

## Real Estate Attorney Alerts to Problem of Fraudulent Wire Instructions for Real Estate; Licensee may be Liable

William Blanchard, Esq. cautions agents to avoid forwarding emails that contain wire transfer instructions for real estate transactions

ST. CHARLES, ILLINOIS, UNITED STATES, September 7, 2018 /EINPresswire.com/ -- In light of the frequent scams involving wire transfers of funds for <u>real estate</u> transactions, Illinois real estate lawyer <u>William B. Blanchard</u> alerts buyers and real estate businesses to this recurrent problem. The basic model of the scam is that scammers intercept and replace wire transfer instructions sent via email between the various parties to a real estate transaction. The buyer then wires the funds for the scheduled transaction, only to find that the funds were sent to the scammers' accounts where they quickly disappeared.

Recently a court had to address such issue. A federal district court in Kansas upheld a jury verdict in this regard in the case of BAIN v. PLATINUM REALTY, LLC. There, a jury found a real estate licensee 85% responsible for the buyer's losses, which occurred when the buyer transferred purchase money to fake account after licensee allegedly forwarded email containing



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fake wiring instructions to the buyer. In this case, a real estate buyer ("Buyer") purportedly received an email from the listing broker ("Broker") that provided new wiring instructions for the upcoming closing on a property. The Buyer used the false instructions to wire the purchase

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William Blanchard, Real Estate Lawyer, Illinois money to the fraudulent account and lost \$196,622. The criminal had infiltrated the email exchanges between the parties to the transaction and created fake email accounts that were very similar to the email accounts used by the parties. The criminal had used these accounts to transmit the false wire instructions that were eventually sent to the Buyer.

The Buyer brought a lawsuit against a number of parties, including the Broker. The Broker claimed that she had never sent the email with the false wiring instructions. She had initially forwarded an email with the false wire instructions but she had sent it to one of the fake accounts set up by the criminal. She claimed that she had not sent

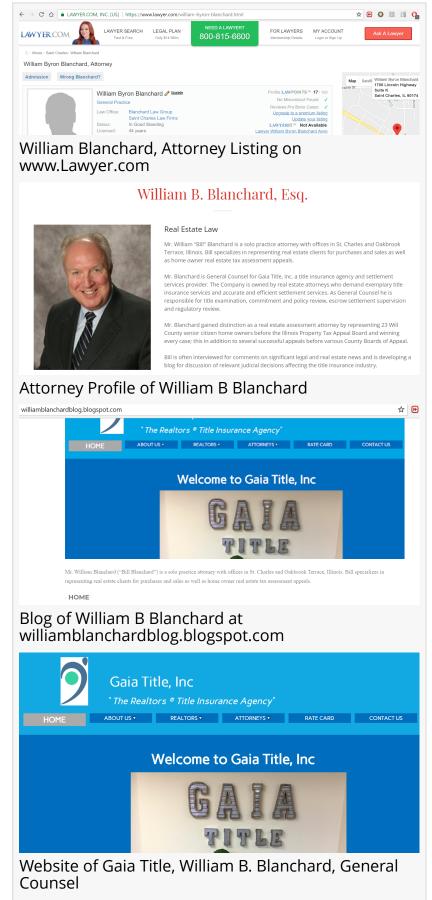
the later email that the Buyer did receive and used to send the purchase money to the fraudulent account.

The case went to trial, and the jury found that the Broker was 85% responsible for the loss and the court entered judgment against the Broker for \$167,129. The Broker filed a posttrial motion seeking a determination in her favor. Defendants argue that the evidence was insufficient to support the jury's finding in favor of plaintiff on his claim of negligent misrepresentation. The Court instructed the jury concerning the elements of that claim as follows: One who, in the course of his or her business, supplies false information for the guidance of another person in such other person's business transactions, is liable for damages suffered by such other person caused by reasonable reliance upon the false information if:

- 1. The person supplying the false information failed to exercise reasonable care or competence in obtaining or communicating the false information; and,
- 2. The person who relies upon the information is the person for whose benefit and guidance the information is supplied; and,
- 3. The damages are suffered in a transaction that the person supplying the information intends to influence.

The district court affirmed the jury verdict. The court rejected the Broker's argument that she did not send the email to the Buyer that was used to send the wire, finding this was an issue of fact for the jury to resolve as there was some evidence that the Broker had sent the later email. The jury determined that the Broker had sent the email, and so the court affirmed the jury verdict in favor of the Buyer.

<u>William Blanchard</u> notes that "theft of closing funds or sale proceeds is nationwide problem. The internet is everywhere, and it has become rather



easy for a scammer to hack into email accounts and/or create fake identities to divert the funds for a real estate transaction. In some states, including Illinois, there are laws requiring a 'Closing

Protection Letter (CPL)'. This is a form of insurance issued by title insurance companies, insuring the actions of a particular attorney, agent, and/or closer in conducting a closing. To bolster lender confidence in agency closings, major title companies and underwriters issued CPLs indemnifying lenders and buyers from losses occurring during the closing process."

"Courts in many states without CPL legislation are struggling to justify decisions finding title companies and individual agency or agent's errors and omission insurers responsible to the parties to real estate transactions that fail due to loss of funds or to sellers whose proceeds end up somewhere other than intended. Even though millions of dollars are being hijacked by unscrupulous closing agents, attorneys and hackers, there are no appellate or supreme court cases on the issue of title insurance company responsibility for loss due to fake wire transfer instructions involving CPLs," concludes Mr. Blanchard.

The underlying case is JERRY BAIN, Plaintiff, v. PLATINUM REALTY, LLC and KATHRYN SYLVIA COLEMAN, Defendants, Case No. 16-2326-JWL United States District Court, D. Kansas (June 25, 2018). The Court's memorandum and order upholding the jury verdict is at <a href="https://www.gpo.gov/fdsys/pkg/USCOURTS-ksd-2\_16-cv-02326/pdf/USCOURTS-ksd-2\_16-cv-02326-3.pdf">https://www.gpo.gov/fdsys/pkg/USCOURTS-ksd-2\_16-cv-02326/pdf/USCOURTS-ksd-2\_16-cv-02326-3.pdf</a>

About Real Estate Lawyer William Blanchard (Illinois)

William B. Blanchard ("Bill Blanchard") is a solo practice attorney with offices in St. Charles and Oakbrook Terrace, Illinois. Bill Blanchard specializes in representing real estate clients for purchases and sales as well as home owner real estate tax assessment appeals. Mr. Blanchard is General Counsel for Gaia Title, Inc. a title insurance agency and settlement services provider.

## References

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