



CASES of NOTE

Breach of Contract

**Power company
claimed GE divisions
conspired against it**

\$136,800,000

*Canatxx Energy Ventures Inc. v.
General Electric Capital Corp.*

U.S. Dist. Ct., Houston

Plaintiffs' Attorneys Guy E. Matthews,
Lawson Bowick & Al-Azem, Houston,
Texas; Ken Breitbeil, McFall Sherwood &
Breitbeil, Houston, Texas; Andrew L.
Jefferson, Jr., Law Offices of Andrew L.
Jefferson, Jr., Houston, Texas

Defense Attorney R. Paul Yetter, Yetter &
Warden, Houston, Texas

Full report on page 12

Medical Malpractice – Back Surgery Harris County

Plaintiff claimed surgeon failed to repair spinal damage5

Premises Liability – Slip and Fall Harris County

Grocery shopper slipped twice in puddle near seafood section8

Fraud – Racketeering – Banking Federal

Texas businessman defrauded partner, faked death11

Employment – Wrongful Termination – Discrimination Federal

Plaintiff claimed he was fired because of national origin13

Motor Vehicle – Wrongful Death – Hit and Run Dallas County

Good Samaritans killed while attempting rescue15

Motor Vehicle – Wrongful Death – Head-on Denton County

Two killed when man collided head-on with another car21

Price Fixing – Whistleblower Travis County

Whistleblower triggered state investigation of price fixing23

Employment – First Amendment – Administrative Travis County

Teacher faced firing over nude photos on internet23

Motor Vehicle – Alcohol Involvement – Broadside Lubbock County

Attorney broadsided by Texas Tech student26

Hot SHEET
DENTAL MALPRACTICE
page 4

Asked & Answered

Which case are you most proud of?

Answers on page 29

SOUTHEAST

that they did nothing wrong, and the services they provided is called banking, which is not a crime.

INJURIES/DAMAGES Marlin and Old National Bank claimed they were defrauded of \$6 million by Nixon, and that defendants aided him in the theft.

The defendants denied that they knowingly caused the plaintiffs' damages.

RESULT Judge Lynn M. Hughes granted summary judgment in favor of the defendants, concluding that the negligence was totally on the part of the plaintiffs.

"To mask their failures, they impose huge costs on the defendants and insult them gratuitously in the form of an ill-conceived complaint that blames everyone, suing 25 people," the judge wrote in his opinion on summary judgment.

"Marlin lost in these purported deals because his partner went bad," the opinion continued. "Nixon had the latitude to go bad because he had perceived Marlin's sloppy management. The diligence that was due to Marlin was his own. Old National owed its depositors and the public care in its lending, but it trusted Marlin, took guaranties from him and his partner, and skipped checking further. Moody's banking operations at no time were deceptive — directly or indirectly.

"Because the only culprit was in prison and broke, Marlin concocted his own scheme to recover from people who did business with him, obscuring its baselessness in a Hydra complaint of bad legal theories," Judge Hughes concluded.

EDITOR'S NOTE This report was composed from Judge Hughes' 12-page opinion on summary judgment.

—Don Maines

VERDICT *of the* WEEK

BREACH OF CONTRACT

Misrepresentation — Fraud — Corporations

Power company claimed GE divisions conspired against it

VERDICT \$136,800,000

CASE Canatxx Energy Ventures Inc. v. General Electric Capital Corp., No. H-99-4425
COURT United States District Court, Southern District, Houston, TX
JUDGE Kenneth M. Hoyt
DATE 8/4/2006

PLAINTIFF

ATTORNEY(S)

Ken Breitbeil, McFall, Sherwood & Breitbeil APC, Houston, TX
 Andrew L. Jefferson, Jr., Law Offices of Andrew L. Jefferson Jr., Houston, TX
 Guy E. Matthews, Matthews, Lawson, Bowick & Al-Azem PLLC, Houston, TX

DEFENSE

ATTORNEY(S)

R. Paul Yetter, Yetter & Warden LLP, Houston, TX

FACTS & ALLEGATIONS In the early 1990s, plaintiff Canatxx Energy Ventures Inc., a Houston-based power and gas company, began efforts to develop a combined power/gas storage project in the United Kingdom. Canatxx saw an opportunity to move away from base load power plants, which operate continuously, to mid-merit (or peaking) plants, which can be shut down and re-started depending on demand. Canatxx identified a site near Lancashire, England, for a mid-merit plant because of the location's proximity to large underground salt deposits that can be used to store natural gas.

In November 1996, Canatxx entered into an agreement with General Electric Power Systems Inc. (GESPI), Schenectady, N.Y., to develop two power plants using GESPI's "F" turbines for the mid-merit operation, together with an underground storage facility in an area near Lancashire known as Fleetwood. The agreement provided for General Electric Capital Corp., Stamford, Conn., to serve as financial advisor, the primary purpose of which was to locate and provide financing for the project. Rather than focus its efforts on finding financing for the project, either from the outside investment banking community or from GE Capital's Structured Finance Group, or some combination of both, GE Capital worked behind Canatxx's back to assist GESPI in co-opting control of the Fleetwood power site for use to test GESPI's brand new concept turbine: the "H" turbine. Not only did the "H" turbine not exist at this time, but it was not suitable for the mid-merit operation that was Canatxx's focus as developer of the Fleetwood project.

In April 1998 after going many months without the kinds of development services and financial advisory support that Canatxx believed it was entitled to under the agreement and otherwise, Canatxx's involvement in the project was terminated. This freed up GESPI, with GE Capital's financial support, to use the Fleetwood power site to test the "H" turbine.

Claiming economic damages, Canatxx sued GE Capital for, among other things, procuring breach of contract; tortious interference with contract; fraudulent inducement; misrepresentation; deception; constructive fraud; breach of confidence; misappropriation and misuse of trade secrets and confidential information; misappropriation of proprietary information, time, labor, skill and money; unjust enrichment; breach of fiduciary duty/confidential relationship; unfair competition; conspiracy; breach of contract; negligent misrepresentation; gross negligence; willful misconduct; and alter ego/single business enterprise. GESPI was originally included as a defendant, but it was

dismissed with prejudice on Canatxx's own motion early on in the litigation to avoid arbitration.

Plaintiff's counsel claimed that GE Capital never made a good faith effort to find financing for the project. The lawyers produced internal memos in which GE Capital executives expressed their feelings that Canatxx was an impediment to the project that must be eliminated.

Plaintiff's counsel alleged that GE Capital and GESPI conspired to keep Canatxx involved in the project until the company was no longer useful, and then oust Canatxx by intentionally delaying payments to Canatxx for development expenses. The lawyers added that Canatxx completed much of the necessary work to complete the projects, including filing an application with the United Kingdom's Department of Trade and Industry for permits to construct and operate power plants.

Plaintiff's counsel charged that GE Capital continued the development work on the project after Canatxx ended its involvement, using Canatxx's confidential information and retaining the services of Canatxx consultants in the fields of marketing, commerce, engineering, permitting, air emissions, environmental assessment and politics.

Plaintiff's counsel also claimed that GE Capital knew that the company had no intention of honoring its contract with Canatxx when it signed.

GE Capital disputed the allegations, contending that Canatxx and GESPI voluntarily ended the venture in 1998, in a binding dissolution contract that forecloses all of Canatxx's claims. (The U.S. Court of Appeals for the 5th Circuit ruled in 2002 that this contract governs resolution of the dispute.) In the dissolution, which Canatxx ratified repeatedly, it received ownership of two of the three potential projects, plus cash payments, in return for transferring its interest in the third project to GESPI.

Defense counsel contended that this third project was never developed, because the United Kingdom's government announced an industry-wide freeze on new plant construction and refused to grant the necessary permits.

Defense counsel also claimed that Canatxx received substantial consideration in the dissolution and continues to own and/or develop the other two projects; and that no GE entity made any money on the entire venture.

Defense counsel also claimed that GESPI withheld payment on certain Canatxx invoices because of serious concerns about fraudulent billing.

INJURIES/DAMAGES Canatxx demanded \$1 billion for benefits and profits that Canatxx lost as a result of the deal, and for benefits and profits that GE Capital gained.

Canatxx also sought punitive damages, compensatory damages and attorney fees.

RESULT The jury returned a plaintiff verdict, finding that GE Capital breached its fiduciary duties, committed fraud, conspired with unnamed others, committed acts of unfair competition and acted with malice. The jury awarded \$136.8 million.

The jury also found in favor of GE Capital on some counts,

determining that the company did not tortiously interfere with any contracts, including the financial advisory agreement; did not fraudulently induce Canatxx to enter into any agreement, including the dissolution contract by which Canatxx transferred its interest in the power project to GESPI; did not unjustly enrich itself by its dealings; and did not make negligent misrepresentations.

CANATXX ENERGY

VENTURES INC. \$700,000 punitive damages
\$136,100,000 Actual damages
 \$136,800,000

TRIAL DETAILS

Trial Length: 3 weeks
 Trial Deliberations: 2.5 days
 Jury Vote: 7-0

PLAINTIFF

EXPERT(S) Richard Pastore, accounting, Orange, CA

DEFENSE

EXPERT(S) Richard Domercq, CPA, valuation, Houston, TX

POST-TRIAL Plaintiff's counsel will seek prejudgment interest and attorney fees that would increase the requested judgment to over \$200 million. Defense counsel will move for JNOV and a new trial. If necessary, GE Capital will file an appeal based on the binding dissolution contract, as well as the trial court's refusal to submit affirmative defenses and other errors in the jury charge and admission of speculative "lost-income" damages testimony for an unbuilt and unpermitted project.

—Rob MacKay

EMPLOYMENT

Race Discrimination — National Origin Discrimination

Plaintiff claimed to be fired because of his national origin

VERDICT

Defense

CASE

Alonso Barrera v. Worldwide Flight Service, Inc.; In the United States District Court Southern District of Texas Houston Division, No. H-03-5718

COURT

United States District Court, Southern District, Houston, TX

JUDGE

Keith Ellison

DATE

5/3/2006

PLAINTIFF

ATTORNEY(S) Manuel R. Garcia, Houston, TX