

Businessman hit with \$2M judgment over unpaid loans

By Pat Murphy

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A nursing home operator is subject to individual liability for \$2.1 million in damages for his failure to repay business loans that the lenders claimed were obtained based on numerous fraudulent misrepresentations, a Superior Court judge determined.

The plaintiffs, Bradley Balter and his business Arrakis Holdings, sued defendant Joseph Cuzzupoli and three nursing home LLCs he controlled for breach of contract, unjust enrichment, fraud, and violations of Chapter 93A. According to the plaintiffs, Cuzzupoli made false representations in obtaining five loans totaling more than \$2.3 million and then failed to repay the loans by their maturity date.

Cuzzupoli filed counterclaims alleging the plaintiffs violated Chapter 93A and that the interest rates on the plaintiffs' loans violated Massachusetts' usury statute. Nevertheless, during the course of the litigation, Cuzzupoli made partial payments on the loans, leaving an unpaid balance of \$850,000.41.

On Jan. 16, following an eight-day trial, the jury in *Balter v. Cuzzupoli* found for the plaintiffs on all claims. It awarded \$2,119,645.41 for breach of the loan agreements, and \$2,290,895.41 on the fraud and 93A claims.

In post-trial rulings issued on June 18,

awarded on the fraud and 93A claims.

Further, Pineault found that damages of \$2,119,645.41 "effectively" doubled the single damages against Cuzzupoli, a penalty that was warranted based on the finding that the defendant knowingly and willfully violated Chapter 93A.



"It was almost like a game of Three-Card Monte trying to track where all the money went."

—Leonard A. Frisoli, Burlington

Judge Michael J. Pineault set the plaintiffs' damages at \$2,119,645.41. That figure accounted for both the payments on the loans made by the defendant during the litigation as well as the judge's finding that the damages awarded by the jury on the plaintiffs' contract claims were duplicative of the damages

Moreover, the judge ruled in favor of the plaintiffs on their contention that the court could disregard the "separate corporate existences" of the nursing home LLCs for purposes of holding Cuzzupoli individually liable for damages.

Continued on page 16

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Continued from page 1

“The challenge in the case was the defendant’s absolute doggedness and steadfast refusal to accept any type of personal responsibility, despite him being the one who was out there making these deals and making the misrepresentations,” said Burlington attorney Leonard A. Frisoli, who represented the plaintiffs.

Frisoli said he expects the court to enter a final judgment in the case in the next month or so. The judge found that the plaintiffs are entitled to attorneys’ fees, which Frisoli said he is working to finalize, and the court still needs to finalize a determination on prejudgment interest.

“I’m expecting this judgment will be in the \$3.5 million to \$4 million range in the end,” Frisoli said.

A complicating factor in the case is that the defendant nursing home LLCs are under receivership in Suffolk Superior Court, he noted.

But Frisoli expressed confidence in ultimately collecting the judgment against Cuzzupoli.

“I suspect he still has millions of dollars,” Frisoli said. “We’re just going to have to find it, if push comes to shove.”

The defendants are represented by Boston attorney David C. Aisenberg, who did not respond to a request for comment.

Sean T. Carnathan, a business litigator in Burlington, called the facts in the case “a little weird.”

“These guys sent [Cuzzupoli] over \$2 million without a promissory note, just based on his representations? Not a lot of people do that unless they have a preexisting relationship,” he noted.

Meanwhile, Boston business litigator David G. Thomas said the ruling is significant because Pineault emphasized that corporate officers can be personally liable under Chapter 93A without a piercing of the corporate veil.

“The court does make the point that, even if there wasn’t any type of commingling [of personal and business funds], Chapter 93A liability is individual to corporate officers if they engage in the actual wrongdoing,” Thomas said. “I don’t think people typically appreciate the fact that corporate officers — even if they are engaging in activities for the corporation — can be personally liable in their individual capacities under Chapter 93A.”

Thomas also found it interesting that Cuzzupoli started making loan payments during the litigation in order to minimize his ultimate exposure.

“That was a smart thing to do considering the evidence really did seem to show that there was pretty significant

wrongdoing,” he said.


Unpaid loans

According to the court’s post-trial findings, the defendant controlled three LLCs that operated nursing homes in the Pioneer Valley region.

In spring 2023, the plaintiffs made three loans totaling \$2,119,645.41 to Cuzzupoli and his LLCs.

The plaintiffs also paid \$250,000 to Cuzzupoli in exchange for a 27.5 percent membership in another Cuzzupoli LLC. Thereafter, Cuzzupoli and Balter agreed to treat the \$250,000 as a loan, with the plaintiffs’ membership in the LLC reverting to a Cuzzupoli family trust.

As found by the court, Cuzzupoli induced the plaintiffs to make the loans based on representations that: (1) the funds would be used to pay the business expenses of the nursing homes; (2) Cuzzupoli would extend comparable loans to the nursing homes at the same time; (3) the plaintiffs’ loans would be documents with promissory notes; (4) the loans were “safe” short-term loans intended to cover



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certain business expenses in anticipation that the defendants would receive certain payments for employee retention tax credits and health insurance reimbursements; and (5) Cuzzupoli personally guaranteed repayment of the loans.

Most of the plaintiffs’ loans had a maturity date of June 15, 2023.

However, in mid-May 2023, Balter learned that Cuzzupoli’s businesses were in bad financial shape. At the same time, Balter discovered that the chief financial officer of the nursing home LLCs had no knowledge of the plaintiffs’ loans and that no funds from those loans were reflected on the LLCs’ balance sheets.

“We basically had to go through bank account after bank account to track all the money and where it went,” Frisoli said of his discovery efforts in the case. “The guy had a handful of different bank accounts he would use to transfer money around.

It was almost like a game of Three-Card Monte to try to track where all the money went.”

When the loans were not repaid by the maturity date, the plaintiffs filed suit.

Evidence later introduced at trial showed that Cuzzupoli failed to follow through on the promises he made to obtain the loans.

“The [court’s] decision is pretty specific as to what the facts were,” Thomas said. “And the facts obviously were not good for the defendants.”

Thomas said it was striking that the case went to trial despite the strength of the plaintiffs’ evidence.

“Who knows? Maybe there wasn’t enough money to satisfy settlement demands,” he theorized. “But sometimes when you go to try a case, the facts are a shade of gray, and the jury is going to pick one [side’s version] over the other.”

Piercing the corporate veil

In his post-trial rulings, Pineault specifically found that Cuzzupoli “substantially disregarded” the separate corporate existences of the LLCs in operating the nurs-

ing was appropriate.”

The judge further noted that the jury found that each of the loan agreements at issue had been breached by both Cuzzupoli and his LLCs. That meant that, as a practical matter, his ruling on piercing the corporate veil had practical significance only if Cuzzupoli pursued an appeal and succeeded in overturning the jury’s verdict finding him individually liable for breach of the loan agreements, Pineault said.

“In addition, Cuzzupoli presumably would need to overturn the adverse fraud and Chapter 93A determinations against him as well,” the judge wrote.

Chapter 93A liability

The post-trial ruling next addressed whether the court would adopt the jury’s verdicts on Chapter 93A liability, with Pineault noting that he was not bound by the jury’s determinations under state law.

Pineault observed that it is well-established under state law that corporate officers may be liable under Chapter 93A “for their personal participation in conduct invoking its sanctions.”

He found that Cuzzupoli’s actions in inducing the plaintiffs to extend more than \$2 million in loans to the defendants “were deceptive, unscrupulous and fell within established concepts of unfairness.”

Pineault wrote that Cuzzupoli’s false statements included his representations that the plaintiffs’ funds would be used to pay legitimate business expenses of the nursing homes, that he would be extending comparable loans to the nursing homes, that the loans would be documented through promissory notes, and that he would personally guarantee repayment.

“Among other things, [Cuzzupoli] at no time disclosed that the funds loaned by Plaintiffs would be deposited into an account that he used to finance personal expenditures,” Pineault wrote.

He went on to find that Cuzzupoli engaged in the cited unfair and deceptive conduct “knowingly, willfully and in bad faith.”

“The conduct was not isolated,” Pineault said. “Cuzzupoli made repeated false statements and promises to induce Plaintiffs to extend not just the first loan but also a series of follow-on loans. Cuzzupoli also took steps to conceal his scheme. Among other things, he directed Balter to wire funds to an account that Cuzzupoli and his personal assistant controlled. Cuzzupoli also made no mention of the loans to the nursing home CFO, thereby keeping the funds off the nursing homes’ books and records and maximizing Cuzzupoli’s ability to divert the monies, undetected, for personal use.” ■■■