defendants, Thomas L. Kivisto, as Trustee of The Thomas L. Kivisto Trust and Thomas Kivisto, alleges and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is a national banking association with its principal place of business at 100 North Tryon Street, Charlotte, North Carolina. Pursuant to 12 U.S.C.A. § 1831u and the Merger Certificate resulting from the Bank's July 23, 1999 interstate merger, the resulting Bank's home state is North Carolina and its main office is 101 South Tryon Street, Charlotte, North Carolina. 12 U.S.C.A. § 1831u(d)(1). Therefore, the Bank is a citizen of the State of North Carolina.

2. Defendant Thomas L. Kivisto is a resident of Tulsa County, Oklahoma.

3. The amount in controversy herein exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

4. Accordingly, this Court has diversity jurisdiction of the parties hereto and the subject matter of this action pursuant to 28 U.S.C. §§ 1332 and 1348.

5. Venue is proper under 28 U.S.C. §1391(b)(2) as this judicial district is where a substantial part of the claim occurred.

**FIRST CAUSE OF ACTION**  
**(Promissory Note)**  
**(The Thomas L. Kivisto Trust)**

6. On or about May 26, 2006, the Bank loaned The Thomas L. Kivisto Trust (the "Trust") \$15,000,000.00, as evidenced by a certain promissory note (the "2006 Note") and Credit Agreement in that amount, with a maturity date of May 26, 2008. A copy of the Note is attached hereto as Exhibit 1 and its terms are incorporated herein by reference. A copy of the Credit Agreement is attached hereto as Exhibit 2 and its terms are incorporated herein by reference.

7. On May 26, 2008, the Credit Agreement was amended to extend the final maturity date of the 2006 Note to August 24, 2008. A copy of the First Amendment to the Credit Agreement is attached as Exhibit 3 and its terms are incorporated herein by reference.

8. The Credit Agreement provides that the Bank shall be entitled to recover the costs and expense of any suit, including attorney fees, brought to enforce the Bank's rights under the Credit Agreement or the associated documents.

9. The 2006 Note was guaranteed by Defendant Thomas Kivisto and secured by the Trust's limited partnership interest in SemGroup, L.P. ("SemGroup").

10. Beginning on Thursday, July 17, 2008, media reports relating to financial difficulties within SemGroup and some of its subsidiary companies broke within the

investment community. These reports included information indicating that Defendant Thomas Kivisto had been replaced as president and chief executive officer and that SemGroup was considering Chapter 11 bankruptcy protection. Additionally, stock prices for SemGroup's public subsidiary, Sem-Group Energy Partners, dropped 51.8% in one day.

11. These events qualify as a material adverse change relating to the value of the security interest in SemGroup and Defendant Kivisto.

12. The occurrence of a material adverse effect on the condition of the borrower, guarantor or the SemGroup partnership constitutes a default under the provisions of the Credit Agreement, specifically, Section 6.1(l).

13. After having been credited with all sums paid by it and any other amounts for which it is entitled to receive credit, the Trust is now indebted to the Bank under the terms of the 2006 Note in the principal amount of \$12,864,768.42, together with interest through July 22, 2008, of \$47,303.85, and with further interest thereafter at the rate of \$1,594.47 per diem.

WHEREFORE, Plaintiff prays that it be awarded judgment on its First Cause of Action against the Trust in the principal amount of \$12,864,768.42, together with interest through July 22, 2008, of \$47,303.85, and with further interest thereafter at the rate of \$1,594.47 per diem, together with Plaintiff's costs, reasonable attorney fees and expenses, and such other relief as may be just and proper.

**SECOND CAUSE OF ACTION**  
**(Guaranty)**  
**(Thomas Kivisto)**

14. On or about May 26, 2006, for good and valuable consideration, and for the purpose of securing the payment of the 2006 Note, Defendant Kivisto executed and delivered to the Bank a certain Guaranty Agreement (the "Guaranty") by which he unconditionally and absolutely guaranteed the obligations of the Trust to the Bank. A true and correct copy of the Guaranty is attached hereto as Exhibit 4 and its terms are incorporated herein by reference.

15. The Trust has defaulted on its obligations to the Bank as set forth above.

16. Under the terms of the Guaranty, Defendant Kivisto is independently liable to the Bank for all indebtedness of the Trust.

WHEREFORE, Plaintiff prays that it be awarded judgment *in personam* on its Second Cause of Action against Kivisto in the principal amount of \$12,864,768.42, together with interest through July 22, 2008, of \$47,303.85, and with further interest thereafter at the rate of \$1,594.47 per diem, together with the Bank's costs, attorney fees and expenses, and such other relief as may be just and proper.

Respectfully submitted,

/s/ Joe E. Edwards  
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