

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR ST. JOHNS COUNTY,
FLORIDA

CASE NO.: CA22-0989
DIVISION: 59

HAROLD MICHAEL CARTER and CAROL
LYNN CARTER,

Plaintiffs,

vs.

IRON CREST NATIONAL TITLE AGENCY,
LLC, and REX – REAL ESTATE EXCHANGE,
INC.,

Defendants.

COMPLAINT

COMES NOW, the Plaintiffs, Harold Michael Carter and Carol Lynn Carter (collectively the “Carters”), by and through its undersigned counsel, hereby files this Complaint against the Defendants, IRON CREST NATIONAL TITLE AGENCY, LLC (“IRON CREST”) and REX – REAL ESTATE EXCHANGE, INC. (“Rex”), and allege as follows:

1. This is an action for damages in excess of \$30,000.00 exclusive of interest, costs, and attorneys’ fees.
2. The Carters reside at 121 Spoonbill Point Court, St. Augustine, St. Johns County, Florida (the “Property”).
3. Defendant Iron Crest is a Delaware limited liability company with its principal place of business located at 21550 Oxnard St., Suite 100, Woodland Hills, California 91367.

4. Defendant Rex is a Delaware corporation with its principal place of business located at 3300 North Interstate 35, Suite 149, Austin, Texas 78705.

5. This dispute arises from the Carters purchase of the Property (the “Transaction”).

6. The Carters agreed to purchase the property from First City Construction, LLC (the “Seller”) for a price of \$635,000. The initial closing date was to be on March 10, 2022 (the “Closing Date”).

7. The Seller’s listing agent for the transaction was Defendant Rex.

8. Defendant Iron Crest is a wholly owned subsidiary of Defendant Rex.

9. Defendant Rex required the Carters to use its wholly owned subsidiary as the closing agent for the Transaction.

10. Prior to the Closing Date, the Carters received communication purportedly from Defendant Iron Crest concerning the HUD-1 for the Transaction. Pursuant to the HUD-1 purportedly from Defendant Iron Crest, the Carter were to pay certain closing costs, which totaled \$140,599.43 (the “Closing Funds”).

11. In realty, the communication was sent from an unknown third-party that had acquired all information relating to the Closing and the Transaction.

12. The unknown third-party also sent the Carters wiring instructions that were not for Defendant Iron Crest or Defendant Rex but, instead, were the instructions for sending the Closing Funds to the third-party’s bank account.

13. On March 8, 2022, the Carters, acting in reliance on the information provided, wired the Closing Funds to the unknown third-party.

14. Shortly thereafter, the Carters discovered that the prior communications were fraudulent and attempted to recover the Closing Funds from their bank. The Carters also notified Defendant Iron Crest of the fraudulent communication from their system.

15. To date, the Carters have been unable to recover the Closing Funds.

16. The Carters proceed with purchasing the Property, which closed later in March 2022. The Carters were required to pay the Closing Costs a second time to purchase the Property.

COUNT I – NEGLIGENCE
(Defendant Iron Crest)

17. Plaintiffs restate and incorporate the allegations contained in paragraphs 1 through 16 above.

18. Defendant Iron Crest owed the Carters a duty to maintain all information relating to the Transaction in a secure and confidential manner and to timely notify the Carters of any breaches in the electronic security system that could impact the Carters confidential information.

19. Defendant Iron Crest breached its duty to the Carters by:

- a. Allowing an unknown third-party to access to the Carters' confidential information;
- b. Allowing an unknown third-party to access their servers and data that enabled this individual to employ a fraudulent scheme on the Carters; and
- c. Failing to timely detect, notice, or realize that an unknown third-party had gained access to Defendant's Iron Crest's and the Carters' confidential information;

20. As a direct result of Defendant Iron Crest's conduct, an unknown third-party was able to access Defendant Iron Crest's data and use it to employ a fraudulent scheme to misappropriate the Carters Closing Funds.

21. As a direct result of Defendant Iron Crest's conduct, the Carters have suffered damages, specifically the Carters had to pay the Closing Funds two times in order to purchase the Property.

WHEREFORE, Plaintiffs demand judgment against Defendant Iron Crest for the damages sustained by the Carter as a result of Defendant Iron Crest's negligence, together with prejudgment interest, post-judgment interest, and any such other relief that this Court deems necessary and proper.

COUNT II – BREACH OF FIDUCIARY DUTY

(Defendant Iron Crest)

22. Plaintiffs restate and incorporate the allegations contained in paragraphs 1 through 16 above.

23. As the closing agent and title company handling the Transaction, Defendant Iron Crest owed the Carters a fiduciary duty.

24. As part of Defendant Iron Crest's fiduciary duty owed the Carters, it was required to maintain all information relating to the Transaction in a secure and confidential manner and to timely notify the Carters of any breaches in the electronic security system that could impact the Carters confidential information.

25. Defendant Iron Crest breached its fiduciary duty to the Carters by:
- a. Allowing an unknown third-party to access to the Carters' confidential information;
 - b. Allowing an unknown third-party to access their servers and data that enabled this individual to employ a fraudulent scheme on the Carters; and
 - c. Failing to timely detect, notice, or realize that an unknown third-party had gained access to Defendant's Iron Crest's and the Carters' confidential information;

26. As a direct result of Defendant Iron Crest's conduct, an unknown third-party was able to access Defendant Iron Crest's data and use it to employ a fraudulent scheme to misappropriate the Carters Closing Funds.

27. As a direct result of Defendant Iron Crest's conduct, the Carters have suffered damages, specifically the Carters had to pay the Closing Funds two times in order to purchase the Property.

WHEREFORE, Plaintiffs demand judgment against Defendant Iron Crest for the damages sustained by the Carter as a result of Defendant Iron Crest's negligence, together with prejudgment interest, post-judgment interest, and any such other relief that this Court deems necessary and proper.

COUNT III – NEGLIGENCE
(Defendant Rex)

28. Plaintiffs restate and incorporate the allegations contained in paragraphs 1 through 16 above.

29. Defendant Rex owed the Carters a duty to maintain all information relating to the Transaction in a secure and confidential manner and to timely notify the Carters of any breaches in the electronic security system that could impact the Carters confidential information.

30. Defendant Rex owed a duty to the Carters ensure its wholly owned subsidiary, Defendant Iron Crest, was utilizing appropriate steps to prevent and detect and unauthorized access to its electronic data.

31. Defendant Rex breached its duty to the Carters by:

- a. Allowing an unknown third-party to access to the Carters' confidential information;
- b. Allowing an unknown third-party to access their servers and data that enabled this individual to employ a fraudulent scheme on the Carters;

- c. Failing to timely detect, notice, or realize that an unknown third-party had gained access to Defendant's Iron Crest's and the Carters' confidential information;
- d. Failing to perform proper due diligence before selecting Defendant Iron Crest to serve as the closing agent;
- e. Requiring the Carters to use Defendant Iron Crest as the closing agent when it knew or should have known that it was not utilizing appropriate steps to protect its electronic data from being accessed by third-parties;
- f. Failing to ensure its wholly owned subsidiary, Defendant Iron Crest, was utilizing appropriate steps to protect its electronic data from being accessed by third-parties; and
- g. Failing to timely notify the Carters that the electronic data maintained by its wholly owned subsidiary, Defendant Iron Crest, was accessed by third-parties.

32. As a direct result of Defendant Rex's conduct, an unknown third-party was able to access Defendant Rex's data and use it to employ a fraudulent scheme to misappropriate the Carters Closing Funds.

33. As a direct result of Defendant Rex's conduct, the Carters have suffered damages, specifically the Carters had to pay the Closing Funds two times in order to purchase the Property.

WHEREFORE, Plaintiffs demand judgment against Defendant Rex for the damages sustained by the Carter as a result of Defendant Rex's negligence, together with prejudgment interest, post-judgment interest, and any such other relief that this Court deems necessary and proper.

Plaintiffs demand a jury trial on all issues.

DATED this 28th day of July, 2022.

MARKS GRAY, P.A.

/s/Tyler J. Oldenburg _____

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