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Florida Appeals Court Ruling Could 'Enslave' Former Business Partners in Years of Litigation, Attorneys Say



Fort Lauderdale attorney Donna Greenspan Solomon, of Solomon Appeals, Mediation & Arbitration, left, and Mark R. Osherow, of Osherow in Boca Raton, right. Courtesy photos

"In the Taubenfeld decision, Judge Gross has taken the bitter herbs of this commercial dispute and taught a brilliant lesson about pleading causes of action for breach of fiduciary duty, conversion and aiding and abetting," attorney Bruce Rogow said.

August 16, 2021 at 03:07 PM

[Jasmine Floyd](#) →

Civil Appeals

🕒 4 minute read

What You Need to Know

- The appellate court found that a heightened pleading requirement was not required on one of the claims but the complaint satisfied heightened pleading in any event.
- It was a great victory because it was very difficult for the appellant client to lose the case like this with an outright dismissal
- The appellant's attorney's had to bring an appeal to get the vindication to be able to proceed.

Entrepreneurs who break up with their business partners could be tied up in years of litigation, following a ruling from a Florida appeals court, some attorneys say.

Florida's Fourth District Court of Appeals reversed a lower tribunal that dismissed with prejudice a lawsuit suing a travel company executive for breach of fiduciary duty.

The trial court had found arguments from Johnathan Lasko, an operating officer and vice president of Passover FB Inc., weren't specific enough to defend against his business partner and company president, Harry Taubenfeld. The court decided that allegations Taubenfeld made weren't supportive to his argument that Lasko had sufficient notice of the specific duty he owed to Passover FB and the connection between him and the damage to the business.

On appeal, the Fourth District rejected Lasko's argument that he was a former officer who no longer owed a fiduciary duty to Passover FB. This argument was not raised in their motion to dismiss. Nor was it a basis for the trial court's ruling, according to the decision.

Taubenfeld and Lasko, who served as vice president of Passover FB, were 50% shareholders of the company, which did business under the name of Lasko Kosher Getaways and organized high-end trips at luxury hotels during Passover holidays. There were no shareholder agreements between the two parties, and no bylaws existed for Passover FB, according to the ruling.

Taubenfeld's complaint— filed by Boca Raton attorney Mark Osherow of Osherow and Donna Greenspan Solomon of Solomon Appeals, Mediation & Arbitration in Fort Lauderdale—also asserted claims against Lasko's family members who worked for the company or served as his agents. The complaint named Lasko's father Sam, mother Arlene and brother Avi.

Sam and Arlene held annual Passover events through Lasko family Kosher Tours Inc. However, when they fell into a \$2 million debt, Taubenfeld claims he rescued the business by agreeing to become a 50% owner of the new corporation. Passover FB took ownership of all its assets.

In 2017, Taubenfeld and Lasko's relationship began to diminish, according to the filing. In the same year, American Express acquired a judgment for over \$750,000 confirming an arbitration award against Taubenfeld over an unpaid credit card bill for another corporation.

On Dec. 1, 2017, Lasko took over management of Passover FB and made an operational business decision by removing Taubenfeld as president of the company. Taubenfeld then filed the fourth amended complaint as a suit on behalf of Passover FB against Johnathan, Sam, Arlene, Avi and Lasko Getaways for breach of fiduciary duty.

In dismissing the complaint with prejudice, the circuit court found there wasn't enough reasoning for the actual damage Lasko had caused to Passover FB. In the Wednesday opinion authored by Fourth DCA Judge Robert M. Gross on behalf of Chief Judge Burton C. Connor and Judge Martha Warner, the court reversed the orders of dismissal and remanded the case.

Osherow said to always believe in your case especially when you truly believe you are right.

Greenspan Solomon said, "It is generally more difficult to prevail as the appellant, as we were, than the appellee. Fortunately, we had an excellent trial attorney, which is critical."

A lesson to be learned

Bruce Rogow, of The Law Office of Bruce S. Rogow, is not involved in the case. But Rogow said he agrees with the Fourth District Court of Appeal ruling.

"In the *Taubenfeld* decision, Judge Gross has taken the bitter herbs of this commercial dispute and taught a brilliant lesson about pleading causes of action for breach of fiduciary duty, conversion and aiding and abetting," Rogow said. "The decision will be required reading for commercial litigators and a reminder for business partners that an exodus from a business relationship can lead to being enslaved in court proceedings for years."

Bruce Rogow of the Law Office of
Bruce S. Rogow in Fort Lauderdale..
Photo: MelanieBell/ALM.

Miami attorneys Adam M. Schachter, Gerald E. Greenberg, Freddy Funes and Mikayla Espinosa of Gelber Schachter & Greenberg, who represented the appellees, did not respond to requests for comment by press time.

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