

TEXAS LAWYER

An **ALM** Publication

texaslawyer.com | April 30, 2021

Texas Jury Awards \$32M to Businessman in Contract Dispute With Ex-Partner

The plaintiff's attorney said the \$15.1 million punitive damages award could serve as an important deterrent against unethical business practices in the community and state.

BY SUZETTE PARMLEY

In a business partnership that went horribly awry, a Texas jury awarded a \$32 million verdict to a Kendall County man earlier this month in a breach-of-contract lawsuit against his former partner, whom he claims engaged in a series of unethical and violent behavior, including physically trying to remove him from the company's premises.

The April 20 verdict, handed down in Judge Vincent Santini's courtroom, may be one of the biggest jury verdicts in Texas this year.

The Montgomery County jury was unanimous in finding clear and convincing evidence that harm to both Garrett Gagliano and plaintiff L&S Pro-Line LLC—a Texas oil and gas services company—resulted from malice, gross negligence or intentional self-enrichment attributable to Alvin Lee Burkett, the president and majority owner of L&S and the named third-party defendant in the case.

Nearly half, or \$15.1 million, of the verdict comprised punitive damages on Gagliano's derivative

claim on behalf of L&S; another \$10 million was in punitive damages to Gagliano; and \$5.6 million in actual damages for withheld payments owed to Gagliano and lost profits to Gagliano's company, Tactical Automation Inc., which makes control panels for oil and gas pipelines.

About \$1.6 million of the \$32 million verdict will go toward Gagliano's attorneys.

The jury found that Burkett breached his fiduciary duty to L&S Pro-line and violated a contract with Gagliano, who was a minority owner, to jointly own and operate L&S to manufacture the metal skids on which the control panels for the electrical equipment are to be mounted.

William S. Helfand, a partner in the Houston and Salt Lake City offices of Lewis Brisbois Bisgaard & Smith, represented Burkett with colleagues Earl Touchstone and Felix Digilov. Helfand did not respond to a request for comment.

San Antonio attorney Corey Wehmeyer of Santoyo Wehmeyer represented Gagliano, the defendant



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and counter-plaintiff in the lawsuit, with assistance from John Ellis and Katherine Mallon, local counsel Kirby Hopkins and Alexis Espejel and co-counsel David Navarro.

Wehmeyer said the jury got it right.

"Mr. Gagliano displayed fortitude in the face of three years of Burkett's vitriolic litigation tactic; the jury rewarded Mr. Gagliano's faith in the system with its award fully compensating Mr. Gagliano for his lost profits and attorneys' fees and punishing the unethical conduct that Mr. Gagliano endured," Wehmeyer said in an email.

"Garrett Gagliano is appreciative of the jury's attention during

the presentation of the case, and is pleased that his business ethics and performance as Chief Financial Officer was vindicated in the verdict.”

On April 12, 2016, court documents revealed that Gagliano bought a 25% interest in L&S from Burkett and agreed to become the company’s chief financial officer and treasurer.

But the relationship soured over the next two years between the two men. By summer 2018, Gagliano claimed that he learned about alleged shady business practices by Burkett in L&S’s Montgomery County office. Among the questionable behavior that Gagliano picked up on against Burkett included bribing potential customers, engaging in illegal employment practices and hiring a convicted sex offender who was the son of a major client.

Gagliano claims that the sex offender allegedly exposed himself in view of women working at a veterinary clinic that sat next door to L&S’s Montgomery County office, which garnered complaints from the clinic.

Gagliano maintains that when he tried to enter the office in August 2018 to investigate the rumors, Burkett attempted to assault him.

“When Gagliano attempted to enter the office, defendant Burkett made threatening physical contact with Gagliano to prevent him from doing so, and other Proline employees had to pull defendant Burkett away from Gagliano,” according to the lawsuit. Gagliano said he never returned to the office after that confrontation.

Gagliano also accused Burkett of costing his company, Tactical Automation Inc., significant business. Tactical was to have first right of refusal of any new work for building the electrical equipment for oil and gas operations—including the panels and control systems—over competitors as was promised in the contract he signed in 2016, but which didn’t happen, according to Gagliano.

Gagliano, who owned the property that L&S rented through a company called Snook Holdings LLC, maintained that he eventually told Burkett to vacate the property, which instigated Burkett and L&S to file the lawsuit.

In the complaint, Burkett accused Gagliano of the same offenses that the jury ultimately found against him, namely breach of fiduciary duty, theft and breach of contract, after Gagliano counter-sued.

The 12-member jury awarded Snook Holdings \$150,000 in damages and attorney fees as part of the verdict.

The jury rejected arguments from Burkett that his decisions were protected under the Texas business judgement rule, which shields corporate officers and directors, who owe fiduciary duties to the corporation, from liability for acts that are considered within the honest exercise of their business judgement and discretion. The jury found harm was done to L&S, and that Burkett’s actions were not protected under the Business Judgement Rule.

The \$32 million verdict is just shy of the state’s largest jury verdict last year, which was just under \$34

million, according to Texas Lawyer.

Wehmeyer said the \$15.1 million in punitive damages against Burkett individually could serve as an important deterrent against unethical business practices in the community and state.

“The Texas Legislature can pass any law it wants, and parties can contract for any benefit or burden they imagine,” added Wehmeyer. “But laws and contracts mean nothing without a jury to hold parties accountable and enforce them. The jury awarded even more in punitive damages than Mr. Gagliano requested, sending a clear message that fiduciary duties are taken seriously in Texas.

“High standards of business integrity are expected and will be punished when parties willfully abandon those expected standards,” added Wehmeyer.

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