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LITIGATION

Developer wins big award

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Lawyers for a Newport Beach real estate developer made it rain to the tune of \$50.3 million in damages for their client at a time when the building industry as a whole is struggling to stay afloat.

The jury verdict came late last week in a case brought by Newport Capital Advisors LLC against a Connecticut-based real estate investment firm for forcing NCA out of a contract to redevelop four prominent Hollywood properties, including the Hollywood Palladium.

Newport's lawyers at Greenberg & Traurig convinced the jury that Commonfund Realty Investors LLC rescinded a joint venture to renovate the Palladium and build several high-rise hotels and office, condominium and retail buildings. After a four-week trial, the jury last week awarded \$16.3 million in compensatory damages and \$33.9 million in punitive damages, finding Commonfund breached its fiduciary duty. *Newport Capital Advisors LLC v. Commonfund Realty Inc.*, BC412918, (L.A. County Sup. Court, filed April 27, 2010).

"On the one hand, NCA is trying to create architectural masterpieces, versus greed, unchecked ego and abuse of power on the part of Commonfund," said Wayne Gross, a Greenberg & Traurig shareholder in Irvine.

According to court documents, NCA partnered with Commonfund to develop the projects in 2005. In

2007, after the value of the properties shot up in market value by more than \$35 million, Newport claimed Commonfund began clamoring to change the terms of the joint venture and restructure the development of the four projects.

"They saw an opportunity to get out of this built-in profit that NCA had accumulated, and got them to start renegotiating their deal in March of 2008," said Alan Greenberg, a shareholder with Greenberg & Traurig who also represented NCA.

Commonfund filed a lawsuit in 2009, alleging it had no obligation to NCA because there was no written agreement between the two parties. Greenberg says although joint ventures involving property and money of this magnitude often have written agreements, such a document is not necessary in order to have a joint venture.

Although Commonfund dropped its complaint on the eve of trial, NCA filed a counter-suit claiming there was a joint venture agreement, that Commonfund had repudiated it and that they had done so with malice.

"We showed the jury the human element that was happening," Greenberg said.

Their case hinged on showing the jurors emails detailing a joint venture between the two parties, despite testimony at trial from Commonfund officials denying any joint venture agreement. According to both attorneys, emails also revealed a secret plan to kick NCA out and replace it with another developer.

Greenberg recalls one email with

a sentence that read: "Kick Zak in the teeth," referring to NCA principal David Zak.

Another crucial element to the case, Greenberg and Gross said, was showing the disintegration of the joint venture took place before the economy tanked because the value of the properties was instrumental in deciding the amount of damages.

Keith Luke, a managing director for strategic planning and communications at Commonfund, said this week that NCA's contention was flat wrong.

"The NCA allegations that we repudiated a joint venture agreement in 2008 are just not supported by facts or evidence," said Luke, who declined to give further comment.

According to Greenberg, Commonfund argued that it lost \$60 million on the properties' value and that if NCA had stayed on the deals, they would have also lost. A bad economy has stalled the four projects, with two of them going through foreclosure, including the Palladium. Still, Gross doesn't believe the jurors' award — as much as it is — is a lucky break for NCA.

"If you steal a car and two years later you crash the car, and then you're caught, you have to pay the value of the car at the time you stole it, not at the time you crashed it," said Gross. "That was Commonfund's risk — not NCA's."

Commonfund plans to appeal the verdict.

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