

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

MICHAEL C. WEISS, as Executor of the Estate  
of ABRAHAM WEISS, MICHAEL C. WEISS,  
Individually, and JOSEPH TRENK,

Plaintiffs,

-against-

TERRENCE LOWENBERG, TODD COHEN,  
DENNIS KONNER, ESQ., and FIRST AMERICAN  
TITLE INSURANCE COMPANY OF NEW YORK,

Defendants.

**SUMMONS**

Index No. \_\_\_\_\_  
Date filed: \_\_\_\_\_

Plaintiffs designate New York  
County as the place of trial.

The basis of the venue is:  
Defendants' Place of Business

To the above-named Defendants:

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Mineola, New York  
December 17, 2009

**FILED**  
DEC 17 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Law Offices of Michael A. Haskel

By: 

Leonard Gekhman  
Attorneys for Plaintiffs  
167 Willis Avenue  
Mineola, NY 11501  
(516) 294-0250

**Defendants' Addresses**

TERRENCE LOWENBERG  
c/o Icon Group, LLC  
433 West 14th Street, Suite 429 3R  
New York, New York 10014

TODD COHEN  
c/o Icon Group, LLC  
433 West 14th Street, Suite 429 3R  
New York, New York 10014

DENNIS KONNER, ESQ.  
c/o Duane Morris LLP  
1540 Broadway  
New York, New York 10036

FIRST AMERICAN TITLE INSURANCE  
COMPANY OF NEW YORK  
633 3rd Avenue  
New York, New York 10017

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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MICHAEL C. WEISS, as Executor of the Estate  
of ABRAHAM WEISS, MICHAEL C. WEISS,  
Individually, and JOSEPH TRENK,

Plaintiffs,

Index No.

-against-

**COMPLAINT**

TERRENCE LOWENBERG, TODD COHEN,  
DENNIS KONNER, ESQ., and FIRST AMERICAN  
TITLE INSURANCE COMPANY OF NEW YORK,

Defendants.

09117716

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Plaintiffs, by their attorneys, Law Offices of Michael A. Haskel, as for their Complaint  
allege as follows:

**THE PARTIES**

1. That Plaintiff Michael C. Weiss ("Weiss") is natural person residing in the State of Massachusetts and Executor of the Estate of Abraham Weiss ("Estate") (collectively, Weiss and the Estate shall be referred to hereinafter as the "Estate Plaintiffs").
2. That Plaintiff Joseph Trenk ("Trenk") is an attorney duly licensed to practice law in the State of New York, and at all times hereinafter mentioned, has been and continues to be the attorney for the Estate.
3. That, at all times relevant to the Complaint, the Estate owned real property known as 234 Mulberry Street, New York, New York (Block 494, Lot 6), and 236 Mulberry Street, New York, New York (Block 949, Lot 7), residential apartment buildings (collectively, the "Property").
4. That upon information and belief, 234-236 Mulberry Realty LLC ("Mulberry") is

a limited liability company organized pursuant to the laws of the State of New York.

5. That Defendants Terrence Lowenberg (“Lowenberg”) and Todd Cohen (“Cohen”) are natural persons, residing in the State of New York, who, upon information and belief, are the principals of Mulberry.

6. That Defendant Dennis Konner, Esq. (“Konner”) is, upon information and belief an attorney admitted to practice in the State of New York, who at all times relevant to the Complaint acted as Mulberry’s attorney and was a Vice-President of Mulberry.

7. That Defendant First American Title Insurance Company of New York (“First American”) is an insurance carrier, licensed to issue policies of title insurance in New York, with its principal place of business at 633 3rd Avenue, New York, New York.

#### **BACKGROUND**

8. That Mulberry and the Estate entered into a Contract of Sale dated May 8, 2008 (“Contract”) for the sale of the Property.

9. That pursuant to the Contract, the Estate agreed to sell the Property to Mulberry for the sum of Eight Million (\$8,000,000) Dollars (the “Purchase Price”).

10. That Mulberry retained First American to provide title insurance in connection with the Contract.

11. That the closing date for the transfer of title to the Property was repeatedly adjourned, with the last scheduled closing date being December 19, 2008 (“Closing Date”).

12. That prior to the Closing Date, Isaac Kaplowitz, one of the transactional attorneys for the Estate, sent a letter stating that time was of the essence and scheduling the Closing Date.

13. That the Estate was ready, willing and able to close, and continued to be so on the Closing Date.

14. That upon information and belief, prior to the Closing Date, Konner, Lowenberg, and Cohen conspired to avoid the closing by raising a bogus objection to the transfer of title based upon the fact that Trenk had prepared and Weiss had signed a Probate Petition filed in the Surrogate's Court, New York County ("Probate Petition Filing"), on behalf of the Estate, and listed the value of the Property at Three Million (\$3,000,000) Dollars.

15. That the purpose of raising the Probate Petition Filing issue was to promote the bogus position of Mulberry that the Estate did not intend to pay the proper estate tax ("Defendants' Estate Tax Contention"), and therefore, that the Estate was allegedly unready, unable, and unwilling to close title to the Property on the Closing Date.

16. That First American omitted any objections to title based upon estate taxes being owed.

17. That at the closing, Konner, addressing First American's prior omission and clearance of any estate tax objections, and in furtherance of his conspiracy with Lowenberg and Cohen, raised the Defendants' Estate Tax Contention, and as set forth more particularly below, accused Trenk and Weiss of criminal wrongdoing, of filing a false probate petition, and of being dishonest and untrustworthy.

18. That following these accusations, First American, which was present by, among other persons, Jeffrey Mitzner, First American's Executive Vice-President, who is involved in marketing, changed First American's position previously clearing any title objections regarding estate taxes and stated that the objection to title relating to the payment of estate taxes ("Estate Tax Objection") would not be omitted but would instead be excepted.

19. That in the face of threats and accusations, the Estate and its representatives offered to escrow the entire sales proceeds, and other alternatives, including an offer to close

through another title company, Stewart Title Guaranty Company, which would omit the objection.

20. Notwithstanding these offers, Konner, Lowenberg, and Cohen and First American refused to close and abruptly left the closing, while the Estate's transactional attorney was making various attempts to satisfy the alleged concerns of the Defendants.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST KONNER, LOWENBERG AND COHEN BY THE ESTATE PLAINTIFFS**

21. Plaintiffs repeat and reiterate paragraphs 1-20 as if fully stated herein.

22. That on December 19, 2008, at a real estate closing at which third parties were present, Konner did publish defamatory statements of and concerning Weiss, to wit: that Weiss had "committed perjury" when he signed the Petition under oath, that Weiss had signed a "fraudulent" petition, that Weiss was "dishonest", that Weiss was "untrustworthy", and that Weiss had not paid the appropriate estate tax, which was not then due ("Defamatory Statements Against Weiss").

23. That, upon information and belief, prior to the Closing Date, Lowenberg and Cohen instructed and/or authorized Konner to publish the Defamatory Statements Against Weiss in an attempt to avoid closing title to the Property.

24. That the Defamatory Statements Against Weiss were maliciously conceived and used in an effort to create a pretext for aborting the closing.

25. That the Defamatory Statements Against Weiss were false when made and known by Konner, Lowenberg, and Cohen to be false.

26. That the Defamatory Statements Against Weiss constituted a slander *per se*, in that they accused Weiss of criminal acts.

27. That the Defamatory Statements Against Weiss were published to all persons present on December 19, 2008, which included Trenk; Richard Kaplowitz, one of the Estate's transactional attorneys; Lisa Ann Zeppieri, a title closer; Jeffrey Mitzner; and Evan Steinbach, property manager for the Property.

28. That on or about November 26, 2008, an appraisal was performed of the Property with the Property valued at \$4,100,000, and eventually the Internal Revenue Service established the value of the Property as \$5,468,270, as per IRS Report of Estate Tax Examination Changes dated November 14, 2009. All estate taxes have been paid both to the IRS and to the New York State.

29. That the Estate Plaintiffs are entitled to damages for slander *per se* in an amount to be determined at trial, including but not limited to the difference between the Purchase Price and the established value of the Property, along with attorneys fees and costs.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST FIRST AMERICAN BY THE  
ESTATE PLAINTIFFS**

30. Plaintiffs repeat and reiterate paragraphs 1-29 as if fully stated herein.

31. That First American's refusal to insure title based on the Estate Tax Objection was reckless and without genuine belief in the accuracy of the Estate Tax Objection.

32. That First American changed its position reinstating an objection to title relating to the payment of estate taxes because, upon information and belief, Konner, Lowenberg, and Cohen had in the past provided First American with significant title business and First American desired to accommodate such defendants to ensure receiving business from them on a continuing basis, even though First American was deviating from industry custom and practice and prior clearance in raising a bogus exception to the Estate's title to the Property.

33. That Mulberry has alleged that were it not for First American's failure to insure title based on First American's change of position, reinstating an objection to title relating to the payment of estate taxes, Mulberry would have closed title for the Property.

34. That First American acted with malice or recklessness.

35. That First American's unjustifiable refusal to insure title constituted wrongful interference with the contract between Mulberry and the Estate for the purchase of the Property.

36. That as a result of the foregoing, the Estate Plaintiffs suffered damages to be determined at trial.

**AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE ESTATE  
PLAINTIFFS AGAINST KONNER, LOWENBERG, AND COHEN**

37. Plaintiffs repeat and reiterate paragraphs 1-36 as if fully stated herein.

38. That Konner's defamatory statements at the December 19, 2008 closing, falsely casting doubt on the validity of the title of the Property, upon the instructions of Lowenberg and Cohen, constituted slander of title.

39. That said Defendants' issuance of such defamatory statements falsely casting doubt on the validity of the title of the Property at the December 19, 2008 closing was reasonably calculated to cause harm to the Estate Plaintiffs.

40. That making of the defamatory statements was accompanied by actual malice.

41. That as a result of the defamatory statements, First American reinstated an objection to title based on the payment of estate taxes, without which objection Mulberry has alleged it would have closed title to the Property.

42. That as a result of the Defendants' slander of title, the Estate Plaintiffs were unable to sell the Property to Mulberry and were caused special damages, including but not

limited to the difference between the Purchase Price and the established value of the Property as per the Internal Revenue Service, *i.e.*, \$2,531,730.00 (\$8,000,000.00 less \$5,468,270.00).

43. That the Estate Plaintiffs are entitled to damages for slander of title in an amount to be determined at trial, including but not limited to the difference between the Purchase Price and the established value of the Property as per the Internal Revenue Service, along with attorneys fees and costs.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF THE ESTATE  
PLAINTIFFS AGAINST KONNER, LOWENBERG, AND COHEN**

44. Plaintiffs repeat and reiterate paragraphs 1-43 as if fully stated herein.

45. That Konner's defamatory statements at the December 19, 2008 closing, falsely casting doubt on the value of the Property, upon the instructions of Lowenberg and Cohen, constituted injurious falsehood.

46. That a reasonably prudent person would or should have anticipated that said Defendants' issuance of such defamatory statements falsely casting doubt on the value of the Property at the December 19, 2008 closing would naturally lead to harm to the Estate Plaintiffs.

47. That the making of the defamatory statements was accompanied by actual malice and the intent to harm the Estate Plaintiffs.

48. That as a result of the defamatory statements, First American reinstated an objection to title based on the payment of estate taxes, without which objection Mulberry has alleged it would have closed title to the Property.

49. That as a result of the Defendants' injurious falsehood, the Estate Plaintiffs were unable to sell the Property to Mulberry and were caused special damages, including but not limited to the difference between the Purchase Price and the established value of the Property as

per the Internal Revenue Service, *i.e.*, \$2,531,730.00 (\$8,000,000.00 less \$5,468,270.00).

50. That the Estate Plaintiffs are entitled to damages for injurious falsehood in an amount to be determined at trial, including but not limited to the difference between the Purchase Price and the established value of the Property as per the Internal Revenue Service, along with attorneys fees and costs.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST KONNER, LOWENBERG AND COHEN ON BEHALF OF TRENK**

51. Plaintiffs repeat and reiterate paragraphs 1-50 as if fully stated herein.

52. That on December 19, 2008, at a closing at which third parties were present, Konner did publish defamatory statements of and concerning Trenk, to wit: that Trenk had acted fraudulently and unethically in connection with the filing of the Probate Petition, which Konner claimed perjurally undervalued the Property, that Trenk was “dishonest”, and that Trenk was “untrustworthy” (“Defamatory Statements Against Trenk”).

53. That, upon information and belief, prior to the Closing Date, Lowenberg and Cohen instructed and/or authorized Konner to publish the Defamatory Statements Against Trenk in order to avoid closing title to the Property.

54. That the Defamatory Statements Against Trenk were published to all persons present on December 19, 2008, which included Weiss; Richard Kaplowitz, the Estate's transactional attorney; Lisa Ann Zeppieri, a title closer; Jeffrey Mitzner; and Evan Steinbach.

55. That the Defamatory Statements Against Trenk were maliciously conceived and used in an effort to create a pretext for aborting the closing.

56. That the Defamatory Statements Against Trenk were false when made and known by Konner, Lowenberg and Cohen to be false.

57. That the Defamatory Statements Against Trenk constituted a slander *per se*, in that they accused Trenk of criminal acts, and acts that impugned his integrity and ability as an attorney and defamed him in his profession.

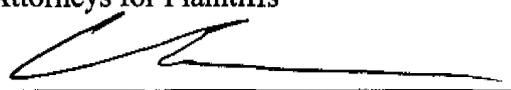
58. That Trenk is entitled to damages for slander *per se* in an amount to be determined at trial.

WHEREFORE, Plaintiffs demand judgment, as follows:

- i. on the First Cause of Action, an amount to be determined at trial, together with punitive damages of Nine Million (\$9,000,000) Dollars;
- ii. on the Second Cause of Action, an amount to be determined at trial, together with punitive damages of Nine Million (\$9,000,000) Dollars;
- iii. on the Third Cause of Action, an amount to be determined at trial, including special damages in the amount of Three Million (\$3,000,000) Dollars, together with punitive damages of Nine Million (\$9,000,000) Dollars;
- iv. on the Fourth Cause of Action, an amount to be determined at trial, including special damages in the amount of Three Million (\$3,000,000) Dollars, together with punitive damages of Nine Million (\$9,000,000) Dollars;
- v. on the Fifth Cause of Action, an amount to be determined at trial, together with punitive damages of Nine Million (\$9,000,000) Dollars; and
- vi. with respect to all claims there be also awarded costs and attorneys fees of this action.

Dated: Mineola, New York  
December 17, 2009

LAW OFFICES OF MICHAEL A. HASKEL  
Attorneys for Plaintiffs

By: 

Leonard Gekhman  
167 Willis Avenue  
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(516) 294-0250

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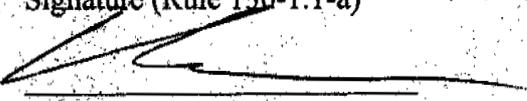
Defendants.

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**SUMMONS AND COMPLAINT**

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Signature (Rule 130-1.1-a)

  
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