

April 21, 2021

An ALM Publication

TEXAS

MONTGOMERY COUNTY

EMPLOYMENT

Intentional Torts

Defense claimed plaintiff caused breach of contract

Amount **\$32,102,679**
CASE L&S Pro-Line, LLC v. Garrett
Gagliano, No. 18-06-07704
COURT Montgomery County District Court,
457th, TX
DATE 4/21/2021
JUDGE Vince Santini

PLAINTIFF

ATTORNEY(S) Earl Touchstone; Lewis Brisbois
Bisgaard & Smith LLP;
Houston TX for L&S Pro-Line LLC,
L&S
Pro-Line LLC
Felix Digilov; Lewis Brisbois
Bisgaard & Smith LLP; for L&S
Pro-Line LLC, L&S Pro-Line LLC
Kenna Seiler; Seiler Mitby; for L&S
Pro-Line LLC, L&S Pro-Line LLC

DEFENSE

ATTORNEY(S) Corey F. Wehmeyer; Santoyo
Wehmeyer P.C. for Garrett
Gagliano, Tactical Automation Inc.,
Snook Holdings LLC
John W. Ellis; Santoyo Wehmeyer
P.C. for Garrett Gagliano, Tactical
Automation Inc., Snook Holdings
LLC

Katherine L. Mallon; Santoyo
Wehmeyer P.C. for Garrett Gagliano,
Tactical Automation Inc., Snook
Holdings LLC
Kirby D. Hopkins; Hopkins Centrich
Winkelman & Drucker for Garrett
Gagliano, Tactical Automation Inc.,
Snook Holdings LLC, David Zareie,
David Zareie CPA-PC
Alexis Espejel; Hopkins Centrich
Winkelman & Drucker for Garrett
Gagliano, Tactical Automation Inc.,
Snook Holdings LLC
David W. Navarro; Hornberger
Guller Garza & Cohen Incorporated
for Garrett Gagliano, Tactical
Automation Inc., Snook Holdings LLC

FACTS & ALLEGATIONS Starting in 2017, plaintiff L&S Pro-Line LLC, an oilfield services company, claimed that treasurer and chief financial officer Garrett Gagliano had authorized payments from L&S to Gagliano or for his benefit. L&S further claimed that Gagliano had failed in his duties to L&S by not responding to expenditure requests or maintaining the books and records, by harassing L&S customers and by disparaging L&S' business.

In April 2016, Lee Burkett, on behalf of L&S, had entered into a contract with Gagliano by which Gagliano purchased a 25 percent membership interest in L&S and became its chief financial officer, treasurer and tax partner. Burkett was president and executive manager and owned the remaining 75 percent of the company.

Gagliano, through his company Tactical Automation Inc., was in the business of designing, producing and selling smart control panels and systems for midstream oil-and-gas operations. L&S was in the business of assembling and selling metal skids and enclosures to be used with such panels and systems.

Gagliano also owned Snook Holdings LLC, which was L&S' landlord.

Relations between Burkett and Gagliano soured in 2018, and in June that year, Snook gave L&S two weeks' notice to vacate.

David Zareie was L&S' accountant.

L&S sued Gagliano. The lawsuit alleged breach of contract, breach of fiduciary duty and theft. L&S later added Tactical, Snook, Zareie and Zareie's business as defendants, but the claims against those defendants were no longer in the case by the time it went to the jury. In May 2019, based on a disputed section 12.7(b) of the contract, L&S sought to purchase Gagliano's entire membership interest for \$1.3 million.

L&S claimed that, starting in 2017, Gagliano had authorized payments from L&S to Snook and Tactical solely for their or Gagliano's benefit. L&S further claimed that Gagliano had failed in his duties to L&S by not responding to expenditure requests or maintaining the books and records, by harassing L&S customers and by disparaging L&S' business.

Gagliano denied the allegations and argued that Burkett's actions prevented Gagliano from performing his duties. He also argued that section 12.7(b) was

unenforceable because of Burkett's prior material breach, and that Burkett caused terminating events as defined by the contract. Gagliano also claimed that the business judgment rule protected him from liability for his decisions and expenses.

Gagliano, along with Tactical and Snook, filed counterclaims against L&S and third-party claims against Burkett. These claims were primarily that L&S breached its contract with Gagliano; that Burkett breached his fiduciary duties to Gagliano and L&S; and that L&S failed to compensate Gagliano fully during the time he was an owner and to reimburse him for certain expenses. Gagliano also asserted claims in the shoes of L&S against Burkett, including claims that Burkett caused L&S to pay Burkett's personal expenses.

With some exceptions, the contract provided Tactical with a right of first refusal for any control-panel/system business. It also provided that L&S obtain Gagliano's consent before committing to any transaction over \$5,000. Gagliano and Tactical alleged that, starting in June 2018, Burkett, standing in the shoes of L&S, breached both of these provisions with impunity and took over the finances of L&S himself.

It was further alleged that Burkett obtained business for L&S through bribery of customers' employees; that Burkett knowingly hired for L&S a registered sex offender who was the son of a customer and who subsequently exposed himself to female employees of a neighboring animal hospital; that Burkett physically excluded Gagliano from L&S' premises in late August 2018; and that Burkett damaged the animal hospital's property by ordering a contractor to displace large amounts of dirt without a permit.

In addition, Snook alleged that L&S underpaid its rent while occupying the premises month-to-month.

L&S and Burkett denied the allegations against them. Burkett further argued that the business

judgment rule protected him from liability for his decisions and expenses.

INJURY L&S sought damages for tax liabilities that it claimed were a result of Gagliano's failure to perform his duties. It also sought attorney fees.

For himself, Gagliano sought \$2,638,101.05 in unpaid distributions. He also sought punitive damages against Burkett and attorney fees.

In the shoes of L&S, Gagliano sought reimbursement of \$525,337.11 in payments to Burkett for personal expenses; \$2,389,725.29 as the amount that L&S would have to pay Tactical for breach of contract; \$2,638,101.05 as the amount it would have to pay Gagliano for unpaid distributions; and punitive damages against Burkett.

Tactical sought \$2,389,725.29 for lost profits.

Snook sought unpaid rent; \$104,139.12 as the amount paid to repair the adjacent property; \$5,100 as the amount paid to erect a privacy fence to protect neighbors from actions of L&S employees; and attorney fees.

RESULT The jury rendered a verdict for Gagliano, Tactical and Snook. Specifically, it found breach of contract by L&S and Burkett; breach of fiduciary duty by Burkett, with malice, gross negligence and intentional self-enrichment; that the business judgment rule did not protect Burkett's decisions and expenses; that Burkett caused a terminating event as defined by the contract; that L&S breached its lease with Snook; and that Gagliano was entitled to reimbursement for expenses. On all of L&S' claims, the jury found in favor of Gagliano.

Under breach of contract, the jury awarded \$2,638,101.05 to Gagliano for unpaid distributions; \$2,389,725.29 to Tactical for lost profits; \$1,251,000

to Gagliano for attorney fees through trial; and \$113,190 to Gagliano for court costs and expenses. Under breach of fiduciary duty, the jury awarded Gagliano, in the shoes of L&S, \$525,337.11 for payments by L&S to Burkett for Burkett's personal expenses; \$2,389,725.29 for the amount that L&S must pay to Tactical for breach of contract; \$2,638,101.05 for unpaid distributions; and \$15,106,326 in punitive damages against Burkett.

The jury awarded Snook zero for unpaid rent; \$104,139.12 for amounts paid by Snook to repair the adjacent property; \$5,100 for amounts paid by Snook to erect a privacy fence to protect neighbors from actions of L&S employees; and \$39,000 in attorney fees through trial.

The charge also included other questions on Gagliano's attorney fees. Through trial, the amounts found were \$1,170,000 to demonstrate that Burkett's purported exercise of section 12.7(b) was ineffective; \$30,000 to defend on the theft claim; and \$1,170,550 for all proceedings through trial.

Some of the findings were made multiple times, were duplicative or will depend on an election of remedies. According to Gagliano/Tactical/Snook's counsel, L&S and Burkett are liable for \$6,996,353.40 (consisting of \$5,553,163.45 in actual damages, \$1,330,000 in attorney fees and \$113,190 in court costs and expenses), and Burkett is liable for punitive damages of \$25,106,326, bringing the total to \$32,102,679.40. Although he did not try the case, William Helfand was the attorney in charge under Rule 8 of the Texas Rules of Civil Procedure.

EDITOR'S NOTE This report is based on information that was provided by counsel for Gagliano, Tactical and Snook. L&S' and Burkett's counsel did not respond to the reporter's phone calls.