

BREACH OF CONTRACT

Breach of Duty of Care — Fraud

Partner failed to comply with contract terms, defense argued

VERDICT Defense

CASE Francis L. Brenner v. Michael J. Savattere, No. DC-14-4956
COURT Dallas County District Court, 160th, TX
JUDGE Jim Jordan
DATE 10/2/2016

PLAINTIFF

ATTORNEY(S) Andrew A. Dunlap, Law Office of Andrew A. Dunlap, Dallas, TX

DEFENSE

ATTORNEY(S) Klint Rybicki, Law Office of Klint Rybicki, Royse City, TX

FACTS & ALLEGATIONS On Sept. 26, 2013, plaintiff Francis L. Brenner and Michael J. Savattere entered into a contract to operate a precious metals and coin exchange in Garland.

In January 2014, Brenner sued Savattere for breach of contract, breach of duty of care and fraud. Brenner alleged that Savattere breached the contract by converting partnership assets and income to his personal use, which was to the detriment of the partnership.

Brenner alleged that Savattere breached the duty of care owed to the partnership by failing to exercise his duty of loyalty to act in good faith. Brenner also alleged that Savattere entered into other ventures and businesses in direct conflict with the partnership. Brenner further alleged that Savattere failed to inform him of his activities; and deprived her of the opportunity to participate.

Brenner also argued that Savattere made a material representation to him that he would develop business for the partnership and that all sales from such business were the property of the partnership. Brenner alleged that Savattere made this material representation with the intent to induce her into making a capital contribution of \$40,000 and also agreeing to give Savattere 51 percent of the partnership without Savattere making a cash contribution.

Brenner alleged that Savattere converted all business from the sale of computer parts and other recyclable/refinable material to his own personal use.

Savattere denied all of Brenner's allegations and initiated a counterclaim against Brenner alleging breach of contract, conversion, theft and breach of fiduciary duty.

Savattere maintained that there is a valid contract. Savattere alleged that the business was not limited to any certain type and neither he nor Brenner were refrained from activities outside the business of precious metals and coin exchange.

Savattere argued that as an experiment he dabbled in buying and selling motherboard materials and other related materials. He claimed that this was not a business venture and, in fact, no profit was made by him.

The defense argued that Brenner violated section 8 of the operating agreement on Jan. 9, 2014, by unilaterally terminating and dissolving the partnership and business without the proper wind-up and voting procedure. He claimed that Brenner unilaterally took the remaining resources, money and equipment and ended the partnership leaving Savattere alone in the venture.

INJURIES/DAMAGES Brenner sought compensatory damages, exemplary damages, and attorney fees and costs.

Savattere sought compensatory damages, as well as attorney fees and costs.

RESULT The jury found that there was a relationship of trust and confidence between Brenner and Savattere. The jury found Savattere did not fail to comply with his fiduciary duty to Brenner. The jury found that Savattere did not fail to fully and fairly disclose all important information to Brenner concerning the subject transaction. The jury found Brenner failed to comply with the company agreement. Savattere's counterclaim against Brenner failed to prevail.

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 2 hours

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Gary Raynaldo

BUSINESS LAW

Tortious Interference with a Business Relationship

Defense argued contract was for sharing medical equipment

VERDICT (D) \$1,155,037

CASE Howard Mintz, M.D. v. Julye Nesbitt Carew, M.D., P.A., and Michelle Chesnut, M.D., P.A., No. DC-14-8087

COURT Dallas County District Court, 14th, TX
JUDGE Eric Moyer
DATE 5/17/2016

PLAINTIFF

ATTORNEY(S) Kathy Brandt, Law Office of James D. Stanton, Dallas, TX
James D. Stanton, Law Office of James D. Stanton, Dallas, TX

DEFENSE

ATTORNEY(S) Patrick J. Carew, Kilpatrick Townsend & Stockton LLP, Dallas, TX (Julye Nesbitt Carew, M.D., P.A.)
 Richard L. Hathaway, Kane Russell Coleman & Logan, PC, Dallas, TX (Michelle Chesnut, M.D., P.A.)
 Joseph Mastrogiovanni, Mastrogiovanni Mersky and Flynn, P.C., Dallas, TX (Julye Nesbitt Carew, M.D., P.A.)
 Karin M. Zaner, Kane Russell Coleman & Logan, PC, Dallas, TX (Michelle Chesnut, M.D., P.A.)

FACTS & ALLEGATIONS In April 2002, plaintiff Dr. Howard Mintz and Julye Nesbitt Carew, M.D., P.A. agreed to share a medical office together for their separate practices, and they entered into a share agreement and management agreement. Mintz claimed that the agreement permitted access and use of the equipment located in the medical practice, as well as use of Mintz' employees. Mintz claimed that the agreement called for Carew to pay Mintz \$500 a month for 60 months for equipment, inventory and leasehold improvements and 40 percent of the equipment insurance.

In 2006, Mintz and Carew moved to a new office space to accommodate their growing separate practices. Mintz claimed the total cost of the move was approximately \$75,000 for tenant improvements and \$5,000 for window coverings and interior decorator fees for which he took out a personal loan to pay the expenses. He claimed that he additionally purchased a body box machine to replace pulmonary function equipment. He claimed that Carew's sole obligation was monthly payments of \$500 for 60 months for use of all equipment.

On June 27, 2008, Michelle Chesnut, M.D., P.A., joined the office sharing arrangement and entered into a share agreement and management agreement with Mintz and Carew. Mintz claimed that Chesnut was required to pay \$700 per month for 60 months for access to and use of the office equipment. He claimed that between the last months of 2013 and 2014, he discovered from his office staff that Chesnut had encouraged the staff to preferentially send certain patients exclusively to her, which was in violation of the agreement.

Mintz claimed that on April 29, 2014, Chesnut and Carew fraudulently induced Mintz into amending the agreement shortly before terminating their agreement with him. He claimed that Carew and Chesnut were obligated by a non-compete clause and buyout provision in the agreement. Mintz claimed that Carew and Chesnut interfered with his attempt to renew the office lease with Presbyterian Hospital of Dallas and instead the hospital renewed the lease with Carew and Chesnut.

Mintz sued Carew and Chesnut for breach of contract, fraud, fraudulent inducement, tortious interference with prospective business relations, declaratory judgment and an injunction.

Mintz alleged that Chesnut's actions were in breach of contract when she claimed ownership in office equipment and failed to pay her share of office expenses. He also alleged Carew and Chesnut breached the non-compete and non-solicitation clause by failing to pay the buyout provision in the agreements.

The court granted summary judgment disposing of the contract breach claim against Carew and Chesnut.

Carew and Chesnut denied all allegations. They claimed that they properly terminated the agreement and denied any wrongdoing. They counterclaimed that Mintz breached their agreement and wrongly asserted sole ownership over the jointly-owned medical office equipment, and mismanaged the medical office in violation of the agreement.

Carew and Chesnut argued that the agreement was for sharing jointly-owned equipment and that payments made to Mintz were a buy-in for existing and newly purchased equipment, as well as the new office building costs. They claimed that Mintz violated the agreement by asserting sole ownership over all the equipment, including the body box machine. Also, Mintz wrongfully removed equipment from the office, they claimed. Carew and Chesnut claimed that Mintz refused to surrender the office space to them as required under the express terms of the agreement.

INJURIES/DAMAGES Mintz sought compensatory damages, declaratory judgment and an injunction in addition to attorney fees and costs.

Carew and Chesnut sought compensatory damages and attorney fees and costs.

RESULT The jury found that Carew and Chesnut did not interfere with prospective business relations, and found that Mintz breached the contract. The jury awarded Carew and Chesnut \$1,155,037 in compensatory damages and attorney fees through appeal.

DEMAND More than \$1,000,000

TRIAL DETAILS Trial Length: 5 days
 Trial Deliberations: 4 hours

EDITOR'S NOTE This report is based on information that was provided by defense counsel for Carew. Plaintiff's counsel and defense counsel for Chesnut did not respond to the reporter's phone calls.

—Gary Raynaldo

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