

CAUSE NO. 2023-54391

RENE GUERRON
Plaintiff

v.

**ERICK BORLASCA, PT-PATRIOT
TITLE, LLC., KARLA JIMENEZ,
WESTERN SURETY COMPANY,
AND PATRICIA GARZA**
Defendants

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IN THE DISTRICT COURT

11TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, RENE GUERRON, hereinafter called (“Plaintiff”), complaining of and about ERICK BORLASCA, PT-PATRIOT TITLE, LLC, KARLA JIMENEZ, WESTERN SURETY COMPANY AND PATRICIA GARZA, hereinafter called (“Defendants”), and for cause of action shows unto the Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Discovery Level 3. Plaintiff seeks only monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

II. PARTIES AND SERVICE

2. Plaintiff, Rene Guerron, is an Individual that resides in Harris County, Texas.

3. Defendant, Erick Borlasca (“Defendant Borlasca”), is an Individual who resides in Harris County, Texas and can be served at 15307 Quiet Creek Drive, Houston, Texas, 77095, or wherever he may be found.

4. Defendant PT-Patriot Title, LLC (“Defendant PT-Patriot Title”), is a Texas Limited Liability Company with its principal place of business in Harris County, Texas. Defendant can be served through its registered agent for service of process, Reginald Villalon, at 5225 Katy Freeway, Suite 510, Houston, Texas, 77007, or wherever they may be found.

5. Defendant Western Surety Company is a Domestic For-Profit entity with its principal place of business in Texas. Defendant can be served through its registered agent for service of process, CT Corporation System; 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever they may be found

6. Defendant Karla Jimenez (“Defendant Jimenez”) is an Individual who resides in Harris County, Texas and can be served at 15307 Quiet Creek Drive, Houston, Texas, 77095, or wherever she may be found.

7. Defendant Patricia Garza (“Defendant Garza”) is an Individual who resides in Harris County, Texas and can be served through her place of employment Dash Title Corp. for service of process, 2323 South Voss Road, Suite 150 G-I, Houston, Texas 77057, or wherever she may be found.

III. JURISDICTION AND VENUE

8. The subject matter in controversy is within the jurisdictional limits of this court.

9. This court has jurisdiction over the parties because Defendants are Texas residents.

10. Venue in Harris County is permissive in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

IV. FACTUAL ALLEGATIONS

11. In late August 2019, Plaintiff and Defendant Borlasca met to discuss a real estate business opportunity involving the investment in a property in need of repairs, in order to repair and sell at a profit. The Property presented by Defendant Borlasca for Plaintiff's consideration was 319 Camp Lilli Road, Humble, Texas, 77346 ("Property").

12. On or around August 24, 2019, another meeting took place between Defendant Borlasca and Plaintiff to define the terms of the business opportunity more clearly. In this meeting, Defendant Jimenez joined the transaction in the role of Notary Public to facilitate the transaction.

13. On August 26, 2019, a Real Estate Purchase Agreement ("Agreement") was executed whereby Plaintiff as "Buyer" and Defendant Borlasca as "Seller" agreed to Buy and Sell Property for \$65,000. Paragraphs 7 and 8 of the Agreement specifically list Defendant Patriot Title as the Title Company to furnish an owner's policy of title insurance and corresponding Title Commitment. The Agreement further stipulates that "upon closing... the earnest money will be applied first to any cash down payment and then to Buyer's expense with any excess refunded back to the Buyer" and that "at all relevant times during the course of this Agreement, the escrow agent is required to notify the other Party prior to the releasing of any funds to the Party who is requesting the funds". The Agreement was executed on August 26, 2019, by both Defendant Borlasca and Plaintiff and notarized by Defendant Jimenez in her capacity as Notary Public, State of Texas, Notary ID: 130642508. On August 28, 2019, Plaintiff made a Zelle Transfer (Confirmation# 025ad720a) in the amount of \$2,500 and a Bank-to-Bank transfer (Confirmation# 2701811570) in the amount of \$28,000 into Defendant Borlasca's bank account. Also on August 28, 2019, Plaintiff requested Cashier's Check# 1655513622 ("Check")

from Bank America in the amount of \$35,000 payable to the order of Defendant Patriot Title. On that same day, Plaintiff and Defendant Borlasca visited Defendant's Patriot Title location at 2323 South Voss Road, Suite 260, Houston, Texas 77057, where they met with Defendant Patricia Garza, Escrow Officer, Patriot Title and entrusted the \$35,000 Check to Patricia Garza as the earnest money deposit for the purchase of Property. Patricia Garza acknowledged this transaction in the final page of the Agreement between Plaintiff and Defendant Borlasca which was once again notarized by Defendant Jimenez.

14. The transaction details for the Check show that it was deposited into Patriot's Title Escrow Account ending in 655 on or about September 19, 2019.

15. At all times relevant to this transaction, Plaintiff was led to believe both verbally and through the action of all Defendants acting in concert that Defendant Patriot Title was acting as the title company for this transaction.

16. The closing of the above-referenced real estate transaction never occurred. The property records for Property reveal that Defendant Borlasca have never had an ownership interest in the property. Furthermore, the earnest money deposit of \$35,000 entrusted to Defendant Patriot Title was released to Defendant Borlasca instead of to Plaintiff as required under the Agreement.

17. Despite multiple requests for the return of the \$65,500 paid by Plaintiff towards the purchase and repair of Property, Defendants have failed to return the money to Plaintiff. As a result, Plaintiff has filed suit.

V. BREACH OF CONTRACT

18. Plaintiff incorporates by reference the allegations set forth above as if the same were fully set forth herein.

19. Defendants are liable to Plaintiff for breach of contract. Plaintiff entered into an agreement for the purchase Property. Defendants failed to comply with their contractual obligations and engaged in multiple and continuing breaches. The breaches of contract by Defendants were the cause of actual damages to Plaintiff, for which Plaintiff now sues.

20. All condition precedent to recovery by Plaintiff under the contract have been performed, have occurred, or are excused.

VI. FRAUD AND FRAUD IN THE INDUCEMENT

20. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

21. Defendants made material misrepresentations to Plaintiff regarding the ownership of Property and Defendant Borlasca's ability to enter into a contract for the sale of Property.

22. Defendants made material misrepresentations to Plaintiff regarding Patriot Title's role, involvement, and obligations in the transaction.

23. Defendants made the misrepresentation to Plaintiff with the intention that Plaintiff act upon such misrepresentations and Plaintiff, in reliance on the misrepresentations, agreed to enter into this transaction by paying \$65,500 for a property he never received. Defendants have shown a pattern of gross dishonesty in their dealings with Plaintiff.

24. Defendants made misrepresentations to Plaintiff with knowledge of its falsity or without knowledge of its truth. As a result, Plaintiff, has suffered damages.

VII. BREACH OF FIDUCIARY DUTY

25. Defendant Jimenez owed a fiduciary duty to Plaintiff by virtue of her role as a notary public in a real estate transaction.

26. Defendant Jimenez breached this duty by executing a certificate as a notary public

containing a statement known to the notary public to be false which proximately caused injury to the Plaintiff.

27. Defendant Patriot Title and Defendant Garza owed a fiduciary duty to Plaintiff by virtue of their role as title company and escrow officer.

28. Defendant Patriot Title and Defendant Garza breached this duty when in their role as title company and escrow officer they accepted the earnest money deposit of \$35,000 from Plaintiff and failed to return these funds to Plaintiff when the real estate transaction failed to close. As a result, Plaintiff, has suffered damages.

VIII. REQUESTS FOR DISCLOSURES

29. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendant disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

IX. JOINT AND SEVERAL LIABILITY

30. Defendants are jointly and severally liability for the recoverable damages caused by their acts. Defendants acted in concert in committing the above pleaded wrongful acts against Plaintiff, causing Plaintiff to suffer significant economic injury and damages.

- a. Compensatory damages
- b. Actual damages
- c. Special damages
- d. Exemplary damages
- e. Punitive damages
- f. Attorney's fees
- g. Incidental damages
- h. Costs of court
- i. Pre- and post-judgment interest; and
- j. All other relief this Court deems necessary and proper.

X. ATTORNEY'S FEES

30. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by Chapter 38 of the Texas Civil Practice and Remedies Code.

XI. REQUEST FOR EXEMPLARY DAMAGES

31. Plaintiff's damages resulted from Defendant's malice, fraud, or gross negligence which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003. Defendant Borlasca has never had an ownership interest in Property, yet he entered into a contract for the sale of Property with Plaintiff and received proceeds for such sale. Defendant Jimenez knew or should have known that Defendant Borlasca did not own Property and therefore could not sell Property to Plaintiff, yet she notarized a contract for the purchase and sale of Property. Defendant Patriot Title and Defendant Garza knew or should have known that Defendant Borlasca did not own the Property for which he presented a contract for purchase and sale. Furthermore, upon realizing that the transaction was not closing, Defendant Patriot Title and Defendant Garza knew or should have known that earnest money deposit of \$35,000 received from Plaintiff could only be rightfully returned to Plaintiff. None of these actions could have occurred without malice, fraud, or gross negligence. Defendant's' actions have caused economic injury to Plaintiff. For these reasons, Plaintiff request exemplary damages.

XII. ALTERNATIVE ALLEGATIONS

32. Pursuant to Rules 47 and 48, Texas Rules of Civil Procedure and the rules of pleadings, allegations in this petition are made in the alternative.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, RENE GUERRON respectfully prays that the Defendants, ERICK BORLASCA, PT-PATRIOT TITLE, LLC, KARLA JIMENEZ, WESTERN SURETY COMPANY AND PATRICIA GARZA, be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

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Unofficial Copy Office of Marilyn Burgess-District Clerk

Automated Certificate of eService

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Anthony Bennett on behalf of Erik Garza
Bar No. 24090117
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Envelope ID: 92729958
Filing Code Description: Amended Filing
Filing Description: Plaintiff's First Amended Petition
Status as of 10/3/2024 8:00 AM CST

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