

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
KANSAS CITY

DONNA ATCHLEY)
3013 South Kendall, Independence,)
Jackson County, Missouri 64055)
INDIVIDUALLY AND AS CLASS)
REPRESENTATIVES)
Plaintiff,)
vs.)
NATIONS TITLE AGENCY, INC.,)
Serve Registered Agent:)
National Registered Agents, Inc.)
300-B East High Street)
Jefferson City, Missouri 65101)
Defendant)

Case No. 6616-CV17169
Division

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JACKSON COUNTY MO KC

PETITION FOR INDIVIDUAL AND CLASS ACTION RELIEF

(RK- Other Real Estate Actions)

Plaintiff, Donna Atchley (hereinafter referred to as "Atchley"), pursuant to Rule 52.08 of the Missouri Rules of Civil procedure, each on her own behalf and as a representative of a class of individuals as more fully described below, for her Petition against defendant Nations Title Agency, Inc. (hereinafter referred to as "Nations") states and alleges as follows:

PARTIES

1. Nations is a Kansas corporation with its principal place of business at 5370 West 95th Street, Prairie Village, Kansas, 66207-3204. Nations, on its own behalf and through its agents, is in the business of closing, insuring title, acting as escrow agent or otherwise participating in real estate loans to Missouri residents.

2. Atchley is a citizen of Missouri and resides at 3013 South Kendall, Jackson County, Independence, Missouri 64055.

GENERAL ALLEGATIONS

3. Nations, on its own behalf and through its agents, has for at least the past five years participated in real estate transactions involving deeds of trust, mortgages, promissory notes, releases of deeds of trusts, variable rate riders, HUD 1 settlement statements, and other instruments and documents affecting or relating to secular rights in property located in Missouri.

4. Among the transactions in which Nations or its agents have participated is one involving Loan No. 10987392 to Donna Atchley secured by the property at 5906 Englewood, Raytown, Jackson County, Missouri, 64133, which transaction settled on or about June 7, 2004. In that transaction, as well as others, Nations and its agents have served as an escrow agent performing real estate closing tasks. Nations in conjunction with its services as an escrow agent collects from the borrower(s), and collected from Atchley, an amount represented to be for Recording Fees.

5. In real estate transactions in which it is involved, Nations represents in HUD-1 settlement statements, like the one concerning the Atchley transaction described above, that certain Recording Fees are charged by governmental entities in conjunction with recording documents like deeds of trusts, mortgages, deeds, and similar documents. The method by which the governmental entities calculate such fees is known to Nations, so Nations could calculate the fees in advance of preparing the HUD-1 settlement statement and submitting the documents for recording. In the Atchley transaction, Nations recorded a deed of trust with the Jackson County Recorder of Deeds, and the Jackson County Recorder of Deeds charged \$81 for that recording.

6. Nations collects from the buyers at closing, and did collect from Atchley and the other members of the Plaintiff Class, the amounts represented by Nations to be the actual Recording Fee.

7. Unknown to Atchley and other borrowers/members of the Plaintiff Class, Nations intentionally inflates on the HUD-1 settlement statement the Recording Fees and collects from borrowers/members of the Plaintiff Class, including Atchley, an amount that exceeds the Recording Fees actually charged. For example, in connection with the Atchley transaction described above, Nations intentionally and falsely represented in the HUD-1 settlement statement that the Recording Fees for a mortgage were \$90.00, when in fact the fees were only \$81.

8. The actual Recording Fees paid by Nations were less than the amount collected by Nations. Despite the actual charges, Nations never remitted to Atchley, or other similarly situated borrowers, the excess amount of money collected which belongs to Atchley and the other borrowers/members of the Plaintiff Class.

9. Nations and its agents have engaged in a pattern and practice of falsely representing that Recording Fees are higher than the true charges and of keeping the overcharge.

CLASS ACTION ALLEGATIONS

10. This action is brought by Atchley individually and as class representative against Nations to recover for herself and for all other Missouri citizens who within the last five years and forward have been overcharged by Nations for Recording Fees.

11. Atchley proposes to represent a Plaintiff Class defined as follows:
all Missouri citizens who within the last five years and forward have been overcharged by Nations for Recording Fees.

12. On information and belief, the Plaintiff Class consists of thousands of individuals, and the number of members is so numerous that joinder of each member as a party to this action is impracticable. Moreover, the amount of damages suffered by each member of the

Plaintiff Class is so small as to make an action for its recovery by each individual member economically unfeasible.

13. There are questions of law and fact common to each member of the Plaintiff Class, including Atchley. Those common questions of law and fact include the following:

- a. Whether Nations or its agents in serving as escrow agents overcharged for Recording Fees.
- b. Whether Nations or its agents in serving as escrow agents owed the borrowers fiduciary duties with respect to the charging of Recording Fees.
- c. Whether overcharging for Recording Fees breaches Nations fiduciary duties to borrowers.
- d. Whether overcharging for Recording Fees is a conversion of money borrowers deposited with Nations for the purpose of paying Recording Fees.
- e. Whether overcharging for Recording Fees constitutes a violation of Mo. Rev. Stat. § 407.010 et. seq.

14. Atchley's claims are typical of the claims of each member of the Plaintiff Class.

15. Lead counsel for the proposed Plaintiff Class, Rouse Hendricks German May PC, are experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the proposed Plaintiff Class.

16. Common questions of law and fact predominate over any questions affecting any individual member of the Plaintiff Class, and a class action is superior to other available methods

for the fair and efficient resolution of this controversy. No unusual difficulties are anticipated in the management of this case as a class action.

17. This action is properly maintainable as a class action because separate adjudications could result in inconsistent results which would establish incompatible standards of conduct for Nations and its agents.

18. This action is properly maintainable as a class action because adjudications of any one individual class member would as a practical matter be dispositive of the interests of the other members of the Plaintiff Class.

COUNT I-FRAUD

19. Atchley restates and incorporates by reference paragraphs 1 through 18 as though fully restated herein.

20. Nations represented to Atchley and in the HUD-1 settlement statement in connection with the Atchley transaction described above that the Recording Fees for the mortgage were \$90 and likewise falsely represented to the members of Plaintiff Class the Recording Fees in each member's transaction. The representations to the members of Plaintiff Class were likewise made in the HUD-1 settlement statements for the transactions with the members of Plaintiff Class.

21. Nations' representations were false.

22. Nations knew the representations were false at the time the representations were made, or recklessly disregarded their truth or falsity.

23. The representation was material to Atchley's payment of the Recording Fees. The representations to the members of the Plaintiff Class were likewise material.

24. Atchley justifiably relied on the representation in paying the Recording Fees. The members of the Plaintiff Class likewise relied on the representations.

25. As a direct result of the false representation, Atchley and the members of the Plaintiff Class were damaged.

26. Nations' conduct was outrageous because of Nations' evil motive and reckless indifference to the rights of others.

COUNT II- UNJUST ENRICHMENT

27. Atchley restates and incorporates by reference paragraphs 1 through 26 as though fully restated herein.

28. Nations knew and appreciated when it overcharged for Recording Fees in connection with the Atchley transaction described above and the transactions involving the members of the Plaintiff Class.

29. Atchley and the members of Plaintiff Class in unknowingly paying the overcharges conferred a benefit on Nations by virtue of the additional money paid to Nations. Nations retained the money.

30. In light of the circumstances of the transaction, acceptance and retention of the additional funds by Nations would be inequitable.

COUNT III-BREACH OF FIDUCIARY DUTY

31. Atchley restates and incorporates by reference paragraphs 1 through 30 as though fully restated herein.

32. Nations, by virtue of its status as the escrow agent in the Atchley transaction described above, and the loans for the members of the Plaintiff Class, had a fiduciary duty to Atchley and the members of the Plaintiff Class to deal in the utmost good faith and in the interest of Atchley and the members of the Plaintiff Class.

33. Nations breached its fiduciary duty by falsely representing the amount of the Recording Fees and by acting in its own self interest and not in good faith when it retained the excess money collected for Recording Fees.

34. As a result of Nations breach of fiduciary duty, Atchley and the members of the Plaintiff Class have been damaged.

35. Nations' conduct was outrageous because of Nations' evil motive and reckless indifference to the rights of others.

COUNT IV-CONVERSION

36. Atchley restates and incorporates by reference paragraphs 1 through 35 as though fully restated herein.

37. Atchley put \$90 in the custody of Nations for the specific purpose of paying the Recording Fees. The members of the Plaintiff Class likewise put in the custody of Nations a particular amount as specified by Nations in the various HUD-1 settlement statements for the specific purpose of paying Recording Fees.

38. The Recording Fees in the Atchley transaction described above and in each transaction involving a member of the Plaintiff Class were less than the amount collected by Nations for the Recording Fees, and Nations misappropriated the difference and the difference belonged to Atchley and to the members of the Plaintiff Class.

39. Nations thereby deprived Atchley and the members of the Plaintiff Class of the right of possession of their money.

40. Nations' conduct was outrageous because of Nations' evil motive and reckless indifference to the rights of others.

COUNT V-VIOLATION OF MO. REV. STAT. §407.010 ET. SEQ.

41. Atchley restates and incorporates by reference paragraphs 1 through 40 as though fully restated herein.

42. By representing the Recording Fees were \$90 for the Atchley transaction described above when in fact the charges were less (and likewise misrepresenting the amounts for the other members of the Plaintiff Class) Nations used a deception, fraud, false pretense, misrepresentation and unfair practice, and concealed a material fact in connection with the sale of "merchandise," as that term is defined in Mo. Rev. Stat. §407.010, in trade or commerce.

43. Nations did so while performing services as a closing agent.

44. Nations' actions violated Mo. Rev. Stat. §407.010 et seq.

45. Atchley and the members of the Plaintiff Class purchased Nations' escrow closing services for personal, family or household uses and suffered an ascertainable loss of money by virtue of Nations' actions.

46. Nations' conduct was outrageous because of Nations' evil motive and reckless indifference to the rights of others.

COUNT VI - MONEY HAD AND RECEIVED

47. Atchley restates and incorporates by reference paragraphs 1 through 46 as though fully restated herein.

48. Nations received money from Atchley, and the other members of the Plaintiff Class, in trust to pay the actual Recording Fees.

49. Nations did not use all the money it received for the purpose for which it was collected.

50. Nations breached the trust with which it collected the money from Atchley and the other members of the Plaintiff Class, and equity and good conscience call for Nations to pay to Atchley and the other members of the Plaintiff Class that amount which represents the difference between the amount as collected for Recording Fees and the amount charged for Recording Fees.

WHEREFORE, Atchley, individually and as representatives of the Plaintiff Class, prays for the following relief:

- a. An order certifying this action as a class action for the following class:
all Missouri citizens who within the past five years
and forward have paid overcharges to Nations for
Recording Fees in connection with escrow agent
services provided for a transaction involving
Missouri residents;
- b. An order appointing Atchley as the representative of the Plaintiff Class;
- c. An order appointing Rouse Hendricks German May PC as class counsel
for the Plaintiff Class;
- d. An order requiring Nations to pay the costs and expenses of class notice
and claim administration;
- e. Entry of judgment against Nations and in favor of Atchley and the
members of the Plaintiff Class for the total amount of overcharges by
Nations for Recording Fees within the past five years and forward in

connection with escrow agent services for Missouri residents, plus
prejudgment interest;

- f. An award of punitive damages sufficient to punish Nations for its conduct
and to deter others from such conduct in the future;
- g. Entry of judgment awarding class counsel reasonable attorneys' fees and
that all expenses of this action to be paid by defendant,
- h. Entry of judgment for post-judgment interest, costs, and any further and
additional relief as to which they may be entitled.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

By _____

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