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Dispute over hotel purchase resolved

by Neil Hartstein October 25, 2022

Kinko's founder Paul Orfalea of Montecito and another Montecito businessman have successfully defended their reputations against a $15 million lawsuit filed by a third Montecito man who accused them of fraud, claiming he was wrongly left out of a deal to buy and redevelop an Alabama hotel.

Mr. Orfalea and John Moller were sued by Patrick Nesbitt, who claimed that he and Mr. Moller entered into a 2015 oral agreement to go in on the deal together to buy the hotel, and that Mr. Moller violated that agreement by going it alone. Mr. Orfalea was named as a co-defendant.

A Santa Barbara jury reached its verdict on Oct. 12 following two days of deliberations. The case was heard in Santa Barbara because Mr. Nesbitt contended the oral agreement was created there.

No damages were awarded to the defendants, who won the case because they never filed a cross-complaint against Mr. Nesbitt. Nor did they seek damages. (The plaintiff, however, will be responsible for defendants' costs, such as court reporter fees and jury fees.)

Damages, however, were never the point, says Ryan Waggoner, a partner in Allen Matkins, the law firm that represented the defendants.

"While money was a factor – Mr. Nesbitt sought $15 million in damages – reputation was the primary concern at stake," Mr. Waggoner said. "Mr. Nesbitt alleged that Mr. Moller and Mr. Orfalea committed fraud, so this lawsuit allowed them to vindicate their positions in a court of law and keep intact their reputations as honorable businessmen.

“Mr. Nesbitt, on the other hand, has harmed his reputation in the community by suing two prominent people in the community, one of whom is one of Santa Barbara’s most philanthropic residents.”

The dispute arose from the sale of a hotel in Huntsville, Alabama in October 2015.

Mr. Nesbitt, CEO of a hotel management company called Windsor Capital Group, Inc., had the motel under contract for approximately 10 months between 2013 and 2014. But after failing to line up financing, Windsor fell out of contract and forfeited to Mr. Orfalea’s company its $550,000 deposit.

In May 2015, the hotel opportunity resurfaced.

Mr. Nesbittt contacted his acquaintance, Mr. Moller, who at the time was looking to complete a tax-deferred 1031 exchange. The two discussed the idea of working together on the hotel opportunity for a few weeks in May and June 2015, Mr. Waggoner said.

“Eventually, however, Mr. Moller realized that Mr. Nesbitt didn’t want to invest a lot of money into the transaction but sought about 40 percent of the upside,” he said. “Mr. Moller also discovered from speaking with other people in the Santa Barbara community that Mr. Nesbitt is notoriously litigious and a subpar hotel operator.

“As a result, Mr. Moller elected to purchase the hotel alone.”

Mr. Orfalea became involved because his company developed and owned the Bridge Street Town Centre, a bustling mixed use center in Huntsville, Ala., that includes the Westin hotel at issue in the lawsuit. The company owned the hotel between 2008 and 2015.

“He had no preexisting relationship with Mr. Moller and sold the hotel (back) to him in October 2015 because Mr. Moller was the most qualified buyer,” Mr. Waggoner said.

After Mr. Moller purchased the hotel, “Mr. Nesbitt alleged that he had entered into an oral joint agreement with Mr. Moller to acquire and redevelop the hotel, and that Mr. Moller breached that oral joint venture agreement by acquiring and redeveloping the hotel without him," Mr. Waggoner said.

"Mr. Nesbitt also alleged that Mr. Orfalea and his company conspired with Mr. Moller to cut out Mr. Nesbitt from the transaction."

That simply wasn't what happened, Mr. Waggoner said.

"There was no oral joint venture agreement. Mr. Moller and Mr. Nesbitt briefly discussed working together on the hotel opportunity, but they never came close to finalizing the details of the arrangement," he said.

"Further, Mr. Nesbitt told Mr. Orfalea's employee to 'keep the damn hotel' because he would never pay the asking price of $22 million.

"Mr. Orfalea stopped negotiating with Mr. Nesbitt after this exchange, and Mr. Nesbitt left for a month-long vacation in Europe a couple of days later. Mr. Moller was free to acquire the hotel on his own and Mr. Orfalea was free to sell the hotel to whomever he determined was the most qualified buyer."

After listening to both sides' arguments, the jury ruled in favor of the two defendants.

"This case ultimately came down to credibility," Mr. Waggoner said. "The jury found that Mr. Moller and Mr. Orfalea were far more credible than Mr. Nesbitt.

"Mr. Nesbitt was caught in several lies during the trial. For example, during the time period that Mr. Nesbitt alleged that an oral joint venture existed between Mr. Moller and him, Mr. Nesbitt was actively searching for joint venture partners and concealing this fact from Mr. Moller."

What's more, the plaintiff "significantly overstated" his friendship with Mr. Orfalea, Mr. Waggoner said, claiming that Mr. Orfalea conspired with Mr. Moller to cut out Mr. Nesbitt from the transaction.

“Mr. Nesbitt and Mr. Orfalea have been acquaintances for years, and are members of the ‘breakfast club’ that regularly meets at the pharmacy,” Mr. Waggoner said. “Mr. Nesbitt tried to portray a scene of two friends (Mr. Orfalea and Mr. Moller) working together to steal a business opportunity from him” when in truth both defendants testified at trial that they were – at most – acquaintances of Mr. Nesbitt, and that Mr. Nesbitt was lying about his characterization of their relationships.”

email: nhartstein@newspress.com