



THE NATIONAL JURY VERDICT® REVIEW & ANALYSIS

SUMMARIES WITH TRIAL ANALYSIS

\$4,093,572 VERDICT - BREACH OF CONTRACT - SALE OF BUSINESS - INTENTIONAL INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONSHIP - CONSUMER PROTECTION ACT VIOLATIONS ALLEGED ENTITLING PLAINTIFF TO AWARD OF MULTIPLE DAMAGES.

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Suffolk County, Massachusetts

This breach of contract action was brought by the plaintiffs former owners of a small computer software business, who sold the business to the defendant CompuServe, the plaintiff's largest customer. The plaintiffs contended that the defendant breached the agreed upon contract of sale by failing to perform an accounting four months after the purchase and sale, and by failing to pay the plaintiffs profits to which they were entitled as would have been reflected by an accounting had one been performed. The plaintiffs additionally contended that the defendant intentionally interfered with their advantageous business relationship with another company, McDonnell Douglas, by luring McDonnell Douglas into doing business with CompuServe instead of the plaintiffs.

The plaintiffs' cause of action included a Consumer Protection 93A claim based upon the evidence allegedly demonstrating a blatant disregard of the terms of the contract by the defendant CompuServe in its refusal to accept the plaintiffs' phone calls and its refusal to undertake an accounting as required by the contract.

At the time the parties entered into the contract in question, the plaintiffs were partners in a small computer software company operating out of Cambridge, Massachusetts. The plaintiffs' largest customer at the time was the defendant, CompuServe. The terms of the contract reflected that the defendant agreed to pay cash and further agreed to do an accounting four months after the date of sale. The defendant agreed to total the pre-purchase accounts receivable, subtract out the pre-purchase accounts payable, and pay the remainder to the plaintiffs. The plaintiffs testified that when it came time to do the accounting, the defendant refused to communicate with the plaintiffs and refused to perform the accounting.

The plaintiffs additionally contended that the subject purchase and sale contract provided that the plaintiffs were to maintain their software license with another large customer, McDonnell Douglas. The plaintiffs alleged that notwithstanding this specific agreement, the defendant purposefully interfered with the plaintiffs' business relationship with McDonnell Douglas by luring McDonnell Douglas away from doing business with the plaintiffs,

selling its own license to McDonnell Douglas for approximately the same amount as McDonnell Douglas was to pay the plaintiffs for the same license.

The plaintiff presented testimony from two fact witnesses, sales people who did work for CompuServe, who related that they were told by the defendant's representatives that the defendant had no intention of doing an accounting on behalf of the plaintiffs and that CompuServe intended to make every effort to collect the accounts receivable owed on the pre-purchase accounts originally obtained by the plaintiffs. The plaintiff contended that the defendant's failure to do an accounting as required by the contract, constituted a breach of the contract.

The plaintiff additionally contended that the defendant further breached the contract by contacting McDonnell Douglas, the plaintiffs' largest remaining client following the purchase and sale of the business and offering to sell McDonnell Douglas the license which the plaintiffs were offering to sell to McDonnell Douglas. The plaintiff alleged that this was done in specific violation of the terms of the contract which stated that the defendant agreed to allow the plaintiffs to retain their rights to deal with McDonnell Douglas.

The plaintiffs contended that the manner in which the defendant dealt with the plaintiffs following the sale of the business, and the blatant nature of the defendant's violative conduct, constituted bad faith on the part of the defendant in its dealings with the plaintiffs and constituted unfair and deceptive acts and practices sufficient to establish a 93 A Consumer Protection claim.

The defendant denied liability and maintained that had they done a formal accounting, it would have been determined that the plaintiffs owed money to the defendants. The defendant's position in this regard was supported by expert testimony from an accountant whose calculations indicated that the plaintiffs would in fact have owed the defendants money had the accounting been undertaken. The plaintiffs countered with testimony from their own independent accountant who calculated money owed to the plaintiffs in excess of \$1 million.

The plaintiff further countered the testimony offered by the defendant's independent expert accountant by presenting the deposition testimony of the defendant's own CFO, during which he stated that he performed the accounting in his head and that the accounts receivable were estimated to be \$250,000. The plaintiff also offered evidence that the defendant's in-house accountant, who was not called by the defendant at trial, had calculated money owed to the plaintiffs in the approximate amount of \$250,000.

The jury found for the plaintiffs and an award of \$4,093,472 was rendered. The award was broken down as follows: \$1,007,449 for breach of contract; \$30,000 for interference with contract; \$550,000 for interference with advantageous business relationship; \$948,374 in interest; and \$1,557,749 on the 93A claim.

REFERENCE

Plaintiff's expert accountant: Jerrold Katz from Cambridge, Ma. Defendant's expert accountant: Lawrence Morris from Kansas City, Mo.

Andrew Garland and Charles Housman vs. Compuserve, Inc. Case no. 90-10342; Judge Douglas W. Hillman, 4-26-93.

Attorneys for plaintiffs: Paul D. Wilson and Andrea M. Fish of Mintz, Levin in Boston, Ma.

COMMENTARY:

The former president of the defendant Compuserve had testified in deposition that he had been told by counsel for the defendant that they had never done an accounting and that this was probably a mistake on the defendant's part. The plaintiff sought to have this statement by the defendant's lawyer admitted as an admission by the defendant company that an accounting had not been performed. Over the defendant's strenuous objection, the Court admitted the evidence. This case is a classic example of a David vs. Goliath battle, with the large unsympathetic corporate America type defendant having attempted to take advantage of the very sympathetic unsophisticated "software-techies" who not only been denied an accounting as expressly promised in the contract of sale but whose independent relationship with another company was directly and purposefully undermined by the defendant's interfering actions, also in direct contravention to the sale agreement. □