

Timothy I. Duffy, Esq. (ID #007541981)
Ryan E. Gallagher, Esq. (ID #303432019)
SCHENCK, PRICE, SMITH & KING LLP
220 Park Avenue
P.O. Box 991
Florham Park, New Jersey 07932
Attorneys for Plaintiff, Sharon Peck

SHARON PECK,

Plaintiff,

v.

LAVERY, SELVAGGI, ABROMITIS AND
COHEN, P.C., MICHAEL SELVAGGI,
ESQ., AMY LOPEZ, REAL SAFE TITLE,
LLC, FREEDOM MORTGAGE
CORPORATION, TITLE RESOURCES
GUARANTY COMPANY; JOHN DOE (1-
10); AND ABC CORPORATION (1-10).

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
WARREN COUNTY
DOCKET NO.:

**VERIFIED COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

I, Sharon Peck (hereinafter, the “Ms. Peck” or “Plaintiff”), by and through my attorneys,
Schenck, Price, Smith & King LLP, hereby submit the following:

PARTIES

1. Ms. Peck is an individual residing at 375 Johnsonburg Road, Blairstown, New Jersey 07825, and the former owner of real property located at 28 Cobblewood Road, Blairstown, New Jersey 07825 (the “Property”).

2. Lavery, Selvaggi, Abromitis and Cohen, P.C. (“LSAC”) is a professional corporation located at 1001 County Rd 517, Hackettstown, NJ 07840 and previously represented Ms. Peck in connection with the sale of the subject Property.

3. Michael Selvaggi, Esq. (“Mr. Selvaggi”) is an individual residing at 12 William Way, Long Valley, NJ 07853. Mr. Selvaggi is an attorney at co-defendant Lavery, Selvaggi, Abromitis and Cohen, P.C. and previously represented Ms. Peck in connection with the sale of the subject Property.

4. Amy Lopez (“Ms. Lopez”) is an individual who is believed to reside in Warren County, New Jersey. Ms. Lopez is believed to be a paralegal at co-defendant Lavery, Selvaggi, Abromitis and Cohen, P.C. and previously assisted Mr. Selvaggi in his representation of Ms. Peck in connection with the sale of the subject Property. (Ms. Lopez, Mr. Selvaggi and LSAC are hereinafter collectively referred to as the “LSAC Defendants”).

5. Real Safe Title, LLC (“Real Safe”) is a limited liability company headquartered at 111 Littleton Rd Suite 301, Parsippany, New Jersey 07054. Real Safe was the title company for the buyers of the subject Property in April 2021.

6. Freedom Mortgage Corporation (“Freedom Mortgage”) is a private mortgage lender incorporated in the State of New Jersey, with a business address of 907 Pleasant Valley Ave., Suite 3, Mount Laurel, New Jersey 08054 and/or 304 Route 38, Moorestown, New Jersey 08057. Freedom Mortgage refinanced Ms. Peck’s loan for the subject Property.

7. Title Resources Guaranty Company (“Title Resources”) is the title insurance underwriter for Real Safe headquartered at 8111 LBJ Freeway, Ste. 1200, Dallas, Texas 75251. Title Resources extended a Policy of Title Insurance to Real Safe.

8. Jurisdiction and venue are proper in Warren County because the cause of action arose in Warren County out of Defendants’ actions in this venue, and all Defendants conduct business in the State of New Jersey.

FACTUAL BACKGROUND

9. In 2018, Ms. Peck purchased 28 Cobblewood Road, Blairstown, New Jersey 07825 (the “Property”).

10. On October 16, 2019, Ms. Peck obtained a loan from JFQ Lending, Inc. (the “Loan”).

11. The Loan was supported by a promissory note (the “Note”) and secured by a mortgage on the Property (the “Mortgage”).

12. In 2020, the Note and Mortgage were assigned to Defendant Freedom Mortgage (Loan Number ending in 2797).

13. In 2021, Ms. Peck listed and agreed to sell the Property to non-parties Nelson Silva and Melissa Silva (collectively, the “Silvas”).

14. For the sale of the subject Property, Ms. Peck retained the LSAC Defendants and understood that she would be represented by Mr. Selvaggi, with the assistance of his paralegal, Ms. Lopez, in connection with same.

15. As part of the sale, Real Safe was the settlement agent and responsible for transmitting the Property sale proceeds to Freedom Mortgage to pay off Ms. Peck’s Mortgage.

16. On April 20, 2021, Ms. Peck signed an authorization form permitting Freedom Mortgage to communicate with the LSAC Defendants concerning the Note and Mortgage, and to obtain a payoff statement for the Loan. Freedom Mortgage received the Authorization on April 22, 2021.

17. Upon information and belief, Ms. Lopez, on behalf of the LSAC Defendants, contacted Freedom Mortgage to request a payoff statement, to which Freedom Mortgage advised

it would be unable to provide same before the Property Closing given that the Authorization was received on April 22, 2021.

18. On April 23, 2021, Ms. Peck sold the Property to the Silvas for \$317,917.85. (See Closing Disclosure attached hereto as “**Exhibit A**”).

19. From the proceeds of sale, Ms. Peck owed \$257,321.38 to Freedom Mortgage to pay off her Mortgage. (Id).

20. Also on April 23, 2021, Ms. Peck contacted Freedom Mortgage to obtain an Authentic Payoff Statement from Freedom Mortgage, which she obtained through her online account. (See Freedom Mortgage’s April 23, 2021, Authentic Payoff Statement attached hereto as “**Exhibit B**”).

21. Freedom Mortgage emailed the Authentic Payoff Statement to both Ms. Peck, as well as Ms. Lopez at alopez@lsaclaw.com, and faxed the Authentic Payoff Statement to 908-852-8225, which fax number is associated with LSAC. (Id).

22. The Payoff Statement included a mailing address to which certified funds could be mailed via overnight delivery, as well as wiring instruction for the submission of the funds to pay off the outstanding Mortgage. (Id).

23. The wiring instructions included on the Authentic Payoff Statement identified an account at KeyBank in Cleveland, Ohio, ending in 8402, as the appropriate account into which the \$257,321.38 should be wired.

24. Upon information and belief, an unknown third-party (the “Hacker”) gained access to the Authentic Payoff Statement through the LSAC Defendants.

25. Upon information and belief, the Hacker altered the Authentic Payoff Statement so that: (1) the payoff instructions only included wiring instructions, rather than also providing

an address to overnight mail the certified funds; (2) the wire instructions listed “JJB REAL CENTER LLC Freedom Corporation” as the name on the account; and (3) the wire instructions incorrectly identified an account at BBVA Bank, ending in 2101, rather than the appropriate Freedom Mortgage account at KeyBank, ending in 8402. (See the Altered Payoff Statement, attached hereto as “**Exhibit C**”).

26. The LSAC Defendants failed to employ sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement.

27. Subsequently, the LSAC Defendants submitted the Altered Payoff Statement to Real Safe, believing same to be the correct version of the Authentic Payoff Statement. (See Email Exchange attached hereto as “**Exhibit D**”; see also **Exhibit C**).

28. The LSAC Defendants failed to ensure that the payoff statement it submitted to Real Safe was accurate and the same Authentic Payoff Statement they had received from Ms. Peck and Freedom Mortgage.

29. Real Safe failed to ensure that the payoff statement it received from the LSAC Defendants was accurate, despite the fact that all emails transmitted by Carol A. Ciardi of Real Safe included a note stating:

BEWARE OF SCAMMERS. WIRE FRAUD IS ON THE RISE. Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Any wire instructions received by email will be reviewed and confirmed with a call to the originator of the email using our previously known contact information prior to sending funds.”

[See **Exhibit C**].

30. Upon information and belief, Real Safe then forwarded the Altered Payoff Statement and/or the information contained in the Altered Payoff Statement to the bank at which Real Safe maintains an account.

31. At no time did the LSAC Defendants or Real Safe contact Freedom Mortgage to confirm the correct payoff amount, the wiring instructions, the discrepancy with JJB REAL CENTER LLC appearing on the account name, or the appropriate account number into which the payoff funds were to be deposited.

32. On April 26, 2021, at 1:59:32 P.M., Real Safe's bank initiated an outgoing wire to BBV Bank at the account ending in 2101 (the Hacker's account), in the amount of \$257,321.38. (See Wire Transfer Receipt attached hereto as "**Exhibit E**").

33. Upon information and belief, Real Safe and/or Real Safe's Bank never contacted Freedom Mortgage prior to, during, or subsequent to initiating the wire transfer of \$257,321.38, nor did Real Safe and/or its Bank confirm Freedom Mortgage's receipt of said funds, which, at a minimum, would have immediately flagged the misdirected wire transfer and allowed for the immediate cancellation of same before the Hacker's account accepted the wire transfer.

34. On June 8, 2021, Ms. Peck was contacted by Freedom Mortgage to advise that payment on her account was due and that the wire transfer initiated at or around April 23, 2021, was never received. (See June 8, 2021, through June 9, 2021, Email Exchanges attached hereto as "**Exhibit F**").

35. Ms. Peck immediately notified the LSAC Defendants and Real Safe that the wire transfer intended for Freedom Mortgage was never received. Ms. Peck also demanded proof that payment was wired or mailed to Freedom Mortgage and confirmation that same was received. (Id).

36. On June 9, 2021, Ms. Peck, advised that she spoke with Freedom Mortgage who stated that the ABA number on the confirmation was incorrect, to which Real Safe advised that, instead, the wire was not applied to the proper loan number. (Id).

37. Upon information and belief, Title Resources Guaranty Company (“Title Resources”) provided title insurance to the Silvas in connection with this Property.

38. By letter dated December 21, 2021, Title Resources acknowledged that payment towards Ms. Peck’s Mortgage with Freedom Mortgage, which continues to encumber the Property, “was misdirected and not paid to Freedom Mortgage.” (See Title Resources December 21, 2021, Coverage Determination attached hereto as “**Exhibit G**”).

39. Title Resources furthered that “[t]his prior lien is a matter that is covered and subject to indemnity . . .” (Id).

40. Despite Title Resources explicit determination of coverage, it has failed and/or refused to pay off the outstanding balance due on Ms. Peck’s Mortgage with Freedom Mortgage.

41. As a result of non-payment of the Mortgage balance, \$57,173.92 in interest has accrued and continues to accrue. Thus, the outstanding balance owed on same is now in excess of \$300,000.00.

42. Despite enlisting the assistance of her former counsel with the foregoing issue, the LSAC Defendants failed and refused to provide any meaningful assistance. (See Sharon Peck Correspondence to Michael Selvaggi between November 5, 2021 and May 12, 2022, attached hereto as “**Exhibit H**”).

43. As a result of the foregoing, Ms. Peck has been forced to live at her mother’s home with her two children, and she has been unable to purchase another home.

44. Every potential lender has denied Ms. Peck’s request for a mortgage, her credit score has plummeted nearly 200 points, she has received several foreclosure notices from Freedom Mortgage, her credit cards have been cancelled by the credit card companies, and,

worst of all, she has suffered such severe mental and physical anguish that she had to quit her job as a Surgical Nurse out of concern for her mental and physical health.

45. Ms. Peck has since obtained new employment after months of attending to her mental and physical health.

46. The inaction of all Defendants for well over a year has irreparably damaged Ms. Peck and her children.

47. Ms. Peck has missed out on numerous opportunities over the past year to purchase a new home for her and her children.

48. If and when this matter gets resolved, Ms. Peck will be dealing with significantly higher mortgage interest rates, compared to those rates available back in 2021, if she is able to buy another home.

49. As a result, Ms. Peck's and her Children's qualities of life have been severely impaired.

50. By letters dated May 20, 2022, counsel for Ms. Peck wrote Mr. Selvaggi and Real Safe Title demanding resolution of the foregoing. (See Ms. Peck's May 20, 2022, letters to Mr. Selvaggi and Real Safe, attached hereto as "**Exhibit I**").

51. On May 23, 2022, Ms. Peck learned that the Silvas filed an Action for Quiet Title on February 2, 2022, naming Freedom Mortgage as a defendant, and alleging that Freedom Mortgage failed to release the Mortgage on the Property. (See the Silvas Complaint, attached hereto as "**Exhibit J**").

52. On May 10, 2022, Freedom Mortgage filed a Third-Party Complaint against the LSAC Defendants and Real Safe. (See Freedom Mortgage's Third-Party Complaint, attached hereto as "**Exhibit K**").

53. By letters dated May 27, 2022, counsel for Ms. Peck demands to Title Resources and Freedom Mortgage demanding resolution of the foregoing. (See Ms. Peck's May 27, 2022, letters to Title Resources and Freedom Mortgage, attached hereto as "**Exhibit L**").

54. By letters dated September 20, 2022, and October 13, 2022, following a meet and confer with counsel for the Defendants in June 2022, Ms. Peck furnished Defendants with a settlement demand to which no meaningful response was received from any party, with the exception of Freedom Mortgage.

COUNT ONE
(Legal Malpractice against the LSAC Defendants)

55. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

56. As Plaintiff's attorneys, the LSAC Defendants were required to uphold and satisfy a professional standard of care.

57. The LSAC Defendants breached the duty they owed to Plaintiff by, inter alia, failing to employ sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement and ensure the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage.

58. The LSAC Defendants' failures caused Plaintiff to suffer damages, including, but not limited to, such severe financial, emotional and physical damages, as well as the legal fees that Plaintiff paid to the LSAC Defendants for their negligent representation.

WHEREFORE, Plaintiff demands judgment in her favor and against the LSAC Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;

- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

COUNT TWO
(Breach of Fiduciary Duty against the LSAC Defendants)

59. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

60. The LSAC Defendants, as attorneys rendering legal services to Plaintiff, owed Plaintiff fiduciary duties of care and loyalty. These duties included providing non-negligent services to Plaintiff that adhered to the applicable standard of care, employing sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement, and ensuring the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage.

61. The LSAC Defendants breached their fiduciary duty to Plaintiff as described above, resulting in the proximate cause damages described above.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;
- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

COUNT THREE
(Breach of Fiduciary Duty against all Defendants)

62. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

63. Defendants, in rendering services to Plaintiff, owed Plaintiff fiduciary duties of care and loyalty. These duties included providing non-negligent services to Plaintiff that adhered to the applicable standard of care, employing sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement, and ensuring the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage.

64. Defendants breached their fiduciary duty to Plaintiff as described above, resulting in the proximate cause damages described above.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;
- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

COUNT FOUR

(Negligent Infliction of Emotional Distress against all Defendants)

65. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

66. Defendants owed Plaintiff the duty to exercise care.

67. Such duty included, but was not limited to, ensuring the appropriate deposit of Ms. Peck's Property sale proceeds towards her outstanding Mortgage at Freedom Mortgage.

68. Defendants failed to exercise care by negligently and willfully failing to employ sufficient data security measures to protect sensitive and confidential financial data contained in

the Authentic Payoff Statement and ensure the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage.

69. By negligently and willfully failing to employ sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement and ensure the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage, Defendants negligently caused Plaintiff to suffer severe emotional distress.

70. As a proximate result of Defendants' negligent and willful acts and omissions, Plaintiff has suffered, and continues to suffer, severe emotional distress for which she requires treatment.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;
- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

COUNT FIVE

(Intentional Infliction Of Emotional Distress against all Defendants)

71. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

72. The wrongful actions of Defendants failing to employ sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement and ensure the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage, as well as Defendants' failures and refusals to assist Ms. Peck, thereby allowing her financial, emotional and physical health to plummet, were extreme and outrageous

and should shock the conscience of the Court.

73. Through their egregious conduct, Defendants intentionally caused Ms. Peck to suffer, and continue to suffer, severe emotional distress.

74. Defendants wrongful acts were/are the proximate cause of Ms. Peck's severe emotional distress.

75. As a result of Defendants' wrongful acts, Plaintiff has suffered, and continues to suffer, severe emotional distress for which she requires treatment.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;
- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

COUNT SIX
(Loss of Income against all Defendants)

76. Plaintiff repeats and realleges each and every fact alleged in foregoing paragraphs of this Complaint as if fully set forth herein.

77. Had Plaintiff not been subjected to such severe physical and emotional distress as a result of Defendants' failure to adhere to the applicable standard of care, employ sufficient data security measures to protect sensitive and confidential financial data contained in the Authentic Payoff Statement, and ensure the safe transfer of funds from the Property sale proceeds to satisfy Plaintiff's Mortgage, Plaintiff would not have been forced to quit her job.

78. Plaintiff has lost income as a result of having to quit her job due to the severe physical and emotional distress she suffered as a result of the foregoing.

79. Plaintiff has since obtained new employment after months of attending to her mental and physical health.

80. Plaintiff demands full compensation for the income lost as a result of the actions and omissions by Defendants relative to the foregoing.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants for:

- A. Compensatory Damages;
- B. Punitive damages;
- C. Pre- and post- judgment interest;
- D. Attorneys' fees and costs; and
- E. Such other relief that the Court deems reasonable and just.

NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4(c)

TAKE NOTICE, that the undersigned attorney, counsel for Plaintiff, hereby demands, pursuant to Rules 1:5-1(a) and 4:17-4(c) that each party herein serving pleadings and interrogatories and receiving answers hereto, serve copies of all such pleadings and answered interrogatories received from any party, including any documents, papers and other materials referred to herein, upon the undersigned attorney and take notice that it is a continuing demand.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues raised by this litigation.

CERTIFICATION

Pursuant to R. 4:5-1, I hereby certify that a separate action related to the subject matter of this action, and including the foregoing Defendants, is currently pending in the Superior Court of New Jersey, Law Division, Warren County, Docket Number WRN-L-000206-22. It is not anticipated at this time that there is any additional party who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Ryan E. Gallagher, Esq. is hereby designated as trial counsel for Plaintiff, Sharon Peck, in the within civil action pursuant to R. 4:25-4.

SCHENCK, PRICE, SMITH & KING LLP.

Dated: October 28, 2022

By: */s/ Ryan Gallagher*

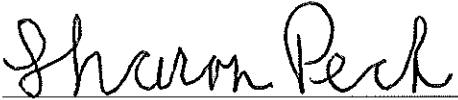
Ryan E. Gallagher, Esq.
Timothy I. Duffy, Esq.

VERIFICATION

I, Sharon Peck, of full age, hereby certify as follows:

1. I have read the foregoing Verified Complaint to be filed on my behalf.
2. I hereby verify that all of the factual allegations stated in the foregoing Verified Complaint are true to the best of my knowledge and belief.
3. I am aware that if any of the statements made by me herein are willfully false, I am subject to punishment.

Dated: October 26, 2022



Sharon Peck