

*** UNCERTIFIED ROUGH DRAFT ***

UNEDITED ROUGH DRAFT OF JURY'S VERDICT

TAKEN ON 02/21/2023

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*** UNCERTIFIED ROUGH DRAFT ***

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Sue Perry Scott, Texas CSR No. 4083, RDR, CRR, Official Court Reporter for the Honorable Dawn Rogers, Judge Presiding in the 334th Civil District Court of Harris County, Texas.

PLEASE NOTE: This draft transcript DOES NOT contain any conference(s) held at the bench.

THE BAILIFF: All rise for the jury.
(The jury is present.)

THE COURT: Hi, everyone, how are you?

JURORS: Good.

THE COURT: Everyone may be seated.

03:48PM

03:48PM

*** UNCERTIFIED ROUGH DRAFT ***

1 Okay. It's my understanding that the jury has a
2 verdict. Is that correct?
3

4 JUROR: We do, Your Honor.

5 THE COURT: And you're the presiding
6 juror, sir?

7 JUROR: Yes, Your Honor.

8 THE COURT: All right. Could you please
9 hand it to the Deputy? Thank you.

10 Thank you, sir.

11 THE BAILIFF: You're welcome.

12 THE COURT: Okay. So I'm going to go
13 through each question in the verdict for the record.

14 Question 1: Did Kay fail to comply with
15 the MOA? Answer, yes.

16 Question 2: Did Yosowitz fail to comply
17 with the MOA? Answer, no.

18 Question 3 was not answered.

19 Question 4: Was Kay's failure to comply
20 with the MOA excused? Answer, no.

21 Question 5 was not answered.

22 Question 6: Did Kay fail to comply with
23 Section 2.5, titled Disposition of Jointly Held Property
24 Interest, in the AID? Answer, yes.

25 Question 7: Did Yosowitz fail to comply

*** UNCERTIFIED ROUGH DRAFT ***

with Section 2.5, titled Disposition of Jointly Held Property Interest, in the AID? Answer, no.

Question 8 was not answered.

Question 9: Was Kay's failure to comply with the AID excused? Answer, no.

03:49PM

Question 10 was not answered.

Question 11: Did a relationship of trust and confidence exist between Kay and Yosowitz with respect to Yosowitz's interest in the Y-K Greenlet Interest on or after October 18th, 2016? Answer, yes.

03:50PM

Question 12: Did Kay fail to comply with his fiduciary duties, if any, to Yosowitz's interest pursuant to the MOA? Answer, yes.

Question 13: Was Kay's failure to comply with his fiduciary duties to Yosowitz excused? Answer, no.

03:50PM

Question 14: Since the date the MOA was signed, has Yosowitz been a member or a noneconomic member of Greenlet LLC? Answer, yes.

03:51PM

Answer 15 [sic]: Did Kay fail to comply with his fiduciary duties to Greenlet by doing any of the following: Part 1, failing to act in the utmost good faith and exercising the most scrupulous honesty towards Greenlet? Answer, yes. Part 2, failing to

03:51PM

1 *** UNCERTIFIED ROUGH DRAFT ***

2 place the interest of Greenlet before his own and not
3 using the advantage of his position to gain any benefit
4 for himself at Greenlet's expense? Answer, yes.

5 Part 3, misappropriating Greenlet's
6 funds? Answer, yes.

7 Part 4, exploiting Greenlet's business
8 opportunity or opportunities? Answer, yes.

9 Question 16: Was Kay's failure to comply
10 with his fiduciary duties excused? Answer, no.

11 Next to both parties, failure to comply
12 by Kay is excused if Greenlet remained silent when there
13 was a duty to speak, with knowledge of the facts or
14 knowledge or information that would lead a reasonable
15 person to discover the facts, and with the intention
16 that Kay would rely on the silence in acting or deciding
17 not to act, and Kay did not know and had no means of
18 knowing the real facts, and relied to his detriment on
19 the silence regarding such material facts. That was
20 answered no.

21 And then: Failure to comply by Kay is
22 excused if compliance was waived by majority of
23 non-interested members of Greenlet. Waiver is the
24 intentional surrender of a known right or intentional
25 conduct inconsistent with claiming the right. Answer no

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 to that one as well.

3 Question 17: Did Kay commit fraud
4 against Yosowitz? Answer, yes.

5 Question 18: What sum of money, if any,
6 if paid now in cash, would fairly and reasonably
7 compensate Yosowitz for her damages, if any, that
8 resulted from Kay's failure to comply with the MOA? The
9 answer, \$4,961,232.97.

10 And I see that there's actually a
11 breakdown of that amount here. It's indicated that
12 750,000 of that was from the children's trust, and then
13 the remainder, \$4,211,232.97. But the actual answer in
14 the space reads \$4,961,232.97.

15 There's no answer to question 19.

16 Question 20: What sum of money, if any,
17 if paid now in cash, would fairly and reasonably
18 compensate Yosowitz for her damages, if any, that
19 resulted from Kay's failure to comply with the AID?
20 Answer, \$378,470.08.

21 Question 21: What sum of money, if any,
22 if paid now in cash, would fairly and reasonably
23 compensate Kay for damages, if any, that resulted from
24 such a failure to comply? There's no answer here. I
25 see that that was scratched out, so no answer to

03:53PM

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*** UNCERTIFIED ROUGH DRAFT ***

question 21.

Question 22: What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Yosowitz for her damages, if any, that were proximately caused by Kay's failure to comply with his fiduciary duties to Yosowitz? Answer, 9,000,998 dollars and 95 cents.

MR. BAILEY: I'm sorry, can you read that number again?

THE COURT: \$9,000 998.95.

Question 23: Did Kay wrongfully obtain assets as a result of his failure, if any, to comply with his fiduciary duties to Yosowitz? Answer, yes.

Question 24: What was the amount of Kay's profit, salary, or income in failing to comply with his fiduciary duty to Yosowitz? Answer, \$84,923.75.

Question 25: What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Greenlet for its damages, if any, that were proximately caused by Kay's breach of fiduciary duties?

Part 1: If you answered yes to question 15, parts 1 or 2, then answer the following question. Otherwise, do not answer the following

1 *** UNCERTIFIED ROUGH DRAFT ***

2 question. The answer to part 1, \$138207,643.66. Did
3 you-all get that?

4 MR. BAILEY: Read it one more time, I'm
5 sorry. 03:56PM

6 THE COURT: Actually, I'm going to call
7 out the numbers. 1-3-8-2-0-7-6-4-3 and 66 cents.
8 \$138,207,643.66.

9 To question 2, if you answered yes to
10 question 15 part 3, then answer the following question. 03:57PM
11 The answer here was \$70,880.23.

12 If you answered yes to question 15, part
13 4, then answer the following question. The answer here
14 was zero dollars.

15 Question 26: Did Kay wrongfully obtain 03:57PM
16 assets as a result of his failure to comply with his
17 fiduciary duties to Greenlet? The answer, yes.

18 Question 27: What was the amount of
19 Kay's profit, salary or income in failing to comply with
20 his fiduciary duty to Greenlet? Answer, \$84,923.75. 03:58PM

21 Question 28: What sum of money, if any,
22 if paid now in cash, would fairly and reasonably
23 compensate Yosowitz for her damages, if any, that were
24 proximately caused by Kay's fraud? Answer,
25 \$4,211,232.97. 03:58PM

1 *** UNCERTIFIED ROUGH DRAFT ***

2 Answer 29: Do you find by clear and
3 convincing evidence that the harm to Yosowitz resulted
4 from malice or from fraud, if any, found by you in
5 question 12? The answer, no.

03:58PM

6 Question 30 was skipped, no answer.

7 Question 31 was skipped, no answer.

8 The verdict certificate indicates that
9 the verdict was not unanimous. 11 have agreed to each
10 and every one of the answers and we have the signatures
11 of the 11 jurors.

03:59PM

12 Now, I do have a signature page here
13 where the jurors were told that they were to sign only
14 if they unanimously answered yes to question 12, so I do
15 have 12 signatures as to this signature page.

03:59PM

16 The signature page that indicates that
17 they are to answer yes or to sign only if they
18 unanimously answered yes to question 15 is blank. And
19 then the signature page that the jurors were to sign if
20 they unanimously answered yes to question 17 does have
21 12 signatures.

04:00PM

22 We may need to revisit that.

23 Okay. So for question 12, again, the
24 question was, did Kay fail to comply with his fiduciary
25 duties, if any, to Yosowitz's interest pursuant to the

04:00PM

*** UNCERTIFIED ROUGH DRAFT ***

1 MOA? And the answer was yes, and, according to this
2 signature page, all 12 jurors did agree this was a
3 unanimous decision as to question 12.
4

5 Question 17 read, did Kay commit fraud
6 against Yosowitz? The answer was yes, and there was
7 all -- this was, again, a unanimous vote by the jurors,
8 they all signed the signature page. I just wanted to
9 make sure that was clear for anybody.

10 Are there any motions from the attorneys
11 at this time?

12 MR. BAILEY: Can we poll the jury?

13 THE COURT: Yes. So, members of the
14 jury, because this was not a unanimous verdict, there
15 has been a motion to poll the jury.

16 So, basically, what that means is that if
17 you agree with the verdict, then you're just going to
18 stand and say "agree"; and if you were the one who did
19 not agree, then you will say "do not agree." So we're
20 going to start with juror number one.

21 JUROR 1: Agree.

22 THE COURT: Two?

23 JUROR 2: Agree.

24 THE COURT: Three?

25 JUROR 3: Agree.

1 *** UNCERTIFIED ROUGH DRAFT ***

2 THE COURT: Four?

3 JUROR 4: Agree.

4 THE COURT: Five?

5 JUROR 5: Agree.

04:01PM

6 THE COURT: Six? Well, were you six the
7 whole time?

8 JUROR: I'm number 10.

9 THE COURT: Okay, we'll come back to you.

10 Six?

04:02PM

11 JUROR: I was 4.

12 THE COURT: Okay, so let's do it this
13 way. I'm going to call -- I know you're not sitting in
14 the right places; but for purposes of the record, just
15 whatever your number was the entire trial, that's when
16 you speak up.

04:02PM

17 So, juror number 1?

18 JUROR 1: Agree.

19 THE COURT: Number 2?

20 JUROR 2: Agree.

04:02PM

21 THE COURT: Number 3?

22 JUROR 3: Agree.

23 THE COURT: Number 4?

24 JUROR 4: Agree.

25 THE COURT: Number 5?

04:02PM

1 *** UNCERTIFIED ROUGH DRAFT ***

2 JUROR 5: Agree.

3 THE COURT: Number 6?

4 JUROR 6: Agree.

5 THE COURT: Number 7?

04:02PM

6 JUROR 7: Agree.

7 THE COURT: Number 8?

8 JUROR 8: Agree.

9 THE COURT: Number 9?

10 JUROR 9: Agree.

04:02PM

11 THE COURT: Number 10?

12 JUROR 10: Agree.

13 THE COURT: Number 11?

14 JUROR 11: Disagree.

15 THE COURT: Number 12?

04:02PM

16 JUROR 12: Agree.

17 THE COURT: Okay. Thank you. Any other
18 motions by the parties?

19 MR. BURFORD: Judge, we'd ask that you
20 accept the jury verdict.

04:02PM

21 THE COURT: Okay. The verdict is so
22 accepted.

23 All right. So, members of the jury --
24 and just so I'm clear on something, I'm going to turn on
25 the white noise briefly.

04:02PM

1 *** UNCERTIFIED ROUGH DRAFT ***

2 (Conference at the bench, off the
3 record.)

4 (Bench conference concluded.)

5 THE COURT: Okay. The verdict has been
6 received. Thank you, members, for your verdict. I've
7 told you-all that the only time you may discuss this
8 case is with the other jurors in the jury room. I now
9 release you from jury duty.

10 You don't have to smile that hard, but I
11 understand why you are.

12 Now you may discuss this case with
13 anyone, but you may also choose to not discuss this
14 case. That is your right. After you're released from
15 jury duty, the lawyers and others may ask you questions
16 to see if you followed the instructions and they may ask
17 you to give a sworn statement. You are free to discuss
18 the case with them and to give a sworn statement, but
19 you may choose to not discuss the case and give a sworn
20 statement. That is your right. And oftentimes the
21 attorneys just want to talk to you, there's not even a
22 request for the sworn statement, but just know it's
23 ultimately up to you-all.

24 Now, I do like to talk to you-all, just
25 for a moment. I know that you-all may be ready to leave

*** UNCERTIFIED ROUGH DRAFT ***

1
2 but I just want to visit with you-all again and extend
3 my thanks to you. So if you don't mind waiting in the
4 jury room just for a couple of minutes until I'm back
5 there to chat with you, and then afterwards, if the
6 attorneys want to speak with you, they'll be waiting in
7 the hallway. Again, thank you so much. I'll check back
8 with you shortly.

04:04PM

9 THE BAILIFF: All rise for the jury.

10 (Whereupon the jury was dismissed and
11 proceedings concluded at 4:04 p.m.)

04:04PM

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