

2021 WL 3008482 (Fla.Cir.Ct.) (Verdict and Settlement Summary)

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\$6.1M Award in Constructive Fraud, Money Lent Claims

Florida Circuit Court, Nineteenth Judicial Circuit, Martin County.

Bestenheider v. Parusa Inv. Corp.

Type of Case:

Fraud & Misrepresentation • Fraud

Fraud & Misrepresentation • Business

Specific Liability: Businesses, owner, failed to pay back a loan and fraudulently merged companies, causing damages

General Injury: Loss of funds and assets; compensatory damages

Jurisdiction:

State: Florida

County: Martin

Related Court Documents:

Plaintiffs' fourth amended complaint: [2015 WL 13902157](#)

Defendants' answer, affirmative defenses and counterclaim to fourth amended complaint: [2015 WL 13902151](#)

Plaintiffs' memorandum of law regarding issues of law for trial: [2021 WL 2434884](#)

Jury instructions: [2021 WL 2434885](#)

Verdict form: [2021 WL 2394384](#)

Case Name: Xavier Bestenheider, individually and as assignee, and Sixta Financial Inc. v. Parusa Investment Corporation f/k/a Positive Gourmet Inc. f/k/a Dry Beef Inc. a/k/a Parusa Investment Corporation and Roland Rothpletz

Docket/File Number: 43-2010-CA-002346

Trial Type: Jury

Verdict: Plaintiffs, \$6,065,787

Range Amount: \$5,000,000 - 999,999,999

Date of Filing: September 23, 2010

Verdict/Judgment Date: June 03, 2021

Judge: Robert Pegg

Attorneys:

Plaintiffs: [Scott Konopka](#), Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss P.A., Stuart, FL; [Donna L. Eng](#), Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss P.A., Stuart, FL; [John Dotterer](#), Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss P.A., Stuart, FL

Plaintiff: [Gregory S. Weiss](#), Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss P.A., Stuart, FL

Defendants: [Tim B. Wright](#), Wright, Ponsoldt & Lozeau, Trial Attorneys L.L.P., Stuart, FL

Experts:

Plaintiffs: Stuart Cohn, Corporations/Mergers/Acquisitions, Fredric G. Levin College of Law, University of Florida, Gainesville, FL; [Matthew Stohlman, C.P.A.](#), Forensic Accounting, Ellrich, Neal, Smith & Stohlman P.A., Palm Beach Gardens, FL; Paul Lester, Documentary Taxes, Law Offices of Paul A. Lester P.A., Miami, FL

Defendants: Alfred LaSorte Jr., Attorney, West Palm Beach, FL; Marian Nease, Attorney, Berger Singerman, Fort Lauderdale, FL

Defendant: Christophe Rothpletz, Tax and Accounting, Tampa, FL

Breakdown of Award:

\$5,565,786.80 to plaintiff Bestenheider, as assignee, from defendant Parusa for money lent

\$500,000.00 to plaintiff Bestenheider, as assignee, from defendant Rothpletz for constructive fraud

Summary of Facts:

Jacky Bestenheider and Roland Rothpletz reportedly formed and operated various companies for the sale of gourmet dry beef through their company Positively Gourmet Inc. (PGI). PGI was allegedly owned 50 percent by Rothpletz's company, Parusa Investment Corporation (Parusa I) and 50 percent by Jacky's company, Sixta Financial Inc. Jacky and Rothpletz allegedly agreed to equally fund PGI and equally share the profits. Rothpletz reportedly managed the day to day operations of the company. Parusa I and Sixta also allegedly each equally owned Pinewood Investment Corp., which owned property in Jupiter, Fla. Jacky reportedly gifted all his shares of Sixta to his six children, including Xavier Bestenheider Architect/Developer. PGI reportedly showed losses and Rothpletz allegedly asked Jacky for loans through Sixta. Jacky allegedly later told Rothpletz he would no longer lend PGI money due to the continuing losses. Rothpletz reportedly offered to have Parusa I buy Sixta's stock and assets, including its interest in PGI and Pinewood, assume Sixta's liabilities and pay back all the outstanding loans for \$500,000. The parties reportedly entered into an agreement in which Rothpletz agreed to purchase of Sixta's stock and assets, as well as the purchase of Pinewood and Positively Gourmet. The agreement also allegedly provided that Rothpletz would assume all of Sixta's liabilities. Jacky reportedly signed on behalf of all of his children as shareholders. Xavier claimed Rothpletz misrepresented that he would fully fund and continue the dry beef business through PGI and continue to operate the Jupiter property. Rothpletz also reportedly represented that if the Jupiter property was sold, the proceeds would be used to repay the loans to Jacky and amounts owed to Sixta's shareholders. Rothpletz further allegedly represented that he had not paid himself or Parusa I from PGI. Rothpletz, according to Xavier, paid himself consulting fees, distributions and other perks through PGI. Rothpletz and Parusa I reportedly failed to make payments under the agreement. Unknown to Jacky or the Sixta shareholders, also, Rothpletz allegedly filed documents merging Sixta into Parusa I. Parusa I was reportedly then merged into PGI and the name was changed to Parusa Investment Corporation (Parusa II). Rothpletz allegedly later also merged Pinewood into Parusa II. Xavier, as Jacky's assignee, reportedly demanded repayment of the loan. Parusa II allegedly later sold the Pinewood property and the buyer agreed to pay off the mortgage. Xavier claimed Parusa and Rothpletz failed to provide notice of the mortgage payoff or remit the proceeds from the sale for payment of the loans. Parusa allegedly later also transferred multiple assets and incurred obligations to Rothpletz.

The claims arose out of a business started in 1993, in Jupiter, Florida, to produce and sell European-style dry beef in the US. The business purchased real property, built out a processing facility and sold dry beef for 10 years, with both principals loaning more than \$4M each to the operations. In 2003, one principal, Mr. Bestenheider, wanted out, so the other principal, Roland Rothpletz, agreed to purchase Mr. Bestenheider's entity for \$500,000 and assume the loans and accrued interest made to the

entity by Mr. Bestenheider. Mr. Rothpletz never paid anything to Mr. Bestenheider thereafter, but did sell the real property that was owned, in part, by Mr. Bestenheider's business, for \$3.7M.

Xavier, individually and as Jacky and the Sixta shareholders' assignee, and Sixta, brought a fourth amended complaint against Parusa and Rothpletz. They asserted claims alleging fraudulent inducement, fraudulent transfer and fraud against the defendants. The plaintiffs also brought a claim against Parusa for money lent and constructive fraud against Rothpletz.

The plaintiffs sought compensatory damages and sought to avoid the transfers and attach the transferred assets. They also requested an injunction against further transfers and appointment of a receiver.

The defendants denied liability. They asserted Jacky misrepresented that he was the owner of Sixta stock and Jacky failed to deliver the shares, as well as legal documents and accounting books. The defendants further asserted in court documents that the agreement was invalid because only Jacky signed, not the shareholders of Sixta. According to court documents, the defendants asserted affirmative defenses, including laches, statute of limitations, lack of consideration, fraud, estoppel, failure to comply with conditions precedent, waiver, standing and prior breach of contract. They further claimed the contract with Sixta provided that Parusa was not required to repay the money lent unless materials were delivered. According to court documents, defendants further asserted Parusa I did not purchase Sixta's assets and Sixta was not merged into Parusa I.

The defendants also asserted a counterclaim against the plaintiffs.

Offer of Judgment for \$1.2M by Plaintiff

Jurors found in favor of the plaintiffs in the money lent claim against Parusa and in the constructive fraud claim against Rothpletz. They awarded a total of \$6,065,786.80 for damages.

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