

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

COTTAGE PARTNERS, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FIRST TITLE AND ESCROW )  
 COMPANY, INC., THE LAW FIRM OF )  
 MUDTER & PATTERSON, AND )  
 GERALD G. PATTERSON, )  
 )  
 Defendants. )

Case No. 16-422-T  
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COMPLAINT

Comes now the Plaintiff, Cottage Partners, LLC ("Cottage Partners"), and sues the Defendants, First Title and Escrow Company, Inc. ("First Title"), The Law Firm of Mudter & Patterson ("Mudter & Patterson"), and Gerald G. Patterson ("Patterson"), hereinafter collectively referred to as the "Defendants," and avers the following:

I. PARTIES

1. Plaintiff is a Tennessee limited liability company with a principal office at 84 Altentann, Nashville, Davidson County, Tennessee 37215.
2. First Title is a Tennessee Corporation with a principal office at 3811 Bedford Avenue, Suite 205, Nashville, Davidson County, Tennessee 37215. First Title's agent for service of process is George E. Mudter, Jr. who is located at First Title's principal office.
3. Mudter & Patterson is a Tennessee unincorporated association devoted to the practice of law with a principal office at 3811 Bedford Avenue, Suite 205, Nashville, Davidson County, Tennessee 37215.
4. Patterson is a citizen and resident of Davidson County, Tennessee.

5. Pursuant to an agreement between the parties, service of process may be made on Defendants Patterson and Mudter & Patterson through Daniel W. Olivas, Esq., counsel for both Patterson and Mudter & Patterson, who is located at 424 Church Street, Suite 2500, Nashville, Tennessee 37219.

## **II. JURISDICTION AND VENUE**

6. Venue is proper in this Court because the actions and breaches herein described occurred in Davidson County, Tennessee, and the corporate Defendants maintain their principal and only places of business in Davidson County, Tennessee. Defendant Patterson is a resident of Davidson County, Tennessee.

7. This is an action for damages which exceeds the sum of eight hundred eighty-nine thousand seven hundred twenty-six dollars and 80/100 (\$889,726.80) exclusive of costs and interest.

8. This action involves business claims between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them.

9. This Court has subject matter jurisdiction over all causes of action asserted in this Complaint and has personal jurisdiction over the Defendants.

10. Venue of this action is proper in this Court and County.

## **III. FACTUAL BACKGROUND**

11. Plaintiff is the owner and seller of certain real property located in Nashville, Tennessee which was to be transferred to third party buyers pursuant to purchase and sale agreements between Plaintiff and said third party buyers.

12. Patterson, individually and through his firm Mudter & Patterson, acted as legal counsel for Plaintiff in connection with rendering professional legal services related to the real estate closings held on March 1, 2016 involving 915 Monroe Street located in Nashville, Tennessee (the "March 1 Transaction"), and on March 7, 2016 involving 1901 4<sup>th</sup> Ave. North located in Nashville, Tennessee (the "March 7 Transaction").

13. First Title, through Patterson and Ashley Hart, acted as closing escrow agent in charge of the March 1 and March 7 Transactions, and was to distribute the sale proceeds pursuant to the terms as agreed to by the parties.

14. Defendants collectively acted as attorney, escrow agent, and closing agent for Plaintiff. At all times material hereto Patterson and others were acting within the scope of their employment. In these roles Defendants owed Plaintiff certain fiduciary duties in rendering professional services including the duty to personally represent and protect the interests of Plaintiff. Additionally, Defendants had a duty to properly distribute the closing proceeds to Plaintiff or its designated representatives. As described more particularly below, Defendants breached these duties and were negligent with regard to the professional services rendered in connection with the March 1 and March 7 Transactions which directly and proximately caused damages to Plaintiff.

#### MARCH 1 TRANSACTION

15. Defendants collectively acted as attorney, escrow agent, and closing agent for Plaintiff in connection with the March 1 Transaction. This real estate transaction was to be completed as the first part of a like kind exchange pursuant to IRS §1031 which allows sellers of property to defer paying taxes on the gains from the sale of the property if the proceeds of such a sale are reinvested in similar property. The qualified intermediary for this §1031 exchange, as

designated by Plaintiff, was Floyd Flippin, Esq. of Humbolt, Tennessee. In connection with the March 1 Transaction, Plaintiff was due to receive the sum of \$1,231,106.60 through the qualified intermediary.

16. Mr. Flippin sent Patterson the genuine wiring instructions via email dated February 26, 2016 at 11:39 a.m. This email correctly identified Flippin & Atkins, P.C. as the account holder, and directed that payment be wired to Regions Bank located at 1214 Main Street, Humboldt, Tennessee, 38343 under the Flippin & Atkins, P.C. account number. Mr. Flippin's genuine email address is clearly identified in this email as flippin@click1.net.

17. The initial corrupt email pertaining to the March 1 Transaction appears to have been sent to Patterson several days later on February 29, 2016 at 9:00 a.m. In this email an unrelated third party using the email address flippin@cliick1.net transmitted wiring instructions which identified SunTrust Bank as the entity to receive the funds in connection with the March 1 Transaction. In addition to changing the bank, the routing number, and the account number, the unrelated third party also requested that any confirmation regarding the wire transfer be sent via email.

18. Patterson made no effort to confirm the genuineness of the February 29, 2016 email and/or independently verify these changes, and as a result of Defendants' negligence in handling the various business emails that were corrupted in connection with the computer systems maintained by Mudter & Patterson, the wire transfer instructions given by Mr. Flippin on behalf of the Plaintiff were not followed and the funds were diverted by unknown persons to a SunTrust Bank account maintained at a branch bank located at 3054 Columbia Avenue in Franklin, Tennessee.

19. Had the Defendants exercised proper care and reasonable diligence in rendering professional services related to the March 1 Transaction they would have readily discovered that the emails pertaining to the wire instructions were compromised as the email address domain name was incorrect and did not match the genuine email address provided by Mr. Flippin. These compromised emails were inconsistent with the details of the underlying transactions. Additionally, the poor grammar and syntax of the compromised emails should have alerted Defendants of the fraudulent nature of the emails. Instead, the Defendants made no inquiry to verify and confirm the genuineness of the corrupt emails, including the wiring instructions and the wire transfer was completed on March 2, 2016 which resulted in \$1,231,106.60 of Plaintiff's funds being negligently and improperly transmitted to an unrelated third party's SunTrust account.

20. Some of the funds which were transferred to the SunTrust account were still within the possession of SunTrust Bank at the time of the discovery of the loss and, as result of the efforts and expense of interested parties including the Plaintiff and its legal counsel, such funds have since been returned to Plaintiff leaving a balance due and owing of \$889,726.80 plus interest.

#### MARCH 7 TRANSACTION

21. Defendants collectively acted as attorney, escrow agent, and closing agent for Plaintiff in connection with the March 7 Transaction. The proceeds from the sale involved in the transaction were to be wire transferred from Defendants to Plaintiff; however, the wire transfers were, once again, improperly diverted to a SunTrust bank account as a result of the Defendants' negligent conduct in handling compromised business emails within the Mudter & Patterson and/or First Title computer systems.

22. The diverted wire transfers were transmitted to a SunTrust bank account contrary to the specific direct in-person instructions provided by Plaintiff's representatives at the time of the closing, and the compromised emails redirecting the funds came mere minutes after Defendants' face to face meeting with Plaintiff's representatives.

23. Shortly after the closing on March 7, 2016 at 2:17 pm an unknown and unrelated third party used the email address richardbacon50@comcastt.co to instruct Defendants to transmit the closing proceeds to the same improper SunTrust Bank account as the March 1 Transaction. Defendants were aware that Richard Bacon, a member of Plaintiff, used the genuine email address richardbacon50@comcast.net. Again, these compromised business emails had improper domain names and were written in improper English. In spite of these inconsistencies and the abrupt change in wiring instructions Defendants undertook no inquiry to verify and/or confirm the changes in instructions regarding the new bank and account number, failed to confirm the change with Plaintiff's representatives, and instead negligently and improperly transmitted \$740,420.64 to an unrelated third party's Sun Trust bank account.

24. The entire amount of the closing proceeds from the March 7 Transaction, in the sum of \$740,420.64, to be delivered to Plaintiff was in possession of SunTrust at the time of the discovery of the loss and, as result of the efforts and expense of interested parties including the Plaintiff and its legal counsel, have since been returned to Plaintiff.

25. In both the March 7 Transaction and the March 1 Transaction Defendants' repeated acts of negligence allowed the closing proceeds to be misdirected and misappropriated to unknown and unrelated third parties directly and proximately causing damages to Plaintiff as result of the loss of the closing proceeds, legal expenses related to the recovery of certain

proceeds, and the potential loss of the IRS §1031 like kind exchange tax deferral arising out of the March 1 Transaction.

26. Defendants knew or should have known that internet schemes were being perpetrated against title agents and attorneys involved in real estate transactions. Prior to March 1, 2016 numerous alerts and warnings were issued throughout the title industry informing Defendants and others of schemes in which business emails were intercepted by hackers who deleted genuine account information and instead substituted fraudulent account information causing funds to be sent to the hacker's own accounts or other accounts resulting in losses to innocent parties such as Plaintiff. As illustrative of information available to the industry, well before the transactions at issue in this case, the Federal Bureau of Investigation, Financial Services Information Sharing and Analysis Center, and the United States Secret Service issued a joint fraud alert on June 19, 2015 directly warning that business emails containing wire transfer instructions may be compromised. In their capacities as attorney, escrow agent, and closing agent for Plaintiff Defendants knew or should have known of such practices and had a duty to learn of industry wide alerts, heed their warnings, and adopt the recommended measures to prevent such foreseeable conduct which may harm, and indeed did harm, innocent parties such as Plaintiff.

#### **IV. WRONGS COMPLAINED OF PATTERSON**

27. Plaintiff re-alleges and incorporates herein paragraphs 1 through 26 as if set forth fully herein.

28. Patterson owed Plaintiff a fiduciary duty to act at all times in good faith and in Plaintiff's best interests. Additionally, Patterson had a duty to not expose Plaintiff to any unnecessary risk or peril. Lastly, Patterson had a duty to render the professional legal services for which he was retained with the reasonable care, skill, prudence, and diligence as members of the

legal profession commonly possess and exercise. As described herein Patterson breached these duties in negligently rendering professional legal services, and Plaintiff suffered damages as a direct and proximate cause of Patterson's breach.

29. Patterson breached the duties he owed to Plaintiff and acted negligently by: (1) failing to adopt best practices with regard to protecting emails such as using encryption, requiring logins with usernames and passwords, and other verification steps; (2) failing to pay attention to detail, specifically with regard to the compromised email addresses; (3) failing to confirm client email addresses; (4) failing to contact Plaintiff and/or its agents directly to verify account information; (5) failing to implement industry standard checks and balances related to wire transfers; (6) ignoring verbal instructions from Plaintiff regarding wiring instructions and instead relying on compromised emails; (7) failing to review the transactions to ensure that the wires were transmitted to the proper parties; (8) failing to timely discover the breach related to the March 1 Transaction and thus failing to subsequently prevent the breach related to the March 7 Transaction; and (9) failing to exercise ordinary care and diligence in overseeing the closing transactions. These acts and omissions directly and proximately caused damages to Plaintiff as set forth herein.

30. Patterson negligently failed to take adequate steps to protect Plaintiff's interests, which constitutes a breach of the standard of care owed by Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

31. Patterson, in direct violation of Rule 1.1 of the Tennessee Rules of Professional Conduct, failed to represent Plaintiff competently with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation which constitutes a breach of the



standard of care owed by Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

32. Patterson, in direct violation of Rule 1.3 of the Tennessee Rules of Professional Conduct, failed to represent Plaintiff with reasonable diligence and promptness, which constitutes a breach of the standard of care owed by Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

33. Plaintiff reserves the right to amend its pleadings to include other wrongful acts and omissions of Patterson as they are discovered.

**V. WRONGS COMPLAINED OF MUDTER & PATTERSON**

34. Plaintiff re-alleges and incorporates herein paragraphs 1 through 33 as if set forth fully herein.

35. Mudter & Patterson owed Plaintiff a fiduciary duty to act at all times in good faith and in Plaintiff's best interest. Additionally, Mudter & Patterson had a duty to not expose Plaintiff to any unnecessary risk or peril. Lastly, Mudter & Patterson had a duty to render the professional legal services for which it was retained with the reasonable care, skill, prudence, and diligence as members of the legal profession commonly possess and exercise. As described herein Mudter & Patterson breached these duties by negligently rendering professional legal services, and Plaintiff suffered damages as a direct and proximate cause of Mudter & Patterson's breach.

36. Mudter & Patterson, through the acts and omissions of its members, partners, officers, associates, attorneys, employees, and/or agents, breached these duties and acted negligently by: (1) failing to adopt best practices with regard to protecting emails such as using encryption, requiring logins with usernames and passwords, and other verification steps; (2)

failing to pay attention to detail, specifically with regard to the compromised email addresses; (3) failing to confirm client email addresses; (4) failing to contact Plaintiff and/or its agents directly to verify account information; (5) failing to implement industry standard checks and balances related to wire transfers; (6) ignoring verbal instructions from Plaintiff regarding wiring instructions and instead relying on compromised emails; (7) failing to review the transactions to ensure that the wires were transmitted to the proper parties; (8) failing to timely discover the breach related to the March 1 Transaction and failing to subsequently prevent the breach related to the March 7 Transaction; and (9) failing to exercise ordinary care and diligence in overseeing the closing transactions. These acts and omissions directly and proximately caused damages to Plaintiff as set forth herein.

37. Mudter & Patterson, through the acts and omissions of its members, partners, officers, associates, attorneys, employees, and/or agents, failed to take adequate steps to protect Plaintiff's interests, which constitutes a breach of the standard of care owed by Mudter & Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

38. Mudter & Patterson, through the acts and omissions of its members, partners, officers, associates, attorneys, employees, and/or agents, in direct violation of Rule 1.1 of the Tennessee Rule of Professional Conduct, failed to represent Plaintiff competently with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation which constitutes a breach of the standard of care owed by Mudter & Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

39. Mudter & Patterson, through the acts and omissions of its members, partners, officers, associates, attorneys, employees, and/or agents, in direct violation of Rule 1.3 of the Tennessee Rule of Professional Conduct, failed to represent Plaintiff with reasonable diligence

and promptness, which constitutes a breach of the standard of care owed by Mudter & Patterson to Plaintiff and directly and proximately caused damages to Plaintiff as set forth herein.

40. To the extent that any of the acts or omissions alleged above committed by Mudter & Patterson were committed by any of Mudter & Patterson's members, partners, officers, associates, attorneys, employees, and/or agents including Patterson Mudter & Patterson is liable under principles of agency and *respondeat superior* for the acts and/or omissions of said member, partner, officer, associate, attorney, employee, or agent.

41. Plaintiff reserves the right to amend its pleadings to include other wrongful acts and omissions of Mudter & Patterson as they are discovered.

#### **VI. WRONGS COMPLAINED OF FIRST TITLE**

42. Plaintiff re-alleges and incorporates herein paragraphs 1 through 41 as if set forth fully herein.

43. At all times complained herein, First Title acted negligently in relation to the March 1 Transaction and the March 7 Transaction by: (1) failing to adopt best practices with regard to protecting emails such as using encryption, requiring logins with usernames and passwords, and other verification steps; (2) failing to pay attention to detail, specifically with regard to the compromised email addresses; (3) failing to confirm client email addresses; (4) failing to contact Plaintiff and/or its agents directly to verify account information; (5) failing to implement industry standard checks and balances related to wire transfers; (6) ignoring verbal instructions from Plaintiff regarding wiring instructions and instead relying on compromised emails; (7) failing to review the transactions to ensure that the wires were transmitted to the proper parties; (8) failing to timely discover the breach related to the March 1 Transaction and failing to subsequently prevent the breach related to the March 7 Transaction; and (9) failing to

exercise ordinary care and diligence in overseeing the closing transactions. These acts and omissions directly and proximately caused damages to Plaintiff as set forth herein.

44. Plaintiff reserves the right to amend its pleadings to include other wrongful acts and omissions of First Title as they are discovered.

#### **VII. DAMAGES**

45. As a direct and proximate result of the negligence and breach of fiduciary duty of the Defendants, Plaintiff has suffered damages in the amount of \$889,726.80 plus interest related to the March 1 Transaction.

46. As a direct and proximate result of the negligence of the Defendants, Plaintiff will lose a tax deferral associated with the March 1 Transaction and will suffer additional damages in the amount of \$407,960.00 if Plaintiff is unable to complete the March 1 Transaction pursuant to the IRS rules and regulations in connection with the IRS §1031 exchange.

47. As a direct and proximate result of the negligence of the Defendants, Plaintiff has incurred legal expenses related to both the March 1 Transaction and March 7 transaction and other expenses recoverable as a matter of law.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, Cottage Partners, LLC, respectfully demands the following:

- A. That process issue and be served upon the Defendants and that the Defendants be required to answer in the time and manner prescribed by law;
- B. That Plaintiff, Cottage Partners, LLC, recover from the Defendants compensatory damages including, but not limited to, all damages previously referenced herein in an amount that is fair and reasonable pursuant to applicable law;
- C. That Plaintiff, Cottage Partners, LLC, recover from the Defendants prejudgment interest;

- D. That the Defendants be held responsible for all such damages asserted herein, together with an award of all costs, including discretionary and taxable costs; and
- E. For such further and additional relief to which the Court may determine Plaintiff is entitled.

Respectfully submitted this 25th day of April, 2016

WOOLF, McCLANE, BRIGHT,  
ALLEN & CARPENTER, PLLC

By: 

Luis C. Bustamante, BPR No. 015328  
Grayson K. Schleppegrell, BPR No. 34435

Post Office Box 900  
Knoxville, Tennessee 37901-0900  
(865) 215-1000

Attorneys for Plaintiff

**COST BOND**

We acknowledge ourselves as surety for all court costs and taxes in this case only in accordance with Tenn. Code Ann. § 20-12-120 as expressly limited and defined within said statute.

PRINCIPAL:

Cottage Partners, LLC

By: 

Richard Bacon  
Its: Chief Manager

SURETY:

WOOLF, McCLANE, BRIGHT,  
ALLEN & CARPENTER, PLLC

By: 

Luis C. Bustamante, BPR No. 015328  
Grayson K. Schleppegrell, BPR No. 34435

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