

FILED September 22, 2014  
Juliane Dufresne  
CLERK OF COURT

21<sup>ST</sup> JUDICIAL DISTRICT COURT  
PARISH OF TANGIPAHOA  
STATE OF LOUISIANA

LOTTIE GROUP, LLC  
AND  
J. A. H. ENTERPRISES, INC.

DOCKET NO.: 2014-0002832

VERSUS

DIVISION: 1

FIRST GUARANTY BANK

JULIANE E. DUFRESNE  
CLERK OF COURT  
TANGIPAHOA PARISH, LA  
2014 SEP 22 PM 3:17

**PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, come Lottie Group, LLC, a Louisiana Limited Liability Company, and J.A.H. Enterprises, Inc., a Louisiana corporation, (hereinafter collectively referred to as the "Plaintiffs"), who represent as follows:

1.

J.A.H. Enterprises, Inc. ("JAH") is a Louisiana corporation with its principal place of business in Livingston Parish, Louisiana. Lottie Group, LLC ("Lottie") is a Louisiana limited liability company, with its principal place of business located in Livingston Parish, Louisiana.

2.

Defendant is First Guaranty Bank (the "Bank"), a Louisiana bank doing business in the Parish of Tangipahoa, State of Louisiana. The Bank's primary regulator is the Federal Deposit Insurance Corporation.

3.

Venue is proper in Tangipahoa Parish pursuant to La. Code of Civ. Proc. Article 42 because the Bank is a Louisiana chartered commercial bank with its principal business establishment in Tangipahoa Parish.

4.

Plaintiffs have been long-term customers of the Bank. JAH has had accounts with the Bank dating back to 2001. Lottie opened its first account with the Bank in 2010. The accounts include bank accounts ending in 4476 for Lottie and in 5806 and 8510 for JAH. The accounts relevant to this petition are memorialized by written contracts between Plaintiffs and the Bank.

5.

JAH regularly sends and receives funds by wire transfer in the ordinary course of its business. These wire transfers are usually initiated by a "payment order," as that term is defined

in La. R.S. 10:4A-103. Over ninety-nine (99%) percent of JAH's payment orders to the Bank request wire transfers to American banks for American account owners

6.

The Bank encouraged Plaintiffs to utilize its internet-based customer interface (the "On-Line System") to send payment orders for wire transfers to be funded from their accounts. The Bank represented to Plaintiffs that its On-Line System was secure and complied with banking industry standards. Plaintiffs relied on these and similar representations in deciding to use the Bank's On-Line System. Plaintiffs have since learned that the security procedures established or utilized by the Bank in connection with its On-Line System were not commercially reasonable during the relevant time period.

7.

In general, to initiate a payment order via the Bank's On-Line System, Plaintiffs would log on to the On-Line System using a user name and password. Once logged in, Plaintiffs could submit information sufficient to create a payment order and authorize funds to be debited from one of their accounts to honor the payment order. For the payment order request to be honored by the Bank as a valid payment order, it had to include the amount to be transferred, the account to be debited, the beneficiary bank, the beneficiary bank address, routing number, final beneficiary, final beneficiary address, final beneficiary, and account number.

8.

Plaintiffs were also able to submit payment orders by phone or in person at a Bank branch location, and occasionally did so. The Bank encouraged Plaintiffs to submit payment orders via the On-Line System because, on information and belief, that form of request required less time and effort from Bank employees to process.

9.

The Bank tracks the IP address for each computer that accesses its On-Line System.

10.

A third party (or parties) not affiliated with Plaintiffs obtained the user name and password that Plaintiffs used to access the On-Line System. The third party (or parties) utilized an IP address or addresses that Plaintiffs had never used before (the "New IP Address") to go to the web portal for the Bank's On-Line System. From the New IP Address, that same third party

(or parties) not affiliated with Plaintiffs utilized Plaintiffs' user name and password to gain access to Plaintiffs' accounts via the Bank's On-Line System.

11.

After gaining access to Plaintiffs' accounts through the Bank's On-Line System, via the New IP Address that had never before been used by Plaintiffs and, upon information and belief, had never before connected to the Bank's web portal, the third party (or parties) submitted a series of unauthorized payment order requests to the Bank. Plaintiffs did not authorize or approve the payment order requests submitted by the unauthorized third party (or parties).

12.

Between September 23, 2011 and October 3, 2011, seven (7) different unauthorized payment order requests were submitted via the Bank's On-Line System using Plaintiffs' login information. The Bank approved the unauthorized payment order requests, wired funds to other banks as requested by the authorized payment order requests, and debited funds from Plaintiffs' accounts to reimburse itself for the funds wired. A summary of the relevant unauthorized payment orders and accounts debited by the Bank is below:

<u>Date</u>	<u>Account No./Name</u>	<u>Amount</u>	<u>Beneficiary</u>
9/23/2011	4767/Lottie*	\$77,000.00	Golden Door
9/27/2011	4767/Lottie*	\$187,400.00	Time Imports INC
9/28/2011	4767/Lottie*	\$5,000.00	Time Imports INC
9/28/2011	4767/Lottie*	\$125,500.00	Golden Door V & L, Inc.
9/29/2011	5806/JAH	\$485,740.80	Emirates NBD
10/3/2011	5806/JAH	\$45,000.00	VTB 24
10/3/2011	8510/JAH	\$45,000.00	Citibank

13.

Several of the above-stated requests were directed to a foreign beneficiary. Less than one percent (1%) of the hundreds of wire payment requests legitimately submitted by Plaintiffs during the course of their relationship with the Bank were directed to an overseas beneficiary or account.

14.

The unauthorized payment order requests were not accurate and/or completely filled out. For example, the beneficiary's address was omitted from each of the unauthorized payment order

requests submitted through the On-Line System. When Plaintiffs began using the Bank's On-Line System, it would not accept a payment order request unless the request included the beneficiary's full address. The Bank changed this requirement, or allowed its vendor to change this requirement, without notifying Plaintiffs. Further, all of Plaintiffs' authorized payment order requests submitted via the On-Line System contained the full address for the beneficiary of the payment order. The fact that the unauthorized payment order requests did not contain the beneficiary's full address should have been a red flag to the Bank, and would have been a red flag to a reasonably prudent banker who reviewed the unauthorized payment order requests before processing them. The Bank did not contact anyone at Plaintiffs' offices to ask if the incomplete payment order requests were authorized.

15.

The unauthorized payment order request submitted on September 27, 2011, in the amount of \$187,400.00 from Account 500044767 (a Lottie account) listed the account holder as JAH, not Lottie. This is a clear error which should have been detected by the Bank.

16.

The unauthorized payment order request submitted on September 28, 2011, in the amount of \$5,000.00, from account 500044767 (a Lottie account) listed the account holder as JAH, not Lottie. This is a clear error which should have been detected by the Bank.

17.

Upon information and belief, the unauthorized payment order requests for the benefit of Golden Door, submitted on September 23, 2011 for \$77,000.00 and on September 28, 2011 for \$125,500.00, from account 500044767 (a Lottie account) listed the account holder as JAH, not Lottie. These were clear errors which should have been detected by the Bank.

18.

Upon learning of the unauthorized payment order requests, Janet Cagley and Jeff Henderson of Plaintiffs promptly gave notice to the Bank that the unauthorized payment order requests were not authorized and were disputed. Plaintiffs requested that the Bank credit their accounts for the unauthorized debits referenced above, as required by the account agreements between Plaintiffs and the Bank. The Bank refused to credit the accounts as requested.

19.

The Bank failed to follow commercially reasonable security procedures to prevent unauthorized payment order requests from being submitted via its On-Line System and to prevent such unauthorized requests from being honored by the Bank. For example, in 2011, the On-Line System required only single-factor authentication before allowing access to customer accounts. The Federal Financial Institutions Examining Council (FFIEC) notified banks at least as early as 2005 that single-factor authentication did not provide sufficient security for on-line banking transactions, particularly for business customers like the Plaintiffs. Commercially reasonable security procedures for on-line banking transactions require multi-factor authentication, according to the FFIEC and its member agencies, including the Federal Deposit Insurance Corporation.

20.

The Bank did not act in good faith or in compliance with commercially reasonable security procedures in connection with the establishment and operation of its On-Line System. Further, the Bank did not act in good faith or in compliance with the security procedures that it had in place when it accepted the unauthorized, incomplete, and incorrect payment order requests stated above.

21.

The Bank knew or should have known that the authorized payment order requests described above were not authorized by Plaintiffs and it should have rejected the requests. The Bank failed to follow the security procedures it had in place to detect and prevent such fraudulent payment order requests from being processed. By way of example and not limitation, the Bank failed to detect the errors in the information submitted via the On-Line System transfer forms; this and other failures show a lack of good faith by the Bank.

22.

By way of further example and not limitation, the Bank failed to call Plaintiffs to obtain authorization and correct information when the Bank knew or should have known that the unauthorized payment order requests were sent from the New IP Address, did not contain all the information normally required by the Bank and included by the Plaintiffs, and/or when the name and account number for the sender did not match on the unauthorized payment order request. These and other failures show a lack of good faith by the Bank.

23.

The Bank induced Plaintiffs to rely, and Plaintiffs did in fact rely, on the Bank's purported expertise in keeping their accounts safe and secured. After the loss occurred, Plaintiffs learned that the Bank's security procedures for granting access to its customers' accounts via the On-Line System were below banking industry standards. The Bank's failure to implant reasonable and customary security procedures caused Plaintiffs' loss.

24.

Since the loss occurred, the Bank has added new security measures that, if they had been in place in September 2011, would have prevented the unauthorized payment order requests from being submitted and/or honored. The security measures newly implanted by the Bank were readily available and widely used by other banks of the same or smaller size in September 2011.

25.

The Bank breached its obligations and/or duty owed to Plaintiffs by accepting and paying the unauthorized payment orders. The Bank is liable to Plaintiffs for all damages sustained by Plaintiffs caused by the Bank's breach. The Bank is liable for the conversion of funds rightfully belonging to Plaintiffs. The Bank was unjustly enriched at the Plaintiffs' expense by debiting Plaintiffs' accounts to reimburse itself for wiring out funds to pay the unauthorized payment order requests noted above.

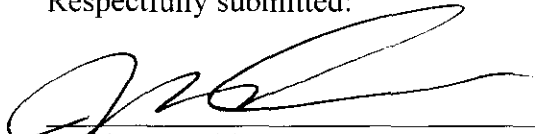
26.

Plaintiffs request a jury trial.

#### **PRAYER**

WHEREFORE, Plaintiffs The Lottie Group, LLC and J.A.H. Enterprises, Inc. pray for judgment against First Guaranty Bank for all damages sustained by them because of Defendant's breach of duty, in an amount to be proven at trial, for all court costs incurred, and all just and equitable relief.

Respectfully submitted:



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21<sup>st</sup> JUDICIAL DISTRICT COURT

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BANK

JULIAN E. DUFRECHE  
CLERK OF COURT  
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2014 SEP 22 PM 3:38

VERIFICATION

STATE OF LOUISIANA

PARISH OF LIVINGSTON

BEFORE ME, the undersigned authority, personally came and appeared:

JANET H. CAGLEY

who, being first duly sworn, deposed and said that she is an authorized Manager for Plaintiff Lottie Group, LLC and the Chief Financial Officer for Plaintiff J. A. H. Enterprises, Inc. She has personal knowledge of the facts alleged in the foregoing Petition for Damages. All factual statements in the foregoing Petition for Damages are true and correct based upon her personal knowledge or her best information and belief formed after due investigation.

FURTHER AFFIANT SAYETH NOT.

  
Janet H. Cagley

SWORN TO AND SUBSCRIBED before me this 22<sup>nd</sup> day of September, 2014.

  
NOTARY PUBLIC

La. Bar/Notary No. \_\_\_\_\_  
(My commission expires at death )

