

Texas businessman wins \$316 million

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An Atlanta jury has ordered Turner Broadcasting System to pay \$316 million to a Houston businessman who claimed that the media giant reneged on a deal to sell him the NBA Hawks and NHL Thrashers.

The unanimous Dec. 10 verdict by a 12-person jury capped 20 hours of deliberations following a seven-week trial.

Jurors awarded \$281 million to David McDavid for breach of contract and an additional \$35 million for promissory estoppel.

The jury did, however, find in favor of Turner Broadcasting on McDavid's fraud claim, as well as another claim that the media company breached a contract to keep information in the negotiations confidential.

H. Lamar Mixson, the lead plaintiff's counsel at trial, said the jury foreman told him after the trial that he was swayed by the plaintiff's case within the first few days.

"Our witnesses seemed to be truthful, and the Turner witnesses were less than forthcoming," Mixson said the foreman told him.

McDavid signed a letter of intent to purchase the two professional sports teams, as well as operating rights to their home base, Philips Arena in Atlanta, in April 2003.

His exclusive negotiating rights expired 45 days later, but discussions continued, according to McDavid. In a surprise move in September 2003, however, Turner Broadcasting announced it had reached an agreement with a group of investors that included the son and son-in-law of Ted Turner, the Atlanta-based media company's founder.

McDavid claimed that Turner officials broke their oral contract with him and shared his financial information with the investor group known as the Atlanta Spirit, which currently owns the teams.

"Basically, they were a bunch of insiders who were given our deal on a silver platter," Mixson said.

Turner has appealed the verdict.

'A Perry Mason moment'

"We basically had two strategies," said co-plaintiff's trial counsel Jill Pryor. "One part focused on the Turner's witnesses' testimony, particularly in places where they exaggerated or their testimony was not credible in light of the documents that were written at the time.

"And the other part," she explained, "was to point to our documents" as a record of the deal between McDavid and Turner Broadcasting.

The reams of e-mails and documents introduced during the trial included a letter from Turner to its parent company, Time Warner, asking for approval to sell the teams to McDavid, a draft press release announcing the deal and documents representing a purchase-and-sale agreement.

Turner executives said the agreement with McDavid was never signed or finalized, and that the draft press release and related memos were merely routine documents during negotiations.

The plaintiff's team also introduced a mysterious handwritten note from an unknown Turner executive that said, "Cannot speak to anyone about the McDavid deal – personal risk. Breaking the law. McD will sue."

The plaintiff's team had found the note during discovery, but didn't know who had written it. While questioning Turner executive Jim McCaffrey, Mixson asked him if he knew who had written the note. McCaffrey said that he had.

"It was really kind of a Perry Mason moment," Pryor said. "That was a very significant moment in the trial."

McCaffrey's explanation was that the note related to his opinion that Ted Turner should not vote on the Spirit deal because of his relationship with several of the group's principals.

But Pryor undercut that explanation when she questioned the company's general counsel and asked her, "Isn't it true the only way Mr. McDavid could sue [would be] if Turner had breached some kind of agreement with him?"

The general counsel agreed.

Self-made man

The company also argued that the fact that Ted Turner's son and son-in-law were part of the investor group that won the deal was irrelevant.

Both McDavid and the Spirit Group offered a total price of \$96 million for the teams and arena. But Mixson noted that the Spirit Group was required to put up only an initial \$8 million in cash, compared with the \$17 million in cash McDavid was expecting to pay when the deal closed.

The Spirit Group also got a few other breaks, including free information technology services and free rent for a year, according to Pryor.

A key witness for the plaintiff's side was McDavid's personal attorney, who testified that Turner Broadcasting chairman and chief executive Phil Kent told him on a conference call, "We have a deal."

Kent testified that his comment about a deal referred only to tax issues involved in the potential sale, and did not represent the completion of the deal.

Several members of McDavid's negotiating team disputed that testimony, however, including James Cain, who is now the U.S. Ambassador to Denmark.

Cain testified that after a conference call with McCaffrey in September 2003, he wrote himself a note saying that final documents were needed to close the deal with McDavid.

Pryor said McDavid's testimony was also critical.

"We spent a lot of time on Mr. McDavid's testimony, talking about his background," she noted.

A self-made businessman, McDavid, 66, owned a chain of 17 car dealerships before selling the company in 1997 for \$380 million.

"One of the themes of direct examination was that he was a risk taker, but he was a careful risk taker," Pryor explained. "When somebody said, 'These teams aren't worth anything,' he believed he could really make something out of these teams.

"He's very plain-spoken," she added. "He didn't exaggerate, didn't go out of his way to throw stones."

Ted Turner did not testify during the trial because company executives said he played no role in any of the negotiations.

During a two-hour closing argument, Mixson reviewed many of the documents, e-mails and handwritten notes from both sides, and told jurors, "These documents wouldn't exist if our version of the facts weren't true."

AT-A-GLANCE

Verdict: \$316 million in compensatory damages.

State: Georgia

Type of case: Breach of contract

Status: On appeal

Case name: McDavid v. Turner

Broadcasting System

Date: Dec. 10, 2008

Plaintiff's attorneys: H. Lamar Mixson and Jill Pryor of Bondurant, Mixson & Elmore in Atlanta.

Defense attorney: James Lamberth of Troutman Sanders in Atlanta.