

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada Limited Liability Company;
THARALDSON MOTELS II, INC., a North
Dakota corporation, and GARY D. THARALDSON,

Petitioners,

Electronically Filed
Feb 23 2011 12:30 p.m.
Tracie K. Lindeman

Case No: 57641

vs.

THE EIGHTH JUDICIAL DISTRICT COURT,
COUNTY OF CLARK, STATE OF NEVADA,
AND THE HONORABLE MARK R. DENTON,
DISTRICT JUDGE,

Respondents,

and

SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; BRADLEY J. SCOTT;
BANK OF OKLAHOMA, N.A., a national bank;
GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; ASPHALT PRODUCTS
CORPORATION D/B/A APCO CONSTRUCTION,
a Nevada corporation,

Real Parties in Interest

SUPPLEMENTAL APPENDIX TO
PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

VOL. 4

ROBERT L. EISENBERG (Bar No. 0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
775-786-6868
Email: rle@lge.net

ATTORNEYS FOR PETITIONERS

INDEX TO PETITIONERS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NOS.</u>
1.	Plaintiffs' First Amended Complaint	07/01/09	1	1 - 57
2.	Morrill and Aronson's (By Special Appearance) Objections to Special Master's Recommendation Compelling the Depositions of Attorney K. Layne Morrill and Martin A. Aronson to Testify as to the Allegations in Plaintiffs' Complaint	12/27/10	1 2	58 - 155 156 - 333
3.	Scott Financial Corporation, Bradley J. Scott, and Bank of Oklahoma, N.A.'s Joint Response to Morrill and Aronson's Objections to Special Master's Recommendation Compelling the Depositions of Attorneys K. Layne Morrill and Martin A. Aronson to Testify as to the Allegations in Plaintiffs' Complaint.	01/07/11	3	334 - 562
4.	Decision and Order	01/21/11	3	563 - 566
5.	Decision	01/25/11	4	567 - 570
6.	Decision	01/25/11	4	571 - 574
7.	Decision	02/07/11	4	575 - 579

Electronically Filed
01/25/2011 02:59:15 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Alvin D. Shuman
CLERK OF THE COURT

1 CLUB VISTA FINANCIAL SERVICES,)
2 L.L.C., a Nevada limited liability)
3 company; THARALDSON MOTELS II,)
4 INC., a North Dakota corporation;) CASE NO. A579963-B
5 and GARY D. THARALDSON,) DEPT. NO. XIII
6)
7 Plaintiff(s),)
8 vs.) (Consolidated with
9) A608563; A609288)
10 SCOTT FINANCIAL CORPORATION, a)
11 North Dakota corporation; BRADLEY)
12 J. SCOTT; BANK OF OKLAHOMA, N.A., a)
13 national bank; GEMSTONE DEVELOPMENT)
14 WEST, INC., a Nevada corporation;) Date: January 20, 2011
15 ASPHALT PRODUCTS CORPORATION D/B/A) Time: 9:00 a.m.
16 APCO CONSTRUCTION, a Nevada)
17 corporation,)
18 Defendant(s).)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

DECISION

THIS MATTER having come before the Court on January 20,
2011 for hearing on, *inter alia*, Defendant Bank of Oklahoma,
N.A.'s Motion for Partial Summary Judgment on Plaintiffs' Third
(Constructive Fraud), Seventh (Breach of Fiduciary Duty), and
Eleventh (Breach of the Covenant of Good Faith and Fair Dealing)
Claims for Relief and on Defendants/Cross-Claimants Scott
Financial Corporation and Bradley J. Scott's Motion for Summary
Judgment on Tharaldson's and Tharaldson Motels II Inc.'s Third
and Seventh Claim for Relief, and for Partial Summary Judgment on
their Eleventh Claim for Relief (Re Fiduciary Duty), and the
Court, having considered the papers submitted in connection with

CLERK OF THE COURT

JAN 25 2011

RECEIVED

(Signature)

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 such item(s) and heard the arguments made on behalf of the
2 parties and then taken the matter under advisement for further
3 consideration;

4
5 Given the number of motions that the Court is now
6 hearing in this case and the time constraints involved and the
7 need for prompt decisions in light of the quickly approaching
8 trial date, the Court must be brief in announcing its rulings.
9 It will thus look to counsel who are directed to submit proposed
10 orders to fill in interstices consistent with briefing and
11 argument that the Court has accepted in its rulings.

12 NOW, THEREFORE, the Court decides the submitted issues
13 as follows:

14 A. Bank of Oklahoma's Motion.

15 The Court is persuaded that there are no genuine issues
16 of material fact going to the subject causes of action and that
17 Defendant is entitled to partial judgment as a matter of law
18 relative thereto. Accordingly, the Motion is GRANTED.

19 B. Scott Defendants' Motion.

20
21 1. The Court agrees that the Motion relative to the
22 specific Plaintiffs against whom it is made is meritorious as to
23 the Seventh Claim for Relief regarding breach of fiduciary duty,
24 and the same is GRANTED IN PART as to that claim for relief
25 against those Plaintiffs.

26 2. However, in light of the past relationship between
27
28

1 the parties and the complexities of the transactions and
2 statements made by Scott Defendants pertaining to such
3 relationship, the Court cannot say that there are no genuine
4 issues regarding the Third (constructive fraud) and Eleventh
5 (breach of implied covenant of good faith and fair dealing)
6 Claims for Relief, and the Motion is thus DENIED IN PART as to
7 those claims.
8

9 C. Conclusion.

10 Counsel for Defendant Bank of Oklahoma is directed to
11 submit a proposed order consistent with A. above.

12 Counsel for the Scott Defendants is directed to submit
13 a proposed order consistent with B(1) above.

14 Counsel for Plaintiffs is directed to submit a proposed
15 order consistent with B(2) above.

16 In addition, such proposed orders should be submitted to
17 opposing counsel for approval/disapproval. Instead of seeking to
18 litigate any disapproval through correspondence directed to the
19 Court or to counsel with copies to the Court, any such
20 disapproval should be the subject of motion practice.
21

22 This Decision is a summary of the Court's analysis of
23 the matter and sets forth the Court's intended disposition on the
24
25
26
27
28

1 subject, but it anticipates further order of the Court to make
2 such disposition effective as an order or judgment.

3 DATED this 25th day of January, 2011.

4
5
6 MARK R. DENTON
DISTRICT JUDGE

7
8 CERTIFICATE

9 I hereby certify that on or about the date filed, this
10 document was e-served or a copy of this document was placed in
11 the attorney's folder in the Clerk's Office or mailed to:

12 COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
13 Attn: Martin A. Muckleroy, Esq.

14 Martin A. Aronson, Esq.
15 One E. Camelback Road, Suite 340
Phoenix, AZ 85012

16 MARQUIS & AURBACH
17 Attn: Terry A. Coffing, Esq.

18 John D. Clayman, Esq.
19 Old City Hall
124 E. Fourth Street
Tulsa, OK 74103

20 LEWIS AND ROCA
21 Attn: Jennifer K. Hostetler, Esq.

22 KEMP, JONES & COULTHARD
23 Attn: J. Randall Jones, Esq.

24 HOWARD & HOWARD
Attn: Robert L. Rosenthal, Esq.

25 SMITH LAW OFFICE
26 Attn: P. Kyle Smith, Esq.

27
28 LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

MARK R. DENTON
DISTRICT JUDGE

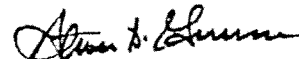
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89165

Electronically Filed
01/25/2011 03:00:39 PM

DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK OF THE COURT



CLUB VISTA FINANCIAL SERVICES,)
L.L.C., a Nevada limited liability)
company; THARALDSON MOTELS II,)
INC., a North Dakota corporation;)
and GARY D. THARALDSON,)

CASE NO. A579963-B
DEPT. NO. XIII

Plaintiff(s),)

vs.)

(Consolidated with
A608563; A609288)

SCOTT FINANCIAL CORPORATION, a)
North Dakota corporation; BRADLEY)
J. SCOTT; BANK OF OKLAHOMA, N.A., a)
national bank; GEMSTONE DEVELOPMENT)
WEST, INC., a Nevada corporation;)
ASPHALT PRODUCTS CORPORATION D/B/A)
APCO CONSTRUCTION, a Nevada)
corporation,)

Date: January 18, 2011
Time: 9:00 a.m.

Defendant(s).)

DECISION

THIS MATTER having come before the Court on January 18,
2011 for hearing on, *inter alia*, Defendant/Counterclaimaint Scott
Financial Corporation's Motion for Summary Judgment Regarding
Plaintiffs' First, Second, and Third Claims for Relief and on
Defendant Bank of Oklahoma, N.A.'s Motion for Partial Summary
Judgment on Plaintiffs' First Claim for Relief (Fraudulent
Misrepresentation) and Second Claim for Relief (Fraudulent
Concealment/Fraudulent Omissions), and the Court, having
considered the papers submitted in connection with such item(s)
and heard the arguments made on behalf of the parties and then
taken the matter under advisement for further consideration;

CLERK OF THE COURT

JAN 25 2011

RECEIVED

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 Given the number of motions that the Court is now
2 hearing in this case and the time constraints involved and the
3 need for prompt decisions in light of the quickly approaching
4 trial date, the Court must be brief in announcing its rulings.
5 It will thus look to counsel who are directed to submit proposed
6 orders to fill in interstices consistent with briefing and
7 argument that the Court has accepted in its rulings.
8

9 NOW, THEREFORE, the Court decides the submitted issues
10 as follows:

11 A. Scott Financial's Motion.

12 1. The Motion is GRANTED IN PART as to the First Claim
13 for Relief, as the Court discerns no genuine issue of material
14 fact going to affirmative fraudulent misrepresentations.

15 2. The Motion is DENIED IN PART as to the Second and
16 Third Claims for Relief, as the Court is persuaded that there are
17 genuine issues regarding concealment and constructive fraud given
18 the relationship between Plaintiff Tharaldson and his entities
19 and the Scott Defendants and the expectations that relationship
20 may have engendered.
21

22 B. Bank of Oklahoma's Motion.

23 The Motion is GRANTED, as the Court is persuaded that
24 there are no genuine issues of material fact on the subjects of
25 the implicated claims and that Defendant is entitled to judgment
26 as a matter of law.
27

1 C. Conclusion.

2 Counsel for the Scott Defendants is directed to submit
3 a proposed order consistent with A(1) above.
4

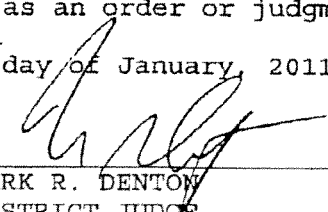
5 Counsel for Plaintiffs is directed to submit a proposed
6 order consistent with A(2) above.

7 Counsel for Defendant Bank of Oklahoma is directed to
8 submit a proposed order consistent with B. above.

9 In addition, such proposed order~~s~~ should be submitted to
10 opposing counsel for approval/disapproval. Instead of seeking to
11 litigate any disapproval through correspondence directed to the
12 Court or to counsel with copies to the Court, any such
13 disapproval should be the subject of motion practice.

14 This Decision is a summary of the Court's analysis of
15 the matter and sets forth the Court's intended disposition on the
16 subject, but it anticipates further order of the Court to make
17 such disposition effective as an order or judgment.

18 DATED this 25th day of January, 2011.

19
20 
21 MARK R. DENTON
22 DISTRICT JUDGE

23 CERTIFICATE

24 I hereby certify that on or about the date filed, this
25 document was e-served or a copy of this document was placed in
26 the attorney's folder in the Clerk's Office or mailed to:
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COOKSEY, TOOLLEN, GAGE, DUFFY & WOOG
Attn: Martin A. Muckleroy, Esq.

Martin A. Aronson, Esq.
One E. Camelback Road, Suite 340
Phoenix, AZ 85012

MARQUIS & AURBACH
Attn: Terry A. Coffing, Esq.

John D. Clayman, Esq.
Old City Hall
124 E. Fourth Street
Tulsa, OK 74103

LEWIS AND ROCA
Attn: Jennifer K. Hostetler, Esq.

KEMP, JONES & COULTHARD
Attn: J. Randall Jones, Esq.

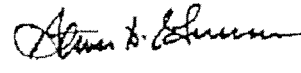
HOWARD & HOWARD
Attn: Gwen Rutar Mullins, Esq.

SMITH LAW OFFICE
Attn: P. Kyle Smith, Esq.


LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

Electronically Filed
02/07/2011 03:59:14 PM

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

1
2
3
4 CLUB VISTA FINANCIAL SERVICES,)
L.L.C., a Nevada limited liability)
5 company; THARALDSON MOTELS II,)
INC., a North Dakota corporation;) CASE NO. A579963-B
6 and GARY D. THARALDSON,) DEPT. NO. XIII
7 Plaintiff(s),)
8 vs.) (Consolidated with
9) A608563; A509288)
10 SCOTT FINANCIAL CORPORATION, a)
North Dakota corporation; BRADLEY)
11 J. SCOTT; BANK OF OKLAHOMA, N.A., a)
national bank; GEMSTONE DEVELOPMENT)
12 WEST, INC., a Nevada corporation;) Date: January 27, 2011
ASPHALT PRODUCTS CORPORATION D/B/A) Time: 9:00 a.m.
13 APCO CONSTRUCTION, a Nevada)
corporation,)
14 Defendant(s).)
15

16 DECISION

17 THIS MATTER having come before the Court on January 27,
18 2011 for hearing on, *inter alia*, Defendant Alex Edelstein's
19 Motion for Summary Judgment against Club Vista, TM2I, & Gary
20 Tharaldson, and the Court, having considered the papers submitted
21 in connection with such item(s) and heard the arguments made on
22 behalf of the parties and then taken the matter under advisement
23 for further consideration;

24 NOW, THEREFORE, the Court decides the submitted issues
25 as follows:

26 Club Vista

27 Given the relationship between Club Vista and Scott
28

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT FIFTEEN
LAS VEGAS, NV 89155

1 financial, representations made to Scott Financial would arguably
2 be made to Club Vista. Also, although there do not appear to be
3 specific proscriptions against sales to family members, the Court
4 is unable to say as a matter of fact or law that the reasonable
5 expectations of the participating lenders in the transaction
6 would not have meant that representations as to qualified sales
7 would have been deemed to refer to third parties dealing at arms
8 length. The Court is also unpersuaded that the Forbearance
9 Agreement relied upon by Defendant concludes the issue.
10 Accordingly, the Motion is DENIED as to the First Claim for
11 Relief regarding fraudulent misrepresentations.
12

13 As to the Second Claim for Relief regarding fraudulent
14 concealment, the Court is of the same view.

15 There are also genuine issues regarding things that
16 Defendant allegedly did in conjunction with the Scott Defendants
17 that would bear upon aiding and abetting alleged breach of
18 fiduciary duties owed by the latter to Club Vista and aiding and
19 abetting alleged misrepresentations and omissions. In this
20 regard, Defendant recognizes that he was told to work with Scott
21 Financial (Motion, p. 16, ll. 18-23), which would indicate that
22 he knew that Club Vista was placing a level of trust in Scott
23 Financial. Therefore, the Motion is DENIED also as to the Third
24 and Fourth Claims for Relief as they relate to Club Vista.
25

TM2I

The Court has previously ruled that there are no genuine issues pertaining to the fraudulent misrepresentation claim. (See Decision 1/12/11)

However, given that the Court has previously ruled that there are issues going to the relationship between Mr. Tharaldson and his entities, which would include TM2I, and the Scott Defendants, the Court is not persuaded that there are no genuine issues on the subject of what Mr. Edelstein knew about that relationship and what he did in conjunction with the Scott Defendants in its dealings with Mr. Tharaldson and his entities. Therefore, although it appears questionable that Defendants would act in concert to disburse funds that they had reason to know they may very well not recover, it is also the case that their willing involvement in what is clearly a complex transaction involving many participants would make it likely that a trial would be necessary to bring out all the facts. Therefore, the Motion is DENIED IN PART as to the Second (fraudulent concealment), and Fourth (aiding and abetting fraudulent misrepresentations/omissions) Claims for Relief.

In addition, as there is no fiduciary (not to say special) relationship between TM2I and the Scott Defendants, the Motion is GRANTED IN PART as to the Third (aiding and abetting breach of fiduciary duty) Claim for Relief.

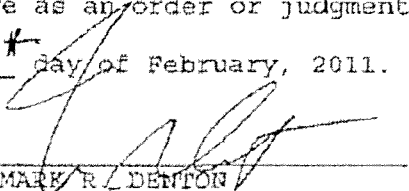
Gary Tharaldson

The Court makes the same determinations as to Mr. Tharaldson as it has made regarding TM2I as to the Second, Third, and Fourth Claims for Relief. It also discerns a distinction between what was proffered relative to TM2I on the subject of fraudulent misrepresentations and that which relates to Mr. Tharaldson individually. Thus, the motion is also DENIED as to the First Claim for Relief relative to Mr. Tharaldson.

Counsel for Plaintiffs is directed to submit a proposed order consistent with the foregoing. Such proposed order should be first submitted to opposing counsel for approval/disapproval. Instead of seeking to litigate any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such disapproval should be the subject of motion practice.

This Decision is a summary of the Court's analysis of the matter and sets forth the Court's intended disposition on the subject, but it anticipates further order of the Court to make such disposition effective as an order or judgment.

DATED this 7th day of February, 2011.


MARK R. DENTON
DISTRICT JUDGE

CERTIFICATE

I hereby certify that on or about the date filed, this document was e-served or a copy of this document was placed in the attorney's folder in the Clerk's Office or mailed to:

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG
Attn: Martin A. Muckleroy, Esq.

MARQUIS & AURBACH
Attn: Terry A. Coffing, Esq.

Martin A. Aronson, Esq.
One E. Camelback Road, Suite 340
Phoenix, AZ 85012

John D. Clayman, Esq.
Old City Hall
124 E. Fourth Street
Tulsa, OK 74103

LEWIS AND ROCA
Attn: Jennifer K. Hostetler, Esq.

KEMP, JONES & COULTHARD
Attn: J. Randall Jones, Esq.

HOWARD & HOWARD
Attn: Robert L. Rosenthal, Esq.

SMITH LAW OFFICE
Attn: P. Kyle Smith, Esq.

Lorraine Tashiro

LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII