

Verdicts & Settlements Final Preview

RESULT DATE: March 5, 2015

15-JV_639

Conquest International, Peter Gillham v. R. Rosser Cole; Hinton, Kreditor & Gronroos, LLP (BC492003)

Hon. John L. Segal

L.A. Superior Central

TOPIC: Contracts

SUB TOPIC: Negligent Misrepresentation

FURTHER DESCRIPTION: Professional Negligence

BENCH DECISION: Defense

ATTORNEY:

Plaintiff - Gary J. Goodstein, Bruce A. Berman (Goodstein & Berman LLP, Los Angeles); Lloyd S. Pantell (Law Offices of Lloyd S. Pantell, Studio City).

Defendant - Stephen J. Tully, Trang T. Tran (Garrett & Tully, Westlake Village) for Hinton, Kreditor & Gronroos LLP.

TECHNICAL:

Plaintiff - Barbara Luna, Ph.D., forensic economics, Sherman Oaks.

Defendant - David E. Nolte, forensic accounting, Los Angeles.

FACTS: Plaintiff Peter Gillham is the 100 percent shareholder of Conquest Inc. In 2008, Gillham and Conquest sold certain of the assets of the company to buyers named Natural Dynamics. Plaintiffs filed suit, alleging that wrongful conduct on the part of defendant Hinton, Kreditor & Gronroos LLP, and other defendants, caused plaintiffs' damage in the sales transaction.

Prior to trial, plaintiffs settled with and dismissed all defendants other than Hinton, Kreditor & Gronroos.

PLAINTIFF'S CONTENTIONS: Plaintiffs alleged that they sustained out-of-pocket damages in the form of the difference between the amounts they received for the Conquest assets sold and the fair market value of those assets, and that plaintiffs lost profits they would have earned had those assets not been sold.

Plaintiffs claimed that the Hinton, Kreditor & Gronroos appraisal was negligently prepared and substantially understated the value of Conquest. Plaintiffs also claimed that they relied on the Hinton, Kreditor & Gronroos appraisal of Conquest to enter into agreements with Natural Dynamics to sell the Conquest assets. Plaintiffs contended that neither they nor the purchasers would have gone forward with the sale of assets had Hinton, Kreditor & Gronroos appraised Conquest at a significantly higher value. Plaintiffs and their expert claimed that the actual value of Conquest at the time of the sale was over \$9.5 million more than the Hinton, Kreditor & Gronroos appraisal, and that plaintiffs lost profits of over \$12.5 million due to Hinton, Kreditor & Gronroos's negligence, misrepresentations and breaches. Plaintiffs stipulated in advance of trial to limit their claims to an appraisal of Conquest that Hinton, Kreditor & Gronroos had conducted, that plaintiffs alleged they relied upon to sell the assets of Conquest and which they contended caused their out-of-pocket and lost profit damages.

Plaintiffs alleged causes of action for negligent misrepresentation, professional negligence, breach of contract, breach of fiduciary duty, and elder abuse.

DEFENDANT'S CONTENTIONS: Hinton, Kreditor & Gronroos contended that plaintiffs did not actually, or justifiably, rely on the Hinton, Kreditor & Gronroos' appraisal, and instead their decision to enter into the sale was caused by facts, motivations and conditions that were unrelated to Hinton, Kreditor & Gronroos. These included, estate and estate tax goals, mitigation of income tax problems, the desire to maintain Gillham's way of doing business and his control of the business after the sale, reliance on the purchasers and plaintiffs' own accountant and attorneys, and Gillham's sophistication and his personal practices and business principles.

Hinton, Kreditor & Gronroos further contended that the appraisal was properly performed, that as a result of the sales transaction, plaintiffs received more than the fair market value of Conquest assets, and that the damages and lost profits that were the subject of the opinions of plaintiffs' expert were without basis and erroneous, and that plaintiffs had sustained no damages.

Hinton, Kreditor & Gronroos also contended that plaintiffs' claims were, in all events, barred by the statute of limitations.

DAMAGES: Plaintiffs claimed out-of-pocket and lost profit damages, together with prejudgment interest, totaling \$26,757,762.

SETTLEMENT DISCUSSIONS: Defendant offered \$100,000 to each plaintiff pursuant to CCP 998.

RESULT: Defense judgment on all causes of action based on the absence of reliance and causation, and the statute of limitations.

OTHER INFORMATION: Following judgment, defendant filed a memorandum of costs and a motion for cost of proof sanctions under CCP section 2033.420. The court awarded defendant fees and costs totaling \$450,000, pursuant to the stipulation of the parties.

A mediation was held before former Superior Court Judge Patricia Collins.

FILING DATE: Sept. 12, 2012.