

IN THE UNITED STATES COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

ASSURANCE TITLE COMPANY, INC.)	
Plaintiff)	
)	
v.)	
)	
TERRY G. VANN, MIKE ROSS, TRACY RIEDL,)	Civil Action No. <u>3:08-CV-252</u>
and the UNITED STATES OF AMERICA)	Phillips/Guyton
)	
Defendants)	

CROSS COMPLAINT OF DEFENDANT TERRY G. VANN

Terry G. Vann ("Vann"), by and through undersigned counsel, hereby sues Defendant Mike Ross ("Ross") and Tracy Riedl ("Riedl"), saying in support thereof as follows:

1. Vann is an attorney by profession, duly licensed to practice law in the state of Tennessee. As a part of his practice, Vann acquired considerable expertise and experience in real estate title work. He was at the time of formation of Assurance Title Company, LLC ("Assurance") an authorized title agent for First American Title Insurance Company.

2. In 2001, Vann was solicited by Defendants Ross and Riedl to join with them in forming, managing and owning a title company. Ross and Riedl proposed to utilize Vann's agency relationship with title insurers, as well as his connections with local lending institutions and developers. Neither Ross nor Riedl were qualified by education, experience or licensing to provide title services.

3. Ross and Riedl further proposed to Vann that if he would join with them for the described purposes, he would be paid a fixed sum for each title examination undertaken by the company, as well as reasonable additional fees for services required in connection with complex transactions, curing defects on title and other such matters. It was further agreed that in addition to compensation as described above, Vann would share equally with Ross and Riedl in resulting profits and distributions. As a result of these inducements, Vann agreed to join with Ross and Riedl in forming and owning Assurance.

4. For a period of time, Vann was paid the agreed compensation for each title examination undertaken by Assurance. This arrangement was subsequently unilaterally terminated by Riedl who was then serving as chief manager of Assurance. Riedl refused to discuss the termination with Vann and from that point forward, Vann was no longer paid the agreed fee for each title examination undertaken by Assurance.

5. Vann was not only denied the compensation that he had been promised for each title examination performed by Assurance, but he was also thereafter excluded from participation in management. Further, he was denied a share in the distributions of profits realized by Assurance. Indeed, Vann did not receive a single penny in distribution of profits even though Assurance reported net income from the years 2004 through 2007, including interest and capital gains, in an amount in excess of \$450,000.

6. In the year 2004, Assurance reported on its federal income tax return ordinary income allocable to Riedl and Ross in the amount of \$12,672 each and to Vann \$12,673. It also reported allocable interest income to Riedl and Ross of \$1,178 each and to Vann the amount of \$1,179. Riedl was paid \$39,000 by Assurance in this year 2004 but no payment was made to Ross or Vann.

7. In the year 2005, Assurance reported on its federal income tax return ordinary income allocable to Riedl and Ross in the amount of \$12,125 each and to Vann \$12,126. It also reported allocable interest income to Riedl and Ross of \$22,567 each and to Vann the amount of \$22,567. Assurance also reported on this return the realization of capital gains allocable to Riedl, Ross and to Vann in the respective amounts of \$72,613, \$72,612 and \$72,615. Riedl and Ross were paid \$39,000 and \$74,257, respectively, in 2005. Again, no payment was made to Vann.

8. In the year 2006, Assurance reported on its federal income tax return allocable interest income to Riedl and Ross in the amount of \$19,160 each and to Vann in the amount of \$19,161. Riedl and Ross were paid \$164,248 and \$30,000, respectively, in 2006. Again, no payment was made to Vann.

9. In the year 2007, Assurance reported on its federal income tax return allocable interest income to Riedl and Ross in the amount of \$15,605 each and to Vann in the amount of \$15,606. Riedl and Ross were paid \$136,207 and \$93,622, respectively, in 2007. Again, no payment was made to Vann.

10. In the years 2004 through 2007, Assurance reported receipt of ordinary income, interest and capital gains. Slightly more than one-third of all of this income was allocated to Vann for tax purposes. Not a single penny was distributed to Vann while Riedl took from Assurance the total sum of \$379,205 and Ross took the sum of \$197,870.

11. As noted above, Riedl served as chief manager and controlled all activities of Assurance with support and cooperation of Ross. The two of them conspired together to deprive Vann of his title fees and his proportionate share of company income. To add insult to injury, they further conspired to conceal from Vann the receipt of income by the

company and the allocation of income to him on the federal income tax return filed for Assurance.

12. In 2004, the federal income tax return of Assurance reflected an allocation to Vann of ordinary income in the amount of \$12,673 and interest income in the amount of \$1,179. However, Riedl and Ross made no report to Vann of this receipt of income nor any allocation to him. Further, they conspired to conceal this information from him by deliberately failing to provide him with a copy of the tax return or a K-1. As a consequence, Vann filed his federal income tax return for the year 2004 without including any income from Assurance.

13. In the year 2005, Ross and Riedl reported to the Internal Revenue Service the allocation to Vann of ordinary income in the amount of \$12,126, interest income in the amount of \$22,567 and capital gains in the amount of \$72,615. Vann was not provided with a copy of the tax return reflecting this allocation, but he was provided with a K-1. However, the K-1 was not mailed to Vann until on or after October 15, 2006. As a consequence, Vann did not receive the form K-1 until October 18, 2006, which was 3 days after the last possible date of extension for timely filing his personal income tax return.

14. Interest income was allocated by Ross and Riedl to Vann on the Assurance tax returns for 2006 and 2007. However, he was not provided with a K-1 nor was he provided with a copy of the tax return for either year.

15. Ross and Riedl breached their contractual obligations to Vann in a number of ways. They induced Vann to participate in the formation of Assurance so that they and it could utilize his title insurer agency status, his network of connections with lending institutions and others involved in the sale and development of real estate, and his expertise

and experience. Ross and Riedl agreed that Vann would be paid \$75 for each title examination undertaken by Assurance. This agreement was breached prior to 2006 and no title fees were thereafter paid to Vann.

16. Ross and Riedl also breached the obligation of good faith and fair dealing. They reaped significant benefits from their association with Vann in the formation and operation of Assurance and yet deprived him of his allocable share of income, in addition to denying him the title fees to which he was entitled.

17. Ross and Riedl violated a number of the provisions of the Tennessee Limited Liability Company Act (the “LLC Act”) as codified in T.C.A. §48-201-101, et seq.

18. T.C.A. §48-220-101 provides that the profits of an LLC must be allocated equally among the members unless otherwise provided in the Articles or Operating Agreement. Neither the Articles nor the Operating Agreement provided otherwise. Ross and Riedl breached this provision of the LLC Act.

19. T.C.A. §48-224-101 provides that each member has equal voting power unless otherwise provided in the Articles or Operating Agreement. Neither the Articles nor the Operating Agreement of Assurance provided otherwise. Ross and Riedl excluded plaintiff from any participation in the management of Assurance, including the right to be notified of meetings and vote on proposed actions.

20. T.C.A. §48-228-202 provides that a member of a member-managed LLC shall have access to true and full information regarding the status of the business and financial condition of the LLC. Ross and Riedl violated this requirement of the LLC Act through their failure to provide access to any information, much less true and full information.

21. T.C.A. §48-236-101 states that unless otherwise provided in the Articles or Operating Agreement, distributions of cash or other assets of an LLC must be allocated equally among the members. Neither the Articles nor Operating Agreement of Assurance provided otherwise. Accordingly, Ross and Riedl also breached this requirement of the LLC Act in their failure to allocate distributions equally among the three members, including plaintiff.

22. The LLC Act requires in T.C.A. §48-238-101 that management of a member-managed LLC be vested in the members collectively. As noted above, Ross and Riedl excluded plaintiff from any participation in management, once again violating the specific requirements of the LLC Act.

23. Ross and Riedl also violated the provisions of the LLC Act as codified in T.C.A. §§48-240-102 and 48-240-103. Among other matters, Ross and Riedl were required to discharge their duties as members in good faith. They were further required to account to Assurance and to all members, including plaintiff, for any and all profits or other benefits realized by them through any connection with Assurance. Again, Ross and Riedl breached these provisions of the LLC Act.

24. In addition to the above breaches, Ross and Riedl conspired to defraud Vann. This fraud consisted of, among other things, the allocation to Vann of significant income from the tax returns of Assurance for the years 2004 through 2007, while distributing large sums to themselves and withholding all sums from Vann. These fraudulent actions of Ross and Riedl, acting in conspiracy each with the other, resulted in significant damages to Vann.

25. Ross and Riedl further committed fraud by continuing to utilize Vann's name in connection with the activities of Assurance, including identifying him as trustee on one or more trust deeds. It is further alleged on information and belief that Ross and/or Riedl forged Vann's signature to one or more documents.

26. As noted above in these pleadings, Ross and Riedl reported the realization by Assurance of interest income of more than \$170,000 collectively in the years 2005, 2006 and 2007. The realization of interest income in this amount would have required investment funds of many millions of dollars, taking into account market rates during those years. Ross and Riedl defrauded Vann through their failure to distribute any interest income to Vann and the failure to distribute any portion of investment assets that would have generated this interest income of more than \$170,000.

27. The actions of Ross and Riedl also constituted a violation of the Tennessee Consumer Protection Act (the "Act"), as codified in T.C.A. §47-18-101, et seq. As active participants who facilitated these unfair and deceptive acts or practices, Ross and Riedl also directly, indirectly or constructively conspired in this violation of the Act.

28. Unfair or deceptive acts or practices affecting the conduct of any trade or commerce are deemed unlawful acts or practices and are prohibited by T.C.A. § 47-18-104, codified from the Act. It is further provided in T.C.A. § 47-18-102, that the Act shall be liberally construed to protect persons from those who engage in unfair or deceptive acts or practices, among other policies and purposes.

29. A private right of action is provided by T.C.A. § 47-18-109 for any person, including a business entity, who suffers an ascertainable loss as a result of the use or employment of an unfair or deceptive act or practice. Recovery may be had even for

negligent conduct, and if the unfair or deceptive act or practice was willful or knowing, the court may award treble damages.

30. The Act also provides, as codified in T.C.A. § 47-18-109(e)(1), reasonable attorney's fees and costs upon the finding of a violation of the Act.

31. The actions of Ross and Riedl, all as described above, constitute unfair or deceptive acts and practices. The deceptive acts and practices were undertaken and performed in order to deprive Vann of his rights as an owner of Assurance.

32. Vann has suffered an ascertainable loss as defined in T.C.A. § 47-18-109 and has incurred significant attorney fees and costs. The actions of Ross and Riedl, which resulted in these damages to Vann were willful or knowing. Vann therefore seeks recovery from these Defendants of three times the actual damages sustained by him, along with its reasonable attorney fees and costs.

33. Vann alternatively asserts that Ross and Riedl tortiously interfered in his existing business relationships, including the relationships with title insurers and his relationship with Assurance. The intent and actual result of this tortious interference was to misappropriate from Vann the benefits and rights to which he was entitled.

34. Additionally and/or alternatively, the actions of Ross and Riedl constituted intentional infliction of emotional distress. As a result of these intentional actions, Vann has suffered specific and severe injuries, requiring treatment by qualified medical professionals.

35. Additionally and/or alternatively, the actions of Ross and Riedl constituted the negligent infliction of emotional distress. As a result of these negligent actions, Vann

has suffered specific and severe injuries, requiring treatment by qualified medical professionals.

36. Additionally and/or in further alternative, Vann seeks to recover from Ross and Riedl his damages resulting from the inducement of Assurance to breach its contract with Vann, in violation of T.C.A. §47-50-109. These actions were undertaken with malice and in an intentional effort to deprive Vann of his agreed compensation for each title examination undertaken by Assurance as well as to deprive him of his share of any net profits or other gains realized by Assurance.

37. Also as an alternative to recovery under the Act, Vann seeks to recover punitive damages from Ross and Riedl. Their actions were intentional, fraudulent, malicious and/or reckless.

WHEREFORE IT IS PRAYED as follows:

A. That the Court determine that Vann suffered actual damages attributable to the wrongdoings of Ross and Riedl, in the amount of not less than \$300,000;

B. That Vann be awarded judgment against Ross and Riedl for compensatory damages of not less than \$300,000 attributable to their wrongdoings;

C. That the Court determine that Ross and Riedl breached their contractual obligations to Vann which breaches were the proximate cause of significant damages;

D. That the Court determine that Ross and Riedl breached numerous obligations to Vann imposed upon them under the Tennessee Limited Liability Company Act, thereby resulting in significant damages;

E. That the Court determine that Ross and Riedl conspired to defraud, and actually defrauded, Vann resulting in actual damages of not less than \$300,000;

F. That the Court determine that the actions of Ross and Riedl, individually and acting in concert, constitute violations of the Tennessee Consumer Protection Act;

G. That the Court determine that the unfair and/or deceptive acts or practices of Ross and Riedl were willful or knowing and that Vann is entitled to recover three times his actual damages of not less than \$300,000;

H. That the Court determine that Vann is entitled to his reasonable attorney fees under the Act;

I. That as an alternative recovery, the Court determine that the actions of Ross and Riedl, acting individually and in concert, constitute tortious interference with Vann's business relationships;

J. That Vann be awarded judgment against Ross and Riedl under this alternative theory for compensatory damages of not less than \$300,000 resulting from this tortious interference;

K. That additionally or as an alternative recovery, Vann be awarded compensatory damages of not less than \$300,000 resulting from the intentional infliction of emotional distress;

L. That additionally or as an alternative recovery, Vann be awarded compensatory damages of not less than \$300,000 resulting from the negligent infliction of emotional distress;

M. That additionally or as an alternative recovery, Vann be awarded treble damages under T.C.A. §47-50-109 in total amount of \$900,000, by reason of the inducement of Assurance by Ross and Riedl to breach its contractual obligations to Vann;

N. That additionally or as an alternative recovery, the Court determine that the actions of Ross and Riedl were intentional, malicious and/or reckless in nature, thereby entitling Vann to judgment for punitive damages in an amount of not less than \$1,500,000;

O. That Vann have and recover such other and further relief as the Court may determine appropriate under the circumstances, including prejudgment interest.

Respectfully submitted this 2nd day of April, 2009.

THE TAYLOR LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing pleading has been served upon the following counsel of record by placing the same in the United States mail, properly addressed and with sufficient postage affixed thereto to ensure delivery this the 2nd day of April, 2009.

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