

# Daily Journal

FEBRUARY 15, 2023



## TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2022.

### Windsor Capital Group Inc. v. Moller et al.

A disputed deal between two Santa Barbara men to buy and redevelop a Westin hotel in Huntsville, Alabama, fell through and led to a \$15 million lawsuit — that also sought punitive damages — by a co-investor in the failed enterprise.

When the matter went to trial on claims by Windsor Capital Group’s CEO, Patrick Nesbitt, that there was an oral joint venture agreement between him and Dansk Investment Group to carry out the project. The complaint argued that Dansk proceeded to buy and redevelop the property without Windsor. *Windsor Capital Group Inc. v. Moller et al.*, 16CV05198 (S. Barbara Super. Ct., filed Nov. 17, 2016).

Representing Dansk and its chairman, John Moller, and a co-defendant, Ryan T. Waggoner of Allen Matkins Leck Gamble Mallory & Natsis LLP and David H. Stern of Baker &

Hostetler LLP led a team that secured a complete defense verdict.

Waggoner and Stern persuaded the jury that despite what the plaintiff said, there was no joint agreement. According to Waggoner, the only paperwork in existence was “an agreement to agree in the future,” but that such understandings are unenforceable under California law.

After presenting three weeks of testimony and documentary evidence, “what the jury took away was that there were term sheets and information about the hotel, but no agreement,” Waggoner said.

Added Stern: “We presented evidence that despite the plaintiff’s claims of a deal, he [Nesbitt] was shopping the project around to other investors.” Hard for the jury to swallow, the lawyers said, was the plaintiff’s contention that sophisticated business-



RYAN WAGGONER

men would agree to a \$20 million deal without documentation on paper.

To take a dry business dispute and make it relatable, Waggoner told jurors that “just because you’re dating doesn’t mean you’re married. There were certainly flirtations, but no commitment.”

The trial ran for six weeks and created a stir in the



PETER GRIFFIN

Santa Barbara business community, where the parties were well-known. “Reputations were at stake,” Waggoner said. An appeal is pending.

Lead plaintiff lawyer A. Barry Cappello of Cappello & Noel LLP pointed out the jury checked yes on the verdict form to indicate that the Moller defendants intended to deceive Windsor by concealing facts.

“The jury found that John Moller defrauded our client but that somehow there was no harm,” he said. “The disconnect was caused by errors in the instructions and an improper refusal to allow an amended complaint. We are confident judgment will be reversed on appeal.”

— JOHN ROEMER

#### Case Details

CASE NAME	Windsor Capital Group Inc. v. Moller et al.
TYPE OF CASE	Breach of oral agreement
COURT	Santa Barbara County
JUDGE(S)	Judge Donna G. Geck
PLAINTIFFS’ LAWYERS	Allen Matkins Leck Gamble Mallory & Natsis LLP, Ryan T. Waggoner, Peter A. Griffin, Baker & Hostetler LLP, David H. Stern
DEFENSE LAWYERS	Cappello & Noel, A. Barry Cappello, David L. Cousineau