

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE
ANNE-MARIE ADAMS
Clerk
MAR 20 2006

STEWART TITLE GUARANTY COMPANY,)

Plaintiff,)

v.)

TITLETECH SERVICES, INC., GLOBAL)
ABSTRACT, LLC, and SEAN M. SWAFFORD,)
individually and in his capacity as an agent of)
TITLETECH SERVICES, INC., and as an agent)
of GLOBAL ABSTRACT, LLC,,)

Defendants.)

CIVIL ACTION NO. CV-06-1483

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

Upon consideration of Stewart Title Guaranty Company's ("Stewart Title") Motion for Preliminary Injunction (the "Motion"), any and all responses and objections to the Motion having been withdrawn or overruled, and after adequate notice and a hearing held on the Motion, it appearing that the Motion is well grounded, the Court hereby **FINDS** as follows:

1. TitleTech Services, Inc. ("Title Tech") was an agent of Stewart Title pursuant to a Title Insurance Underwriting Agreement, as amended (the "TitleTech Agency Agreement"), for the purpose of soliciting applications for title insurance, collecting premiums, and counter-signing title insurance policies, binders, commitments, and endorsements ("Policies").
2. Sean M. Swafford ("Swafford") was an employee of TitleTech, who performed such functions on behalf of TitleTech.
3. TitleTech and Swafford misappropriated funds received in connection with real estate closing transactions which were to be maintained by TitleTech, under the TitleTech Agency Agreement, in separate escrow accounts (the "Escrow Accounts") and disbursed solely



for, and only in connection with, real estate closing transactions involving Stewart Title Policies, and in accordance with Stewart Title's written instructions relating to the real estate closings.

4. Stewart Title will suffer immediate injury if the requested injunctive relief is not granted since there is a strong likelihood that the misappropriation of escrowed funds will continue and that the proceeds of the misappropriated escrowed funds will be disposed of, disbursed, dissipated, or transferred.

5. Any and all existing and future harm to Stewart Title resulting from the escrow shortage is irreparable because TitleTech lacks sufficient funds with which to indemnify Stewart Title under its underwriting agreement and because TitleTech and Swafford lack sufficient funds to satisfy the claims asserted by Stewart Title, which damages claims will only continue to increase if the injunctive relief is not granted and the misappropriations permitted to continue.

6. Furthermore, in the absence of injunctive relief, the Defendants' acts will cause irreparable injury to Stewart Title by damaging its business, reputation, and goodwill.

7. No plain, speedy, and adequate remedy at law is available to redress the threatened harm because the damage to Stewart Title's reputation cannot be measured nor repaired by the payment of money damages. Furthermore, no remedy at law exists because Defendants lack funds sufficient to redress the harm that Stewart Title will suffer.

8. It is likely that Stewart Title will succeed on the merits of its complaint, which includes claims for breach of contract, breach of fiduciary duty, fraud, conversion, civil theft, unjust enrichment, negligence, and constructive and resulting trusts.

9. The potential hardship to TitleTech and Swafford does not unreasonably outweigh the benefit to Stewart Title from the issuance of the injunction.



10. An injunction will not disserve the public interest because it will stop a pattern of unlawful business practices. The continuation of these unlawful practices will harm the general public, in addition to Stewart Title.

It is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

11. The Plaintiff's Motion for a Preliminary Injunction is **GRANTED**; and

12. The Court hereby **ORDERS** that, following entry of this Order:

(a) TitleTech, and any agent, employee, or representative of TitleTech, including but not limited to Swafford, is enjoined from disbursing, dissipating, transferring, misappropriating, or otherwise disposing of the following: (i) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-004-848-6; (ii) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-004-844-2; (iii) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-006-911-1; (iv) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-004-846-4; (v) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-006-651-5; (vi) funds held at First Commercial Bank headquartered at 800 Shades Creek Parkway, Birmingham, AL 35209 with account number 106-004-847-5; (vii) funds held at University Federal Credit Union headquartered at 1400 20th Street South, Birmingham, AL 35205 with account number 91789. Accordingly, these accounts are frozen, and any withdrawals or disbursements there from, payment of any drafts thereon, and any and all other financial transactions in connection therewith are prohibited;



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(b) TitleTech, and any agent, employee, or representative of TitleTech, including but not limited to Swafford, shall not act as agents or hold themselves out as agents of Stewart Title, nor issue any Stewart Title Policies, nor conduct any closings involving Stewart Title Policies, nor use or display the Stewart Title name;

(c) TitleTech and Swafford shall not sell or otherwise dispose of any assets of TitleTech, including disbursing, dissipating, transferring, misappropriating, or otherwise disposing of funds located in the Accounts;

(d) Swafford, and any agent or person acting on behalf of Swafford, shall not sell or otherwise dispose of any asset of Swafford's or any asset obtained with proceeds from misappropriations from the Escrow Accounts; and

(e) TitleTech and Swafford shall provide Stewart Title with all records regarding all Stewart Title Policies; shall return to Stewart Title all materials, forms, manuals, and supplied furnished by Stewart Title to TitleTech; shall retain and provide to Stewart Title all evidence of insurability in its files for the benefit of both Stewart Title and TitleTech; shall refrain from disposing of or altering in any form the property described in this Order and Motion; shall provide Stewart Title with continued access to, including the right to download as applicable, TitleTech's books, records, files, and documents (including electronically stored documents, both on and offline); shall preserve such books, records, files, and documents (including electronically stored documents, both on and offline) as they are kept in the ordinary course of business; and shall comply with any and all governmental regulations or laws.

(f) This Order is effective immediately.



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(g) The \$35,000 in cash posted by Stewart Title shall remain on deposit, conditioned for the payment of such costs and damages as may be incurred or suffered by any party which was found to have been wrongfully enjoined or restrained.

Done this 20 day of March, 2006 at 9:58 a.m. / p.m..

Edward L. Ramsey
Hon. Ed Ramsey
Circuit Court Judge



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I, **Anne-Marie Adams**, Clerk of the Circuit Court of Jefferson County, do hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in said Court.

WITNESS my hand and the seal of said Court, this

the _____ day of **APR 28 2006**, 20_____

Anne-Marie Adams
Clerk

