

[Verdicts & Settlements]

Damages sought after deed acquired fraudulently

Plaintiff asserts national title group ultimately responsible for agents' misappropriation

\$1.8 million

In a lawsuit filed at Oakland County Circuit Court, plaintiff Isaiah Shafir sought to quiet title — and, subsequently, monetary damages — after the deed to 42 single-family properties he owned was used fraudulently.

In 2005, Shafir was approached by defendant Randy Saylor, who expressed interest in purchasing the properties for \$3.8 million. Saylor said his out-of-state lender required a copy of the deed to approve the loan, and Shafir faxed it. Saylor later told Shafir that he had not been approved for financing, but he wished to buy the properties on land contract.

Saylor purportedly used the copy of the faxed deed to record an affidavit of lost original deed with the Register of Deeds. The properties were sold subsequently to straw purchasers.

When Shafir discovered in 2008 that he'd been divested of his properties, he sued Saylor and all transferees, seeking to quiet title in his favor.

The plaintiff asserted that co-defendant First American Title Insurance Co. — which had a standard agency agreement with Patriot Title and Simmons Title, run by Saylor and partner Kirk Scheib — was ultimately responsible for the fraud.

First American asserted that it was not liable for the acts of its agents in participating in these transactions. Relying on the con-



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tract between itself and its agents, First American argued that the agents' authority to act on its behalf extended only to issuing policies and commitments, and did not include defrauding others.

Also, the defense contended, the contracts between First American and the agents did not include recording documents and closing transactions as part of the agents' duties.

Through detailed discovery, the plaintiff demonstrated that First American knew its agents were closing transactions and recording documents; that First American relied on its agents to perform these duties; and that these actions were an integral part of the agency relationship.

Plaintiff's counsel took numerous depositions, including assistant regional counsel for First American, who testified that agents were expected to record documents in the course of issuing policies — a key admission in the case, which undercut First American's position in its earlier briefs.

The defense asserted that Shafir acknowledged being a seasoned real estate investor, but never provided any documentary or other support for his claim that he only faxed a copy of the deed. He also was unable to produce the deed he allegedly only faxed or records to show that a fax transmission had been made. Further, defense

Type of action:

Fraud, slander of title, quiet title

Type of injuries: Loss of real estate

Name of case: *Shafir, et al., v. Krauss, et al.*

Court/Case no./Date:

Oakland County Circuit Court;
08-091478-CH; May 12, 2009

Tried before: Judge

Name of judge: Wendy Potts

Facilitator: Barry Howard

Settlement amount: \$1.8 million

Attorneys for plaintiff:

Gerard V. Mantese, David F. Hansma

Attorney for defendant:

Phillip J. Neuman

Key to winning: Thorough deposition testimony from key witnesses, vigorous motion practices

contended, Shafir had signed a document acknowledging that he had actually handed the deed to Saylor.

Plaintiff filed a motion for partial summary disposition, demonstrating that First American was liable as a matter of law for the fraud of its agent committed within the scope of his duties. Shafir soon sought monetary damages instead of a quiet title, as property values on the 42 homes had declined.

Shortly before the motion was scheduled to be heard, a facilitation resulted in a \$1.8 million settlement. The majority of the settlement was paid to lenders who held prior mortgages on the properties, and the properties were conveyed to the lenders.