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Bonnie Scheele

Grand Traverse 13th Circuit Court

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

FRED TOPOUS, JR.,

Plaintiff / Counter-Defendant,

HON. THOMAS G. POWER
CIRCUIT COURT JUDGE

v

FILE NO. 12-28977-CB

CLARENCE K. GOMERY and GOMERY &
ASSOCIATES, PLLC,

Defendants/Counter-Plaintiffs

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JUDGMENT

At a session of this Court held on the 15th day of May, 2013, the jury having rendered the following verdict:

We the Jury find as follows:

CLAIM OF VIOLATION OF MRPC 1.8

1. Was Defendant Gomery the attorney for Plaintiff Topous when he entered into a business transaction with Plaintiff Topous or knowingly acquired an ownership interest adverse to Mr. Topous regarding the purchase of Mitchell Creek?

a. Yes X

b. No

If "Yes" go to 2. If "No" go to 6.

2. Was the transaction and terms described in the Operating Agreement fair and reasonable to Plaintiff Topous?

a. Yes

b. No X

3. Was the transaction and terms fully disclosed and transmitted to the client in a manner that could be reasonably understood by Plaintiff Topous?

a. Yes

b. No X

4. Was Plaintiff Topous given a reasonable opportunity to seek the advice of independent counsel?

a. Yes X

b. No

5. Did Plaintiff Topous consent to the transaction and terms in writing?

a. Yes

b. No X

**LEGAL MALPRACTICE CLAIM PERTAINING TO THE OPERATING AGREEMENT
AND/OR THE CASH PAYMENT**

6. Did Defendant Gomery breach the standard of care for Attorneys in one or more of the ways claimed by Plaintiff ?

a. Yes X

b. No

If "Yes" go to 7. If "No" go to 9.

7. Was the breach of the standard of care a proximate cause of:

A. Obtaining Plaintiff Topous' signature on the Operating Agreement?

i. Yes X

ii. No

B. Obtaining a Cash Payment from Plaintiff Topous?

i. Yes X

ii. No

If "Yes" to 7A. and/or 7B, go to 8. If "No" as to both 7A and 7B, go to 9

8. Was Plaintiff Topous damaged or injured as a result of the breach of care by the Defendant?

A. as to the Operating Agreement

i. Yes X

ii. No

B. as to the Cash Payment

i. Yes X

ii. No

CLAIMS OF FRAUD

9. Did Defendant Gomery make an intentional, knowingly false misrepresentation of material fact(s) upon which Plaintiff Topous relied to his detriment regarding:

A. The purpose of the Operating Agreement?

i. Yes

ii. No

B. The purpose for a Cash Payment?

i. Yes

ii. No

If "Yes" as to 9A and/or 9B go to 10. If "No" as to both 9A and 9B, go to 11

10. Was Plaintiff Topous damaged as a result of his reliance on the representation?

A. as to the Operating Agreement

i. Yes

ii. No

B. as to the Cash Payment

i. Yes

ii. No

SILENT FRAUD

11. Did Defendant fail to disclose material facts about the Operating Agreement, of which Defendant had actual knowledge with the intent to have Plaintiff Topous rely on the false impression?

a. Yes

b. No

If "Yes", Go to 12, If "No" Go to 13.

12. Did Plaintiff Topous rely on the false impression regarding the Operating Agreement to his detriment?

a. Yes

b. No

DAMAGES

If you answered "Yes" to 8A, 8B, 10A or 10B, or 12, Go to 13. Otherwise, go to II. Who is the owner of the subject property?

a. Plaintiff Topous

b. As set forth in the Operating Agreement

14. What is the amount of Plaintiff Topous' damages caused by his reliance on the misrepresentations concerning the cash payment?

\$ 25,000.

15. Was Defendant Gomery acting within the scope of his employment with Gomery and Associates during the relevant times?

a. Yes

b. No

II. COUNTER-CLAIM OF DEFENDANT GOMERY

We the Jury, find as follows:

Interference with a business expectancy:

1. Did Plaintiff intentionally and improperly interfere with Defendant Gomery's business relationship or expectancy with Graystone Catering and parties who sought to rent the Northern Meadows property for events.

a. Yes

b. No

If "yes", go to 2. In "no" go to 4

2. Was Defendant Gomery damaged as a result of Plaintiff's interference with the business relationship or expectancy with Graystone Catering and parties who sought to rent the Northern Meadows property for events?

a. Yes _____

b. No _____

If "yes", go to 3. If "no" go to 4

3. What is the amount of Defendant Gomery's damages caused by Plaintiff's interference with the business relationship or expectancy?

\$ _____.

Unjust Enrichment – if you answer (a) "Plaintiff Topous", on paragraph 13 of Plaintiff's Jury Questionnaire

4. What is the amount by which Plaintiff has been unjustly enriched by Defendant Gomery's improvements to the subject property?

\$ 13,377.38 _____.

Post judgment motions for costs and/or sanctions are reserved. It is so ordered.

Dated: _____



6/10/2013
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THOMAS G. POWER, CIRCUIT COURT JUDGE, P24270

The Honorable Thomas G. Power