

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
AUG 20 2009
BY J.T. NOBLIN, CLERK DEPUTY

WACHOVIA BANK, NATIONAL)
ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
PRESTIGE TITLE, INC. &)
STEPHEN R. COLSON)
)
Defendants.)

CASE NO. L'09CV03016RHW

COMPLAINT

COMES NOW the plaintiff in this action, Wachovia Bank, National Association ("Wachovia" or the "Plaintiff") and for its Complaint against the defendants Prestige Title, Inc. ("Borrower") and Stephen R. Colson (the "Guarantor" and together with Borrower, the "Defendants"), states as follows:

JURISDICTION AND VENUE

1. Plaintiff Wachovia is a national banking association having its principal place of business in North Carolina.
2. Defendant Stephen R. Colson is a citizen of the State of Mississippi, and may be served with service of process at 925 Tommy Munro Drive, Suite D, Biloxi, Mississippi, 39532.
3. Defendant Prestige Title, Inc. is a corporation incorporated under the laws of the State of Mississippi with its principal place of business at 925 Tommy Munro Drive, Suite D, Biloxi, Mississippi, 39532. Prestige Title, Inc. may be served with service of process upon its registered agent, Stephen R. Colson, at 2301 14th Street #580, Gulfport, Mississippi, 39501.
4. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

5. This Court has original jurisdiction of this case pursuant to 28 U.S.C. § 1332.

6. Venue is proper pursuant to 28 U.S.C. § 1391(a), because *inter alia*, the Defendants consented to personal jurisdiction within this judicial district.

STATEMENT OF FACTS

7. Wachovia made a term loan to Borrower in the principal amount of \$300,000.00 ("Loan 1"). Borrower's obligation to repay Loan 1, with interest thereon, is evidenced by that certain Promissory Note dated August 8, 2007, made by Borrower payable to Wachovia in the principal amount of \$300,000.00 ("Note 1"). A true and correct copy of Note 1 is attached hereto as **Exhibit A** and is incorporated by reference.

8. Wachovia made certain revolving line of credit loans to Borrower, which have been renewed, increased, extended, and/or modified from time to time, most recently in the principal amount of \$700,000.00 ("Loan 2"). Borrower's obligation to repay Loan 2, with interest thereon, is most recently evidenced by that certain demand Promissory Note dated September 10, 2007, made by Borrower payable to Wachovia in the principal amount of \$700,000.00 ("Note 2"). A true and correct copy of Note 2 is attached hereto as **Exhibit B** and is incorporated by reference.

9. Wachovia made a term loan to Borrower in the principal amount of \$500,000.00 ("Loan 3;" and together with Loan 1 and Loan 2, the "Loans"). Borrower's obligation to repay Loan 3, with interest thereon, is evidenced by that certain Promissory Note dated September 10, 2007, made by the Borrower payable to Wachovia in the principal amount of \$500,000.00 ("Note 3" and together with Note 1 and Note 2, the "Notes"). A true and correct copy of Note 3 is attached hereto as **Exhibit C** and is incorporated by reference.

10. In addition to the obligations of Borrower to pay the principal of and interest on the Loans, each of the Notes provides that the holder thereof is entitled to recover its costs and expenses, including attorneys' fees, incurred in collecting the amounts due thereunder.

11. As an inducement for Wachovia to make the Loans, Colson unconditionally guaranteed payment of the Loans and other sums due on the Notes. The guaranties of Colson, executed from time to time, are most recently evidenced by those certain Unconditional Guaranty Agreements executed by Colson dated August 8, 2007 and September 10, 2007 (collectively, the "Guaranties"). True and correct copies of the Guaranties are attached hereto as **Exhibits D** and **E**, respectively, and are incorporated herein by reference. (The Guaranties, together with the Notes and any other documents or instruments evidencing or securing the Loans are collectively referred to herein as the "Loan Documents".)

12. In addition to Colson's obligations under the Guaranties to pay the principal of and interest on the Loans, the Guaranty provides that Colson shall also be liable for costs and expenses, including attorneys' fees, incurred in collecting the obligations due under said loans.

13. The Defendants are in default of their respective obligations under the Loan Documents for, among other things, failure to pay amounts when and as due under thereunder.

14. Wachovia gave Defendants written notice of the default(s) and notified Defendants of the acceleration of the maturity of each of the Loans, as evidenced by that certain demand letter from Wachovia to Defendants dated March 25, 2009 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit F**. In light of the defaults and the acceleration of each the Notes, all amounts owing under the Loans are immediately due and payable.

15. The amount outstanding on Loan 1 as of August 14, 2009, exclusive of expenses of collection, attorneys' fees and the costs of this action, is \$292,355.36, consisting of principal in the amount of \$277,369.48, accrued interest in the amount of \$12,937.77, and late charges in the amount of \$2,048.11. Interest continues to accrue daily on Loan 1 at the rate provided in Note 1.

16. The amount outstanding on Loan 2 as of August 14, 2009, exclusive of expenses of collection, attorneys' fees, and the costs of this action, is \$720,088.09, consisting of principal in the amount of \$699,662.09, accrued interest in the amount of \$19,223.01 and late charges in the amount of \$1,202.99. Interest continues to accrue daily on Loan 2 at the rate provided in Note 2.

17. The amount outstanding on Loan 3 as of August 14, 2009, exclusive of expenses of collection, attorneys' fees, and the costs of this action, is \$494,321.01 consisting of principal in the amount of \$465,931.89, accrued interest in the amount of \$24,856.50 and late charges in the amount of \$3,532.62. Interest continues to accrue daily on Loan 3 at the rate provided in Note 3.

COUNT I
BREACH OF CONTRACT BY BORROWER

18. Wachovia incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

19. Borrower is in default of its obligations under the Loan Documents.

20. Despite written demand, Borrower has failed to pay Wachovia the amounts due under the terms of the Loan Documents.

WHEREFORE, Wachovia demands judgment against the Defendants, for the principal indebtedness outstanding under the Loans, plus accrued and accruing interest, late charges, and expenses of collection, including attorneys' fees and the costs of this action.

COUNT II
BREACH OF GUARANTY BY COLSON

21. Wachovia incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

22. Colson is default of his obligations under the Guaranties.

23. Despite written demand, Colson has failed to pay Wachovia the amounts due under the terms of the Loan Documents.

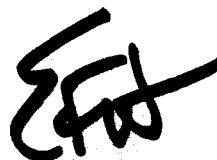
WHEREFORE, Wachovia demands judgment against the Defendants, jointly and severally, for the principal indebtedness outstanding under the Borrower Loans, plus accrued and accruing interest, late charges, and expenses of collection, including attorneys' fees and the costs of this action.

COUNT III
ATTORNEYS' FEES

24. Wachovia incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

25. Under the terms of the Notes and the Guaranties, Borrower and Colson are jointly and severally obligated to pay Wachovia's cost of collecting the amounts due under each of the Notes, including attorneys' fees and other costs.

WHEREFORE, Wachovia demands judgment against the Defendants, jointly and severally, for the principal indebtedness outstanding under the Loans, plus accrued and accruing interest thereon, late charges, and expenses of collection thereof, including attorneys' fees and the costs of this action.



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