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Attorneys for Plaintiff, Surety Title Agency of Atlantic County, LLC

SURETY TITLE AGENCY OF ATLANTIC COUNTY, LLC : SUPERIOR COURT OF NEW JERSEY

Plaintiff,

LAW DIVISION

vs.

ATLANTIC COUNTY

3 SUNSET COURT, LLC and ANDREW C. SIMPSON,

Docket No. **L2359/11**

Civil Action

Defendants.

COMPLAINT

Plaintiff, Surety Title Agency of Atlantic County, LLC, with an office at 1800 New Road, Northfield, New Jersey, by way of Complaint, says:

FACTS AND BACKGROUND

1. Plaintiff is a licensed title insurance agent authorized to do business in the State of New Jersey.
2. Defendant 3 Sunset Court, LLC is a New Jersey limited liability company with an office located within Brigantine, New Jersey.
3. On information and belief, Defendant Andrew C. Simpson is a member of the Defendant 3 Sunset Court, LLC.
4. Defendant 3 Sunset Court, LLC, as seller, and John Parker and Patricia Parker, as buyers (the "Buyers") entered into a real estate agreement for the sale and purchase of a single family home located at 3 Sunset Court in Brigantine, New Jersey, a/k/a Lot 7 in Block 4402 of the Brigantine Tax Map (the "Property").
5. Defendant Andrew C. Simpson held himself out as the owner of the Property.
6. The Buyers did order from the Plaintiff a commitment for title insurance for the Property.

7. On or about September 24, 2010 the Plaintiff did provide the Buyers with a commitment for title insurance which, among other things, required Defendant 3 Sunset Court, LLC to pay all taxes, charges and assessments levied against the Property which were due and payable.

8. In preparation for closing on the Property between Defendant 3 Sunset Court, LLC and the Buyers, the Plaintiff secured a tax and assessment search regarding the Property from Data Trace effective as of September 29, 2010 determining that the real estate taxes for the Property for the fourth quarter of 2010 were unpaid in the amount of \$4,381.50.

9. Closing between Defendant 3 Sunset Court, LLC and the Buyers was scheduled for October 18, 2010. On October 15, 2010 a representative of the Plaintiff was advised by a representative of the City of Brigantine that the only outstanding taxes due on the Property were those for the fourth quarter of 2010 in the amount of \$4,381.50.

10. The Settlement Statement prepared by the Plaintiff for the closing showed the fourth quarter taxes due to the City of Brigantine being paid from the proceeds of sale of Defendant 3 Sunset Court, LLC and a \$3,524.25 tax adjustment between the Defendant 3 Sunset Court, LLC and the Buyers.

11. Closing occurred on October 18, 2010 at which time Defendant Andrew C. Simpson signed a Closing Agreement in which it was agreed that if there were any errors or omissions in the closing figures, adjustments or documentation utilized for closing that the parties would remit such monies and/or re-execute such documents as necessary to correct said errors or omissions.

12. Also at closing Defendant Andrew C. Simpson executed and delivered to the Plaintiff an Affidavit of Title in which he represented that there were no legal obligations that could be enforced against the Property.

13. In reliance on the aforementioned documentation executed by Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson the Plaintiff did agree to issue to the Buyers a title policy insuring, among other things, that the real estate taxes on the Property had been paid through December 31, 2010.

14. Unknown to the Plaintiff at the time of closing but known to Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson, the City of Brigantine had imposed an added or omitted assessment against the Property which, according to the City of Brigantine, had increased the taxes due on the Property as of the date of closing from \$4,381.00 to \$60,194.22, or an additional \$55,812.72. Of this additional tax liability \$48,186.84 would have been the obligation of Defendant 3 Sunset Court, LLC.

15. Defendants 3 Sunset Court, LLC and Andrew C. Simpson were aware, at the time of closing, of the aforementioned additional tax liability and fraudulently failed to disclose said information to the Plaintiff and executed documents that were inconsistent with the knowledge that they had.

16. Plaintiff has requested that Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson pay to the Plaintiff the aforementioned additional tax liability due by Defendant 3 Sunset Court, LLC. Both Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson have failed to pay this tax liability.

17. So as to avoid jeopardizing the Buyers' title to the Property, as insured by the Plaintiff, the Plaintiff did pay to the City of Brigantine, the share of the additional tax liability due by Defendant 3 Sunset Court, LLC.

FIRST COUNT
(Unjust Enrichment)

1. The Plaintiff repeats the allegations as contained within paragraphs 1 through 17 of the Facts and Background.

2. By the payment by the Plaintiff of the additional tax liability of Defendant 3 Sunset Court, LLC, Defendant 3 Sunset Court, LLC has been unjustly enriched.

WHEREFORE, Plaintiff demands judgment against Defendant 3 Sunset Court, LLC as follows:

- A. For compensatory damages; and
- B. For interest, attorney fees and costs of suit.

SECOND COUNT
(Breach of Contract)

1. Plaintiff repeats the allegations of the First Count as if set forth at length herein.
2. Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson, agreed to pay any sums to the Plaintiff to correct any errors that were contained within the Settlement Statement.
3. There was an error within the Settlement Statement and Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson have failed to make payment to the Plaintiff as agreed.

WHEREFORE, Plaintiff demands judgment against Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson as follows:

- A. For compensatory damages; and
- B. For interest, attorney fees and costs of suit.

THIRD COUNT
(Negligent Misrepresentation)

1. Plaintiff repeats the allegations of the Second Count as if set forth at length herein.
2. Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson negligently misrepresented the status of the taxes on the Property resulting in a loss to the Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson as follows:

- A. For compensatory damages; and
- B. For interest, attorney fees and costs of suit.

FOURTH COUNT
(Fraud)

1. Plaintiff repeats the allegations of the Third Count as if set forth at length herein.
2. Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson knew, as of the date of closing, that an added assessment had or was in the process of being imposed against the Property that would result in an additional tax liability to be adjusted at closing.
3. Both Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson intentionally failed to disclose to the Plaintiff this information resulting in damages to the Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant 3 Sunset Court, LLC and Defendant Andrew C. Simpson as follows:

- A. For compensatory damages;
- B. For punitive damages; and
- C. For interest, attorney fees and costs of suit.

Dated: March 21, 2011

GEMMEL, TODD & MERENICH, P.A.

By: 

Charles Gemmel, Esquire, Attorneys
for Plaintiff, Surety Title Agency of
Atlantic County, LLC

CERTIFICATION

Pursuant to *N.J. Rules, 1969, R.4:5-1*, it is hereby certified that this matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding of which the undersigned is aware; and, that no other action in any other court or arbitration proceeding is contemplated.

Dated: March 21, 2011

GEMMEL, TODD & MERENICH, P.A.

By: 

Charles Gemmel, Esquire, Attorneys
for Plaintiff, Surety Title Agency of
Atlantic County, LLC

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the undersigned, attorney for Plaintiff, Surety Title Agency of Atlantic County, LLC, hereby designates Charles Gemmel, Esquire, as trial counsel in this matter.

Dated: March 21, 2011

GEMMEL, TODD & MERENICH, P.A.

By: 

Charles Gemmel, Esquire, Attorneys
for Plaintiff, Surety Title Agency of
Atlantic County, LLC

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a trial by jury on all issues raised by these pleadings.

Dated: March 21, 2011

GEMMEL, TODD & MERENICH, P.A.

By: 

Charles Gemmel, Esquire, Attorneys
for Plaintiff, Surety Title Agency of
Atlantic County, LLC