

**Stewart Tit. Ins. Co. v Liberty Tit.  
Agency, LLC**

2009 NY Slip Op 31170(U)

May 22, 2009

Supreme Court, New York County

Docket Number: 601162/09

Judge: Richard B. Lowe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Richard B. Lerner III  
Justice

PART 56

Stewart Title Insurance Company

- v -

Liberty Title Insurance Co.

INDEX NO. 601162/4  
MOTION DATE 4/24/09  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion: Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**

MAY 27 2009

COUNTY CLERK'S OFFICE  
NEW YORK

MAY 22 2009

HON. RICHARD B. LERNE III

Dated: MAY 22 2009

J.S.C.

Check one: FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 56

-----X  
STEWART TITLE INSURANCE COMPANY,

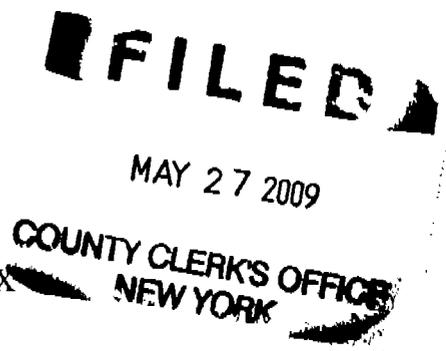
Plaintiff,

-against-

Index No. 601162/09

LIBERTY TITLE AGENCY, LLC, GNY LIBERTY  
ABSTRACT, LLC, DECISION TITLE SERVICES  
LLC, BRIAN H. MADDEN, ELIZABETH D.  
MADDEN, ALBERT YORIO, BROWNSTONE  
ABSTRACT, LLC, LIBERTY WESTCHESTER, LLC  
and LIBERTY TITLE AGENCY OF WESTCHESTER, LLC,

Defendants.



-----X

**RICHARD B. LOWE III, J.:**

The plaintiff Stewart Title Insurance Company (plaintiff) moves for an order (i) enjoining and restraining Liberty Title Agency, LLC and non-party TD Bank, N.A., from paying any check drawn upon, or otherwise removing any funds from, the bank accounts entitled "Liberty Title Agency LLC Account No. 792583 1120 and 7915132596," or any other bank account owned, controlled or maintained by Liberty Title Agency, LLC; (ii) enjoining and restraining Liberty Title Agency, LLC and non-party Madison National Bank, from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Liberty Title Agency, LLC ; (iii) enjoining and restraining each of the defendants, from expending, transferring, or secreting all or any portion of any funds entrusted to Liberty Title Agency, LLC in connection with title closings, for the purpose of paying transfer taxes, mortgage taxes, recording fees, or as escrow deposits or any asset purchased or investment made with any of

the escrow funds; (iv) enjoining and restraining defendants Liberty Title Agency, LLC , Brian H. Madden, Elizabeth D. Madden, and Albert Yorio, from making any transfers or payments of money or other assets to any person or entity, whether or not a party to this action; (v) enjoining and restraining defendants from destroying or secreting any invoices, correspondence, ledgers, accounts, books, records or other documents related in any manner to the title insurance business conducted by defendants Liberty Title Agency, LLC, GNY Liberty Abstract, LLC, or Decision Title Services LLC; (vi) directing defendant Liberty Title Agency, LLC to produce for discovery, inspection, and copying by the plaintiff, within five days from service of the order of this court directing such production, all files, invoices, correspondence, ledgers, accounts, books, records, deposit tickets, cancelled checks, debit or credit memos, wire transfer confirmations, bank statements and similar documents pertaining to all title insurance transactions or closings insured by the plaintiff from February 7, 2005 to the present time, including but not limited to Liberty Title Agency, LLC's order log, a list of all open files that have not been closed or cancelled, and all information relating to the deposit, transfer, and whereabouts of the escrow funds; and (vii) enjoining and restraining defendants from soliciting, servicing or writing title insurance business on behalf of the plaintiff, issuing any title reports or title insurance policies on behalf of the plaintiff, or from taking any action or paying or receiving any funds on behalf of the plaintiff, or from holding themselves out to the public as agents or representatives of the plaintiff, or from taking any action purporting to bind the plaintiff.

### **Background**

The plaintiff is a title insurance underwriter. The defendant Liberty Title Agency, LLC is a title abstract company, that issued title insurance policies on behalf of the plaintiff. The defendants

Brian H. Madden, Elizabeth D. Madden, and Albert E. Yorio are the officers and principals of Liberty Title Agency, LLC. It is alleged that Liberty Title Agency, LLC has failed to record deeds and mortgages insured through the plaintiff, and the individual defendants have misappropriated the sum of \$560,000.00 of escrow funds entrusted to Liberty Title Agency, LLC in connection with real estate closings. Transfer taxes, recording fees, and liens have gone unpaid. As a result, deeds and mortgages have gone unrecorded, exposing lenders and owners to loss of priority, and loss of title.

In support of its motion, the plaintiff alleges that Elizabeth D. Madden withdrew the sum of \$1.4 million from a company whose insolvency exceeded \$5 million, and that the defendant Albert Yorio has changed the business name of one of the defendants from Liberty Westchester, LLC, to Brownstone Abstract, LLC, and is carrying on an abstract business under the new name. The plaintiff argues that a preliminary injunction is required in order to prevent further defalcations and attempts to further conceal the funds that have already been embezzled.

In opposition to the motion, the defendant Elizabeth D. Madden alleges that she was not involved in the alleged malfeasance. The defendant Brian H. Madden argues that his personal assets should not be frozen. The defendant Albert Yorio argues that there are no meaningful allegations against him.

### **Discussion**

In order to be entitled to a preliminary injunction, the movant must demonstrate a likelihood of success on the merits, irreparable injury absent the injunction, and a balance of the equities in favor of injunctive relief (*W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]).

CPLR 6301 provides in relevant part:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff

The subject matter of this action is a specific fund, i.e. money escrowed at real estate closings. Where, as here, the dispute involves claims to a specific fund, and that fund is the subject of the action, a preliminary injunction is appropriate under the express wording of CPLR 6301 (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541 [2000]).

Contrary to the defendants' assertion, the movants demonstrate a likelihood of success on the merits (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]). The proof, in the form of written agreements, business records, balance sheets, and an affidavit from John H. Frates, the plaintiff's Vice President, all demonstrate that the defendants Brian H. Madden and Elizabeth D. Madden, may have committed active intentional fraud. Mr. Frates alleges that the defendant Elizabeth D. Madden is named as partner of Liberty Title Agency, LLC, and that her equity account shows a deficit of \$1.4 million

However, as to the defendant Albert E. Yorio, there are no allegations against him personally. Mr. Yorio alleges that the name change by Liberty Westchester, LLC, to Brownstone Abstract, LLC, was set in motion prior to this lawsuit, and that Liberty Westchester, LLC is not involved with the Madden defendants. The absence of any proof means that there is a failure to demonstrate a likelihood of success against the defendants Albert E. Yorio, Brownstone Abstract LLC, Liberty Westchester LLC, and Liberty Title Agency of Westchester LLC (*Doe v Axelrod*, 73 NY2d 748 [1988]; *U.S. Re Companies, Inc. v Scheerer* 41 AD3d 152

[1<sup>st</sup> Dept 2007]).

The destruction by defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden, of the trust placed in title agencies at real estate closings, by purchasers and sellers alike, demonstrates irreparable injury. The plaintiffs demonstrate that an award of monetary damages would not adequately compensate them (*Zodkevitch v Feibush*, 49 AD3d 424 [1st Dept 2008]). Therefore, the plaintiffs demonstrate irreparable injury absent the injunction.

Finally, the balancing of the equities clearly favor preserving the status quo by preventing the alleged perpetrators of the alleged fraud from destroying their records and converting the remaining escrow funds (*Uniformed Firefighters Assn. of Greater N.Y. v City of New York*, 79 NY2d 236 [1992]).

### **Conclusion**

Accordingly, it is

ORDERED that the motion against the defendant Albert E. Yorio, Brownstone Abstract LLC, Liberty Westchester LLC, and Liberty Title Agency of Westchester LLC is denied, and it is further

ORDERED that the motion for a preliminary injunction against the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden is granted, and it is further

ORDERED that due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiffs and against the defendants Liberty Title Agency

LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden, and that the plaintiff is entitled to a preliminary injunction on the ground that the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden, threaten or are about to do, or are doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is further

ORDERED that the undertaking is fixed in the sum of \$10,000.00 conditioned that the plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Brian H. Madden, and Elizabeth D. Madden, all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the defendants Liberty Title Agency, LLC and non-party TD Bank, N.A., are preliminarily enjoined from paying any check drawn upon, or otherwise removing any funds from, the bank accounts entitled "Liberty Title Agency LLC Account No. 792583 1120 and 7915132596," or any other bank account owned, controlled or maintained by Liberty Title Agency, LLC; and it is further

ORDERED that the defendants Liberty Title Agency, LLC and non-party Madison National Bank, are preliminarily enjoined from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Liberty Title Agency, LLC ; and it is further

ORDERED that the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden are enjoined from expending, transferring, or secreting all or any portion of any funds entrusted to Liberty Title Agency, LLC in connection with title closings, for the purpose of paying transfer taxes, mortgage taxes, recording fees, or as escrow deposits or any asset purchased or investment made with any of the escrow funds; and it is further

ORDERED that the defendants Liberty Title Agency, LLC , Brian H. Madden, and Elizabeth D. Madden are preliminarily enjoined from making any transfers or payments of money or other assets to any person or entity, whether or not a party to this action; and it is further

ORDERED that the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden are preliminarily enjoined from destroying or secreting any invoices, correspondence, ledgers, accounts, books, records or other documents related in any manner to the title insurance business conducted by defendants Liberty Title Agency, LLC , GNY Liberty Abstract, LLC, or Decision Title Services LLC; and it is further

ORDERED that the defendant Liberty Title Agency, LLC to produce for discovery, inspection, and copying by the plaintiff, within five days from service of this order with notice of entry, all files, invoices, correspondence, ledgers, accounts, books, records, deposit tickets, cancelled checks, debit or credit memos, wire transfer confirmations, bank statements and similar documents pertaining to all title insurance transactions or closings insured by the plaintiff

from February 7, 2005 to the present time, including but not limited to Liberty Title Agency, LLC 's order log, a list of all open files that have not been closed or cancelled, and all information relating to the deposit, transfer, and whereabouts of the escrow funds; and it is further

ORDERED that the defendants Liberty Title Agency LLC, GNY Liberty Abstract LLC, Decision Title Services LLC, Brian H. Madden, and Elizabeth D. Madden are enjoined from soliciting, servicing or writing title insurance business on behalf of the plaintiff, issuing any title reports or title insurance policies on behalf of the plaintiff, or from taking any action or paying or receiving any funds on behalf of the plaintiff, or from holding themselves out to the public as agents or representatives of the plaintiff, or from taking any action purporting to bind the plaintiff.

Dated: May 22,2009

ENTER:

  
HON. RICHARD B. LOVE  
J.S.C.  
**FILED**  
MAY 27 2009  
COUNTY CLERK'S OFFICE  
NEW YORK