

Stewart Title Ins. Co. v Timoney

2010 NY Slip Op 33968(U)

November 1, 2010

Supreme Court, Nassau County

Docket Number: 011742-10

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x
STEWART TITLE INSURANCE COMPANY,

**TRIAL/IAS PART: 22
NASSAU COUNTY**

Plaintiff,

Index No: 011742-10

Motion Seq. No: 1

- against -

Submission Date: 10/21/10

**GERARD P. TIMONEY, CARMELLA STUART,
GPT SERVICES INC. d/b/a TITLEGUARD AGENCY,
GPT/288 INC. d/b/a TITLEGUARD AGENCY,
TITLEGUARD AGENCY LAND SERVICES,
TITLEGUARD LAND SERVICES, TITLE GUARD
LAND SERVICES, TITLEGUARD AGENCY LAND
SERVICES, INC., GREENHOUSE STRATEGICS LLC,
VIKING TITLE AGENCY CORP., GPT CAPITAL
INC., DEVIN'S OFFICE SERVICES INC., 50 GRAND
AVENUE CORPORATION, and 25 OSBORNE PLACE
CORP.,**

Defendants.

-----X

Papers Read on this Order to Show Cause:

- Order to Show Cause, Affidavit in Support,**
- Affirmation in Support and Exhibits.....x**
- Emergency Affirmation.....x**

This matter is before the court on the Order to Show Cause filed by Plaintiff Stewart Title Insurance Company ("Stewart Title" or "Plaintiff") on August 18, 2010 and submitted October 21, 2010 without opposition. For the reasons set forth below, the Court grants Plaintiff's Order to Show Cause and directs that, pending further court order, 1) Defendants Gerard P. Timoney ("Timoney"), Carmella Stuart ("Stuart"), GPT Services Inc. d/b/a Titleguard

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Agency, GPT/288 Inc. d/b/a Titleguard Agency, Titleguard Agency Land Services, Titleguard Land Services, Title Guard Land Services, Titleguard Agency Land Services Inc. (collectively "Titleguard") and non-party Signature Bank are hereby enjoined and restrained from paying any check drawn upon, or otherwise removing any funds from, the bank accounts bearing account numbers 1500829180, 1500829199, 1500829202, 1500829210, 1500829229, 1500829237 or any other bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne Place Corp. ("25 Osborne"), 50 Grand Avenue Corporation ("50 Grand"), or from any account on which Timoney or Stuart is an authorized signatory; 2) Timoney, Stuart, Titleguard, and non-party Oceanside Christopher Federal Credit Union ("Oceanside") are hereby enjoined and restrained from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne, 50 Grand, or from any account on which Timoney or Stuart is an authorized signatory; 3) each of the Defendants is hereby enjoined and restrained from expending, transferring, or secreting all or any portion of any funds entrusted to Titleguard in connection with title closings, for the purpose of paying transfer taxes, mortgage taxes, recording fees, or as escrow deposits ("Trust Funds"), or any asset purchased or investment made with any of the Trust Funds; 4) Defendants Titleguard, Timoney, Stuart, 25 Osborne and 50 Grand are hereby enjoined and restrained from making any transfers or payments of money or other assets to any person or entity, whether or not a party to this action; 5) Defendants are hereby enjoined and restrained from destroying or secreting any computers, invoices, correspondence, ledgers, accounts, books, records or other documents, in paper or electronic form, related in any manner to the title insurance business conducted by any Defendant; 6) Defendants Titleguard, Timoney and Stuart are hereby directed to produce for discovery, inspection and copying by Plaintiff, within five (5) days of service of this Order upon them, all files, invoices, correspondence, ledgers, accounts, books, record, 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 Plaintiff from January 1, 2008 to the present, including but not limited to Titleguard'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 Trust Funds; and 7) Defendants are hereby enjoined and

restrained from soliciting, servicing or writing title insurance business on behalf of Plaintiff, issuing any title reports or title insurance policies on behalf of Plaintiff, or from taking any action or paying or receiving any funds on behalf of Plaintiff, or from holding themselves out as agents or representatives of Plaintiff, or from taking any action purporting to bind Plaintiff.

The Court directs Plaintiff to post a bond in the sum of \$250,000 as a condition of this injunctive relief.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order 1) enjoining and restraining Defendants Timoney, Stuart, GPT Services Inc. d/b/a Titleguard Agency, GPT/288 Inc. d/b/a Titleguard Agency,¹ Titleguard Agency Land Services, Titleguard Land Services, Title Guard Land Services, Titleguard Agency Land Services Inc. (collectively "Titleguard") and non-party Signature Bank, pending further Order of this Court, from paying any check drawn upon, or otherwise removing any funds from, the bank accounts bearing account numbers 1500829180, 1500829199, 1500829202, 1500829210, 1500829229, 1500829237 or any other bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne, 50 Grand, or from any account on which Timoney or Stuart is an authorized signatory; 2) enjoining and restraining Timoney, Stuart, Titleguard, and non-party Oceanside, pending further Order of this Court, from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne, 50 Grand, or from any account on which Timoney or Stuart is an authorized signatory; 3) enjoining and restraining each of the Defendants, pending further Order of this Court, from expending, transferring, or secreting all or any portion of any funds entrusted to Titleguard in connection with title closings, for the purpose of paying transfer taxes, mortgage taxes, recording fees, or as escrow deposits ("Trust Funds"), or any asset purchased or investment made with any of the Trust Funds; 4) enjoining and restraining Defendants Titleguard, Timoney, Stuart, 25 Osborne and 50 Grand, pending further

¹ Paragraph (i) of Plaintiff's Order to Show Cause refers, *inter alia*, to "Defendant GPT/288 Inc. d/b/a Titleguard, Titleguard Agency." The Court concludes that this was a typographical error and that Plaintiff intended to refer to the entity "GPT/288 Inc. d/b/a Titleguard Agency" as contained in the caption of the Complaint.

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Order of this Court, from making any transfers or payments of money or other assets to any person or entity, whether or not a party to this action; 5) enjoining and restraining Defendants, pending further Order of this Court, from destroying or secreting any computers, invoices, correspondence, ledgers, accounts, books, records or other documents, in paper or electronic form, related in any manner to the title insurance business conducted by any Defendant; 6) directing Defendants Titleguard, Timoney and Stuart to produce for discovery, inspection and copying by Plaintiff, within five days of the return date of the Order to Show Cause, all files, invoices, correspondence, ledgers, accounts, books, record, 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 Plaintiff from January 1, 2008 to the present, including but not limited to Titleguard'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 Trust Funds; and 7) enjoining and restraining Defendants from soliciting, servicing or writing title insurance business on behalf of Plaintiff, issuing any title reports or title insurance policies on behalf of Plaintiff, or from taking any action or paying or receiving any funds on behalf of Plaintiff, or from holding themselves out as agents or representatives of Plaintiff, or from taking any action purporting to bind Plaintiff.

On August 18, 2010, the Court signed a temporary restraining order ("TRO") directing that, pending the hearing and decision of this motion, and the entry of an order thereupon, 1) Defendants Titleguard, Timoney and Stuart, and non-party Signature Bank are hereby restrained and enjoined from paying any check drawn upon, or otherwise removing any funds from, the bank accounts bearing account numbers 1500829180, 1500829199, 1500829202, 1500829210, 1500829229, 1500829237 or any other bank account owned, controlled or maintained by Timoney, Stuart or Titleguard, or from any account on which Timoney or Stuart is an authorized signatory; 2) Defendants Titleguard, Timoney, and Stuart, and non-party Oceanside are hereby restrained and enjoined from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne, 50 Grand, or from any account on which Timoney or Stuart is an authorized signatory; 3) all Defendants are hereby restrained and enjoined from expending,

transferring or secreting all or any portion of any Trust Funds, or any asset purchased or investment made with any of the Trust Funds; 4) Defendants Titleguard, Timoney, Stuart, 25 Osborne, 50 Grand, and all other persons and garnishees, are hereby restrained and prohibited from concealing, transferring or paying any assets of Defendants Titleguard, Timoney, Stuart, 25 Osborne, 50 Grand, or any personal property in which any of said Defendants has an interest; 5) Defendants are hereby restrained and 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 any Defendant; and 6) Defendants are hereby enjoined and restrained from soliciting, servicing or writing title insurance business on behalf of Plaintiff, issuing any title reports or title insurance policies on behalf of Plaintiff, or from taking any action or paying or receiving any funds on behalf of Plaintiff, or from holding themselves out as agents or representatives of Plaintiff, or from taking any action purporting to bind Plaintiff.

Plaintiff has provided Affidavits of Service reflecting its service of the Order to Show Cause, Summons and Complaint and supporting papers on Defendants in compliance with the Court's directive.

Defendants have not submitted an opposition, or any response, to Plaintiff's Order to Show Cause.

B. The Parties' History

The Verified Complaint ("Complaint") (Ex. 1 to Frates Aff. in Support) describes the parties as follows: 1) Plaintiff is a title insurance underwriter, licensed by the New York State Department of Insurance to issue policies insuring the titles of real property owners and the mortgages of secured lenders; 2) Titleguard Agency Land Services ("Titleguard Land") was a New York corporation that was dissolved on or about January 27, 2010 and thereafter was an assumed business name of GPT 288 Inc. d/b/a Titleguard Agency ("GPT 288"); 3) GPT 288 is a New York corporation with offices ("Offices") in Rockville Centre, New York; 3) Titleguard Agency Land Services, Titleguard Land Services and Title Guard Land Services are assumed business names of GPT 288, and those entities and any other entity that conducted title abstract business from the Offices are collectively referred to as "Titleguard"); 4) Defendant Viking Title Agency Corp. ("Viking"), GPT Services Inc. d/b/a Titleguard Agency ("GPT Services"), GPT

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Capital Inc. (“GPT Capital”), Devin’s Office Services Inc. (“Devin’s”), 50 Grand, 25 Osborne and Greenhouse Strategics LLC (“Greenhouse”) are New York corporations; 5) GPT Services, GPT Capital, Devin’s, Titleguard Land, Greenhouse, Grand and Osborne are referred to collectively at times as the “Transferee Companies; 6) Timoney was, at all relevant times, an officer and shareholder of Titleguard, Viking and each of the Transferee Companies; 7) Timoney, at all relevant times, was or held himself out to be the President of Titleguard; 8) Timoney, at all relevant times, was or held himself out to be the President of Viking; 9) Stuart, at all relevant times, was the bookkeeper and manager of Titleguard who was responsible for the financial and banking operations of Titleguard; and 10) Stuart and Timoney are referred to collectively as the “Individual Defendants.”

The Complaint describes this action as arising from the fraudulent and criminal activities of Defendants GPT 288, Viking and their controlling principal and manager, Timoney and Stuart respectively, between 2008 and 2010 (“Defalcation Period”). The Complaint alleges that 1) the Individual Defendants have admitted to converting at least \$640,000 of trust funds entrusted to them at real estate closings, in violation of their fiduciary and contractual obligations and to the detriment of Plaintiff and innocent property owners and mortgage holders; 2) on or before 2008, Viking, GPT 288, Timoney and Stuart (“Defalcating Defendants”) misappropriated their customers’ trust funds by expending them on debts and operational expenses of GPT 288, Viking and other companies and using the trust funds for personal expenses and other improper purposes; 3) as a result of their conversion of trust funds, the Defalcating Defendants failed to record deeds and mortgages issued at approximately 95 real estate closings (“Unrecorded Instruments”), thereby placing the validity and priority of titles and mortgages of property owners and lenders at risk; 4) this conduct exposed Plaintiff to potentially “catastrophic liability” (Compl. at ¶ 4) on claims under policies of title insurance that GPT 288 and Viking issued in Plaintiff’s name at the real estate closings at issue; 5) the Individual Defendants exercised complete dominion and control over GPT 288 and Viking, and were solely responsible for their decisions and conduct; 6) the Individual Defendants have admitted to Plaintiff that the trust funds have been converted and were used for unauthorized purposes, and admitted their roles in that conversion; 7) the Court should pierce the corporate veils of GPT 288 and Viking and hold the

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Individual Defendants personally liable for Plaintiff's losses suffered as a result of the misconduct of those companies; and 8) the Defalcating Defendants' conduct warrants the imposition of punitive damages. The Complaint contains fifteen (15) causes of action including, but not limited to, requests for an accounting and injunctive relief, conversion of trust funds and breach of fiduciary duty.

John A. Frates ("Frates"), a Vice President and New York State Counsel of Plaintiff, provides an Affidavit in Support of Plaintiff's application dated August 14, 2010 in which he affirms that he is familiar with the facts and circumstances of this matter. Frates affirms as follows:

Plaintiff and Titleguard conducted business with each other pursuant to a written agreement dated June 16, 2003 ("Underwriting Agreement") (Ex. 5 to Frates Aff.). Plaintiff terminated the Underwriting Agreement on or about June 7, 2010 upon the discovery of Defendants' improper conduct. Frates affirms that, as of the date of his Affidavit, Plaintiff has discovered that Titleguard failed to use the Trust Funds to record documents entrusted to it at no fewer than 96 title closings and provides a schedule (Ex. 2 to Frates Aff.) containing pertinent information about those closings including the title number, premium, mortgage tax, transfer tax, recording fees and date of closing. As a result of Defendants' conduct as outlined in the Complaint, Plaintiff has been required to use its own funds to pay most of the fees and taxes required to record the Unrecorded Closing Documents and Plaintiff's damages in this regard continue to accrue. To date, Plaintiff has replaced \$516,950.38 in Trust Funds regarding Titleguard files as reflected on the summary provided (Ex. 3 to Frates Aff.). Plaintiff anticipates replacing all, or nearly all, of the Trust Funds reflected on Exhibit 2, totaling over \$662,000.

Frates also affirms that Plaintiff has filed a summons and complaint in Westchester County, New York against the Individual Defendants (Ex. 4 to Frates Aff.) in which Plaintiff has alleged, *inter alia*, that Timoney 1) caused Titleguard to co-mingle its money with funds belonging to his other companies; and 2) caused Titleguard's assets, receipts, and receivables to be diverted to both his personal accounts and other "sham entities" he formed, including Defendant GPT Services.

Frates avers that he spoke in person with Timoney at Titleguard's Office on June 8, 2010,

and that other representatives of Plaintiff witnessed this conversation. At that time, Timoney admitted that the Trust Funds had been converted and stated, specifically, that 1) since late 2008, Trust Funds were deposited into either Titleguard's clearing account or operating account and thereafter expended without ever being transferred into segregated trust or escrow accounts as required by the Underwriting Agreement; and 2) although Titleguard was using its customers' Trust Funds to fund its day-to-day operations, he permitted Stuart to use the company credit card for personal expenses and to satisfy obligations of Titleguard and his other companies with Trust Funds.

Frates spoke with Stuart over the telephone on June 9, 2010 at which time she 1) confirmed Timoney's account of the conversion of the Trust Funds, including her own involvement; and 2) admitted that a) she was aware that the Unrecorded Closing Documents were not being recorded and that Trust Funds were being used for purposes other than those for which they were deposited; b) she used the Trust Funds to pay Titleguard's payroll and other operating expenses beginning in late 2008; c) Titleguard's customers sometimes complained that their deeds and mortgages remained unrecorded for a long time after the closing and Stuart, in response to those complaints, would direct that the particular instruments be recorded using Trust Funds deposited in connection with other, more recent closings; d) when she used the Trust Funds to fund Titleguard's operating expenses and pay salaries of Titleguard employees, Titleguard would often fail to conduct any closings for several weeks at a time; and e) since late 2008, Stuart was the person responsible for Titleguard's banking and financial operations, and kept Timoney apprised of her actions.

Plaintiff conducted a post-termination inspection ("Inspection") at Titleguard's Office on June 8, 2010 at which time Plaintiff reviewed the limited documents available. Plaintiff obtained documentation confirming that Timoney and Stuart have converted Trust Funds for their own personal use, including 1) a copy of a receipt from Signature Bank for a bank check issued payable to Susan A. Morris in the sum of \$1,600 (Ex. 7 to Frates Aff.) who, upon information and belief, is a former wife of Timoney, as well as a corresponding withdrawal slip bearing Stuart's signature, and 2) credit card statements for the Individual Defendants' Titleguard credit cards (Ex. 9 to Frates Aff.) issued by Signature Bank reflecting purchases for personal expenses

including groceries, liquor and pet supplies.

In addition, with Timoney's consent, Plaintiff took possession of Titleguard's computers at the Inspection and Timoney advised Plaintiff which employee used which computer. Plaintiff was unable to access the hard drives and, as reflected in an e-mail dated June 24, 2010 (Ex. 10 to Frates Aff.) it was the opinion of Plaintiff's Chief Technology Officer that information had been intentionally erased from the computer.

Counsel for Plaintiff ("Counsel") provides an Affirmation in Support dated August 14, 2010 in which he affirms that he attended the Inspection and witnessed Timoney's admissions as outlined in Frates' Affidavit. In addition, Timoney advised Counsel that Timoney is the sole owner of 25 Osborne and 50 Grand which are holding companies ("Holding Companies") for two apartment buildings that Timoney owns located at 25 Osborne Place and 50 Grand Avenue, Rockville Centre, New York. Timoney stated that he resides in one of the 25 Osborne units and rents out the remaining units there, as well as units at 50 Grand. Timoney also confirmed that he is, and has always been, the sole owner of Titleguard.

Counsel for Plaintiff affirms that he has learned that Timoney has been using Trust Funds from Titleguard to make payments for his Holding Companies and to one of his former wives. Counsel provides documentation in support of this assertion, including 1) copies of numerous Titleguard checks payable to "cash," (Ex. 11 to Truitt Aff.) totaling \$177,160.75, which Stuart signed and cashed, which contain no title numbers or other notation that would suggest the checks were used for a Titleguard business purpose, 2) copies of 13 checks totaling \$4,245.35 (Ex. 13 to Truitt Aff.) drawn against Titleguard accounts during the Defalcation Period, payable to 25 Osborne, 3) copies of 12 checks totaling \$6,308 (Ex. 14 to Truitt Aff.), issued from Titleguard accounts during the Defalcation Period, payable to 50 Grand, and 4) 48 checks totaling \$16,544.79 (Ex. 15 to Truitt Aff.), issued during the Defalcation Period from various Titleguard accounts, payable to Oceanside. These checks contain numbers on the memo line that correspond to Timoney's Member and Account Numbers with Oceanside.

C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to injunctive relief. It has demonstrated a likelihood of success on the merits by producing both documentary evidence and affirmations

regarding admissions made by the Individual Defendants establishing that Defendants have converted Trust Funds, and may have intentionally deleted information from Titleguard's computers to avoid detection. This conduct violates Paragraph 4.J of the Underwriting Agreement which required Titleguard to:

segregate and safely keep in a separately designated trust account all moneys entrusted to Company [Titleguard] by Underwriter [Stewart] and others, including but not limited to, fiduciary funds, indemnity deposits and Underwriter's portion of all funds due Underwriter.

Paragraph 4.J also directed that these funds were to be used "for no other purposes than for which entrusted to Company."

Plaintiff also contends that if the Court does not grant the requested injunctive relief, which will secure the Trust Funds and provide Plaintiff with the Unrecorded Closing Documents and corresponding files to be processed and recorded, there exists a grave risk of additional harm to Plaintiff, mortgage lenders and the general public because the sellers', purchasers' and mortgagees' interest in the subject properties will not be protected. In addition, unless the assets of Titleguard and the Individual Defendants are frozen, Plaintiff will not be able to determine the extent of the harm caused by Defendants' conduct to the sellers, purchasers and lenders whose Trust Funds were converted, particularly because Plaintiff believes that Titleguard may have maintained its books and records in a manner designed to understate the extent of its improper conversion of trust funds. Moreover, to ensure that Plaintiff has all relevant documentation regarding the use and misuse of the Trust Funds, Plaintiff requires the entire contents of all files for which Trust Funds are missing or documents remain unrecorded and asks the Court to direct Defendants to turn over those files, along with records reflecting the current location of the missing Trust Funds.

Plaintiff also asks the Court to compel Titleguard to immediately turn over all Trust Funds in its possession to Plaintiff, as required under Paragraph 24 of the Underwriting Agreement which provides, in pertinent part, as follows:

Upon termination of this Agreement, for whatsoever cause, Underwriter shall have the right to review any escrow or indemnity deposits and funds held by the Company which were collected as a result of title assurances of the Underwriter having been issued...

Upon termination of this Agreement, the Underwriter shall be entitled to the immediate transfer and possession of all such escrow or indemnity deposits held by the Company. The Company will be responsible for delivering to the Underwriter, within ten (10) business days after termination of this Agreement, the appropriate certified funds, payable to the Underwriter, including the original Escrow, Indemnity or Deposit Agreement and whatever appropriate documentation would be required to release or act upon the requirement of the Indemnity, Escrow or Deposit Agreement. Such documentation must include any partial disbursements and information associated with any disbursements which reduced the original Escrow, Indemnity or Deposit.

Defendants have submitted no opposition or other response to Plaintiff's motion.

RULING OF THE COURT

A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

B. Application of these Principles to the Instant Action

The Court concludes that Plaintiff has demonstrated its right to the requested injunctive relief. Plaintiff has demonstrated a likelihood of success on the merits by presenting proof, both in the form of documentary evidence and admissions by the Individual Defendants, that the Defendants have wrongfully converted Trust Funds by expending them on debts and operational

expenses of GPT 288, Viking and other companies and using the trust funds for personal expenses and other improper purposes. In addition, by demonstrating that the Individual Defendants have used those funds for the benefit of GPT 288 and Viking, Plaintiff has established a basis for its claim that it is appropriate for the Court to hold Timoney and Stuart personally responsible for Plaintiff's losses suffered as a result of the misconduct of those companies.

This proof includes, but is not limited to, 1) documentation reflecting Titleguard's failure to use the Trust Funds to record documents entrusted to it at no fewer than 96 title closings, 2) bank and credit union documentation reflecting the use of Trust Funds to provide money to Timoney's former wife and make purchases for personal expenses including groceries, liquor and pet supplies, 3) bank records reflecting the use of Trust Funds to make payments to Holding Companies owned by Timoney, 4) admissions by Timoney that Trust Funds were deposited into either Titleguard's clearing account or operating account and thereafter expended without ever being transferred into segregated trust or escrow accounts as required by the Underwriting Agreement, 5) admissions by Timoney that he permitted Stuart to use the company credit card for personal expenses and to satisfy obligations of Titleguard and his other companies with Trust Funds, 6) admissions by Stuart that she used the Trust Funds to pay Titleguard's payroll and other operating expenses beginning in late 2008, and 7) admissions by Stuart that when she used the Trust Funds to fund Titleguard's operating expenses and pay salaries of Titleguard employees, Titleguard would often fail to conduct any closings for several weeks at a time.

The Court also concludes that Plaintiff will suffer irreparable harm without the requested injunctive relief. Plaintiff has already incurred significant financial expense in replacing certain Trust Funds and anticipates additional significant financial expense in replacing others that are still under review. Moreover, Plaintiff is endeavoring to ensure that the necessary real estate documents are recorded to protect the property rights of the numerous sellers, purchasers and lenders affected by Defendants' alleged improper conduct and will be stymied in those efforts without the requested injunctive relief.

Finally, the Court concludes that the equities balance in favor of Plaintiff who has incurred significant financial expense as a result of Defendants' alleged conduct and who is

endeavoring to ensure that the sellers, purchasers and lenders of the numerous properties at issue are protected by the recording of appropriate documents and that the Trust Funds are disbursed appropriately. Defendants have provided no submission reflecting any prejudice they will suffer with the requested injunctive relief.

In light of the foregoing, the Court grants Plaintiff's Order to Show Cause in its entirety and directs that, pending further court order, 1) Defendants Gerard P. Timoney, Carmella Stuart, GPT Services Inc. d/b/a Titleguard Agency, GPT/288 Inc. d/b/a Titleguard Agency, Titleguard Agency Land Services, Titleguard Land Services, Title Guard Land Services, Titleguard Agency Land Services Inc. (collectively "Titleguard") and non-party Signature Bank are hereby enjoined and restrained from paying any check drawn upon, or otherwise removing any funds from, the bank accounts bearing account numbers 1500829180, 1500829199, 1500829202, 1500829210, 1500829229, 1500829237 or any other bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne Place Corp. ("25 Osborne"), 50 Grand Avenue Corporation ("50 Grand"), or from any account on which Timoney or Stuart is an authorized signatory; 2) Timoney, Stuart, Titleguard, and non-party Oceanside Christopher Federal Credit Union are hereby enjoined and restrained from paying any check drawn upon, or otherwise removing any funds from, any bank account owned, controlled or maintained by Timoney, Stuart, Titleguard, 25 Osborne, 50 Grand, or from any account on which Timoney or Stuart is an authorized signatory; 3) each of the Defendants is hereby enjoined and restrained from expending, transferring, or secreting all or any portion of any funds entrusted to Titleguard in connection with title closings, for the purpose of paying transfer taxes, mortgage taxes, recording fees, or as escrow deposits ("Trust Funds"), or any asset purchased or investment made with any of the Trust Funds; 4) Defendants Titleguard, Timoney, Stuart, 25 Osborne and 50 Grand are hereby enjoined and restrained from making any transfers or payments of money or other assets to any person or entity, whether or not a party to this action; 5) Defendants are hereby enjoined and restrained from destroying or secreting any computers, invoices, correspondence, ledgers, accounts, books, records or other documents, in paper or electronic form, related in any manner to the title insurance business conducted by any Defendant; 6) Defendants Titleguard, Timoney and Stuart are hereby directed to produce for discovery, inspection and copying by Plaintiff,

within five (5) days of service of this Order upon them, all files, invoices, correspondence, ledgers, accounts, books, record, 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 Plaintiff from January 1, 2008 to the present, including but not limited to Titleguard'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 Trust Funds; and

7) Defendants are hereby enjoined and restrained from soliciting, servicing or writing title insurance business on behalf of Plaintiff, issuing any title reports or title insurance policies on behalf of Plaintiff, or from taking any action or paying or receiving any funds on behalf of Plaintiff, or from holding themselves out as agents or representatives of Plaintiff, or from taking any action purporting to bind Plaintiff.

The Court directs Plaintiff to post a bond in the sum of \$250,000 as a condition of this injunctive relief.

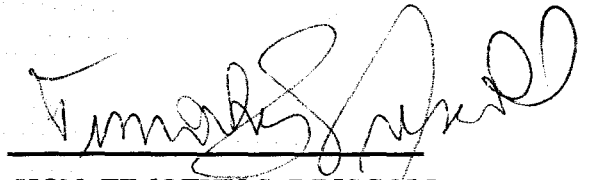
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court on December 17, 2010 at 9:30 a.m.

ENTER

DATED: Mineola, NY
November 1, 2010



HON. TIMOTHY S. DRISCOLL
J.S.C.

ENTERED
NOV 04 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE