

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RAYMOND E. HECK,
DOUG HAMLEY, CHARLES
MOORE, JOSEPH MCKEARN,
and ALLEN RICHARDSON

VERSUS

KENNETH K. BUHLER
WAYNE TRICHE, and
DARYL DEARMOND

CIVIL ACTION

NO. 07-21-BAJ-CN

JUDGMENT

This cause came on before the Court, Honorable Brian A. Jackson, presiding, the jury having rendered its verdict on June 9, 2011, and;

Considering the Court's rulings filed November 30, 2007 (doc. 76) and March 30, 2010 (doc. 114) dismissing, with prejudice, plaintiffs' state law claims against Wayne Triche for negligent and fraudulent/intentional misrepresentation and conversion, and plaintiffs' Section 29(b) rescission claim and breach of contract claim against Wayne Triche, and;

The Court having granted, at the trial of this matter, the Motion for Dismissal of Action Under Fed.R.Civ.P. 50 as to Daryl DeArmond, and in accordance with the jury verdict;

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Raymond E. Heck, and against defendant, Kenneth K. Buhler, in the amount of \$53,968.77.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is

entered in favor of plaintiff, Raymond E. Heck, and against defendant, Wayne Triche, in the amount of \$35,979.18.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Doug Hamley, and against defendant, Kenneth K. Buhler, in the amount of \$15,000.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Doug Hamley, and against defendant, Wayne Triche, in the amount of \$10,000.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Charles Moore, and against defendant, Kenneth K. Buhler, in the amount of \$60,000.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Charles Moore, and against defendant, Wayne Triche, in the amount of \$40,000.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Joseph McKearn, and against defendant, Kenneth K. Buhler, in the amount of \$22,200.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Joseph McKearn, and against defendant, Wayne Triche, in the amount of \$14,800.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Allen Richardson, and against defendant, Kenneth K. Buhler, in the amount of 30,000.60.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of plaintiff, Allen Richardson, and against defendant, Wayne Triche, in the amount of 20,000.40.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this matter is dismissed, with prejudice.

Baton Rouge, Louisiana, June ¹⁶, 2011.

A handwritten signature in black ink, appearing to read "Brian A. Jackson". The signature is written in a cursive style with a horizontal line extending from the end.

BRIAN A. JACKSON
UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RAYMOND E. HECK, DOUG HAMLEY,
CHARLES MOORE, JOSEPH MCKEARN,
ALLEN RICHARDSON

VERSUS

KENNETH K. BUHLER AND
WAYNE TRICHE

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CIVIL ACTION NO. 07-21-RET-CN

JUDGE RALPH E. TYSON

MAGISTRATE CHRISTINE NOLAND

JOINT SUMMARY MEMORANDUM OF RELEVANT ISSUES

MAY IT PLEASE THE COURT:

Plaintiffs, Raymond E. Heck (Heck), Doug Hamley (Hamley), Charles Moore (Moore), Joseph McKearn (McKearn), and Allen Richardson (Richardson) (collectively, "Plaintiffs"), together with Defendants, Wayne Triche (Triche) and Daryl DeArmond (DeArmond) submit this joint summary memorandum as required by the Court in its Order dated July 21, 2010. [Rec. Doc. 117].

I. BRIEF DESCRIPTION OF REMAINING FACTUAL AND LEGAL ISSUES.

The factual and legal issues underlying this dispute have been briefed in detail by the Plaintiffs and Defendants, Triche and DeArmond, in connection with substantive motions previously decided by the Court.

On January 10, 2007, Plaintiffs filed suit against Kenneth K. Buhler (Buhler) and Triche. On March 21, 2007, Plaintiffs filed an Amended Complaint and Demand for Jury Trial. On May 14, 2007, Plaintiffs filed their Second Amended Complaint and added defendant DeArmond. The Plaintiffs and Defendants are unable to agree upon the vast majority of the facts at issue in this case and have provided their respective recitations of the remaining facts below.

A. Plaintiffs' Claims:

Made Defendants in this case are Wayne Triche, Daryl DeArmond, and Kenneth Buhler [hereinafter "Defendants"]. Plaintiffs claim that Defendants wrote a Prospectus entitled "Antique Investment Group, LLC Inventory Investment Pool" containing at least sixteen (16) material misrepresentations and omissions of material fact and used this Prospectus to solicit the purchase of investment contracts, in the form of promissory notes, from Plaintiffs and others. Plaintiffs invested \$335,000.00. [See, Doc. 105, Plaintiffs' Memorandum in Opposition to Defendant Triche's Motion for Summary Judgment, pp. 4-5.] The Prospectus represented that Plaintiffs' funds would be used to purchase an inventory of antique furniture to be sold by Buhler through Antique Investment Group LLC [AIG]. For many years, Buhler had been a closely associated with Triche and DeArmond, operating as Triche and Associates, which was a CPA firm that had a business consulting division. Triche and Associates had previously written two private placement memoranda for Go Antiques, which was controlled by Buhler and which sold antique furniture on the internet. Go Antiques had paid Triche and Associates over \$250,000.00 for this work. Go Antiques fired Buhler, and Go Antiques filed for Chapter 7 bankruptcy in 2002, and claimed that Buhler owed it \$360,000.00. Buhler was now broke and had a number of money judgments against him. Triche and DeArmond knew about this, since they were trying to get Buhler started again in the antique furniture business, and Triche was advising Buhler almost daily on business and financial matters. To get Buhler started again DeArmond, at the instruction of Triche, formed AIG. Defendants wrote the Prospectus containing the material misrepresentations and omissions of material fact. [The facts that support the conclusion that the Prospectus contained at least sixteen (16) material misrepresentations and omissions of fact are set out in Doc. 105, pp 5-20.] Triche judicially admitted that he wrote several pages of the Prospectus. Writing the Prospectus containing the material misrepresentations and omissions

that were relied upon by Plaintiffs in making their investments, does not make Triche and DeArmond only “aiders and abettors”, it makes Triche and DeArmond “principals” under the Securities laws. However, even if Triche did not write the Prospectus, he may be held liable if he rendered substantial assistance in the creation of the Prospectus with a general awareness that the Prospectus contained material misrepresentations and omissions. [See, Doc. 112, Magistrate Judge’s Report denying Triche’s motion for summary judgment on Plaintiffs’ federal and Louisiana securities claims, pp. 4-5.] Buhler’s bookkeeper testified that she saw Triche and Buhler working on the Prospectus. The records of Triche and Associates, produced in discovery, showed a plethora of meeting between Triche and Buhler during this time. All of the Plaintiffs testified that they carefully reviewed the Prospectus and discussed it with other Plaintiffs prior to deciding to invest. Raymond Heck telephoned Triche prior to making his investment and asked Triche if he was assisting Buhler in putting together AIG. Triche said yes. Heck told Triche that he had received the Prospectus and asked Triche is this was a real deal. Triche told Heck that it was.

Among Buhler’s substantial debts, he owed First Bank one million dollars. Triche was a shareholder, director, and on the loan committee of First Bank. The principals of First Bank were trying to sell the bank, and Triche was working with First Bank to get Buhler to furnish more security to the bank for Buhler’s loans to bolster the bank’s financial condition. The billing records of Triche and Associates contained invoices sent to Buhler regarding this work: “(m)eeeting with client and bankers regarding loan package and restructure of present debt.” [See, Exhibits K & L to Doc. 105.] Triche accomplished this by having Buhler pledge to First Bank the antique furniture that had already been pledged to the Plaintiffs as security for AIG’s promissory notes issued to Plaintiffs. Triche knew that this antique furniture had already been pledged to the Plaintiffs, and when questioned about this double-pledging by Buhler’s

bookkeeper, Triche responded that you didn't need to worry about that, he knew what he was doing, and it was done all the time. First Bank obtained this additional security for Buhler's loans, which primed the Plaintiffs' liens on that antique furniture. First Bank was sold and Triche made a substantial profit on his shares of bank stock. On July 12, 2005, the bank filed suit against Buhler, his wife, and AIG and seized all of AIG's antique furniture inventory that had been pledged to Plaintiffs to secure their loans to AIG. As a result, Plaintiffs lost 100% of their investment, approximately \$335,000.00. Plaintiffs are entitled to a judgment in the amount of \$335,000.00 plus legal interest from January 10, 2007 until this judgment is paid, plus reasonable attorneys fees.

B. Triche and DeArmond's Claims:

The Plaintiffs' claims are brought pursuant to 15 U.S.C. §78aa, otherwise known as §27 of the Securities and Exchange Act of 1934 and, in particular, §10B and Rule 10b5 promulgated thereunder; and La. R.S. 51:713(A)(2) of the Louisiana Blue Sky law. All of the Plaintiffs' other claims (counts) have been dismissed. See this Court's rulings of November 30, 2007 [Rec. Doc. 76] and March 30, 2010 [Rec. Doc. 114]. With regard to Triche and DeArmond, the Plaintiffs fail on each element of their claims.

Plaintiffs have alleged that defendants Buhler, Triche and DeArmond have violated federal and state securities laws to induce the five plaintiffs to advance funds to Buhler and/or Antique Investment Group, L.L.C. (AIG), in the amount of approximately \$335,000 to purchase antique inventory to be sold at a warehouse. It is undisputed that neither Triche nor DeArmond had any direct material communication with the Plaintiffs about soliciting their respective investments. At issue is a document entitled "Antique Investment Group, L.L.C. Inventory Investment Pool" (Pool Document). Co-Defendant Buhler incorrectly suggests that Triche and DeArmond contributed to the content of the Pool Document. However, neither Triche nor

DeArmond authored the Pool Document, nor did they contribute to it.¹ Furthermore, neither Triche, individually, nor Triche and Associates, wrote any prior private placement memoranda for Go Antiques. Any indication to the contrary is inconsistent with discovery completed in this matter.

The Pool Document was allegedly disseminated to each of the Plaintiffs by Buhler prior to their respective investments. However, the Plaintiffs relied little, if any, on the Pool Document. Some did not read the Pool Document at all. Instead, Buhler's "sales pitch" was the enticing factor to the Plaintiffs. Indeed, the individual Plaintiffs performed very little, if any, due diligence prior to investing in AIG. This is remarkable when considering the substantial sophistication of each of the Plaintiffs. This lack of due diligence precludes their recovery under any theory of federal or state security laws.

Because they never talked to Triche and DeArmond, Plaintiffs' claims against them are wholly reliant on the testimony and representations made by Buhler -- a man each Plaintiff admits is untrustworthy. Although Buhler is the primary actor and a defendant in this case, it is unlikely that he will provide any defense at trial. Indeed, he has been more consistently treated as an asset of the Plaintiffs than as a defendant in this matter. After the suit was filed, Buhler was interviewed on two occasions by Plaintiffs' counsel, but has not answered the Plaintiffs' suit and the Plaintiffs have not sought a default judgment against Buhler. Defendants contend Buhler is a witness for the Plaintiffs and hostile to the defendants. Counsel for Plaintiffs should not be allowed to lead Buhler at trial, as he did at Buhler's deposition.

¹ Triche and DeArmond are far from primary actors and are, at best, merely aiders and abettors. Triche maintains that the implied private right of action found under § 10(b) of the Securities Exchange Act does not extend to aiders and abettors such as Triche and DeArmond. This is both a factual and a legal issue which will be addressed at the trial of this matter.

In their submission, Plaintiffs again brought up Triche's alleged involvement with State Bank. This is instructive of the lack of credibility of Plaintiffs' claims for two reasons. First, since all Plaintiffs have left in the case is a securities claim, their own allegations of Triche's duplicity with State Bank occurred well after each of the Plaintiffs invested, and is not referenced in the Pool Document. This allegation has nothing to do with the securities claims. Perhaps more importantly, the State Bank issue is likely the reason that Buhler has alleged (falsely) that Triche was in any way involved with the Pool Document. Buhler blames Triche for the demise of this business, and is, thus, biased against Triche, because he claims Triche helped State Bank and not him. However, once again, it is irrelevant to the subject case.

The Plaintiffs do not have viable claims against either Triche and/or DeArmond and their claims should be dismissed with prejudice.

II. PENDING MOTIONS.

There are currently no motions pending before this Court.

III. DISCOVERY.

All discovery in this matter is complete. All Plaintiffs and Defendants have been deposed.

IV. INDEPENDENT RESOLUTION.

There is little likelihood of independent resolution. The parties have not entertained settlement negotiations and remain steadfast in their respective positions.

RESPECTFULLY SUBMITTED:

s/Donald L. Beckner

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