

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

_____	)	
<b>GLOBAL TITLE, LLC,</b>	)	
<b>d/b/a GLOBAL TITLE SERVICES,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: CL-2011-6749
	)	
<b>CAPITAL ONE FINANCIAL CORP.</b>	)	
	)	
Defendant.	)	
_____	)	

**AMENDED COMPLAINT**

Plaintiff GLOBAL TITLE, LLC, d/b/a GLOBAL TITLE SERVICES (hereinafter “Global Title”), by and through counsel, submits its Amended Complaint and seeks judgment against Defendant CAPITAL ONE FINANCIAL CORP. (hereinafter “Capital One”) under the Virginia Commercial Code, §8.4A-101, *et. seq.*, and in support thereof states as follows:

**PARTIES**

1. GLOBAL TITLE, LLC, d/b/a GLOBAL TITLE SERVICES (hereinafter “Global Title”) is a Virginia limited liability company with its principal address at 8150 Leesburg Pike, Suite 410, Vienna, VA 22182, located within Fairfax County.
2. Global Title is a full service title insurance agency that offers title and settlement services to individuals and businesses primarily in Virginia, Maryland and the District of Columbia.

3. CAPITAL ONE FINANCIAL CORP. (hereinafter Capital One”) is a Virginia corporation with its headquarters located at 1680 Capital One Drive, McLean, Virginia 22102, located within Fairfax County.
4. Capital One is one of the largest banks in the United States which offers banking services to individuals and businesses, including online wire transfer services.
5. Capital One is a member of the Federal Deposit Insurance Corporation (FDIC) and is subject to its regulations.

### **JURISDICTION**

6. Jurisdiction is proper pursuant to Va. Code §8.01-328.1.
7. Venue is proper pursuant to Va. Code § 8.01-261.

### **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

#### GLOBAL TITLE CONTRACTED WITH CHEVY CHASE BANK FOR ONLINE WIRE TRANSFERS

8. Global Title’s principal business is conducting closings for real estate transactions.
9. As part of the closing process, Global Title receives and holds in escrow funds from the buyer and/or seller for each real estate transaction.
10. These funds are used to pay off mortgages, liens, and various other obligations of the buyer and/or seller to the real estate transaction.
11. Virginia law requires that the closing agent disburse these funds in a timely fashion, typically 72 hours or less after the closing occurs.
12. Due to the nature of these transactions and the need to make payments from escrow in a prompt fashion, Global Title, as with most other closing companies, makes these payments through wire transfers.

13. Most banks offer some form of online wire transfer service whereby the consumer can log on to a secure website and arrange for wire transfers.
14. In 2004 Global Title approached Chevy Chase Bank and inquired about setting up an online wire transfer service with the bank.
15. Chevy Chase Bank required Global Title to sign two agreements in order to use their online wire transfer service – a Commercial Funds Transfer Agreement and an Online Access Service Agreement.
16. Global Title was not given an opportunity to negotiate the terms of these agreements with Chevy Chase Bank.
17. On December 6, 2004, Global Title, through its President Priya Aurora, entered into a Commercial Funds Transfer Agreement (“CFT Agreement”) with Chevy Chase Bank.
18. A true and accurate copy of the CFT Agreement is attached hereto as Exhibit A.
19. On December 27, 2004, Global Title, through its President Priya Aurora, entered into an Online Access Service Agreement (“Online Access Agreement”) with Chevy Chase Bank.
20. A true and accurate copy of the Online Access Agreement is attached hereto as Exhibit B.

#### CHEVY CHASE BANK IS ACQUIRED BY CAPITAL ONE

21. In February 2009, Defendant Capital One acquired Chevy Chase Bank.
22. Following the acquisition, all Chevy Chase Bank locations were converted to Capital One branches and operated under the corporate umbrella of Capital One.
23. The CFT Agreement and Online Access Agreement between Global Title and Chevy Chase bank remained in effect with Capital One assuming Chevy Chase Bank’s obligations and responsibilities under the agreements.

24. Global Title's online wire transfers continued to operate in the same manner as they had prior to the acquisition.
25. Global Title dealt with the same bank branch and same personnel; however the branch was now operated by Capital One.

#### CAPITAL ONE IS NOTIFIED OF UNAUTHORIZED ACCOUNT ACTIVITY

26. On the morning of June 1, 2010, Global Title was able to access Capital One's online system to send several wire transfers without any problems.
27. In the afternoon of June 1, 2010, Global Title unsuccessfully attempted to log on to Capital One's online system in order to send out additional wire transfers.
28. Concerned about the inability to access the online banking system, Priya Aurora immediately contacted Capital One to seek their assistance.
29. At 2:09 p.m., Ms. Aurora spoke with a customer service representative identified as Ruben and informed him that she was unable to access the online banking system.
30. Ruben informed Ms. Aurora that she was unable to access the system because the account was due for a routine security update that Capital One was performing.
31. Global Title had never had a problem logging on to the online banking system previously and again expressed concern to Ruben that they were unable to send or receive wires.
32. Ms. Aurora further explained that she was the only one with access to the online banking system.
33. Capital One dismissed her concerns, again stating that it was just part of a routine annual security update.

34. Capital One attempted to reset the security password; however Global Title was still unable to access the online banking system.
35. It would be another 9 days until Global Title was able to gain access to its online banking system.
36. Upon information and belief, Capital One took no further steps to investigate this incident and did not flag the account for suspicious activity.

WHILE GLOBAL TITLE IS LOCKED OUT OF ITS ONLINE BANKING ACCOUNT, NUMEROUS UNAUTHORIZED WIRE TRANSFERS ARE APPROVED BY CAPITAL ONE

37. At 2:19 p.m., unknown person(s) illegally accessed Global Title's escrow account and began sending unauthorized wire transfers from Global Title's account.
38. While these unauthorized wire transfers were occurring, Global Title continued to speak with representatives from Capital One and continued to explain to Capital One that they could not access their online banking system.
39. The following unauthorized wire transfers ("Unauthorized Wire Transfers") were sent on June 1, 2010:
  - a. \$119,500 to Key Marius Import, LLC – sent at 2:19 p.m.
  - b. \$48,698 to Dwaine Peterson at 2:19 p.m.
  - c. \$39,560 to Alvarez Here and Now, Inc. at 2:44 p.m.
40. Capital One took no action to determine the authenticity of these transfers, even though Global Title had informed Capital One that it had no access to its online wire transfer account and that the account's only authorized user, Priya Aurora, could not access the online banking system.
41. These three transfers resulted in the loss to Global Title of \$207,758 which has never been recovered.

**COUNT I – Virginia Commercial Code**  
**Va. Code §8.4A-101, et. seq.**

42. Plaintiff restates the allegations of the preceding paragraphs and incorporates them by reference herein.
43. Capital One approved the Unauthorized Wire Transfers on June 1, 2010.
44. Capital One approved the Unauthorized Wire Transfers after being told by Priya Aurora that she was the only authorized user on the account and that she could not access the system.
45. Capital One failed to establish sufficient security procedures to protect its clients, including Global Title, from unauthorized wire transfers.
46. At all relevant times, Capital One's online banking system used single factor identification to allow its users to log on to the online banking system.
47. Using this single factor identification, a user can access the online banking system by simply entering a username and password.
48. Capital One, not its clients, chose to use this single factor identification.
49. Single factor identification is not sufficient to protect client's personal information, and specifically, access to online bank accounts.
50. As early as 2005, the Federal Financial Institutions Examination Council ("FFIEC") provided guidance to banks stating that single-factor identification was inadequate to safeguard client's information, particularly when there is a transfer of funds involved (as with a wire transfer).
51. The FFIEC recommended that financial institutions implement multi-factor authentication, layered security, or other controls to mitigate the risk of a security breach and resulting damage to the bank's clients.

52. Capital One had a duty to create and maintain a security system which would sufficiently protect clients from online attacks and identity theft.
53. By operating a single factor identification online banking system, Capital One lefts its customers open to identity theft and failed to take sufficient safeguards to prevent unauthorized access to its client's online banking accounts, including the ability to send wire transfers.
54. By operating a single factor identification online banking system, Capital One breached its duty to safeguard its client's bank accounts, money and personal information.
55. Capital One also failed to follow its own security procedures by failing to initiate an investigation into Global Title's complaint that it could not access its online banking system; instead offering the convenient, yet false, explanation that Global Title could not access its online banking system because the account was due for security updates.
56. Capital One was put on notice through Ms. Aurora's phone call at 2:09 on June 1, 2010, and on subsequent calls that same day, that Global Title had no access to its online banking system.
57. Accordingly, Capital One knew or should have known that any wire transfer that afternoon would be unauthorized.
58. Capital One knew or should have known that a routine security update would not have caused Global Title to be locked out of their online banking services.
59. In addition to any other security procedures required by the commercially reasonable standard, the CFT Agreement imposed an additional security procedure which Capital One failed to follow.

60. Under the CFT Agreement, Chevy Chase/Capital One may refuse to execute any wire transfer or payment order if “the Bank for any reason believes the execution of the payment order might result in an unauthorized or erroneous transfer of funds or might otherwise cause the Bank to suffer a loss.”
61. As set forth above, Capital One was given advance notice by Global Title of a security breach; yet Capital One failed to exercise due diligence to investigate the outgoing fraudulent wire transfers.
62. Capital One had a duty to protect its client’s money after receiving specific knowledge from the client that the no authorized users were able to access the online banking services.
63. Capital One failed to follow additional security procedures by approving the Unauthorized Wire Transfers even though they were inconsistent with Global Title’s typical pattern of wire transfers to the metropolitan Washington, D.C. area and because the Unauthorized Wire Transfers did not adequately identify the beneficiary’s name, address, bank name, bank address, and/or bank account numbers.
64. Had adequate security procedures been in place or existing security procedure followed, the Unauthorized Wire Transfers should have been flagged as suspicious and further action taken to confirm whether these transfers were approve or not.
65. Capital One had a duty to take reasonable precautions to ensure the safety of its customers’ money, which should have included flagging the account due to suspicious activity, taking action to verify the authenticity of the wire transfers, or simply exercising its discretion to decline those wire transfers.

66. By allowing these unauthorized wire transfers to be paid, Capital One did not operate in good faith and consistent with commercially reasonable standards.
67. As a direct and proximate result of Capital One's actions and inactions, Global Title lost \$207,758 which has never been recovered.
68. Global Title was forced to take out a loan in order to make the required cash distributions from the escrow account.
69. Global Title's business was substantially impaired and harmed by its inability to access its escrow account for approximately nine (9) days.
70. WHEREFORE Plaintiff Global Title, LLC requests judgment against Capital One Financial Corp. in the amount of \$500,000, plus pre and post judgment interest, attorney's fees pursuant to statute, costs and any and all such other relief as is in the interests of justice.

Respectfully Submitted,  
Global Title, LLC  
By Counsel

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*Counsel for Plaintiff Global Title, LLC*

## CERTIFICATE OF SERVICE

I, the undersigned, affirm under the penalty of perjury, that on this 16<sup>th</sup> day of September, 2011, Plaintiff's Amended Complaint was delivered via electronic mail and first class mail to the following:

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Michael T. Pritchard