

Filing # 62465929 E-Filed 10/05/2017 03:37:05 PM

**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

DONN SANDERS,

CASE NUMBER:

Plaintiff,

v.

**SMOKY MOUNTAIN TITLE, INC.,
GATEWAY MORTGAGE GROUP, LLC,
LECONTE REAL ESTATE, LLC, and
BANK OF AMERICA CORPORATION,**

Defendants.

_____ /

COMPLAINT

The Plaintiff, **DONN SANDERS** (“Plaintiff”), sues the Defendants, **SMOKY MOUNTAIN TITLE, INC.** (“Smoky”), **GATEWAY MORTGAGE GROUP, LLC** (“Gateway”), **LECONTE REAL ESTATE, LLC**, (“LeConte”) (collectively “Defendants”), and **BANK OF AMERICA CORPORATION** (“BOA”), and states:

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, attorney’s fees and court costs.
2. Plaintiff is over the age of eighteen (18) years, sui juris, and a resident of Palm Beach County, Florida.
3. Smoky is a Tennessee corporation which is, and at all times material was, authorized to do, and doing business in Palm Beach County, Florida.
4. Gateway is an Oklahoma limited liability company which is, and at all times material was, authorized to do, and doing substantial business in Palm Beach County, Florida.
5. LeConte is a Tennessee limited liability company which is, and at all times material was authorized to do, and doing business in Palm Beach County, Florida.

6. BOA is a North Carolina corporation which is, and at all times material was, authorized to do, and doing substantial business in Palm Beach County, Florida.

7. Venue is proper in this Court because all actions giving rise to this Complaint occurred in Palm Beach County, Florida.

FACTUAL ALLEGATIONS

8. Plaintiff was scheduled to close the sale/purchase of real property located at 1787 Red Bone Way in Sevierville, Tennessee (the "Property") on June 29, 2017 at 2:30 P.M.

9. Plaintiff retained LeConte to represent him in the above-mentioned closing. Gateway was the appointed lender to finance the purchase. Gateway brought in Smoky to be the title insurance agent.

10. On June 22, 2017, Gateway advised Plaintiff that his loan was clear to close. Gateway further advised Plaintiff that Smoky would be contacting him to set up the mobile notary to formally close the sale/purchase of the Property in Palm Beach County, Florida.

11. Because Plaintiff would be executing all closing documents in Palm Beach County, Florida, Plaintiff, on June 26, 2017, asked Gateway if he could wire the funds to complete the closing transaction. Gateway advised Plaintiff to get wiring instructions from Smoky.

12. On June 28, 2017 at approximately 8:40 a.m., Plaintiff received wiring instructions to close the sale/purchase of the Property from Smoky. This particular email not only contained instructions to wire the closing funds to a BOA account, but attached the Final Settlement Statement for the closing. The email originated from Smoky's email account/server, on Smoky's electronic letterhead, with Smoky's signature block and title agent Diana Abrams's electronic signature. Gateway was copied on this email.

13. The above-described email was fraudulent, as an imposter hacked into Defendants' email accounts/servers.

14. This imposter, impersonating Diana Abrams of Smoky, sent Plaintiff fraudulent wiring instructions, together with the Final Closing Statement.

15. Because the wiring instructions originated from Smoky's email account/server, Plaintiff believed the instructions to be genuine and authentic.

16. Gateway being copied on this email, together with pertinent closing documents being attached to the email, further legitimized the fraudulent email.

17. Despite being copied, Gateway never challenged this fraudulent email.

18. Gateway further legitimized the wiring instructions to BOA by sending a separate email to Plaintiff confirming the wiring instructions to the fraudulent BOA account.

19. Despite knowing that Plaintiff needed wiring instructions, LeConte and Smoky failed to personally contact Plaintiff with instructions. The only wiring instructions Plaintiff received regarding the subject closing came from the imposter and Gateway, both confirming that Plaintiff's funds should be wired into a BOA account.

20. On the morning of June 29, 2017, Plaintiff wired \$17,282.00 to the BOA account (the balance of the down payment and closing costs) pursuant to the wiring instructions provided.

21. Later that afternoon, with the mobile notary provided by Gateway, Plaintiff formally executed all closing documents in his office in Palm Beach County, Florida; then, forwarded the executed closing documents to Defendants.

22. Just before the close of business on June 29, 2017, Smoky telephoned Plaintiff advising him that Plaintiff's funds never arrived. Smoky further advised Plaintiff that he had been tricked and fooled into wiring his funds into a BOA account created by a crook.

23. The active, on-going police investigation reveals that the hacker infiltrated Defendants' email accounts/servers from Florida, then conned/manipulated Plaintiff into wiring the closing funds into a BOA account located in Florida.

24. Two days prior to the June 29th closing, Defendants had direct knowledge that the electronic communications regarding Plaintiff's purchase of the Property had been compromised.

25. Defendants received a fraudulent, suspect electronic communication from the subject hacker.

26. The hacker asked Defendants directly if the sale/purchase of the Property was set to close on June 29, 2017.

27. Defendants knew that this bogus email came from a third party unauthorized to participate in the sale/purchase of the Property.

28. In acknowledging this security breach, Defendants changed their email passwords.

29. Knowing that an unauthorized person hacked the electronic communications regarding the sale/purchase of the Property, Defendants permitted the closing to proceed without advising Plaintiff of the security breach.

30. Plaintiff would have never followed wiring instructions originating from compromised email accounts/servers.

31. Plaintiff retained and relied upon Defendants to: (1) orchestrate the closing of the sale/purchase of the Property in a professional manner; and, (2) maintain the safety and security of Plaintiff's funds earmarked for the closing of the sale/purchase of the Property.

32. Defendants failed to accomplish any of these obligations.

33. By failing to properly secure their computing systems, Defendants permitted a crook to electronically infiltrate the instant closing and steal Plaintiff's funds.

34. Defendants' cursory, pitiful efforts to protect the security and integrity of the instant transaction were woefully inadequate.

35. Defendants had an obligation to close the instant sale/purchase of the Property competently. Plaintiff trusted and relied upon Defendants to do so.

36. Because the instant sale/purchase of the Property was to be performed remotely/electronically, Defendants has an obligation to properly secure their computing systems, particularly their email accounts/servers.

37. Plaintiff had a right to trust and rely upon the safety and security of Defendants' computing systems, particularly their email accounts/servers.

38. Defendants failed to properly secure their email accounts/servers causing Plaintiff to lose \$17,282.00.

39. Had Defendants properly secured their email accounts/servers, or warned Plaintiff that the safety and security of their email accounts had been compromised, Plaintiff would have never lost \$17,282.00.

40. Had Defendants taken the initiative to personally speak with Plaintiff regarding proper closing instructions, Plaintiff would have never lost \$17,282.00.

41. Due to Defendants' negligent, careless, unreasonable, and irresponsible behavior in closing the subject transaction, Plaintiff suffered monetary losses well in excess of \$17,282.00.

42. Because the sale/purchase the Property due to Defendants' negligence, Plaintiff demands the immediate return of his security deposit being held in escrow by Smoky.

43. Plaintiff made written demand on Defendants to return the escrowed security deposit, together with Plaintiff's stolen closing funds.

44. To date, Defendants have either ignored or rejected Plaintiff's demand to be made whole.

45. Plaintiff retained undersigned counsel to represent him in this action and has agreed to pay a reasonable fee for his representation.

46. Plaintiff performed all conditions precedent to bringing this action, or such conditions have been waived or excused.

COUNT I

(Professional Malpractice/Negligence)

Plaintiff re-alleges paragraphs 1– 46 as if fully set forth herein.

47. Plaintiff engaged Defendants to orchestrate the subject transaction to purchase the Property, and Defendants agreed to do so in a competent, professional manner.

48. Defendants had a duty to provide reasonable, professional services to Plaintiff in closing the sale/purchase of the Property.

49. Particularly, Defendants had an obligation to secure their email accounts/servers in conducting the instant transaction.

50. By failing to secure the safety of their email servers; by failing to warn Plaintiff that their email servers had been compromised; by directing Plaintiff to wire his closing funds

into a fraudulent BOA account; and, by failing to speak personally and directly to Plaintiff about closing procedures and protocols, Defendants breached and neglected their duties to close the purchase of the Property in a professional manner.

51. Defendants' negligence caused substantial loss and damage to Plaintiff.

52. Defendants' neglect caused Plaintiff to lose well in excess of \$17,282.00.

53. Plaintiff's injuries, losses and damages were directly and proximately caused by Defendants' unreasonable and negligent delivery of professional real estate services.

WHEREFORE, the Plaintiff, **DONN SANDERS**, demands judgment against **SMOKY MOUNTAIN TITLE, INC., GATEWAY MORTGAGE GROUP, LLC**, and **LECONTE REAL ESTATE, LLC** for all compensatory damages allowed by law, interest, costs and all other relief this Court determines is appropriate.

COUNT I

(Negligence Against Bank of America Corporation)

Plaintiff re-alleges paragraphs 1, 2, 6, 7, 8, 10 - 18, 20, 22, 23, 45 & 46 as if fully set forth herein.

54. BOA had a duty to follow its own policies and procedures in preventing the instant theft and fraud.

55. Unauthorized ACH transfers, unauthorized wire transfers, fraudulent checks, fraudulent bank accounts are so pervasive that BOA has established protocols to detect and prevent fraud.

56. Know your customer ("KYC") is the process in which BOA identifies and verifies the identity of its clients.

57. The objective of KYC guidelines is to prevent BOA from being used, intentionally or unintentionally, by crooks for fraudulent, nefarious activities.

58. BOA failed to follow its own policies and procedures in preventing the instant theft and fraud, particularly BOA failed to follow the KYC guidelines, which would have, most certainly, prevented the subject fraudulent transaction.

59. Specifically, BOA failed to perform the simplest safety check: match the named recipient of the subject wire transfer with the named recipient's account. In other words, funds must only be deposited into the account of the named recipient; and, BOA failed to do this.

60. The named recipient of the subject wire transfer was Wenross Skyers Smoky Mountain Title, a corporate entity; yet, the subject funds were accepted by BOA into the private, personal account of Wenross Skyers.

61. Had BOA followed its own fraud prevention protocols, and followed KYC guidelines, the subject fraudulent transaction would have never occurred. BOA's failure to follow established fraud prevention protocols caused the subject fraudulent transaction to go through successfully.

62. As a direct result of BOA's failure to follow established fraud prevention protocols, Plaintiff suffered substantial, significant financial losses and damages.

WHEREFORE, the Plaintiff, **DONN SANDERS**, demands judgment against **BANK OF AMERICA CORPORATION** for all compensatory damages allowed by law, interest, costs and all other relief this Court determines is appropriate.

Dated this 5th day of October, 2017

Respectfully submitted by:

/s/ Vincent E. Miller
Vincent E. Miller
Fla. Bar. No. 126497
**THE LAW OFFICES OF
VINCENT E. MILLER, P.A.**

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