

EMPLOYMENT**Compensation — Fraud — Breach of Fiduciary Duty****Struggling frozen food biz used employees to help cover costs****SETTLEMENT** **\$28,000**

CASE Antoine Assali, Marlene Assali et al v. LTT Gourmet Foods, Inc., et al, No. PC037200
COURT Superior Court of Los Angeles County, Chatsworth, CA
JUDGE John P. Farrell
DATE 9/11/2006

PLAINTIFF ATTORNEY(S) Terry A. Nelson, Nelson and Lawless, Huntington Beach, CA

DEFENSE ATTORNEY(S) Ronald S. Parsons, Woodland Hills, CA

FACTS & ALLEGATIONS In August 2003, plaintiffs Antoine and Marlene Assali, both sales managers, began working for long-time friends at the Chatsworth based LTT Gourmet Foods Inc.

The Assalis signed a contract with LTT for undisclosed salaries, which included benefits and commission that was based on their sales and marketing of the company's frozen meat, dessert, seafood and juice products.

The plaintiffs soon learned that the company had cash flow problems and by June 2004, the plaintiffs alleged they were owed substantial unpaid compensation and commissions.

The plaintiffs also directly loaned substantial amounts to LTT for payroll expenses and advanced additional substantial amounts to cover other employees' paychecks. Only a small portion of this money was paid back by LTT, according to the plaintiff's counsel. The defendant claimed it could cover the costs due to lack of funds.

The plaintiffs sued LTT Gourmet Foods Inc. for breach of employment and loan agreement, in addition to fraud.

According to the defense, there was no money owed for commissions and salary. When the plaintiffs terminated their employment with LTT, they signed a termination letter indicating they were owed no money for benefits, commissions and/or salary. This was not contested by the plaintiff's counsel.

In addition, LTT filed a cross complaint against the Assalis for Breach of Fiduciary Duty, Unfair Business Practices and violation of California Labor Code, Section 2860.

The cross complaint alleges that the Assalis copied and duplicated confidential records owned by LTT, which included but were not limited to customer lists, customers' finance agreements, customers' credit applications, customers' loan documents and credit reports.

It was alleged by the defense that after terminating their employment with LTT, the Assalis went to work for First National Lending Corporation, an Ohio based loaning firm,

where the Assalis solicited LTT customers for loans. Since the Assalis had LTT customer information, they could solicit LTT customers who they knew, by LTT's records, had good credit. LTT knew the Assalis were soliciting LTT customers, according to the defense, because some of those customers complained to LTT.

Both parties denied any wrong doing.

INJURIES/DAMAGES The plaintiffs sought the return of the funds lent to their employers, in addition to the money owed under the terms of their employee contracts.

RESULT A settlement was reached between the parties, comprised of both complaint and cross complaint, and the plaintiffs were awarded a combined \$28,000 to avoid spending the money on a trial.

—Michael Rehak

BREACH OF CONTRACT**Fraud — Oral Agreement****Lender claimed that debtor skipped out on oral agreement****VERDICT** **\$18,000**

CASE Dionisio Topacio v. Manuel Osmena, No. VC043969
COURT Superior Court of Los Angeles County, Norwalk, CA
JUDGE Thomas McKnew
DATE 8/28/2006

PLAINTIFF ATTORNEY(S) Norberto F. Reyes, III, Reyes & Associates, Anaheim, CA

DEFENSE ATTORNEY(S) Kelly Chang, Law Offices of Kelly Chang, Los Angeles, CA

FACTS & ALLEGATIONS In 1996, plaintiff Dionisio Topacio, 53, a businessman, allegedly made a loan to Manuel Osmena, defendant, in the amount of \$100,000 for his import-export business, in consideration of defendant's verbal promise to repay plaintiff \$120,000 after four months. Topacio met Osmena approximately two weeks earlier in California, and the plaintiff inquired to mutual associates and individuals in the area and Philippines (defendant's homeland) about Osmena's reputation, for whom they vouched. The plaintiff lent the money to the defendant confident that he would pay the money back as promised.

Plaintiff testified that Osmena provided him a check in the

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amount of \$120,000, which subsequently bounced. The defendant then wrote another check, in the amount of \$80,000, but that check too was issued with insufficient funds. The plaintiff alleged that he insisted on certified funds, and Osmena was able to pay Plaintiff \$68,000 in certified funds. Soon thereafter, Topacio claims that he demanded the remaining amount but was unable to contact the defendant. Through speaking with mutual associates, he discovered that Osmena returned to the Philippines in late 1996, where he resided.

In 2004, the plaintiff ran into the defendant during a social gathering. Osmena was in the process of restarting a new extermination business, and Topacio agreed to assist him by renting him office space on the condition that Osmena would repay the remaining \$52,000 balance of the 1996 loan, thus forming a new agreement. In October of that year, Topacio claimed that the defendant made a payment of \$500 to him. Later in 2004, plaintiff evicted Osmena from the office space for not making any additional payments on the 2004 agreement.

Claiming damages, Topacio sued Osmena for breach of contract and fraud, arguing that the defendant breached a contract made in 1996 when the defendant agreed to pay the plaintiff \$120,000 after lending Osmena \$100,000 and was committed fraud in 1996 by writing bad checks to him. Plaintiff also contended that the statute of limitations tolled while defendant was residing out of state per Code of Civil Procedure Section 351.

Plaintiff's counsel contended that the defendant breached the contract originally made with Topacio in 1996, and that another contract was agreed upon in 2004 for the repayment of \$51,500.

Defense counsel argued that no contract was ever made between the defendant and plaintiff, nor was there any money exchanged or borrowed. Defendant testified that he was imprisoned in the Philippines from 1996 to 2000 for writing bad checks. Defendant also testified that he had overstayed his tourist visa in the US since 2000, and that he was in the US illegally at the present time.

INJURIES/DAMAGES Topacio sought \$51,500 for the remaining balance of the \$120,000 that Osmena promised to pay in 1996 and the subsequent payment of \$500 in 2004.

Defense asserted that if there was any money exchanged or borrowed, plaintiff's claim was precluded by the statute of limitations. Defendant also claimed that the parties did not make a new agreement in 2004, and that the \$500 payment made by defendant was to repay a different obligation.

RESULT The judge ruled sua sponte that \$20,000 out of the original \$120,000 that defendant promised to pay plaintiff constituted usurious interest, and thus reduced the balance of \$51,500 to \$31,500. The judge also ruled that plaintiff's claims of fraud, and punitive damages, related only to defendant's conduct in 1996 and were thus barred by the statute of limitations. The jury found that there was a contract formed between the plaintiff and defendant in 1996; that both parties entered into a new agreement in 2004; that the defendant failed to meet that 2004 agreement; and that the plaintiff sustained damages in the amount of \$18,000.

DIONISIO TOPACIO \$18,000 punitive damages

OFFER None

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 2 days

POST-TRIAL Plaintiff filed a motion to vacate judgment because the jury erred in awarding \$18,000, which is inconsistent with the evidence that the contract obligated defendant to repay \$31,500. The court then vacated the judgment of \$18,000 and entered a new judgment in the amount of \$31,500.

—Aaron Jenkins

MOTOR VEHICLE

Broadside — Left Turn

Airbag deployment damaged hearing of sound engineer

VERDICT \$231,032

CASE Ryan D. Castle v. Jonathan Rude and June Rude, No. EC040243

COURT Superior Court of Los Angeles County, Central, CA

JUDGE Michael Mink

DATE 8/4/2006

PLAINTIFF ATTORNEY(S) Steven R. Goostrey, Gustafson & Goostrey LLP, Los Angeles, CA
James D. Gustafson, Gustafson & Goostrey LLP, Los Angeles, CA

DEFENSE ATTORNEY(S) P. Renee LoCascio, Doherty & Catlow, Los Angeles, CA

FACTS & ALLEGATIONS On Oct. 8, 2004 plaintiff Ryan Castle, a 29 year-old recording engineer, was driving his pickup east-bound near Hollywood Way on Van Owen St. in Burbank, when June Rude, 82, made a left turn into traffic and broadsided Castle. Both of Castle's airbags deployed.

Claiming injuries, Castle sued Rude for negligent operation of a motor vehicle. Castle also sued the owner of the vehicle, Rude's son, Jonathan Rude, for negligent entrustment due to the June Rude's age at the time that he allowed her to drive his car under the state permissive user law.

Defense counsel for June Rude conceded liability and Judge Michael Mink directed a defense verdict for the negligent entrustment cause of action. The matter went forward on disputed damages.