

# Judge Trims \$12M Toll Brothers Suit Against Security Co.

By **Ryan Harroff**

Law360 (January 5, 2024, 11:54 AM EST) -- The home security arm of Pennsylvania-based home building firm Toll Brothers saw three of its claims against another security firm it sold \$12 million worth of accounts to trimmed away by a Connecticut judge but held on to the majority of its suit.

Toll Brothers Smart Home Technologies Inc. lost its claims against Security Systems Inc. for bad faith dealing, conversion and tortious interference with contracts based in large part on its own word choice in its **August complaint**. Security Systems' **motion to strike** had targeted six of the seven total claims in Toll Brothers' suit and the court granted it for half of them on Wednesday after finding Toll Brothers' own description of the alleged misconduct did not support some of its claims.

One of the main things at issue in the case is a \$1.5 million attrition reserve fund the parties set aside in case some of the home security monitoring accounts Toll Brothers sold to Security Systems defaulted through no fault of the buyer. Security Systems took that money after allegedly failing to disclose important information to Toll Brothers, which the complaint states was a breach of the covenant of good faith and fair dealing. The court disagreed.

"In its complaint, the plaintiff fails to allege SSI acted in bad faith when committing acts that injured its right to receive the attrition reserve. The allegations, instead, allege that SSI acted incorrectly or unfairly but not with any intentional bad will or malfeasance," the court said.

The court also said that Toll Brothers admitted in its complaint that it did not "have a right to the money" in the \$1.5 million reserve fund unless specific events came to pass, meaning that the company cannot claim Security Systems stole those funds from it.

For the tortious interference claim, which alleged Security Systems harassed many of Toll Brothers' clients that it had not been sold under the \$12 million deal, the court ruled that the wording used in the complaint undercut the claim from the beginning.

The memorandum points out that the complaint says the alleged harassment came after Security Systems "erroneously loaded and operated off of an outdated list of accounts that contained over 100 accounts that were not on the final list," with the court adding emphasis to the word "erroneously." If Security Systems acted in error rather than with malicious intent, as the word "erroneously" implies, then Toll Brothers cannot claim tortious interference, the court said.

Toll Brothers' claims for fraudulent misrepresentation, negligent misrepresentation and violations of the Connecticut Unfair Trade Practices Act all survived Security Systems' motion to strike as the court determined they were sufficiently pled. Toll Brothers' breach of contract claim, which was not targeted for dismissal, will also continue.

Counsel for Toll Brothers did not immediately reply to requests for comment Friday. Counsel for Security Systems declined to comment.

Toll Brothers is represented by Monte E. Frank of Pullman & Comley LLC, and Michael D. Kibler and Stephen F. Raiola of Kibler Fowler & Cave LLP.

The defendants are represented by Joseph Lipari of Sultz Law Group PC, and the firm Howard Kohn Sprague & Fitzgerald.

The case is Toll Brothers Smart Home Technologies Inc. v. Security Systems Inc. et al., case number MMX-CV23-6038527-S, in the Middletown Judicial District of the Connecticut Superior Court.

--Additional reporting by Aaron Keller and P.J. D'Annunzio. Editing by Alyssa Miller.