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A Sweet Deal?

Former Law Partners Duke It Out Over Lucrative Gas Deal



Gregg Laswell (above) represents Robert B. Allen in the litigation.

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Decades ago, Trevor Rees-Jones offered his former law partner Robert B. Allen a business deal that later earned Allen \$8.2 million. Yet on July 28, Houston's 1st Court of Appeals allowed a suit to go forward in which Allen alleges if not for Rees-Jones' "fraud," Allen would be \$100 million richer.

The story of the two former Thompson & Knight partners, according to the 1st Court's decision in *Allen v. Devon Energy Holdings, et al.*, is as follows: In the early 1980s, Rees-Jones, a bankruptcy lawyer, and Allen, an oil and gas transactions lawyer, became friends while working at the firm. In 1984, Rees-Jones left his practice and went into the oil and gas business. Ten years later, Rees-Jones formed a company to pursue natural gas exploration and production in North Texas. He solicited Allen to invest in the company and Allen became an 8 percent equity owner in return for his \$700 investment and a \$34,300 certificate of deposit that was collateral for a line of credit.

Rees-Jones' company, Chief Holdings, became successful due to its activity in

the Barnett Shale, a geological formation near Fort Worth. By 2001, the company's fair market value had grown to \$8.5 million. That same year, Chief offered its investors a partial buyout so two key employees could participate in a stock ownership plan. Allen accepted the offer to redeem 10 percent of his investment, reducing his interest in the company to 7.2 percent in exchange for more than \$62,000.

The 1st Court noted that in 2003, Rees-Jones called Allen to tell him that Chief was offering to redeem the investors' remaining stock. Rees-Jones later sent Allen a letter with supporting documents that showed discounts for the sale of a minority interest and that Chief had a net asset value of \$183.3 million.

Chief offered Allen approximately \$8.2 million for his 7.2 percent interest in the company. In June 2004, Allen accepted the deal. In November 2005, Chief announced it was for sale. Though Chief redeemed Allen's interest based on a \$138.3 million valuation, Devon Energy purchased Chief for \$2.6 billion in May 2006. Had Allen waited, his interest in the company would have been worth over \$100 million more than Chief paid him, the 1st Court wrote.

Allen sued Rees-Jones and Devon, alleging that Rees-Jones and Chief made misrepresentations and failed to disclose facts relevant to his determination of whether to redeem his interest, according to the 1st Court's opinion. Allen alleged fraud by nondisclosure, breach of fiduciary duty, and shareholder oppres-

sion, among other things.

Allen alleged that Rees-Jones failed to tell him about financial reports about the Barnett Shale's potential productivity that substantially increased the value of Chief prior to its sale, the 1st Court wrote. Had that information been disclosed to him, Allen alleges, he never would have sold his interest in the company.

According to the 1st Court's opinion, Rees-Jones alleges that the sale price two years after Allen's redemption reflected changing market conditions and improvements in technology that were speculative at the time of the redemption. Allen, as a sophisticated investor and oil and gas lawyer, knew those changes were possible and was given the opportunity to obtain any additional information he wanted. Rees-Jones further alleged that Allen preferred not to assume those risks and instead cashed out his modest investment in Chief into a lottery-size windfall that paid him \$8 million.

Rees-Jones and Devon filed motions for summary judgment alleging, among other things, that disclaimers and other provisions in the redemption agreement barred Allen's fraud claim as a matter of law. The 190th District Court in Houston granted the motions, and Allen appealed those rulings.

The Decision

In its July 28 opinion, the 1st Court found that the redemption agreement does not bar Allen's claims, and a fact issue exists as to fraud and the existence of a fiduciary relationship. But the 1st

Court held that the trial court properly granted the defendants' summary judgment motions on Allen's shareholder oppression claim.

"Rees-Jones and Devon have misconstrued the nature of Allen's claim. Allen's fraud by non-disclosure claim is not that Chief and Rees-Jones omitted material facts about Chief's value; instead, he claims that Chief and Rees-Jones omitted material facts bearing on his decision whether to redeem his interest at all, including information regarding Chief's future," wrote 1st Court Justice Harvey Brown, joined by Justice Laura Carter Higley and Judge Joseph "Tad" Halbach of the 333rd District Court in Houston, who was sitting by assignment.

"Allen contends that for a founding investor in a start-up company, the question is not only whether the price offered for his interest is fair, but whether the investor would be better-off in the long run if he retained his interest. While the omitted information is material in its impact on Chief's value, a jury could decide that the omitted information is also material apart from its impact on Chief's value," Brown wrote, reversing and remanding the case to the trial court.

Allen, now in-house counsel at Helis Oil & Gas in Houston, declines to comment. But Gregg Laswell, a partner in Houston's Hicks Thomas who represents Allen, says he is pleased with the 1st Court's decision.

"The bottom line is that certain events in the Barnett Shale had not been disclosed to Allen before the redemption and those events really made the profits and the company much different than what had been explained to him," says Laswell. He adds that Allen has not yet



"Rees-Jones and Devon have misconstrued the nature of Allen's claim," wrote 1st Court Justice Harvey Brown (above).

decided whether to appeal the 1st Court's decision to affirm summary judgment for the defendants on Allen's shareholder oppression claim.

Laswell says Allen's initial investment in the company was important and valuable. "It's kind of like the old tale — the wife who puts the husband through law school and then [he] dumps her. This company wouldn't have ever got off the ground without this initial investment," Laswell says.

Rees-Jones declines comment, but his lawyer, Thompson & Knight partner Craig Haynes of Dallas, writes in a statement: "We disagree with the court's opinion that some of the claims should be allowed to move forward, and plan to request a rehearing. We strongly believe that Texas law supports the trial court's ruling that barred all of Mr. Allen's claims as a matter of law."

Charles Schwartz, a partner in the Houston office of Skadden, Arps, Slate, Meagher & Flom who represents Devon, says his client plans to appeal. "I think it's likely that we would move for rehearing and equally likely if that's denied that we'll seek review at the Texas Supreme Court, he says.

Schwartz adds that "Devon is not accused of doing anything — we're just in the case because we're the successor to Chief. And we're fully indemnified by Trevor Rees-Jones." 