

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 21-61176-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS, LLC,  
EQUINOX HOLDINGS, INC.,  
PROPERTY INCOME INVESTORS 26, LLC,  
PROPERTY INCOME INVESTORS 304, LLC,  
PROPERTY INCOME INVESTORS 201, LLC,  
PROPERTY INCOME INVESTORS 3504, LLC,  
PROPERTY INCOME INVESTORS 1361, LLC,  
PROPERTY INCOME INVESTORS 4020, LLC,  
PROPERTY INCOME INVESTORS 9007, LLC,  
PROPERTY INCOME INVESTORS 417, LLC,  
PROPERTY INCOME INVESTORS 4450, LLC,  
PROPERTY INCOME INVESTORS 3050, LLC,  
LARRY B. BRODMAN and ANTHONY  
NICOLSI (f/k/a ANTHONY PELUSO),

Defendants.

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MIRANDA L. SOTO, as Receiver for Property Income Investors, LLC; Equinox Holdings, Inc.; Property Income Investors 26, LLC; Property Income Investors 304, LLC; Property Income Investors 201, LLC; Property Income Investors 3504, LLC; Property Income Investors 1361, LLC; Property Income Investors 4020, LLC; Property Income Investors 9007, LLC; Property Income Investors 417, LLC; Property Income Investors 4450, LLC; and Property Income Investors 3050, LLC

Third-Party Plaintiff,

v.

KELLEY & GRANT, P.A. and JERRON LEON KELLEY, individually,

Third-Party Defendants.

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**RECEIVER'S SUPPLEMENTAL THIRD-PARTY COMPLAINT  
AGAINST KELLEY & GRANT, P.A. AND JERRON L. KELLEY**

Third-Party Plaintiff, Miranda L. Soto (the "Receiver"), solely in her capacity as Receiver (the "Receiver") for Defendants Equinox Holdings, Inc. ("Equinox"); Property Income Investors, LLC ("PII"); Property Income Investors 26, LLC ("PII 26"); Property Income Investors 304, LLC ("PII 304"); Property Income Investors 201, LLC; Property Income Investors 3504, LLC; Property Income Investors 1361, LLC; Property Income Investors 4020, LLC; Property Income Investors 9007, LLC; Property Income Investors 417, LLC; Property Income Investors 4450, LLC; and Property Income Investors 3050, LLC ("PII Entities")(collectively the "Receivership Entities") files this Complaint against Third-Party Defendants, Kelley & Grant, P.A., and Jerron L. Kelley, individually, (collectively, "Defendants"), and states:

## INTRODUCTION

1. The Receiver brings this action in her capacity as Receiver for the Receivership Entities to recover funds for the benefit of investors defrauded by Larry Brodman (“Brodman”), Anthony Nicolosi (“Nicolosi”), and the Receivership Entities in a \$9 million fraudulent scheme.

2. Investors were led to believe that their funds would be used to purchase multi-family properties in South Florida which would then be renovated, rented to tenants, and sold.

3. Investors were also told that they would be entitled to receive a portion of the rental income and any sale proceeds generated from the properties they were investing in.

4. At no time were investors told that any funds would be used to buy a single-family home, a barn or a horse farm.

5. Although a portion of investor funds was used to purchase multi-family properties, other funds were misappropriated and diverted to personal expenses of Brodman, Nicolosi, and others.

6. Brodman engaged the real estate lawyers from Kelley & Grant, P.A. (the “Firm”) and Jerron Kelley (“Kelley”) to represent himself personally and the PII Entities.

7. As a result of the previous work Defendants performed for the PII Entities, Defendants were aware of the business of the PII Entities and their business models.

8. At material times, Defendants breached their professional obligations when they assisted Brodman in the misuse of funds belonging to Property Income Investors 26, LLC (“PII 26”) to purchase a horse farm property in Parkland, Florida.

9. Defendants knew that Brodman had previously engaged the Firm for himself in a failed attempt to personally purchase a \$1.4M horse farm property for his wife.

10. The purchase of a horse farm was so far outside the scope of the PII Entities' business that Defendants' knew or should have known that such purchase – especially after an attempt to purchase a similar farm nearby in Brodman's personal name – was an improper use of company funds.

11. As a result, Defendants negligently and recklessly enabled Brodman's misappropriation of PII investor funds, specifically \$55,000.00, for the forfeited deposit in the attempted and failed purchase of the horse farm.

12. The PII Entities were damaged as a proximate cause of Defendants recklessness and negligence.

### **PARTIES**

13. The Receiver is a natural person over the age of 21 and otherwise *sui juris*. The Receiver represents the interests of the Receivership Entities.

14. Defendant Kelley & Grant, P.A. (the "Firm") is a law firm based in Boca Raton, Palm Beach County, Florida.

15. Defendant Jerron Leon Kelley ("Kelley") is a resident of the State of Florida. He is a natural person over the age of 21 and otherwise *sui juris*. Kelley is an attorney licensed to practice in the State of Florida and is one of the principals of the Firm.

### **JURISDICTION AND VENUE**

16. This Court has supplemental subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1367 as this claim is so related to the claims in the original action that they form part of the same case or controversy.

17. This Court has supplemental jurisdiction because this an action brought by the Receiver to accomplish the ends sought and directed by the suit, pending in this Court, in which the Receiver's appointment was made (See Order Appointing Receiver at Doc. 10.)<sup>1</sup>

18. This Court has personal jurisdiction over the Firm because it is a Florida professional association that is doing business in Florida and has registered with the Florida Secretary of State.

19. This Court has personal jurisdiction over Kelley because he is a Florida resident, does sufficient business in Florida, has sufficient minimum contacts with Florida, or otherwise intentionally avails himself of the protections and benefits of Florida law. Further, Kelley committed tortious acts in Florida that form the basis of this action.

20. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants transact business and may be found in this District. Venue is also proper here because at all times relevant hereto, the practices complained of herein occurred in the Southern District of Florida.

21. All conditions present to this action have occurred or have been waived.

### **FACTUAL ALLEGATIONS**

22. On or about September 26, 2020, Brodman entered into a \$1,425,000.00 contract for the purchase of property located at 7000 NW 87<sup>th</sup> Avenue, Parkland, FL 33067 (the "First Horse Farm"), which consisted of a single-family residential home with a horse stable.

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<sup>1</sup> See *Pope v. Louisville, N.A. & C. Ry.*, 173 U.S. 573 (1899); *Robb Evans & Assoc., LLC v. Holibaugh*, 609 F.3d 359, 363 (4th Cir. 2010); *Donnell v. Kowell*, 533 F.3d 762, 769 (9th Cir. 2008); *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995); see also *Eberhard v. Marcu*, 530 F.3d 122, 128–29 (2d Cir. 2008); *Merrill Scott & Assoc., Ltd. v. Concillium Ins. Serv.*, 253 Fed. Appx. 756, 761 (10th Cir. 2007).

23. According to the contract, Defendants were to act as Brodman's settlement agent. Angie Whitson ("Whitson"), a legal assistant at the Firm, was Brodman's point of contact.

24. The parties never closed on the sale, and the realtor handling the transaction sent Brodman a Release and Cancellation of Contract for review a number of times in October of 2020.

25. There were no inquiries from the Firm regarding whether the deal was moving forward outside of an October 6, 2020 email advising that the Firm had not received Brodman's \$5,000 escrow deposit, and no correspondence confirming that the file was being closed.

26. Several months later, on or about January 27, 2021, the Firm received a contract for the purchase of difference piece of real property located at 7550 NW 84<sup>th</sup> Avenue, Parkland, FL 33067 (the "Second Horse Farm")—another single-family home with horse stables.

27. In this transaction, Brodman was not the stated purchaser of the property. Instead, the purchase of the property was Property Income Investors, LLC ("PII"). The Firm was retained to act as PII's settlement agent.

28. The Second Horse Farm consisted of a 2,711 square foot, 4-bedroom, 2-bathroom, single-family dwelling with a pool and horse barn; the contract price was \$1,185,000.

29. On February 22, 2021, David DiNatale, President of Capital Funding Financial LLC, advised Whitson, a legal assistant at the Firm, that the loan for the purchase of the Second Horse Farm was being updated and cross collateralized with the purchase of real property located at 3050 Coral Springs Drive #1-8, Coral Springs, FL 33065 (the "Property 3050").

30. The blanket loan was to be made to Property Income Investors 304, LLC ("PII 304"), the owner of Property 3050.

31. The change required the revision of the title commitment, closing protection letter, and closing statement to reflect that the borrower was PII 304, rather than PII.

32. The Firm redrafted each of the documents to reflect this change.

33. Broadman did not close on the purchase, and pursuant to the Purchase and Sale Agreement, the \$55,000 deposit was forfeited to the seller.

34. However, Defendants knew or should have known that the PII Entities were engaged in the business of purchasing multi-family housing structures for investment purposes, having represented and provided legal services to PII and Brodman since early 2017.

35. Defendants breached their duty of care when they assisted Broadman in his fraudulent and self-serving activities, diverted funds from PII to attempt to purchase the Second Horse Farm, cross-collateralized the loan for a purchase of another property belonging to PII 304, and directly and proximately caused the loss of the escrow funds, paid by PII 26 for the property, by their failure to exercise reasonable care and proper diligence in their representation of the entities as well as their management of their trust account.

36. Defendants knew or should have known that Brodman was fraudulently transferring funds from PII Entities for his personal gain and to the detriment of PII investors.

### **COUNT I – NEGLIGENCE**

#### **(Against Kelley & Grant, P.A.)**

37. The Receiver re-alleges and re-incorporates the allegations in Paragraphs 1 through 37, as if fully set forth herein.

38. The Firm provided legal advice and counsel to Brodman and the PII Entities during the relevant time period.

39. The Firm served as the settlement agent and provided counsel in Brodman's attempt to purchase the Second Horse Farm using funds diverted from PII accounts.

40. The Firm owed the PII Entities, specifically PII, PII 304 and PII 26, a duty of care to take reasonable steps to protect their interests in the transaction.

41. The Firm breached that duty by, among other things:

- i. Failing to withdraw as counsel when a conflict arose between representing the interests of Brodman and the PII Entities;
- ii. Failing to exercise reasonable care and due diligence in their receipt and disbursement of escrowed funds into their trust account;
- iii. Failing to prevent or mitigate the loss of \$55,000.00 in the failed Second Horse Farm transaction;
- iv. Assisting Brodman in using PII funds for his own personal gain;
- v. Ignoring obvious red flags regarding the transaction when they knew or should have known that Brodman was diverting PII Funds for purchase of property for his own personal use and/or in violation of the duties and obligations owed to investors; and,
- vi. Having actual or constructive knowledge of the improper transfers of funds between and among three PII Entities in violation of the rights of the respective investors in such entities.

42. The Firm negligently provided advice and counsel regarding the transaction involving the purchase of the Second Horse Farm among other transactions.

43. The Firm's breach of its duty of care extended to its recklessness and negligence in the acceptance and disbursement of \$55,000.00 from PII 26 to the seller of the Second Horse Farm, when PII 26 was neither a purchaser nor a borrower in the transaction.



44. As a result of the negligence of the Firm, the Receivership Entities have suffered damages in an amount to be proven at trial.

WHEREFORE, the Receiver requests entry of a judgment against Defendants for damages, pre- and post-judgment interest, attorneys' fees to the extent available by statute or contract or other applicable law, costs, and any further relief as the Court deems just and proper.

## **COUNT II – NEGLIGENCE**

### **(Against Jerron L. Kelley)**

45. The Receiver re-alleges and re-incorporates the allegations in Paragraphs 1 through 37, as if fully set forth herein.

46. Kelley functioned as the settlement agent and provided legal counsel to certain PII Entities in the transaction involving the Second Horse Farm.

47. Kelley owed the PII Entities, and specifically PII, PII 304 and PII 26, a duty of care to take reasonable steps to protect their interests in the transaction.

48. Kelley breached that duty by, among other things:

- i. Failing to withdraw as counsel when a conflict arose between representing the interests of Brodman and the PII Entities;
- ii. Failing to exercise reasonable care and due diligence in their receipt and disbursement of escrowed funds into their trust account;
- iii. Failing to prevent or mitigate the loss of \$55,000.00 in the failed Second Horse Farm transaction;
- iv. Assisting Brodman in using PII funds for his own personal gain;
- v. Ignoring obvious red flags regarding the transaction when they knew or should have known that Brodman was diverting PII Funds for purchase of

property for his own personal use and/or in violation of the duties and obligations owed to investors; and,

- vi. Having actual or constructive knowledge of the improper transfers of funds between and among three PII Entities in violation of the rights of the respective investors in such entities

49. Kelley negligently provided advice and counsel regarding the transaction involving the purchase of the Second Horse Farm among other transactions.

50. Kelley's breach of its duty of care extended to its recklessness and negligence in the acceptance and disbursement of \$55,000.00 from PII 26 to the seller of the Second Horse Farm, when PII 26 was neither a purchaser nor a borrower in the transaction.

51. As a result of the negligence of Kelley, the Receivership Entities have suffered damages in an amount to be proven at trial.

WHEREFORE, the Receiver requests entry of a judgment against Defendants for damages, pre- and post-judgment interest, attorneys' fees to the extent available by statute or contract or other applicable law, costs, and any further relief as the Court deems just and proper.

Respectfully submitted,

**BUCHANAN INGERSOLL & ROONEY PC**

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