The Claims Corner: Back in My Dayâ?¦

Description

Article by John Rinaldi

I donâ??t know whether to be proud of or to be depressed by the fact that I am now at the point in my career when I can use phrases like: â??When I started practicing lawâ?¦â?• or â??When I learned how to do it, we alwaysâ?¦.â?• Causing every younger attorney within earshot to roll their eyes. In any event, I was recently involved in a matter in which I was sorely tempted to start using those phrases. Hereâ??s the story, the facts have been simplified and the names have been changed to protect the innocent (and not so much so):

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The story starts with a real estate agent, Betty Sellitnow. Betty received an email, generated through a marketing website, from an owner of an undeveloped lot in Fairfax County, Joe Lotowner. Joe expressed an interest in selling his lot, and, of course, Betty wanted to sell it now.

Even though the county tax and other records showed that Joe lived less than 5 miles from Bettyâ??s office, Betty nonetheless elected to email the listing agreement to Joe to sign via DocuSign, rather than meet with him in person. Betty also had Joe send her a copy of his driverâ??s license, just to be sure he was not a scammer. Joe e-signed the listing agreement and promptly returned it, along with the copy of his license, to Betty, all via email. Betty jumped right on selling the property, now.

Betty found a buyer, John and Alice Happycouple, who offered to buy the property for $400,000.00. Betty promptly emailed the contract to both sides for execution. Both sides signed the contract, once again via DocuSign. All was right with the world.

Betty referred the closing to Impregnable Title to handle closing, with the title insurance policy to be issued by Awesome Title, an agency in which Betty co-owned an interest along with the owners of Impregnable.

Shortly before the scheduled closing date, Joe contacted Impregnable to let them know that he would be on vacation in the Outer Banks on the day of closing. He asked them to email the closing documents to him so that he could print them up, sign them, get the relevant documents notarized locally, and return them to Impregnable. Joe remotely signed and returned the closing documents, including an original notarized deed. Closing went down without incident. Impregnable wired Joeâ??s proceeds to the account that Joe had directed them to wire the funds.

Shortly after closing, Impregnable got a call from the Fairfax County Police. The police had been monitoring the account in question because of past fraudulent activity related to the account. They asked why Impregnable had wired such a large amount of money to the account. Further investigation revealed that:

- The person claiming to be Joe (who had communicated with both Betty and Impregnable only via email and whom nobody had even met face-to-face) was not really Joe.

- The signature and notaryâ??s acknowledgement on the deed were both forgeries.
- Even though Joe said that he was on vacation in the Outer Banks, the deed was allegedly notarized in Hanover County, Virginia, and was overnighted to Impregnable from Norfolk, Virginia.
- The emailed driverâ??s license was a fake.

Impregnable immediately contacted their bank to try to recall the wire. Alas, it was too late; the money was gone.

Impregnable, to their credit, also immediately tracked down the real Joe Lotowner to notify him of the fraudulent transaction. They also advised John and Alice Happycouple to make a claim of their title insurance policy. They also immediately notified their Errors and Omissions carrier of the potential claims.

Impregnableâ??s Errors and Omissions carrier immediately denied coverage and filed suit in the U.S. District Court for declaratory judgment over the coverage issue. Impregnable was on their own.

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The real Joe immediately filed suit against John and Alice Happycouple under a number of theories to rescind the deed or otherwise quiet title. John and Alice responded with a third-party complaint against Betty and Impregnable for their failure to confirm that the Joe with which they were dealing was the real Joe.

The title insurance underwriter, after a thorough investigation, confirmed that the deed and notarization were both forgeries. Because of this, the title insurance underwriter paid policy limits of $400,000 to John and Alice, but thatâ??s not the end of the story. The title insurance underwriter then immediately filed suit against both Impregnable and Awesome Title under multiple theories, including breach of their agency agreements.

John and Aliceâ??s claim for damages was far in excess of the $400,000 purchase price for the property, because they claimed to have had expended quite a large amount of money designing and pursuing construction of the â??home of their dreamsâ?•. So, John and Alice were not done with Impregnable and Betty.

The last I checked, and I do not plan on checking again, ever, Impregnable and Awesome had settled with the title insurance underwriter and had also settled with John and Alice. Both settlements were funded directly by Impregnable. John and Aliceâ??s suit against Betty is still on-going, as far as I know.

When I started practicing law, we always made sure that both sides were physically at the closing table and that one of our own notaries took the steps necessary to confirm the identity of the parties. While the world has changed, the basics have not. The entire mess could have been avoided in its entirety if someone, anyone, involved in the transaction would have insisted on meeting the seller in person. If that was not possible, many other steps could have been taken at any point in the process to confirm that Joe was really Joe or at least that the notary was really the notary.

Post- Script: The words: â??The last I checked, and I do not plan on checking againâ?• ultimately came back to haunt me, but in a good way, I suppose. I got a call from the attorney representing Betty, who was appointed by her E&O carrier. He told me that they were in the process of negotiating a settlement with John and Alice and noted that the title insurance underwriter has made a subrogation claim against

any claims that John and Alice had against Betty. So, in addition to the money that the title insurance underwriter could recover from Impregnable and Awesome (directly, and not through the E&O policy), the title insurance underwriter was also able to recover some additional money from Betty, albeit indirectly.



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Date Created
2025/06/23
Author
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