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CIRCUIT COURT City settles with Travelers, manager

Boca Raton accepts \$4.6 million for delay of city library project

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Boca Raton reached a \$4.6 million settlement during trial with Travelers Casualty & Surety and a project management firm that left the city to finish an \$11 million library project on its own.

A Palm Beach Circuit Court trial scheduled to last five weeks ended in its third week before Boca Raton started calling witnesses, and the City Council voted unanimously Monday to accept the terms.

Travelers will pay \$3.55 million and project manager Harvard Jolly Architecture agreed to pay \$1.05 million, said the city's trial attorney, Michael S. Popok of Weiss Serota Helfman Pastoriza Cole & Boniske in Coral Gables.

It's unusual for a municipal defendant on a major construction dispute to exit with a fat check, he said. Popok credited an effective cross-examination by his team, which included Matthew Mandel, in showing jurors the plaintiff case had a lot of difficulties.

Plaintiff testimony indicated damages of \$1.2 million, Popok said. By comparison, Boca Raton contended it spent \$5.4 million completing the Spanish River library and community center.

The city claimed Travelers, as the performance bond issuer, didn't properly evaluate SFCS, the Hallandale Beach-based contractor that started the project.

When the city fired SFCS for what it considered unreasonable delays, Travelers failed to either finish the project or to reimburse the city.

"Travelers decided early on to side with SFCS in order to save themselves the \$7.6 million bond," Popok said.

The defense also exposed a similar case where SFCS left a port terminal project, then sued the public entity and won damages. "I'm not sure that was a knockout blow, but it was devastating to their case," Popok said.

SFCS reached an undisclosed side agreement with Travelers and dropped its suit against the city.

SFCS initiated the litigation in 2006, claiming it was wrongfully terminated. The contractor claimed delays were caused by the city and the weather. SFCS also claimed Boca Raton added costly changes for which SFCS was not reimbursed or given additional time to complete.

The contractor's co-counsel, Alexander Williams Jr. of Ferencik Libanoff Brandt Bustamante & Williams of Fort Lauderdale, did not return a call for comment by deadline.

Travelers was represented by Alberta Adams of Mills Pasker Divers in Tampa. Harvard Jolly's counsel was George Truitt Jr. at Cole Scott & Kissane in Miami. The attorneys did not return calls for comment by deadline.

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Jury sides with Joe's Stone Crab in business dispute

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A Miami jury sided with Joe's Stone Crab in a dispute with a Hollywood lawyer over marketing rights to products using the restaurant's brand.

Joe's lawyers, Robert Hertzberg, Joe Serota and Amy Santiago discuss the case.

They were best friends since meeting at a Miami day camp when they were 7. Over the next four decades, the two men grew to trust one another's business skills enough to launch what promised to be a food line unlike any other.

That's why it was so stunning when Hollywood attorney Jeffrey Frantz turned on Joe's Stone Crab executive Stephen Sawitz in 2007, filing a lawsuit alleging his friend waged a war against their joint venture.

But it was Sawitz and his family-run Joe's Stone Crab restaurant in Miami Beach that emerged victorious Tuesday, with a Miami-Dade Circuit jury rejecting Frantz's demand for \$19 million in damages on breach of contract claims.

The restaurant's attorneys convinced jurors the food line failed because Frantz and Sawitz ran out of cash, not because the restaurant violated a 2004 license and marketing agreement.

"Neither Joe's nor Steve did anything wrong. They did their best," said Miami litigator Robert Hertzberg, the restaurant's general counsel.

Frantz and his attorney declined comment as they left the courtroom.

The restaurant's win came days after the start of the annual stone crab season.

Sawitz, who runs the restaurant with his mother, Jo Ann Bass, said losing the case "would have been severe" and possibly put the 97-year-old company out of business.

Launching the Venture

Frantz and Sawitz joined forces in 2003 to create Caché Foods because of the restaurant's outstanding reputation. They met as children at a Miami Country Day School camp, grew up together and dreamed for years about launching a company that would distribute the famed restaurant's dishes



L-R: Robert D. Hertzberg, Amy Santiago and Joe Serota
 Photo by J. Albert Diaz

in supermarkets nationwide.

They relied on Sawitz's knowledge of the restaurant business and the business know-how of Frantz, president and sole owner of Tella-Tech, which manufactures oral care products such as the Reliident Electric Toothbrush.

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Together, they reached out to Publix and Costco Wholesale and developed plans to package the food. Caché obtained a marketing agreement in 2004 to gain exclusive rights to the restaurant's recipes and its brand, and the restaurant was promised a 4 percent royalty on sales.

But in the months that followed, the venture ran into roadblocks that kept it from launching. Food laboratories couldn't get many items past the testing phase due to problems with taste or texture.

Time and time again, the restaurant and Sawitz refused to approve mass production of items such as creamed spinach, crab artichoke dip and sweet potato soufflé.

E-mail between Frantz and Sawitz show both reasoned that launching an inferior product would destroy the Joe's Stone Crab brand, which they relied on for success.

But three years after the pair created the company, they found themselves still waiting for revenue, as the costs of food testing, packaging and marketing began to add up. They collectively invested more than \$700,000 and weren't willing to funnel more into the business.

By early 2007, Caché was all but dead. The duo's friendship became strained, and e-mail between them indicated Frantz was stunned when Sawitz suggested they admit defeat. The situation worsened when Sawitz sent Frantz a video in which he called the attorney an "imbecile."

Frantz sued later that year, alleging his friend and the restaurant conspired to ruin the venture.

Signature Dishes

Miami-Dade Circuit Judge Gill Freeman, who oversees the court's complex litigation matters, presided over the three-week trial.

Frantz's attorney, Eric Isicoff of Isicoff Ragatz & Koenigsberg in Miami, carefully detailed many concerns the partners had while developing foods for mass production. He explained how chemicals and mechanical processes affected the creation of soups, pies and the restaurant's famous mustard sauce.

Isicoff argued Sawitz and the restaurant unreasonably held back product approval and production, costing Caché what could have been a multimillion-dollar revenue stream in violation of their contracts. Isicoff deemed the insulting video proof of Sawitz's lack of cooperation.

"Every time they were at the doorstep ready to go ... they chose to not honor this agreement. Not one signature dish was launched, and there's simply no justification," Isicoff told jurors. "For whatever reasons, the plug was pulled, and the business was killed."

Joe Serota and Ed Guedes of Weiss Serota Helfman Pastoriza Cole & Boniske in Coral Gables represented Sawitz. They accused Frantz of relying on a few e-mails and the video to mischaracterize the business relationship.

"Why would somebody invest hundreds of thousands of dollars and hundreds of hours into a company and then try to destroy it?" Serota asked jurors. "The old friends got into a business neither knew much about. They made mistakes together, they ran out of money, they couldn't find other people to invest money, and the business failed."

During a deposition, Sawitz offered a similar explanation, saying, "I think we needed a mentor, somebody who could have helped us, someone who'd been down the path before."

Hertzberg also accused Frantz of lying about product holds. He showed jurors e-mails from Frantz showing he thought the development of some products, such as the mustard sauce, was still problematic in 2006. During trial, Frantz claimed the sauce was ready in 2004.

"Was he telling the truth then and lying now, or was he lying then and telling the truth now?" Hertzberg asked jurors, flinging his arms into the air.

Isicoff asked jurors to award Frantz the value Caché would have had if the products were approved — an estimated \$19.08 million.

After deliberating for about two hours, jurors sided with Sawitz and the restaurant on all counts, giving the restaurant's owners cause for celebration during their first week open since taking their annual summer break.

Sawitz, who like Frantz is now 53, said his former partner destroyed their lifelong friendship because, "to Mr. Frantz, this outweighed that," first holding up his wallet, then pointing to his heart.

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