

STATE OF INDIANA }
COUNTY OF ALLEN } SS:
STATE OF INDIANA }

FILED

FEB -4 2010

CLERK ALLEN CIRCUIT
AND SUPERIOR COURTS

IN THE ALLEN SUPERIOR COURT

CAUSE NO.

02D04-10 02 - FB - n 00015

AFFIDAVIT FOR PROBABLE CAUSE

VS.

Todd C. Leary

I, J. Timothy McCaulay, swear or affirm under penalty of perjury, that I am a Deputy Prosecutor with the Allen County Prosecutor's Office, and that:

On or about the period of time between March 1, 2008 and March 1, 2009, said defendant did conspire and agree, with Joseph A. Garretson, of Allen County, Indiana, to commit the crimes of Conversion or Misappropriations of Title Insurance Escrow Funds (15 counts), Corrupt Business Influence (1 count), and Theft (1 count) and that Joseph A. Garretson did perform an overt act in the County of Allen, State of Indiana, in furtherance of each such agreement.

The Defendant, Todd C. Leary, is described as being a male, white, whose date of birth is 11/23/1970, Social Security Number REDACTED 6'03" tall, 225 lbs, Hair Color: BRN, Eye Color: BLU.

The affiant, J. Timothy McCaulay, believes and has good cause to believe that the said Defendant Todd C. Leary committed the aforesaid offense. The affiant, J. Timothy McCaulay, bases his belief on the fact that

1. According to records maintained by the Indiana Secretary of State's Office, Joseph A. Garretson, at all relevant times, was an officer of and principal in Fort Wayne Title, Inc. ("Fort Wayne Title"), a title insurance company with a last known business address on Constitution Drive in Fort Wayne, Allen County, Indiana.
2. During the course of an investigation initiated in November, 2009 by the Allen County Prosecutor's Office, in conjunction the State of Indiana Department of Insurance and the Indiana Secretary of State's Office, several homeowners in Allen County, Indiana reported refinancing their houses using title insurance, settlement and escrow services provided by Garretson and Fort Wayne Title to close the real estate transaction and later learning that their previous mortgages were either never satisfied, or not immediately satisfied, from the proceeds of the refinance transaction, deposited with Fort Wayne Title, contrary to representations contained in the HUD-1 Settlement Statement provided each homeowner by Fort Wayne Title.
3. The normal practice in residential real estate refinancings is for the escrow agent to immediately pay-off the existing mortgage with the proceeds provided through the refinancing process as documented by the loan pay-off reported in the HUD-1 Settlement Statement provided the refinancing homeowner.
4. On November 3, 2009, search warrants were issued authorizing the search of the offices of Fort Wayne Title as well as Garretson's residence for business records related to Garretson's escrow service operations in Allen County, Indiana.
5. As a result of a review of the records seized pursuant to said search warrants, as well as information supplied to an Indiana Department of Insurance "tip-line," and other sources, investigators have, to date, identified thirteen (13) homeowners who used title insurance, settlement, and escrow services provided by Garretson and Fort Wayne Title, during the time period from October 26, 2007 to October 26, 2009, in connection with residential real estate re-financings whose previous mortgage was never satisfied from the proceeds of the refinance transaction, contrary to representations contained in the HUD-1 Settlement Statement provided each homeowner by Fort Wayne Title or Garretson.
6. As a result of a review of the records seized pursuant to said search warrants, as well as information supplied to an Indiana Department of Insurance "tip-line," and other sources, investigators have, to date, identified two sale/purchase real estate transactions involving the use of title insurance, settlement, and escrow services provided by Garretson and Fort Wayne Title, on September 25, 2009 and October 9, 2009, where the seller's mortgage was never satisfied from the proceeds of the buyer's financing, contrary to representations contained in the HUD-1 Settlement Statement provided the transaction parties by Fort Wayne Title or Garretson.
7. The total (as of November 20, 2009) of unpaid mortgages on refinancings or sale/purchases processed by Garretson

through Fort Wayne Title is approximately: \$2,950,000.

8. The amount of escrow funds available, in the name of Fort Wayne Title discovered by Indiana Secretary of State investigators (as of November 20, 2009) is approximately: \$233,000.

9. The net loss from Garretson's scheme or artifice is in excess of: \$2,700,000.

10. On December 14, 2009 and again on December 15, 2009, Garretson, through his attorney, provided information to the Allen County Prosecutor's Office linking Defendant Todd C. Leary to certain conversions or misappropriations from a Fort Wayne Title account at Fifth Third Bank subsequently wire transferred to a National City Bank account in the name of S&S Real Estate Solutions, LLC between March 11, 2008 and February 12, 2009.

11. On December 17, 2009, the State of Indiana, in Allen County, Indiana, filed criminal charges against Garretson which charges included Conversion of Title Insurance Escrow Funds (a Class B Felony), Corrupt Business Influence (a Class C Felony), and, Unlawful Loan Origination Activities (a Class D Felony).

12. On or about December 18, 2009, Defendant Todd C. Leary telephoned Brian Evans, Leary's former Indiana University basketball teammate and a personal friend of Garretson and Garretson's wife. Evans later reported this telephone contact to either Garretson or Garretson's wife. Garretson's attorney then reported the Leary/Evans telephone call to the Allen County Prosecutor's Office.

13. On December 21, 2009 Brian Evans gave a voluntary recorded statement to Indiana Secretary of State investigators which covered Evans' telephone conversation with Defendant Todd C. Leary about the criminal charges filed against Garretson. Evans stated that Leary told him that Leary was a "big part" of Garretson's "situation." Evans also stated that Leary told him that Garretson had helped Leary out when Leary was in "big trouble." Evans also stated Leary told him that Leary went to Garretson for help and that Garretson "pretty much had to help" Leary. Evans further stated that Leary said Garretson had to help Leary because Leary had previously caught Garretson misappropriating escrow funds while Leary worked for Garretson years earlier. Evans stated that Leary told him that when Leary needed money Leary went to Garretson and said "you [Garretson] gotta help me [Leary]."

14. In a December 23, 2009 written statement provided to the Allen County Prosecutor's Office by his attorney, Garretson indicated that:

- a. He first met Defendant Todd C. Leary through an introduction made by Brian Evans.
- b. He later hired Defendant Todd C. Leary in 2004 to work in a mortgage company, Mortgage Links, that he opened in the Indianapolis area.
- c. Defendant Todd C. Leary left his employment with Garretson in 2006 to go to work for Ken Dilger.
- d. Defendant Todd C. Leary approached him needing money to cover approximately \$289,000 Leary had misappropriated from Legends Title.
- e. Defendant Todd C. Leary told him that if Garretson did not give Leary money, Leary would disclose Leary's knowledge of Garretson's mishandling of Fort Wayne Title escrow funds.
- f. Defendant Todd C. Leary pressured him, on several different occasions, for additional money using the same threat of disclosure of Garretson's prior financial misdealing.
- g. Defendant Todd C. Leary repeatedly told him the money would be replaced once Leary had an investor lined up who could provide Leary funds.

15. An examination of records obtained pursuant to a subpoena issued to National City Bank, regarding the S&S account, revealed that:

- a. The account was first opened in November, 2002;
- b. Defendant Todd C. Leary was added as an authorized signer to the account in August, 2006;
- c. Between March 11, 2008 and February 12, 2009, \$1,047,405.56 in wire transfers was received into the account from a Fort Wayne Title Fifth Third account on the following specific dates and in the following specific amounts:

i.)	March 11, 2008:	\$ 87,500.00;
ii.)	May 22, 2008:	\$ 87,500.00;
iii.)	July 28, 2008:	\$159,743.22;
iv.)	July 31, 2008:	\$ 53,019.56;
v.)	August 1, 2008:	\$ 41,700.00;
vi.)	August 19, 2008:	\$107,922.47;
vii.)	August 22, 2008:	\$101,298.00;
viii.)	September 3, 2008:	\$ 6,497.88;
ix.)	September 5, 2008:	\$107,238.91;
x.)	October 23, 2008:	\$ 4,974.22;
xi.)	October 28, 2008:	\$ 51,984.73;
xii.)	October 31, 2008:	\$168,015.27;
xiii.)	February 3, 2009:	\$ 15,000.00; and,
xiv.)	February 12, 2009:	\$ 55,011.30.

- d. Between March 12, 2008 and April 11, 2008, \$262,500 was transferred out of the S&S account to Legends Title represented by two checks and one wire transfer; and,
- e. Between March 12, 2008 and March 7, 2009, Defendant Todd C. Leary withdrew more than \$690,000 from the S&S account.

16. The address shown on checks written on, and on wire transfers debited to, the S&S National City account in 2008 and 2009 match the address in the Indiana Bureau of Motor Vehicles' database for Defendant Todd C. Leary.

17. In addition, an examination of the records obtained pursuant to a subpoena issued to National City Bank, regarding the S&S account, revealed that a check, numbered "6647," drawn on the Legends Title Escrow Account in the amount of \$294,374.63, with the notation "PAYOFF HARVEY," was deposited in the S&S account in late May, 2007. An examination of Fort Wayne Title bank account records at Fifth Third Bank revealed a wire transfer from Fort Wayne Title's account to Legends Title on March 28, 2008 in the amount of \$294,799.37. Fort Wayne Title records listed the beneficiary of this wire transfer as "DEE DOWNEY."

18. Representatives of the Indiana Department of Insurance interviewed Dee Downey and Ken Dilger on January 29, 2010. During the course of that interview, Downey and Dilger confirmed that Defendant Todd C. Leary's diversion of the "Harvey" pay-off check to S&S was not authorized by Legends Title. Downey further confirmed that the March 28, 2008 wire transfer from Fort Wayne Title to Legends Title was used to pay back the Legend's Title escrow account for the "Harvey" pay-off check Defendant Todd C. Leary wrongfully misdirected. Dilger indicated that Defendant Todd C. Leary told him that the money used to repay Legends Title had come from Leary's father-in-law.

The Affiant believes the witnesses to be credible and reliable.

J. Timothy McCauley
J. Timothy McCauley, Affiant

Subscribed and sworn to before me this 4th day of FEBRUARY, 2010.

[Signature]
Deputy Prosecuting Attorney

KAREN E. RICHARDS
PROSECUTING ATTORNEY
38TH JUDICIAL CIRCUIT
STATE OF INDIANA

ORDER

Hearing on issue of probable cause held. State of Indiana, by Prosecuting Attorney, Karen E. Richards, files Affidavit for Probable Cause, which is examined by the Court. Court finds probable cause does exist for the arrest of Defendant, Todd C. Leary, and orders Clerk to issue a warrant for the arrest of Todd C. Leary, for the crimes of COUNT I, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond -\$10,000.00, NCIC 2699; COUNT II, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond -\$10,000.00, NCIC 2699; COUNT III, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond -\$10,000.00, NCIC 2699; COUNT IV, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond -\$10,000.00, NCIC 2699; COUNT V, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond -\$10,000.00, NCIC 2699; COUNT VI, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT VII, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT VIII, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT IX, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT X, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XI, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XII, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS C FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XIII, CONSPIRACY TO COMMIT CORRUPT BUSINESS INFLUENCE, Class C Felony, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XIV, CONSPIRACY TO COMMIT THEFT, Class C Felony, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2399; COUNT XV, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS D FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XVI, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS D FELONY, Bond -Release on Recognizance subject to PTS Conditions, NCIC 2699; COUNT XVII, CONSPIRACY TO COMMIT CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS, a CLASS B FELONY, Bond-\$10,000.00, NCIC 2699.

Dated: 2/4/10

[Signature]
Judge, Allen Superior/Circuit Court