

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO:

CHRISTOPHER SCHUMAN,

Plaintiff,

vs.

WELLS FARGO BANK, N.A., a Foreign Corporation,  
and BANK OF AMERICA CORPORATION,  
a Foreign Corporation,

Defendants.

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**COMPLAINT**

COMES NOW the Plaintiff, CHRISTOPHER SCHUMAN (hereinafter "SCHUMAN"), by and through the undersigned, and sue the Defendants, WELLS FARGO BANK, N.A., a Foreign Corporation, and BANK OF AMERICA CORPORATION, a Foreign Corporation, and as grounds therefore would state:

1. This is an action seeking damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of attorney's fees, interest and costs.
2. At all times material hereto, Christopher Schuman, was a resident of Broward County, Florida residing in Fort Lauderdale, Florida.
3. Defendant, WELLS FARGO BANK, N.A. (hereinafter "WELLS FARGO") is a national banking institution chartered and supervised by the Office of the Comptroller of the Currency (OCC), and conducts business across the State of Florida to provide financial services on a global basis. Defendant, WELLS FARGO, is a Foreign Corporation that maintains its principal place of business in North Carolina. At all times relevant hereto, WELLS FARGO operated, conducted, engaged and otherwise carried on a business venture in Broward County,

Florida.

4. Defendant, BANK OF AMERICA CORPORATION, (hereinafter "BOA") is a national banking institution chartered and supervised by the Office of the Comptroller of the Currency (OCC), and conducts business across the State of Florida to provide financial services on a global basis Defendant, BOA, is a Foreign Corporation that maintains its principal place of business in North Carolina. At all times relevant hereto, BOA operated, conducted, engaged and otherwise carried on a business venture in Broward County, Florida.

5. All conditions precedent required prior to bringing this action have been met or waived by the Defendants.

### **FACTUAL ALLEGATIONS**

6. In entering into a long term banking relationship with WELLS FARGO, Mr. SCHUMAN relied upon the name and stature of WELLS FARGO, believing that WELLS FARGO had in place security operations and procedures which would safeguard his hard earned money.

7. At no time did WELLS FARGO ever inform, advise or instruct SCHUMAN as to specific requirements necessary for the security of his computer equipment, software or programming in order to conduct the on-line banking provided through WELLS FARGO.

8. At all times material and prior to the opening of Mr. SCHUMAN's account, WELLS FARGO knew that accounts discussed electronically were exposed to penetration from outside sources including, but not limited to, hackers and the introduction of virus' into their customer's computer equipment.

9. In early June 2017, Mr. SCHUMAN made the decision to purchase real estate in Broward County, Florida, at which time he retained an attorney to facilitate the transaction.

10. Mr. SCHUMAN's investment required that he make a down payment in the amount

of \$1,312,500.00 prior to the closing on the subject property on September 13, 2017.

11. Mr. SCHUMAN made an initial earnest money down payment in the amount of \$10,000 from his WELLS FARGO Bank Account number XXXXXXXXXX2572.

12. Mr. SCHUMAN then made a second payment in the amount of \$520,000.00 towards his down payment on the subject property from the same WELLS FARGO Bank Account.

13. On July 5, 2017, Mr. SCHUMAN received an email from who he believed to be his attorney requesting that he wire the \$585,000.00 balance of his down payment in order to close on the subject property on July 13, 2017.

14. Mr. SCHUMAN then contacted his WELLS FARGO Financial Advisor to request assistance with the transfer.

15. Mr. SCHUMAN's WELLS FARGO Financial Advisor contacted a WELLS FARGO Employee who agreed to assist Mr. SCHUMAN with the wire transfer electronically without requiring his physical presence or physical signature.

16. The WELLS FARGO Employee then electronically contacted the fraudulent email address purporting to be Mr. SCHUMAN's attorney, and requested the wire instructions.

17. The individual fraudulently posing as Mr. SCHUMAN's attorney provided the wiring instructions to the WELLS FARGO PB Client Associate and the wire transfer was initiated for \$585,000.00. The Federal Reference Number for the transaction is \*\*\*\*\*018303.

18. On July 11, 2017, Mr. SCHUMAN received another email from the fraudulent email address purporting to be his attorney requesting an additional wire of the remaining \$254,027.37 as the balance of the down payment.

19. Receipt of such email prompted Mr. SCHUMAN to contact his attorney telephonically to discuss the remaining details of the transaction prior to the closing date.



20. During said telephone call, Mr. SCHUMAN discovered that his attorney was not aware of the July 5, 2017 wire transfer nor was he aware of the July 11, 2017 request for a final wire transfer as his attorney had not sent either email nor had he made either request.

21. On July 11, 2017, immediately after becoming aware of the wire fraud, Mr. SCHUMAN contacted WELLS FARGO to inform them of the transaction and demand an immediate recall of the wire transfer request.

22. The wire transfer was traced to and accepted by the receiving bank, Defendant BANK OF AMERICA CORPORATION (hereinafter "BOA").

23. A portion of monies, approximately \$300,000.00, was allegedly frozen; however, the unknown, fraudulent recipient of the wire transfer had already transferred \$285,000.00 to a location in South Africa.

24. Defendant BOA transferred the monies without any delay to confirm the source of the monies, the legitimacy of the transaction, without knowing the full and complete identities of the various individuals associated with the BOA account into which the funds were received, and without detecting the various indicia of fraud related to the account and those who set up and used the account.

25. Each and every reference to "Defendant" in this Complaint is intended and shall be deemed and construed to be agents, representatives, employees, co-venturers, servants, partners, principals, masters, employers, co-conspirators, and/or associates respectively of WELLS FARGO and BOA, and at all times relevant were acting within the course and scope of such agency, service, employment, partnership and/or association.

26. The allegations of this complaint and factual contentions made herein on information and belief have evidentiary support or are likely to have evidentiary support after a

reasonable opportunity for further investigation or discovery.

**COUNT I**  
**FOR BREACH OF CONTRACT AND BREACH OF THE IMPLIED**  
**COVENANT OF GOOD FAITH AND FAIR DEALING**  
**AGAINST DEFENDANT WELLS FARGO**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further state:

27. Upon information and belief, Mr. SCHUMAN was subject to the terms and conditions of the Treasury Services Terms and Conditions (hereinafter referred to as “T&C”), which WELLS FARGO will contend is a binding agreement between WELLS FARGO and Mr. SCHUMAN as to each and every provision therein contained.

28. The T&C prepared entirely by WELLS FARGO is an agreement used throughout the banking industry, and Mr. SCHUMAN had no meaningful ability or power to change any of the terms, conditions, or provisions of such agreement.

29. Portions of the T&C, among other provisions, emphasize the extreme importance of preventing others from wrongfully obtaining access to computer equipment or transmitting facilities, and that the customer should safeguard against potential unauthorized use, including unauthorized electronic transfers, unauthorized checks, or other withdrawal orders.

30. At all times relevant hereto, there existed an implied covenant of good faith and fair dealing, where WELLS FARGO impliedly promised and represented to Mr. SCHUMAN that it would not do anything which would deprive Mr. SCHUMAN of the benefits of the contractual and statutory relationship between Mr. SCHUMAN and WELLS FARGO. This duty includes a duty to do everything that the T&C requires, and what WELLS FARGO will do, including a reasonable expectation to protect the security of Mr. SCHUMAN’s money on deposit with WELLS FARGO.

31. By allowing the fraudulent wire transfer under the name of Mr. SCHUMAN, described in paragraph 17 above, in the amount of \$585,000.00 from Mr. SCHUMAN's WELLS FARGO bank account to BOA, and WELLS FARGO's failure to act appropriately in making the transfer while not following its own policies as outlined in the T&C, as well as its failure to act appropriately in making a timely recall demand of the wire transfer request, WELLS FARGO breached the T&C and also breached the implied covenant of good faith and fair dealing that existed between Mr. SCHUMAN and WELLS FARGO by virtue of their banking relationship and as existed in the T&C between the parties.

32. Prior to the initiation of this lawsuit, Mr. SCHUMAN made due demand upon WELLS FARGO for reimbursement of the fraudulently transferred money which was transferred in violation of the covenant of good faith and fair dealing. Although due demand has been made, WELLS FARGO has failed and refused to pay to Mr. SCHUMAN the balance of the money stolen as a result of the breach of the T&C and breach of the covenant of good faith and fair dealing.

33. As a direct and proximate result of such breach of the T&C and the implied covenant of good faith and fair dealing, Mr. SCHUMAN has suffered damages in the amount of Two Hundred and Eighty-Five Thousand and 00/100 dollars (\$285,000.00) plus interest.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, WELLS FARGO, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT II**  
**BREACH OF STATUTORY DUTY**  
**AGAINST DEFENDANT WELLS FARGO**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further states:



34. Florida Statutes Section 674.406 imposes upon WELLS FARGO the duty to exercise ordinary care and to act in good faith when paying items.

35. Florida Statutes Section 674.406 further imposes the duty on Mr. SCHUMAN to discover and report unauthorized items with reasonable promptness.

36. SCHUMAN exercised reasonable promptness in notifying WELLS FARGO of the fraudulent wire transfer.

37. SCHUMAN notified the bank promptly within the time that he reasonably could have discovered the unauthorized payment.

38. In fact, SCHUMAN notified the bank within the same day of becoming aware of the fraudulent transaction.

39. In making the fraudulent wire transfer, WELLS FARGO breached its statutory duty by failing to exercise ordinary due care and by failing to implement required safeguards, and that failure has substantially contributed to the loss suffered by SCHUMAN.

40. In facilitating the fraudulent wire transfer, WELLS FARGO breached its statutory duty by failing to act in good faith as they knew, or should have known, that the email the WELLS FARGO PB Client Associate contacted was in fact a fraudulent email.

41. Until July 11, 2017, Mr. SCHUMAN could not have known of the fraud.

42. Furthermore, WELLS FARGO failed to act in good faith when it failed to follow its own T&C when it made the transfer of the \$585,000.00 without requiring Mr. SCHUMAN's presence or physical signature for the transfer of an amount of money requiring such under their T&C.

43. As a direct and proximate result of WELLS FARGO's failure to use ordinary care, and bad faith in making the transfer, Mr. SCHUMAN has been damaged.

44. The Plaintiff has retained the undersigned attorney and has agreed to pay a reasonable fee.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN respectfully demands judgment for damages against the Defendant, WELLS FARGO, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT III**  
**BREACH OF FIDUCIARY DUTY**  
**AGAINST DEFENDANT WELLS FARGO**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further states:

45. As a bank holding Mr. SCHUMAN's accounts, WELLS FARGO had a fiduciary obligation to act at all times in the interest of Mr. SCHUMAN and in good faith. None of the funds held in Mr. SCHUMAN's account belonged to or were the property of WELLS FARGO, whose duty was to safeguard the funds and to disburse them only upon written express instructions of Mr. SCHUMAN and after following strict guidelines and protocol to ensure the funds were not lost to fraud, in accordance with their T&C.

46. WELLS FARGO is familiar with various fraud schemes and is duty-bound to detect fraud and implement strategies to ensure clients are not defrauded through known schemes.

47. In this case, a scheme known to Wells Fargo was used to defraud a client out of money only due to the ineffective fraud prevention practices of Defendant Wells Fargo.

48. Further, WELLS FARGO knew that its customer's on-line accounts were subject to exposure to penetration by outside sources, including the infiltration of viruses used to gain access to customer's information.

49. WELLS FARGO failed to inform customers of specific security procedures they



needed to undertake in order to prevent fraudulent wire transfers.

50. By WELLS FARGO's failure to inform Mr. SCHUMAN of the dangers, as well as their failure to timely recall the fraudulent wire transfer, which was done without proper and appropriate authorization and authentication, and without having secured proper and appropriate proof of same, WELLS FARGO knowingly assisted, aided, abetted and/or participated in the fiduciary breaches set forth above and described herein.

51. WELLS FARGO has therefore intentionally and knowingly acted against Mr. SCHUMAN's interests.

52. WELLS FARGO, due to its inaction, wrongdoing, willful conduct, and such other reasons as have been described above, or may be inferred from the foregoing allegations, breached its fiduciary duties to Mr. SCHUMAN, and as a direct and proximate result of such wrongdoing, Mr. SCHUMAN has been damaged thereby, in the amount of Two Hundred and Eighty-Five Thousand and 00/100 dollars (\$285,000.00) plus interest.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, WELLS FARGO, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT IV**  
**NEGLIGENCE**  
**AGAINST DEFENDANT WELLS FARGO**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further states:

53. When Mr. SCHUMAN opened his account with WELLS FARGO, and deposited large sums of money entrusting same to WELLS FARGO's care and handling, and the covenant of good faith and fair dealing was implied in the T&C entered into with WELLS FARGO.

54. Mr. SCHUMAN alleges that at all times, he performed all obligations, conditions and agreements imposed by any such agreement entered into with WELLS FARGO.

55. Following the fraudulent wire transfer request, Mr. SCHUMAN immediately notified WELLS FARGO insisting that the request was fraudulent and demanded the recall of the wire transfer request.

56. At all times herein mentioned, WELLS FARGO owed the following duties, among others, to its depositors in connection with the wire transfer of funds to a third party, including Mr. SCHUMAN:

- a) To reasonably protect the funds on deposit of the customer;
- b) To establish commercially reasonable and adequate security procedures;
- c) To offer to the customer, including Mr. SCHUMAN, additional security procedures and controls, including but not limited to, passwords and PIN numbers;
- d) To reasonably prevent the occurrence of fraudulent activity;
- e) To have in place and faithfully implement WELLS FARGO's own internal security policies, practices, and procedures for on-line bank accounts to verify and authenticate wire transfer requests from one account to another;
- f) To have in place and faithfully implement security policies, practices, and procedures establishing the true identity and authentication of a customer requesting a wire transfer in accordance with WELLS FARGO's own internal security policies, practices, and procedures and those which are customary and commercially reasonable within the banking industry;
- g) To adequately train, educate and continue to train, educate, and supervise bank personnel in security policies, practices, and procedures, and those commercially

- reasonable security policies, practices, and procedures customarily used in the banking industry, including the prevention of the fraudulent wire transfer requests;
- h) To adequately screen, monitor and perform criminal and fraud background checks on existing WELLS FARGO personnel and new hires in accordance with internal security policies, practices, and procedures of WELLS FARGO and those commercially reasonable security policies, practices and procedures typically utilized in the banking industry;
  - i) To be vigilant in the protection of customer money from the risk of fraud which is well known to Defendant Wells Fargo;
  - j) To require that Mr. SCHUMAN appear in person to authorize any wire transfer, especially one of this size;
  - k) To obtain written authority for such wire transfer;
  - l) To speak with the person or entity receiving the funds to ensure that the funds are not being taken as part of a scam;
  - m) To contact the bank to which the funds are being transferred, in this case BOA, to ensure that the monies are being transferred to the account to which they were intended;
  - n) To follow all safety protocol to ensure client monies are not stolen; and
  - o) Other duties according to proof.

57. WELLSO FARGO breached its duty to Mr. SCHUMAN to protect and safeguard his money by failing to require in person or written authorization of the transfer; failing to ensure the location to which the funds should have been transferred; failing to detect the likely fraud that was being perpetrated; failing to contact the funds recipient other than through email; and otherwise failing to safeguard against fraud as well as wasting valuable time in ordering the recall



of the fraudulent wire transfer request.

58. Further, WELLS FARGO has breached its duty to Mr. SCHUMAN by failing and refusing to assist Mr. SCHUMAN in the recovery of the stolen monies.

59. As a direct and proximate result of WELLS FARGO's untoward acts as afore-described, Mr. SCHUMAN has been damaged in the amount of Two Hundred and Eighty-Five Thousand and 00/100 dollars (\$285,000.00) plus interest.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, WELLS FARGO, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT V**  
**NEGLIGENCE**  
**AGAINST DEFENDANT BANK OF AMERICA**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further states:

60. As a bank holding Mr. SCHUMAN's funds, BOA had a duty to act at all times in the interest of Mr. SCHUMAN and in good faith and to ensure that funds are not improperly obtained through the use of a fraud scheme orchestrated at or through BOA and associated accounts. None of the funds taken from Mr. SCHUMAN's account belonged to or were the property of BOA, whose duty was to safeguard the funds and to disburse them only upon authorization in accordance with their T&C.

61. BOA knew that there had been reports of fraudulent on-line banking activities and scams, especially involving South Africa. In fact, Bank of America was in a better position than Mr. Schuman to appreciate this danger and to safeguard against it.

62. Further, BOA knew that on-line accounts were subject to exposure to penetration

by outside sources, including the infiltration of viruses used to gain access to unauthorized information.

63. BOA breached its duty to protect Mr. Schuman's money from being improperly taken through fraudulent activities by: failing to follow protocol when establishing the bank account to which Mr. Schuman's monies were initially wired; failing to know the identity of all persons and entities associated with that account; failing to put in place and/or follow all safeguards when setting up accounts or receiving wire transfers; failing to hold or stop the transfer of Mr. SCHUMAN's money from BOA to a bank account in South Africa despite knowledge of widespread international fraudulent banking activities; and failing to otherwise detect and prevent this fraud by following known banking safety regulations and protocol.

64. BOA failed to inform Mr. SCHUMAN or WELLS FARGO of the obvious fraudulent wire transfer that they knew or should have known was made from BOA to another account South Africa.

65. By failing to timely recall the fraudulent wire transfer of funds from BOA to an account outside of the United States, which BOA knew or should have known was a fraudulent wire transfer, BOA has knowingly assisted, aided, and abetted and/or participated in the fiduciary breaches set forth above and described herein.

66. BOA is a financial institution in the business of, amongst other things, holding money of other individuals, thereby creating a fiduciary duty to each of those other persons, and has a duty to protect those monies from fraud; in this case BOA had a has therefore negligently acted against Mr. SCHUMAN's interests.

67. BOA, due to its inaction and negligent conduct, and such other reasons as have been described above, or may be inferred from the foregoing allegations, breached its fiduciary

duties to Mr. SCHUMAN, and as a direct and proximate result of such wrongdoing, has been damaged thereby, in the amount of Two Hundred and Eighty-Five Thousand and 00/100 dollars (\$285,000.00) plus interest.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, BOA, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT VI**  
**AIDING AND ABETTING A FRAUD**  
**AGAINST DEFENDANT BANK OF AMERICA**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further state:

68. BOA aided and abetted the fraud which has been perpetrated on Mr. SCHUMAN when it opened Account No. XXXXXXXXXX2572 by failing to comply with the Joint Final Rule promulgated by Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, dated May 9, 2003, 68 FR 25090-01, entitled *Customer Identification Programs For Banks, Savings Associations, Credit Unions and Certain NonFederally Regulated Banks*. BOA further aided and abetted the fraud which has been perpetrated on Mr. SCHUMAN by (a) willfully blinding itself to the irregular activity in Account No. XXXXXXXXXX2572, and (b) failing to close Account No. XXXXXXXXXX2572 prior to July 11, 2017.

69. The failures on BOA's part were caused by the "willful blindness" of BOA to the irregularities attendant upon the opening of and the activity in Account No. XXXXXXXXXX2572. Such "willful blindness" satisfies the "actual knowledge" criterion applicable to a cause of action against a bank for aiding and abetting a fraud upon a non-customer, such as Mr. SCHUMAN.



70. Mr. SCHUMAN is entitled to recover compensatory damages from BOA in the principal sum of Two Hundred and Eighty-Five Thousand and 00/100 dollars (\$285,000.00), plus pre-judgment interest and the costs of this civil action.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, BOA, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**COUNT VII**  
**FRAUDULENT TRANSFER**  
**AGAINST DEFENDANT BANK OF AMERICA**

Plaintiff realleges and reavers paragraphs 1-26 above as if fully set forth herein, and further state:

71. An unknown individual deceitfully directed WELLS FARGO to wire transfer \$585,000.00 to BOA for the purpose of wrongfully converting those funds to the use and benefit of the unknown individual. Consequently, for purposes of Chapter 726, Florida Statutes, Mr. SCHUMAN is a creditor of WELLS FARGO and WELLS FARGO is a debtor of Mr. SCHUMAN.

72. The unknown individual, with actual intent to hinder, delay, or defraud Mr. SCHUMAN, within the scope of § 726.105(1)(a), Florida Statutes, caused WELLS FARGO to make the foregoing fraudulent wire transfer of \$585,000.00 to be made to BOA. Upon the execution of the foregoing fraudulent wire transfer of \$585,000.00, BOA became the transferee of that fraudulent wire transfer of funds.

73. Under § 726.108(1)(a), Florida Statutes, Mr. SCHUMAN is entitled to avoid the foregoing fraudulent wire transfer of \$585,000.00 to BOA and to recover from BOA the value thereof.

74. A portion of monies, approximately \$300,000.00, was allegedly frozen; however,

the unknown, fraudulent recipient of the wire transfer had already transferred \$285,000.00 to a location in South Africa.

75. Mr. SCHUMAN is entitled to recover from BOA the principal sum of \$285,000.00, plus pre-judgment interest and the costs of this civil action.

WHEREFORE, Plaintiff, CHRISTOPHER SCHUMAN, respectfully demands judgment for damages against the Defendant, BANK OF AMERICA CORPORATION, together with post judgment interest, attorney's fees, and costs along with any further relief this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, CHRISTOPHER SCHUMAN, demands a trial by jury of all issues triable by law.

**CERTIFICATE RE: E-FILING AND E-SERVICE**

I HEREBY CERTIFY that this Complaint was filed electronically in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

I FURTHER CERTIFY for purposes of service of any documents after initial process that [staff.efile@pathtojustice.com](mailto:staff.efile@pathtojustice.com) is primary, [brittany@pathtojustice.com](mailto:brittany@pathtojustice.com) and is secondary.

Dated: October 5, 2017

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