

The New York Jury Verdict Reporter

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LEGAL MALPRACTICE — NEGLIGENCE AND BREACH OF FIDUCIARY DUTY OF UNDIVIDED LOYALTY IN REPRESENTATION OF FAMILY-OWNED REAL ESTATE COMPANY — PRE-JUDGMENT INTEREST — JURY ALSO AWARDS ATTORNEY'S FEES AND PUNITIVE DAMAGES

Janet Chang, as assignee of 207 Second Avenue Realty Corp. v. Lorraine Botsacos, as Ex. of the Est. of Thomas Cartelli 2242/86 11-day trial Verdict 10/10/02 New York Supreme

Judge: Louise Gruner Gans

Verdict: \$5,106,491, plus pre-judgment interest. Breakdown: \$1,930,491 in actual damages; \$3,000,000 for punitive damages; \$176,000 for legal fees. Jury: 1 male, 5 female.

Pltf. Atty: Daniel R. Wotman of Daniel R. Wotman & Associates, Manhattan

Def. Atty: William P. Larsen III and Lloyd J. Herman of D'Amato & Lynch, Manhattan

Facts: This legal malpractice action arose out of what plaintiff shareholder claimed were a series of negligent actions and breaches of fiduciary duty of undivided loyalty in connection with the (now deceased) defendant attorney's 12-year representation of a family-owned real estate company, which owned and operated the land and building at 207 Second Ave. and 13th St. in Manhattan. The corporation's legal malpractice claim was assigned to plaintiff in exchange for a dismissal of her claims against Ruby and Wilson Chang, who had no assets to satisfy any judgment against them, without payment and with prejudice. Defendant Cartelli had originally formed the corporation in 1979 with the issuance of 25% equal shares of common stock to each of its four shareholders, Wilson Chang and his wife Ruby Chang, and Wilson Chang's older brother Hsu Chang, and his wife, Janet Chang. When Janet Chang's husband, Hsu, died in 1982, she inherited his 25% shareholder interest in the corporation. Testimony indicated that Cartelli had also represented Wilson Chang individually for a number of years prior to the formation of the 207 Second Ave. Realty Corp.

Plaintiff claimed that Cartelli, while representing the corporation, had also assisted Wilson and Ruby Chang in illegally mortgaging the real estate owned by the corporation, diverting the mortgage proceeds for their own use, and diverting the rents from the commercial retail spaces owned by the corporation for their own use. Plaintiff claimed that Cartelli, as attorney for the corporation, acted in a wanton and reckless manner and with indifference to the interests of the corporation.

Cartelli's prior statement at a special referee's hearing in February 1991, in which he stated that he prepared stubs and stock certificates reflecting the issuance of the additional shares of stock, was read to the jury. Defendant argued that Cartelli met the minimum standards of an attorney practicing in this area of the law, and that he was not responsible for overseeing the collection and expenditure of corporate funds. Defendant further contended that he could not be held responsible for anything to do with rents once a receiver was in place in 1992, and contended that because Wilson and Ruby Chang diverted the mortgage proceeds and rents, the attorney should not be held accountable for such defalcations. Defendant's expert testified that there is no duty on the part of a corporate attorney representing a small closely-held corporation to second-guess assertions of the primary corporate contact for a client and to actually determine whether a duly noticed meeting had been called, whether a quorum was present, and whether a vote was taken on the particular proposed corporate transaction.

The jury specifically found that Cartelli committed legal malpractice by actively assisting Wilson and Ruby Chang in obtaining majority control over the corporation by changing the corporation's stock register to reflect the issuance of additional shares of stock to Wilson and Ruby without proper corporate authorization and consent of the other 50% shareholder and director, plaintiff Janet Chang. The jury also found that Cartelli had assisted Wilson and Ruby in obtaining a series of mortgage loans in the name of 207 Second Ave. Realty Corp. over an 8-year-period from various banks without proper corporate authorization and consent from plaintiff, the director

and 50% shareholder. The loans eventually went into default and the building is presently in foreclosure. The jury found that Wilson and Ruby Chang diverted the proceeds of these mortgage loans for their own benefit and not the benefit of the corporation. In addition, the jury found that Cartelli was negligent and breached his fiduciary duties of undivided loyalty as attorney for the corporation by assisting Wilson Chang individually in obtaining leases and subleases of the two principal commercial retail spaces in the building for his own benefit without proper corporate authorization and without plaintiff's knowledge and consent, and found that Wilson Chang had diverted these rents from the commercial spaces instead of turning the rents over to the corporation. Demonstrative evidence: two enlarged pictures of the building. Jury deliberation: 5 hours. Carrier: Home Insurance Co., in supervision under the New Hampshire Dept. of Insurance.

Pltf. Expert(s): Steven W. Schuster, attorney, of McLaughlin & Stern, L.L.P., Manhattan, on New York's Business Corporations Law; Charles Walsh, real estate broker, Apartments Unlimited, Inc., Manhattan (on fair market value for rent of commercial and residential space in building).

Def. Expert(s): Richard F. Horowitz, attorney, Manhattan (on responsibilities of attorneys representing small closely-held corporations).