

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SEAN SMITH and ERIN WRONA
3673 Upton Street N.W.
Washington, D.C. 20008

Plaintiffs,

v.

FEDERAL TITLE & ESCROW COMPANY
5335 Wisconsin Avenue, N.W., Suite 700,
Washington, D.C. 20015

CLOSE IT! TITLE SERVICES, INC.
5335 Wisconsin Avenue, N.W., Suite 700,
Washington, D.C. 20015

TODD EWING
5335 Wisconsin Avenue, N.W., Suite 700,
Washington, D.C. 20015

MELINA SCHIFFLETT
8217 Claremont Woods
Alexandria, Virginia 22309

JMZ EQUITIES, LLC
100 4th Avenue S., #404,
St. Petersburg, Florida 33701, and

JEFF ZORBO
100 4th Avenue S., #404,
St. Petersburg, Florida 33701

Defendants.

Case No. 17-cv-1580

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Sean Smith and Erin Wrona bring this action against Defendants Federal Title & Escrow Company (“Federal Title”), Close It! Title Services, Inc. (“Close It!”), Todd Ewing (“Ewing”), Melina Schifflett (“Schifflett”), JMZ Equities LLC (“JMZ Equities”), and Jeff Zorbo (“Zorbo”) for monetary damages, and, on information and belief allege as follows:

NATURE OF THE ACTION

1. Plaintiffs' claims arise from the theft of \$1.57 million that was intended to be used by Plaintiffs to purchase a home located in Washington, D.C.

2. Plaintiffs' contracted with Federal Title to conduct closing services, including holding funds in escrow, in connection with their real estate purchase. Federal Title, Close It!, and Melina Schifflett, an employee of Federal Title and/or Close It!, instructed Plaintiffs to complete two wire transactions totaling over \$1.77 million. Plaintiffs received two separate wire confirmations via email to ensure Federal Title had received the funds. However, when Plaintiffs arrived at Federal Title for closing, Ewing, the attorney conducting the closing, informed Plaintiffs that Federal Title did not have possession of \$1.57 million of the funds Plaintiffs had wired.

3. The wiring instructions sent by Federal Title directed Plaintiffs to wire money to an account in the name of Federal Title and Escrow Company, with further credit to JMZ Equities, LLC, which is a limited liability company wholly-owned by Jeff Zorbo.

4. As a direct and proximate cause of the actions and inactions of Defendants, Plaintiffs have been damaged in excess of \$1.57 million.

PARTIES

5. Plaintiffs Sean Smith and Erin Wrona are married and are residents of the District of Columbia.

6. Defendant Close It! Title Services, Inc. is a corporation organized and existing under the laws of the District of Columbia, with its principal place of business located at 5335 Wisconsin Avenue, N.W., Suite 700, Washington, D.C. 20015.

7. Defendant Federal Title & Escrow Company is a title company organized and existing under the laws of the District of Columbia, with its principal place of business located at 5335 Wisconsin Avenue, N.W., Suite 700, Washington, D.C. 20015. Upon information and belief, Federal Title & Escrow Company is the trade name for Close It! Title Services, Inc.

8. Defendant Todd Ewing is an attorney licensed in the District of Columbia. Mr. Ewing is Federal Title's founder. Mr. Ewing is also a partner in the law firm Tobin, O'Connor & Ewing, which shares office space with the Federal Title.

9. Upon information and belief, Defendant Melina Schifflett is a settlement coordinator at Federal Title and holds a title producer license from the Commonwealth of Virginia. Upon information and belief, Ms. Schifflett is employed by Federal Title in the District of Columbia.

10. Defendant JMZ Equities, LLC is a limited liability company organized under the laws of the State of Florida with its principal place of business located at 100 4th Avenue S., #404, St. Petersburg, Florida 33701.

11. Defendant Jeff Zorbo is the registered agent and sole owner of JMZ Equities, LLC. Upon information and believe, Zorbo resides at 100 4th Avenue S., #404, St. Petersburg, Florida 33701.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1964 and 28 U.S.C. §§ 1331 and 1367. Plaintiffs assert causes of action arising under the Racketeer Influenced and Corrupt Organizations Act and its state law claims are part of the same case or controversy.

13. Venue is proper in this judicial district pursuant to 18 U.S.C. § 1965 and 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred.

14. The Court has personal jurisdiction over Federal Title, Close It!, and Ewing because they reside in the District of Columbia. The Court has personal jurisdiction over Schifflett because she is employed in the District of Columbia and committed the tortious and criminal acts in the District of Columbia. The Court has personal jurisdiction over JMZ Equities, LLC and Jeff Zorbo because the acts committed to defraud Plaintiffs through their conspiracy and corrupt practices were committed in the District of Columbia.

FACTS

15. On or about May 3, 2017, Plaintiffs entered into a sales contract to purchase a home located at 3673 Upton Street, N.W., Washington D.C. 20008. The following day, Plaintiffs contracted with Federal Title to perform closing services for the purchase of the home. The agreed upon purchase price of the home was \$1,738,750.00.

16. On May 4, 2017, Schifflett emailed Plaintiffs and introduced herself as their settlement coordinator from Federal Title and congratulated Plaintiffs on the purchase of their new home.

17. On the same day, Plaintiffs were instructed via email from Federal Title—specifically, from Schifflett—to wire the earnest money deposit to Federal Title for Federal Title to hold in escrow.

18. Plaintiffs complied with Federal Title's instructions and directed their financial institution to wire \$200,000.00 to Federal Title.

19. Later that day, Plaintiffs received an email confirmation from Federal Title confirming that the earnest money deposit in the amount of \$200,000.00 had been received.

20. On May 8, 2017, Plaintiffs received an email forwarding a request from Schifflett to wire the final closing amount to Federal Title for Federal Title to hold in escrow.

21. Attached to the email was a settlement statement containing all the pertinent details regarding Plaintiffs' real estate transaction. The settlement statement showed a credit for the \$200,000.00 earnest money deposit and showed a remaining balance owed of \$1,572,097.70.

22. Also attached to the email was a memo from Schifflett at Federal Title that contained wiring instructions for the balance due. The name on the Chase bank account to which the funds were to be transferred was Federal Title and Escrow Company with further credit to JMZ Equities, LLC.

23. Upon receipt of the email with wiring instructions, Smith contacted his financial institution, Morgan Stanley, about wiring the remaining funds.

24. Prior to completing the wire transaction, Smith emailed Schifflett to inquire why the bank account number listed on the wiring instructions was different from the bank account number where the earnest money deposit had been wired. Smith wanted to confirm that the wiring instructions contained the correct bank account number.

25. Schifflett replied to Smith's email and advised him that Federal Title used different accounts for different amounts.

26. In reliance upon on Schifflett's assurances, Smith directed his financial institution to wire the funds to Federal Title in the amount of \$1,572,097.70.

27. On May 9, 2017, Plaintiffs received an email from Schifflett confirming that Plaintiffs' funds had been received.

28. Following the wire transfer, Schifflett communicated with Plaintiffs regarding schedule changes and other logistical updates regarding closing.

29. Prior to closing, neither Schifflett nor anyone at Federal Title ever reached out after May 8, 2017, to provide any other directions about wiring funds.

30. Based on all the circumstances, Plaintiffs reasonably believed the entire purchase price was being held in escrow by Federal Title pursuant to the services Defendants contracted to perform.

31. On June 19, 2017, Plaintiffs reported to Federal Title's offices located at 5335 Wisconsin Avenue NW, Suite 700, Washington, D.C., for closing. When Plaintiffs arrived, no one asked them about the funds to close the transaction.

32. Ewing conducted the closing.

33. Ewing directed Plaintiffs to sign a number of documents to effectuate the real estate transaction.

34. Midway through the closing, Ewing asked Plaintiffs about wiring the funds for closing. Plaintiffs notified him that they had already wired the funds.

35. Ewing left the room. After discussions with Federal Title personnel, Ewing returned and informed Plaintiffs that Federal Title did not have the funds in escrow.

36. Ewing then told Plaintiffs that Plaintiffs' email had been hacked.

37. Ewing told Plaintiffs that the only way to close the real estate transaction was to come up with an additional \$1.57 million. Distraught over the shocking turn of events, the apparent loss of \$1.57 million, and the information conveyed by Federal Title that this happened as a result of Plaintiffs being hacked, Plaintiffs and their family wired an additional \$1.57 million to close the transaction.

38. The FBI was contacted immediately. It was determined that over the course of the approximately six weeks since Plaintiffs executed the final wire transfer, their \$1.5 million had been wired out of the Chase account to which Plaintiffs had wired the money.

39. Several days later, Ewing contacted Smith and stated that that it was not Plaintiffs who had been hacked. Instead, Ewing claimed that Federal Title's email had been hacked, such that someone had supposedly commandeered Federal Title's computer servers, learned about Plaintiffs' transaction, and sent, from Schifflett's email account, the wiring instructions that led to the theft of Plaintiffs' funds. Neither Federal Title nor Ewing has provided any evidence of such a hacking.

40. Plaintiffs have been unable to recover the \$1.57 million that was wired pursuant to Federal Title's instructions.

41. Upon information and belief, the theft of Plaintiffs' money was accomplished by an enterprise formed by Federal Title, Close It!, Schifflett, JMZ Equities, and Zorbo. Defendants' enterprise is engaged in a pattern of racketeering activity for the purpose of affecting interstate commerce. As a result of Defendants actions, Plaintiffs have been injured.

42. Upon information and belief, Defendants created a scheme to defraud Plaintiffs for the purpose of obtaining money through fraudulent escrow accounts. Defendants used wire communications in furtherance of the scheme by wiring the money they defrauded from Plaintiffs out of the account.

43. Upon information and belief, Defendants committed multiple acts of wire fraud in furtherance of this scheme. Defendants wired the money they defrauded from Plaintiffs out of the account over a substantial period of time in multiple transactions.

44. Upon information and belief, Defendants committed more than two acts of racketeering activity by sending fraudulent electronic communications and committing multiple wire transactions. These acts were related and continuous. Defendants committed these acts to steal money from Plaintiffs.

45. Upon information and belief, Defendants continue to mislead Plaintiffs about the true location of their money, and have used interstate wire communications to fraudulently conceal the location of the money.

46. The pattern of racketeering is an intentional and knowing series of acts of use of interstate wire communications that began in early May 2017 and continues to this day.

COUNT I
Violations of the Racketeering Influenced and Corrupt Organizations Act
(18 U.S.C. Section 1962(c))
(against all Defendants)

47. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

48. Defendants have formed an enterprise engaged in and whose activities affect interstate commerce. Defendants are employed by or associated with the enterprise.

49. Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiff.

50. Pursuant to and in furtherance of their fraudulent scheme, Defendants committed multiple related acts of wire fraud.

51. The acts of wire fraud set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

52. Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering and activity described above, in violation of 18 U.S.C. § 1962(c).

53. As a direct and proximate result of the Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiffs have been injured by the loss of their \$1.5 million and other financial losses incurred as a result of the theft of their money.

54. Plaintiffs are therefore entitled to judgment against the Defendants for a sum including actual damages, treble damages, and attorneys' fees.

COUNT II
Conversion
(against all Defendants)

55. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

56. Defendants intentionally deprived Plaintiffs of its rights in the \$1.57 million by directing Plaintiffs to wire the funds to an account allegedly held by Federal Title, allegedly holding them in escrow for Plaintiffs' benefit in the real estate transaction, and then refusing to use those funds to close the real estate transaction as they were intended.

57. Defendants unlawfully exercised ownership, dominion, or control over Plaintiffs' funds in repudiation of Plaintiffs' rights.

58. Defendants' actions were the proximate cause of Plaintiffs' loss of \$1.57 million to cybercriminals and Defendants are liable to Plaintiffs in the amount of this loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

COUNT III
Civil Conspiracy
(against all Defendants)

59. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth therein.

60. Upon information and belief, Defendants acted in concert to commit an unlawful act—namely, the theft of Plaintiffs’ funds.

61. Upon information and belief, Defendants entered into an agreement to inflict an injury upon Plaintiffs—namely, the loss of \$1.5 million.

62. Upon information and belief, as a result of Defendants’ agreement and resulting actions, Plaintiffs suffered damages.

63. Upon information and belief, Defendants’ agreement and their actions taken in furtherance of that agreement were willful and malicious.

64. Defendants are liable to Plaintiffs in the amount of their loss, plus punitive damages, attorneys’ fees, accrued interest, costs, and the expenses of this action.

COUNT IV
Negligence
(against Federal Title, Close It!, Ewing, and Schifflett)
(in the alternative to RICO, Conversion, and Civil Conspiracy)

65. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

66. Federal Title and its employees and agents assumed a duty to Plaintiffs to act as escrow agent and as settlement agent for the sale of 3673 Upton Street, NW, Washington D.C. 20008.

67. Federal Title and its employees and agents breached their duty to act as escrow agent and as settlement agent by not enacting adequate security protocols. Specifically, upon

information and belief, Defendants failed to take even basic security measures to secure their email accounts, including:

- a. Using an email address that requires additional forms of authentication;
- b. Using digital, encrypted signatures for messages;
- c. Using encrypted communication with clients; and
- d. Frequently changing passwords.

68. Further, Defendants did not follow-up with Plaintiffs to inquire about the funds to close the transaction. Rather, after the money was wired, Defendants did nothing for six weeks until Plaintiffs arrived at closing and Defendants stated they had not received the funds.

69. Defendants' negligence in securing their email accounts and not following up or having a policy of orally confirming large monetary transfers was the proximate cause of Plaintiffs' loss of \$1.57 million.

70. Cybercrime, and this alleged hacking scheme in particular, are well-known risks within the real estate industry. Real estate trade associations have warned title companies and realtors to advise customers that they will never send wiring instructions by email. Defendants did not follow this practice.

71. Defendants are liable to Plaintiffs in the amount of their loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

COUNT V
Breach of Contract
(against Federal Title and Close It!)

72. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraph as though fully set forth herein.

73. Federal Title and its employees and agents entered into a contract with Plaintiffs as escrow agent and settlement agent for Plaintiffs' purchase of 3673 Upton Street, NW, Washington D.C. 20008.

74. Upon information and belief, Federal Title and its employees and agents breached their obligations under the contract to act as escrow agent and as settlement agent by converting Plaintiffs' funds or by failing to enact proper security measures.

75. Upon information and belief, if Defendants did not intentionally convert the funds, then they failed to take even basic security measures to secure their email accounts, including:

- e. Using an email address that requires additional forms of authentication;
- f. Using digital, encrypted signatures for messages;
- g. Using encrypted communication with clients; and
- h. Frequently changing passwords.

76. Further, Defendants did not follow-up with Plaintiffs to inquire about the funds. Rather, after the money was wired, Defendants did nothing for six weeks until Plaintiffs arrived at closing and Defendants stated they had not received the funds.

77. Defendants' breach of contract to protect Plaintiffs' funds was the direct and proximate cause of Plaintiffs' loss of \$1.57 million. Defendants are liable to Plaintiffs in the amount of this loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

COUNT VI
Breach of Implied Covenant of Good Faith and Fair Dealing
(against Federal Title and Close It!)

78. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraph as though fully set forth herein.

79. Defendants willfully acted to frustrate the purposes of the contract for escrow and closing services by failing to protect Plaintiffs' financial information and funds wired into escrow.

80. Defendants' breach of the covenant of good faith and fair dealing to protect Plaintiffs' interests was the direct and proximate cause of Plaintiffs' loss of \$1.57 million. Defendants are liable to Plaintiffs in the amount of this loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

COUNT VII
Breach of Fiduciary Duty
(against Federal Title, Close It!, and Ewing)

81. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraph as though fully set forth herein.

82. Defendants had a fiduciary duty to protect the Plaintiffs' financial information and assets and to hold the funds for the real estate transaction in escrow. Defendants breached this duty by converting Plaintiffs' funds.

83. Alternatively, Defendants' duty required them to adopt reasonable and necessary measures to safeguard their email accounts and computer system against intrusion by cybercriminals. Defendants ignored this duty by failing to adopt even the most basic safeguards against unauthorized intrusion. Defendants' acts and/or omissions permitted cybercriminals to hack Schifflett's email account and gain access to Schifflett's communications with Plaintiffs. As a result of this access, the cybercriminals were able to impersonate Schifflett and deceive Plaintiffs into authorizing their bank to wire \$1.57 million into a bank account controlled by the cybercriminals.

84. Defendants' breach of their fiduciary duty to Plaintiffs was the direct and proximate cause of Plaintiffs' loss of \$1.57 million. Defendants are liable to Plaintiffs in the

amount of this loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

COUNT VIII
Legal Malpractice
(against Ewing)

85. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraph as though fully set forth herein.

86. Ewing, presented himself as a specialist in real estate law who had supervised and conducted many transactions for the sale of real property in Washington, D.C.

87. As the attorney completing Plaintiffs' closing, Ewing had the duty to protect Plaintiffs' assets, confidential information, and legal interests that were implicated in the transactions required to purchase the home, and not to convert his own clients' funds. Since Ewing and/or his agents intended to conduct these transactions electronically, by emails and wire transfers, rather than in person meetings or telephone calls, Ewing had the further duty to secure his email account and computer system against intrusion by cybercriminals. As a legal professional who regularly performed and/or supervised large financial transactions that were conducted electronically, Ewing should have been aware of the danger of cybercrime and imposture.

88. To represent Plaintiffs competently and protect him from cyber and other forms of crime, Ewing had a duty to take reasonable and necessary security precautions, such as the installation of appropriate protective software and the use of two-factor authentication. Ewing had a duty to take measures including, but not limited to, the following:

- i. Reasonable measures to secure Ewing's client files, and communications with clients;

- ii. Reasonable measures to secure Ewing's email account and computer, including the data contained within them, from unauthorized third parties;
- iii. Reasonable measures to prevent Ewing's email account from being used by unauthorized third parties;
- iv. A strict policy of orally confirming instructions for the electronic transfer of funds belonging to clients. This policy should include advance notification to clients that funds should not be transferred unless Ewing orally confirmed any emailed instructions;
- v. Oral confirmation, following the electronic transfer of funds, to establish that the funds were actually received by the intended party;
- vi. The immediate investigation of any incident involving crime or cybercrime, to determine its cause, its perpetrator, and the possibility of remedying or mitigating any loss; and
- vii. The preservation of all Electronically Stored Information (ESI).

89. Further, Ewing had a duty to provide a certain standard of representation to Plaintiffs, which he failed to do, including, but not limited to:

- viii. Providing competent representation;
- ix. Acting with reasonable diligence and promptness, and not neglecting matters;
- x. Maintaining confidentiality of information and communications; and
- xi. Preservation of client funds and property.

90. If Defendants did not accomplish the conversion of Plaintiffs' funds acting in concert through the above-alleged conspiracy, then as a result of Ewing's failure to take any of the aforementioned precautionary measures, cybercriminals were able to hack Federal Title's

email system and gain access to communications with Plaintiffs. The cybercriminals were then able to impersonate Schifflett and Federal Title and mislead Plaintiffs into wiring the \$1.57 million to the erroneous account purportedly controlled by cybercriminals on May 8, 2017. If Defendants' own version of the facts is accurate, Defendants had no communication with Plaintiffs or Plaintiffs' bank and did not realize the money was erroneously sent until the parties arrived at closing on June 19, 2017.

91. If Ewing had initially acted competently and taken reasonable and necessary steps to secure Federal Title's email system, the email account would not have been hacked and Plaintiffs would have purchased the home with their original funds. If Ewing had eventually acted competently by noticing that the email had been hacked and that Plaintiffs' payment was being transferred to an erroneous account, or if Ewing had attempted to orally confirm the proper receipt of Plaintiffs' deposited funds, Plaintiffs could have acted to cut off the funds to the erroneous account and the stolen funds would have been recovered. Ewing, however, acted recklessly, without concern for his client's funds, was ignorant to the threat of cybercrime, and did nothing to protect his client's information and assets from this form of fraud.

92. If Defendants did accomplish the conversion of Plaintiffs' funds acting in concert through the above-alleged conspiracy, then Ewing breached his duty to his clients through his involvement and/or failure to prevent the conspiracy.

93. Ewing's disregard of his duty to protect his client's assets and information was a direct and proximate cause of Plaintiffs' loss of \$1.57 million to cybercriminals and Ewing is liable to Plaintiffs in the amount of this loss, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this action.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests this Court to:

- a. Order Defendants to pay Plaintiffs compensatory damages of \$1.57 million;
- b. Order Defendants to pay Plaintiffs treble damages pursuant to RICO;
- c. Order Defendants to pay Plaintiffs punitive damages for conversion and civil conspiracy;
- d. Order Defendants to pay Plaintiffs their reasonable attorneys' fees, accrued interest, costs, and the expenses of this action; and
- e. Order such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Michael S. Nadel

Michael S. Nadel (D.C. Bar #470144)
Jennifer B. Routh (D.C. Bar #1032060)
MCDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
(202) 756-8000

Counsel for Plaintiffs Sean Smith and Erin Wrona