

1 where there are “elements of public interest, adhesion, and fiduciary responsibility.”²

2 Nothing in the Complaint suggests the existence of any such special
3 relationship. In response to the motion to dismiss, the only special relationship alleged by the
4 Plaintiff is that once the loan funds were advanced, they were to be maintained in a
5 construction loan account at Irwin Union Bank, which the Plaintiff argues was effectively a
6 trust account. But there is no allegation the Defendants failed to maintain or otherwise misused
7 funds in this construction loan account. Instead, to the contrary, the whole theory of the
8 Complaint pertains only to moneys that were never advanced by the investor defendants and
9 therefore never deposited into the construction loan account. This a simple breach of a contract
10 to lend money, not a breach of fiduciary duty by a trustee.

11 The conclusory allegation of a “special-nature relationship,”³ in the absence of
12 allegations of “enough facts” to make the existence of such a relationship “plausible on its
13 face,” fails to satisfy the requirements of F.R. Civ.P. Rule 8(a), incorporated by Bankruptcy
14 Rule 7008(a).⁴ Because the Complaint does not allege facts sufficient to plausibly suggest any
15 special relationship beyond that of lender and borrower, tort damages are not available. The
16 motion to dismiss Counts III and IV is therefore granted.

17 DATED AND SIGNED ABOVE

18 Copy of the foregoing e-mailed
19 this 10th day of December, 2008, to:

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28 ² *Burkons v. Ticolor Title Ins. Co. of California*, 813 P.2d 710, 720 (Ariz. 1991), quoted in Plaintiff’s Response to Motion to Dismiss, at 6.

³ Complaint ¶ 10.

⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

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