

VERDICTS & SETTLEMENTS

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Restaurant employee converts profits for personal use

Type of action: Contract

Injures alleged: Loss of profits

Name of case: Marisco Del Caribe, Inc., et al. v. Beato

Court/case no.: Essex Superior Court, No. 05-00185

Tried before judge or jury: Jury

Name of judge: John T. Lu

Amount of verdict: \$227,905

Date: May 24, 2007

Attorneys: Peter G. Shaheen and Michelle L. Doucette, Shaheen, Guerrero & O'Leary, North Andover (for the plaintiffs)

State audit reveals underreported sales

\$227,905 verdict

The defendant was employed by the plaintiffs as a restaurant manager from 2001 to 2004. The plaintiffs alleged that defendant's job duties included ordering food and liquor, hiring and firing employees, handling all cash and tracking sales receipts for tax purposes.

The plaintiffs also alleged that the manager's duties specifically included bringing all sales receipts to the plaintiffs' accountant. The employers agreed to pay their employee a salary of about \$15,000 a year plus half of the net profits of the restaurant after payment of all expenses.

In 2004, the plaintiffs were audited by the Department of Revenue. The audit result showed that the corporation had underreported sales, and a tax penalty of \$40,000 was assessed. As it was a small corporation, the plaintiffs, as sole shareholder, had to pay the penalty personally.

The plaintiffs asserted that the defendant

converted the profits from food and liquor sales for his personal gain, breached the contract by failing to pay the plaintiffs half of the net profits of the business, and also breached his fiduciary duty to the corporation by not accurately reporting the sales receipts to the accountant and, subsequently, to the DOR.

The plaintiffs presented documentary evidence to the jury in the form of the manager's personal bank statements showing large deposits into his own personal account while he was employed by the plaintiffs. Over the course of three years, his account equaled the approximate amount of profits that had been underreported.

The auditor from the DOR presented documentation and testified as to the specific amount of the variance between the amount of sales underreported and the amount reported by the plaintiffs' vendors, which was in excess of \$197,000 over the course of the defendant's employment. The plaintiffs also presented evidence of the defendant's purchase of luxury automobiles and real estate during the period in which he was earning approximately \$15,000 annually.

The plaintiffs' accountant testified that the defendant had sole responsibility for reporting

all the sales of the business and bringing sales receipts to his office. The plaintiffs testified that they paid the DOR a penalty and never received any profits from the business while the defendant was employed because the business was not showing a profit.

The defendant presented a counterclaim for breach of contract, alleging he never received his share of the net profits. He also testified that while employed by the plaintiffs, he sold paintings and artwork and was loaned money from third parties, which explained the large amount of money he deposited into his own bank account. Lastly, he testified that the agreement with the plaintiffs was that he would keep all the profit of the business.

The jury found that the manager had converted the plaintiffs' money for his own personal use, breached his fiduciary duty to the corporation and therefore forfeited his salary during that time. The jury also found that the defendant breached his contract with the plaintiffs by failing to pay half of the net profits of the business.

The jury awarded the entire amount of lost profits to the plaintiffs, plus the defendant's salary for the three years he was employed.