

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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WFG NATIONAL TITLE INSURANCE :
COMPANY, :

Plaintiff, :

Index No. _____

-against- :

COMPLAINT

TITLESERV, INC., TITLESERV OF :
ALABAMA, INC., TITLESERV OF FLORIDA, :
INC., TITLESERV OF MICHIGAN, INC., :
TITLESERV OF NEW JERSEY, INC., :
TITLESERV OF VIRGINIA, INC., JAMES J. :
CONWAY III, ROCCO ABBONDANDOLO, :
and JOHN DOES 1-20, :

Defendants. x

Plaintiff WFG National Title Insurance Company ("WFG" or
"Plaintiff"), by and through its attorneys, Herrick, Feinstein LLP, as and for its
Complaint against defendants TitleServ, Inc., TitleServ of Alabama, Inc., TitleServ
of Florida, Inc., TitleServ of Michigan, Inc., TitleServ of New Jersey, Inc., TitleServ
of Virginia, Inc. (collectively, "TitleServ"), James J. Conway III ("Conway"), Rocco
Abbondandolo ("Abbondandolo") and John Does 1-20 (together with TitleServ and
Conway, the "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract, fraud, breach of fiduciary duty,
negligence, unjust enrichment, money had and received, and declaratory relief,
which arises out of a fraudulent scheme by the Defendants, and perhaps others, to

embezzle or misappropriate funds placed in escrow with the Defendants by Plaintiff and others (the "Escrow Funds").

2. Plaintiff is a title insurance underwriter authorized to do business in the State of New York. Prior to the termination of its agency agreement with Plaintiff, TitleServ was authorized to write title insurance policies in at least twenty-six states, including New York, on behalf of Plaintiff. Pursuant to the agency agreement, TitleServ was authorized by Plaintiff to, among other things, solicit potential title insurance customers, perform title searches, and issue title insurance commitments and policies on its behalf subject to certain rules, procedures, and limitations. Upon information and belief, TitleServ was one of the nation's largest title insurance agencies and was authorized to write title insurance policies on behalf of other title insurance underwriters in 47 states.

3. TitleServ also engaged in escrow and settlement services on its own behalf (i.e., outside the scope of its business as a title insurance agent of Plaintiff). In the course of such business, TitleServ received monies from sellers and buyers of real estate and lenders, as agent for one or more of these parties. The Escrow Funds were to be used as directed by the parties. When escrows were held incident to a transaction for the issuance of a title insurance policy, TitleServ would use the Escrow Funds to pay off prior mortgages and to pay mortgage and deed recording and transfer taxes when it records the deeds and mortgages related to each closing.

4. Pursuant to the terms of the agency agreement, TitleServ was required to keep all such Escrow Funds in a federally insured financial institution, in a

designated escrow or settlement funds account held separate from TitleServ's individual accounts, and to disburse such funds only for the purposes for which the same were entrusted. All such Escrow Funds and accounts were required to be maintained and documented in accordance with all requirements and guidelines established by Plaintiff.

5. At all times relevant herein, Conway was a principal and the president of TitleServ and Abbondandolo was the chief financial officer.

6. Upon information and belief, Defendants have intentionally or at least negligently failed to maintain Escrow Funds in segregated escrow accounts, have comingled Escrow Funds with other funds, and have misappropriated Escrow Funds or otherwise used them for purposes other than the purposes for which they were entrusted, all in breach of TitleServ's agency agreement with Plaintiff. In addition, TitleServ has breached the agency agreements with Plaintiff by failing to cooperate with audits and examinations of TitleServ's business, including by failing to provide documents and information requested by Plaintiff.

7. In addition, and as a result of these misappropriations of Escrow Funds, the Defendants have failed to timely record deeds and mortgages on behalf of Plaintiff's insureds documenting their interests in real property, exposing Plaintiff to the risk of loss from claims made by their insureds under their respective title insurance policies with Plaintiff. Upon information and belief, the approximate amount of monies transferred to TitleServ mortgage and deed recording and transfer taxes is estimated to be at least \$7,900,000.

8. Through these misappropriations, Defendants have committed a fraud upon Plaintiff and its insureds, as well as lenders and buyers and sellers of real property. Defendants have misappropriated monies that were entrusted to them and owned by Plaintiff or its insureds, buyers and sellers of real property, or lenders. Further, Defendants have, through their actions, breached their fiduciary duties to Plaintiff and its insureds, lenders, and buyers and sellers of real property, and have been unjustly enriched.

9. As a result of these defalcations and misappropriations of funds held in escrow, Plaintiff has suffered damages. In addition, Plaintiff expects to suffer additional losses from claims submitted by insured lenders, including those asserting their rights to coverage arising from liens against the subject properties, which now have priority over their liens as a result of TitleServ's failure to (i) pay off prior mortgages with Escrow Funds entrusted to it at closings; (ii) return funds for scheduled closings that did not proceed; and (iii) record deeds and mortgages at the appropriate time.

10. Plaintiff seeks: (1) damages in an amount to be determined; (2) a declaration of its rights with respect to losses caused by Defendants' misconduct; and (3) provisional relief, including an order: (a) freezing all assets held or maintained by TitleServ or Conway; (b) enjoining Defendants from destroying or altering documents or information; (c) enjoining Defendants from making any further transfers or misappropriations of Escrow Funds; and (d) granting Plaintiff

access to all documents and information relevant to the Defendants' business operations.

THE PARTIES

11. Plaintiff WFG is a title insurance underwriter incorporated under the laws of the State of South Carolina, and is authorized to do business within the State of New York. WFG has a principal place of business located at 340 Oswego Pointe Drive, Suite 100, Lake Oswego, Oregon 97034.

12. Defendant TitleServ, Inc. is, upon information and belief, a corporation organized under the laws of the State of New York with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

13. Defendant TitleServ of Alabama, Inc. is, upon information and belief, a corporation organized under the laws of the State of Alabama with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

14. Defendant TitleServ of Florida, Inc. is, upon information and belief, a corporation organized under the laws of the State of Florida with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

15. Defendant TitleServ of Michigan, Inc. is, upon information and belief, a corporation organized under the laws of the State of Michigan with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

16. Defendant TitleServ of New Jersey, Inc. is, upon information and belief, a corporation organized under the laws of the State of New Jersey with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

17. Defendant TitleServ of Virginia, Inc. is, upon information and belief, a corporation organized under the laws of the State of Virginia with a principal place of business located at 88 Froehlich Farm Blvd., Woodbury, New York, 11797.

18. Defendant James Conway III is, upon information and belief, a natural person and a resident of Matinecock, Nassau County, New York. Conway is, upon information and belief, a principal and the president of TitleServ.

19. Defendant Rocco Abbondandolo is, upon information and belief, a natural person and a resident of Oyster Bay Cove, Nassau County, New York. Abbondandolo is, upon information and belief, a principal and the CFO of TitleServ.

20. Defendants John Does 1-20 are persons or entities who have not been identified who may have participated in the fraudulent scheme, acted in concert with Defendants, or aided and abetted the fraudulent scheme; or who may have received misappropriated funds or other property that was acquired using the misappropriated funds. Plaintiff reserves the right to amend its pleadings to more fully describe such John Doe defendants as appropriate after discovery and investigation.

21. Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

WFG's Agreements with Defendants

22. On or about December 29, 2010, WFG and TitleServ entered into an agency agreement (as amended, the "Agreement").

23. The Agreement obligates TitleServ to, among other things, keep all funds received by TitleServ from any source in connection with transactions in

which title insurance policies of WFG are to be issued in a federally insured financial institution, in an account separate from TitleServ's individual accounts and designated as an "escrow" or "settlement funds" account, and disburse such funds only for the purposes for which the same were entrusted. TitleServ further acknowledged that such funds constitute trust funds and agreed that all such funds and accounts would be maintained and documented in accordance with all requirements and guidelines established by WFG.

24. The Agreement obligates TitleServ to cooperate fully with WFG in the performance of audits and other examinations of TitleServ's activities. The Agreement grants WFG the right to audit and examine all financial and business records relating to any escrow business conducted by TitleServ at any reasonable time or times due to WFG's legitimate concerns about closing protection letter liability and title insurance policy liability created by TitleServ's closing services. These rights expressly survive the termination of the Agreement.

25. The Agreement provides that, upon reasonable notice, WFG has the right to examine all documentation of TitleServ relating to the business authorized by the Agreement. The Agreement further provides that in the event TitleServ refuses to permit WFG to conduct such an examination or in any other way fails to cooperate with WFG's efforts to conduct such an investigation, WFG has the right to: (1) immediately terminate the Agreement; and (2) seek equitable remedies, including injunctive relief and the appointment of a receiver. These rights expressly survive the termination of the Agreement.

26. The Agreement grants WFG the right to immediately terminate the Agreement upon notice in writing if, among other things, TitleServ commits a breach of any term, condition, or representation contained in the Agreement.

27. The Agreement states that TitleServ shall be liable to WFG and agrees to indemnify WFG against any loss, cost, or expense, including attorneys' fees and costs of litigation, sustained or incurred by WFG and arising from the fraud, negligence, or misconduct of TitleServ, or any agent, servant, or employee of TitleServ, whether or not such loss, cost, or expense results from any policy issued by TitleServ.

WFG's Relationship With TitleServ

28. TitleServ tendered approximately \$70,000 in premiums to WFG during the first two months of the Agreement. Because title agencies generally write policies for multiple underwriters, this level of revenue is unusually high for a new agency relationship. Generally, revenues increase gradually as the underwriter moves business from one underwriter to another.

29. During a routine telephone call between WFG and TitleServ, a Senior Vice President at WFG made mention of the unusually high level of premiums being paid so early in the relationship. The TitleServ representative stated that they would provide WFG with a million dollars in premiums. This representation struck the Senior Vice President as suspicious.

30. In addition, Plaintiff began to hear rumors regarding TitleServ. One such rumor was that two or three other title insurance underwriters had

terminated their relationship with TitleServ during the months prior to the Agreement. The high level of initial revenue and the statement made by representatives of TitleServ lend credence to this rumor.

31. In early March 2011, WFG endeavored to conduct an audit of TitleServ, pursuant to WFG's rights in the Agreement. A WFG auditor contacted TitleServ to schedule an audit, but TitleServ was evasive about setting a date for the audit.

32. After learning that TitleServ was overdue for an audit mandated by the State of Virginia, WFG again contacted TitleServ and insisted on scheduling an audit for April 1, 2011 to bring TitleServ into compliance and address WFG's suspicions. TitleServ rejected WFG's attempt to schedule an audit.

33. WFG became uncomfortable with the relationship and TitleServ's lack of cooperation. On March 31, 2011, WFG terminated its agency agreement with TitleServ pursuant to the terms of the Agreement.

TitleServ Collapses and WFG Seeks Its Contractual Right to Audit

34. Upon information and belief, on or about April 3, 2011, Citibank and Chase instructed their mortgage managers to cease utilizing TitleServ for title business.

35. On April 8, 2011, WFG became aware that Conway, as president of TitleServ, announced that TitleServ was immediately ceasing operations.

36. On April 11, 2011, an article appearing on the website of the *Wall Street Journal* stated that TitleServ had ceased operations on April 8, 2011 without explanation. On April 14, 2011, the *Long Island Business News* reported that

TitleServ has ceased operations after Citibank and Chase instructed its mortgage managers not to put any further business through TitleServ and that the banks had refused comment concerning their reasons for doing so.

37. Based on TitleServ's imminent closing, WFG dispatched two auditors to TitleServ's Woodbury offices on Monday April 11, 2011, to begin an immediate audit of their books and records. Under the terminated agency agreement, WFG retained the right to conduct such an audit, as is standard in the industry.

38. TitleServ refused to provide WFG's auditors with access to its office as well the company's books and records.

39. On April 15, 2011, after negotiations with counsel for Defendant Conway, TitleServ relented and provided WFG with access to TitleServ's offices and its books and records.

40. Despite agreeing to fully cooperate with WFG, TitleServ has not provided WFG with the complete access to TitleServ's books and records that WFG is entitled under the agency agreement.

41. WFG's auditors have concluded, despite the absence of all pertinent information, that there is suspicious activity in and among many of TitleServ's accounts that bear the hallmarks of suspicious activity, including transfers of Escrow Funds to operating accounts.

42. For example, there are numerous inter-account transfers that do not appear to have a legitimate economic purpose. In addition, these transfers are done in round numbers (i.e. \$700,000, \$1.5 million), which is unusual and suspicious.

43. To date, TitleServ has failed to provide WFG with all of the requested documents and financial information to which WFG has a contractual right.

Evidence of Missing Escrow Funds

44. WFG, through TitleServ, acted as the title insurer for a private mortgage refinance on property in North Carolina. The transaction contemplated satisfying the original mortgage in contemplation of a refinanced mortgage to be held by Wells Fargo Home Mortgage ("Wells Fargo").

45. As part of this transaction, TitleServ acted as an Escrow Agent for the parties to the transaction, which included TitleServ's acceptance of funds from Wells Fargo for the original mortgage payoff amount of \$1,600,633.17, which was to be held in escrow until closing.

46. Upon information and belief, the loan underlying this transaction closed on March 30, 2011. On or about April 12, 2011, a Wells Fargo employee contacted WFG to report that the Escrow Funds, which had been sent by Wells Fargo to TitleServ for the purpose of satisfying the original mortgage, had not been tendered by Defendants. Accordingly, the original mortgage has not been satisfied.

47. During the audit initiated by WFG on April 15, 2011, a review of TitleServ's records showed the deposit of the Wells Fargo Escrow Funds at the end of March 2011. In addition, TitleServ's records show that a check bearing number 78847 was issued against those funds on March 30, 2011.

48. The records that are available indicate that the money is no longer in the account and Wells Fargo confirms that it has not received the funds.

49. Wells Fargo has made a claim with Plaintiff against the title insurance policy issued by TitleServ and underwritten by WFG for the approximately \$1.6 million that is currently missing.

50. In addition to the claim entered by Wells Fargo, three additional banks have filed a total of four claims for approximately \$500,000.

51. During a telephone call with representatives for WFG on April 15, 2011, Defendant Conway acknowledged that approximately \$6 million was missing from the TitleServ trust accounts. Conway was unable or unwilling to declare who or what was responsible for the missing trust funds.

52. Additional documents and information reveal that approximately \$7.9 million is actually missing from TitleServ trust accounts related to WFG insured closings.

AS AND FOR A FIRST CAUSE OF ACTION
(Against TitleServ - Breach of Contract)

53. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 52 of the Complaint as if set forth fully herein.

54. WFG and TitleServ are parties to a valid and binding agency agreement, namely, the Agreement.

55. WFG has fully performed all of its obligations under the Agreement.

56. Upon information and belief, TitleServ has breached the Agreement by, among other things:

(a) failing to keep all Escrow Funds received by TitleServ from any source in connection with transactions in which title insurance policies of WFG in an escrow account separate from TitleServ's individual accounts;

(b) failing to disburse such Escrow Funds only for the purposes for which the same were entrusted; and

(c) failing to cooperate fully with WFG in the performance of audits and other examinations of TitleServ's activities.

57. As a result of these breaches, WFG:

(a) has suffered or may suffer loss;

(b) has the right to seek equitable remedies, including injunctive relief and the appointment of a receiver; and

(c) is entitled to indemnification against any loss, cost, or expense, including attorneys' fees and costs of litigation, sustained or incurred by Commonwealth and arising from the fraud, negligence, or misconduct of TitleServ; or any agent, servant, or employee of TitleServ, whether or not such loss, cost, or expense results from any policy issued by TitleServ.

AS AND FOR A SECOND CAUSE OF ACTION
(Against All Defendants -- Fraud)

58. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 57 of the Complaint as if set forth fully herein.

59. TitleServ, through Conway falsely represented to Plaintiff that they would hold the Escrow Funds entrusted to them in separate escrow accounts and

not commingle them with Defendants' assets or misappropriate them for other than their intended purpose.

60. TitleServ, through Conway, made this representation to Plaintiff knowingly and with the intent to deceive Plaintiff.

61. Plaintiff reasonably and justifiably relied on the representations made by the Defendants to its detriment by, among other things, allowing TitleServ to act as agents of Plaintiff.

62. As a direct and proximate result of their reasonable and justifiable reliance on the representations made by the Defendants, Plaintiff has suffered or will suffer damages in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Against All Defendants -- Breach of Fiduciary Duty)

63. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 62 of the Complaint as if set forth fully herein.

64. As the agents of Plaintiff, the Defendants owed fiduciary duties to Plaintiff and its insureds, including the duties to (1) hold Escrow Funds separate and not commingle them with Defendants' assets or misappropriate them for other than their intended purpose, (2) ensure the timely recording of deeds and mortgages evidencing the interests of Plaintiff's insureds in real property, and (3) pay all transfer taxes and recording fees on behalf of Plaintiff's insureds.

65. Upon information and belief, the Defendants breached their fiduciary duties to Plaintiff and its insureds by, among other things:

(a) failing to hold Escrow Funds separate and instead comingling them with Defendants' assets and/or misappropriating them for uses other than their intended purpose;

(b) failing to timely record deeds and mortgages evidencing the interests of Plaintiff's insureds in real property;

(c) failing to pay all transfer taxes and recording fees on behalf of Plaintiff's insureds.

66. As a result of the breaches of duties owed to Plaintiff, Plaintiff has or will suffer damages in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Against All Defendants -- Negligence)

67. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 65 of the Complaint as if set forth fully herein.

68. Defendants owed Plaintiff and its insureds a duty to use reasonable care to (1) protect the Escrow Funds entrusted to them; (2) timely record deeds and mortgages evidencing the interests of Plaintiff's insureds in real property, and (3) pay all transfer taxes and recording fees on behalf of Plaintiff's insureds.

69. Upon information and belief, the Defendants breached their respective duties of care to Plaintiff and its insureds by, among other things:

(a) failing to hold Escrow Funds separate and instead comingling them with Defendants' assets and/or misappropriating them for uses other than their intended purpose;

(b) failing to timely record deeds and mortgages evidencing the interests of Plaintiff's insureds in real property; and

(c) failing to pay all transfer taxes and recording fees on behalf of Plaintiff's insureds.

70. As a result of the breaches of duties owed to Plaintiff, Plaintiff has or will suffer damages in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Against All Defendants -- Unjust Enrichment)

71. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 69 of the Complaint as if set forth fully herein.

72. Upon information and belief, the Defendants have been enriched at the expense of Plaintiff and its insureds.

73. The enrichment of the Defendants is, in light of the surrounding circumstances, unjust in that the Escrow Funds misappropriated by the Defendants did not belong to them and were entrusted to the Defendants as Escrow Funds to be kept safe and segregated from the Defendants' assets.

74. It is against equity or good conscience to permit the Defendants to retain any portion of the Escrow Funds they have received.

AS AND FOR A SIXTH CAUSE OF ACTION
(Against All Defendants -- Money Had and Received)

75. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 73 of the Complaint as if set forth fully herein.

76. Upon information and belief, the Defendants have received monies belonging to Plaintiff.

77. Upon information and belief, the Defendants have benefited from receipt of the monies belonging to the Plaintiff and have misappropriated such monies for their own benefit and use.

78. Under principles of equity and good conscience, the Defendants should not be permitted to keep the monies they have received.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Against All Defendants -- Conversion)

79. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 78 of the Complaint as if set forth fully herein.

80. The funds that Defendants held in escrow were held as agent for either the Plaintiff's insureds or for the purpose of completing transactions and in connection with issuance of Plaintiff's title insurance policies.

81. Defendants also held funds in the escrow that were due to Plaintiff as premium remittances.

82. Therefore, funds held in these accounts were owned in part by Plaintiff or its insureds.

83. By their actions, Defendants misappropriated and converted these funds and, as result, have damaged Plaintiff in an amount to be determined at trial.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Against All Defendants -- Accounting)

84. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 85 of the Complaint as if set forth fully herein.

85. Plaintiff is entitled to a detailed accounting from Defendants to determine the exact amount of funds that Defendants have misappropriated from Escrow Funds that were to be held on behalf of Plaintiff and Plaintiff's insureds.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants awarding Plaintiff:

(1) damages in an amount to be determined at trial;

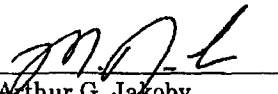
(2) a declaration of their rights with respect to losses caused by Defendants' misconduct;

(3) injunctive relief permanently enjoining Defendants from destroying or altering documents or information, making any further transfers or misappropriations of escrow funds, directing Defendants to turn over all Escrow Funds in their possession to Plaintiff, and granting Plaintiff access to all documents and information, including an accounting, relevant to TitleServ's business operations; and

(4) awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 31, 2011

HERRICK, FEINSTEIN LLP



Arthur G. Jakoby
M. Darren Traub
2 Park Avenue
New York, New York 10016
Attorneys for Plaintiff