

FILED
Court of Appeals
Division III
State of Washington
11/12/2019 2:55 PM

No. 365654

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

SPOKANE SLAVIC BAPTIST CHURCH

Respondent,

v.

JOE TRENCHUK, et al.

Appellant.

REPLY BRIEF OF APPELLANT TRENCHUK

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In reply to the Slavic Baptist Church's (hereafter "Church") Response Brief, the Appellant submits the following:

This is an appeal of a Summary Judgment Order based upon many material facts being in dispute at the time of the trial court's decision granting the Church's Summary Judgment motion.

The Church begins its Brief by attacking the Appellant's veracity by alleging the Appellant made false misstatements about the relationship of the Appellant and Ivan Kriger, the governing member of Green Global LLC. The undisputed fact is that Mr. Trenchuk was an un-participating member of Green Global LLC, and not involved in any of the negotiations with the Slavic Baptist Church regarding the Fred Meyer purchase. (CP 210) Further, the November 13, 21013 "Agreement Letter" drafted by the Church indicated that Ivan Kriger was the sole negotiator for the Church in regard to the Fred Meyer project. (CP 219)

Mr. Trenchuk's assertions were supported by sworn testimony of Church members, or that of Ivan Kreger.

The Church in error argues that Mr. Trenchuk made representations to the Church regarding the Fred Meyer project. (Par. 1 page 6 of Response Brief) In fact, he did not. The senior Pastor, Aleksandr Sipko, confirmed in his deposition that Joe Trenchuk only had one conversation with them, and that was when they convinced him to sign the May 15, 2014 "Agreement Letter". Pastor, Aleksandr Sipko stated:

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10 Q That conversation that you had with Joe Trenchuk in
11 the chancery, is that the only conversation you had with

12 Trenchuk regarding this matter?
13 A With Joe probably only one, yes. We have called
14 him, and we had a conversation, and they drove to do it.

(CP 225)

The true purpose behind the meeting with Mr. Trenchuk and the Church referenced above was to “trick” Mr. Trenchuk, an elderly gentleman, in becoming a guarantor. The content of the conversation was confirmed by Pastor Aleksandr Sipko in his deposition, when he stated:

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7 Q Why did you give him the money? What was he to do
8 with it?
9 A He was supposed to deposit it to trust account or
10 whatever that's called. That when the closing starts he has
11 our money as an assurance that we will pay. This money was
12 only for closing and nothing else.
13 Q So you told Joe Trenchuk this \$250,000 is to be
14 used only for closing?
15 That was the -- that's the whole conversation was
16 about. And it said there if the purchase doesn't happen by
17 this and this date, that the money will be returned to the
18 Church.

(CP 222)

The purpose of the May 15, 2014 Letter identified above by Pastor Aleksandr Sipko states no legitimate business purpose, unless it was to create an unknowing guarantor by Mr. Trenchuk.

The Church knew that they were required to forward \$250,000 to a company known as Kennedy Funding, as a loan commitment fee. This was made clear to the Church by Ivan Kriger as he testified:

18 Q I want to make sure I understand this. Exhibit No. 3
19 is the 250,000 that was for the loan commitment. The
20 250,000 in Exhibit No. 4, that was to finalize the

21 loan.
22 A It's, again, commitment fee.

(CP 288)

The Church's knowledge of the fee is clearly supported by the May 1, 2014 e-mail to Aleksandr Solodyankin, the Respondent's bookkeeper, received from Ivan Kriger, which stated:

**The check from Slavic Baptist Church should be received by Green Global Enterprises by 3 pm on Thursday the 1st of May 2014. Check should be written to Kennedy Funding in the amount of \$250,000.
Thank you.
Ivan Kriger**

(CP 233 and 271)

The above e-mail was sent two weeks prior to talking with Mr. Trenchuk on May 15, 2014.

And on May 5, 2014, as a follow-up, Ivan Kriger sent an e-mail regarding Kennedy Funding to both Pastor Aleksandr Sipko and Aleksandr Solodyankin once more.

**Hi Alex,
Kennedy Funding can add Fred Meyer in the loan, but you will still need to put down \$250,000. It would need to be paid any time between now and 10 am tomorrow. Call me as soon as possible so that I can make the necessary arrangements. Thank you.
Ivan**

(CP 238 and 269)

The Church in error states that on May 15, 2014, the Church, Green Global, and Joe Trenchuk entered into the Deposit Agreement. (Par. 1 page 8 of Response Brief) In fact, Pastor Aleksandr Sipko and Aleksandr Solodyankin met

with Mr. Trenchuk to have him sign the “Agreement Letter” holding only him responsible. The Church did not have Green Global or Ivan Kriger as a party to the Agreement. (CP 227) Further, this Letter was drafted by the Slavic Baptist Church, on its letterhead, by Ivan Kriger’s brother-in-law, Aleksandr Solodyankin, the Church’s bookkeeper.

The Agreement Letter with Mr. Trenchuk is intentionally silent about having to send funds to Kennedy Funding.

Once again, there is no legitimate business purpose behind the “Agreement Letter with Joe Trenchuk Trust”. The Church could have sent a check directly to Kennedy Funding, as there was no need to run funds through Mr. Trenchuk’s account as first requested in Ivan Kriger’s May 1, 2014 e-mail to Aleksandr Solodyankin (CP 233 and 271)

Following the May 15, 2014 “Agreement Letter with Joe Trenchuk Trust”, Mr. Trenchuk placed the \$250,000 in his account as agreed. (CP 212) This is undisputed.

On May 20 2014 Mr. Trenchuk was contacted by Aleksandr Solodyankin, the Church bookkeeper, or Ivan Kriger to wire the \$250,000 to Kennedy Funding. (CP 212) Mr. Trenchuk’s wiring the \$250,000 to Kennedy Funding is undisputed.

Mr. Trenchuk had no further involvement with the Fred Meyer project, and thought his obligation was resolved due to the request to send money to Kennedy Funding. (CP 212 #13-14)

After sending the funds to Kennedy Funding, he heard nothing from the Church until May 10 2016 when he received a “Formal Notice” from the Church

demanding the return of the \$250,000 they had Mr. Trenchuk send to Kennedy Funding. (CP 297)

The Church withheld material facts from Mr. Trenchuk, as unbeknown to him, the \$250,000 payment was only a commitment fee and that more money was needed by the Church to close the loan. Further, the Church knew that the \$250,000 was non-refundable and in jeopardy if they were unable to pay the remaining moneys due Kennedy Funding for the closing. Ivan Kriger clearly explained that the Church knew the money that was put in Mr. Trenchuk's account was in jeopardy of being lost, if no closing occurred. Ivan Kriger stated:

1 Q So at the time that the promissory note was issued,
2 they didn't have the other 250,000 –

3 A Correct.

4 Q -- accumulated yet.

5 A Correct.· Actually, they said -- at the beginning of
6 this whole negotiation, I was told the Church has like
7 close to \$2 million in their accounts and they feel
8 comfortable to close the deal.· But when actually it
9 came to closing, there was an issue with money. I
10 don't know -- and it seems like there was issue eve
11 with 250,000 to close it, and there was extension
12 requested; the extension was granted by Kennedy
13 Funding.

14 Q Did the Church indicate to you they were having
15 problems raising this other 250,000 --

16 A Yes.

17 Q -- in the promissory note?

18 A Yes. Their congregation went from -- I don't know --
19 a thousand to probably 550. That's what I was told.

20 Q So at the time that they issued this promissory note,
21 the Church knew that its 250,000 loan commitment fee
22 would be in jeopardy if they send that out.

23 A Correct.

(CP 288 and 289)

Ivan Kriger clearly testified the Church knew the \$250,000 commitment fee was non-refundable:

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11 Q So what you're telling me that is you informed the
12 Church that once this money went to Kennedy Funding,
13 it would be non-refundable?
14 A Yes, to Alex Sipko.

(CP 285)

This was material information, which was intentionally withheld from Mr. Trenchuk.

The Church, in distorting the facts, stated in its Response Brief that the Church had no contact with Kennedy until after the Church became aware that its money had been lost to Kennedy, and that Mr. Trenchuk was not making good on his contractual promise to refund the Church's Deposit. (Response Brief Par. 1 page 7) The facts and documents show that on December 4, 2015, the Church contacted Kennedy Funding, stopping the closing and requested the \$250,000 be refunded. The Church's letter to Kennedy Funding stated:

“The Church committee of Spokane Slavic Baptist Church along with Green Global have decided not to pursue the loan at this time from Kennedy Funding due to certain circumstances which the church cannot control and can not put up with a any longer.

That is why we request church's money \$250,000 which were deposited into your bank to return it back to Spokane Slavic Baptist Church...”

(CP 291)

Apparently, negotiations ensued between the Church and Kennedy Funding about the return of the \$250,000. Ivan Kriger described the negotiations as follows:

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15 Q And at the end of that one year, is that when the loan
16 fell through?

17 A Actually, the Kennedy Funding gave time frame to close
18 the loan, it was like in the three months -- they
19 didn't give six months, but they gave three months --
20 and Alex Sipko said that probably they cannot do it
21 because there's no funding in the Church. And then
22 Alex approached me and said, "What is our options
23 there?" And I said, "Well, we can still see if" --
24 "come back and" -- "from the Kennedy Funding, you
25 know, they can probably extend the 250 as long as you

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1 close," you know, which Kennedy Funding did a
2 commitment that as long as the Church put everything
3 together and still close it.

4 **But at one point Alex told me that, you know,**
5 **their congregation shortened and he even wrote a**
6 **letter to Kennedy Funding to cancel the deal -- I**
7 **don't know, I think it was a Church Board decision --**
8 **and that letter was sent to he have Steven Rogovich to**
9 **cancel.**

10 Q That letter to cancel the --

11 A The deal and to try to get 250,000 back.

12 Q They tried to get their 250 back.

13 A That's what it says in that letter. I believe
14 Steve Rogovich have that, and I might have it in my
15 e-mails.

16 Q Did they give you that letter to pass on to Kennedy
17 Funding or did they send it directly themselves?

18 A They send it directly themself.

19 Q **Okay. And what was Kennedy Funding's response to the**
20 **request for the 250,000 back?**

21 A **They said, "This money is done, but you can get**
22 **probably 30,000-plus back if you cancel the deal.**
23 **Then it's done." So --**

24 Q **And did they send 30,000 back?**

25 A **Yes. 30,900**

(CP 294 and 295)

Following the negotiations between the Church and Kennedy Funding, and the \$30,000 refund to the Church, on May 11, 2016 the Church sent the “Formal Notice” to Mr. Trenchuk for the refund of the \$250,000 he had wired to Kennedy Funding. (CP 297) Being consistent with the Church’s dealing with Mr. Trenchuk, they demanded the full \$250,000 after receiving a \$30,000 refund from Kennedy Funding. This is a material issue of fact in dispute.

The Church, in its Response Brief, continues to allege misstatements of fact to this Court.

The Church alleges:

“Mr. Trenchuk falsely asserts that the Church denied any knowledge of Kennedy. (Par. 2 page 10 of Response Brief)”

In fact, the Church’s administrator, Aleksandr Solodyankin, testified in his deposition:

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19Q Okay. I want to make sure I understand
20 regarding Kennedy Funding.
21 You had no knowledge of Kennedy Funding being
22 involved with funding the Fred Meyer project?
23 A. No. As far as I understood the Green Global
24 financed the Fred Meyer for us.

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16 Q Were you aware that Joe Trenchuk was going to
17 take that 250,000 and send it to Kennedy Funding?
18 A No, I did not know.

(CP 263 and 264)

And the Church’s Pastor, Aleksandr Sipko, stated in his deposition regarding Kennedy Funding:

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4 Q You're not answering the question. It's a simple
5 question, yes or no. At the time that you drafted Exhibit 4 (Agreement
letter)
6 were you aware that \$250,000 was going to be sent to Kennedy
7 Funding?
8 A I did not know.

(CP 267)

The Church alleges:

“Unfortunately, the Church learned that Green Global and Mr. Trenchuk
had given the Church's Deposit to Kennedy after the money was lost.”

In fact, the numerous e-mails cited in the Appellant's initial briefing
between Ivan Kriger and the Church provide abundant evidence that the Church
knew the funds were going to Kennedy Funding. As an example:

On April 27, 2014 an e-mail was sent by Kriger to Aleksandr Solodyankin, which
stated:

**Green Global Enterprises is closing a loan with Kennedy
Funding for 21 M. Green Global Enterprises has agreed to
sell Fred Meyer to the Slavic Baptist Church for 2.5M with
5% interest for 25 years. The Slavic Baptist Church
agreed to pay 250K to Kennedy Funding by 3 pm on
Monday, the 28th of April 2014.**

**Sincerely,
Ivan Kriger**

(CP 273)

Aleksandr Solodyankin also received a May 1, 2014 e-mail from Kriger,
which stated:

**The check from Slavic Baptist Church should be received
by Green Global Enterprises by 3 pm on Thursday the 1st
of May 2014. Check should be written to Kennedy
Funding in the amount of \$250,000.**

Thank you.

Ivan Kriger

(CP 233 and 271)

And on May 5, 2014, Kriger sent an e-mail regarding Kennedy Funding to both Paster Aleksandr Sipko and Aleksandr Solodyankin.

Hi Alex,

Kennedy Funding can add Fred Meyer in the loan, but you will still need to put down \$250,000. It would need to be paid any time between now and 10am tomorrow. Call me as soon as possible so that I can make the necessary arrangements. Thank you.

Ivan

(CP 238 and 269)

Over and over, the Church makes misstatements of material facts.

The record supports Mr. Trenchuk's defense of an unconfined agreement. The record indicates the Church concealed material facts from Mr. Trenchuk regarding the funds needing to be sent to Kennedy Funding for a loan commitment fee.

No reasonable person would agree to hold funds and be a guarantor with his own funds when directed to send them to a third party who had indicated the funds were in jeopardy of being nonrefundable.

The Church also modified the Agreement by having it sent to Kennedy Funding for a loan commitment fee. Mr. Trenchuk believed the funds were being wired for closing. In reality, the funds were being wired for the loan commitment fee. This is material, as money paid for a closing would be refundable, but a loan commitment fee is not. Mr. Trenchuk was not told that. He was led to believe the money being wired was for a closing. Having Mr. Trenchuk send the funds for a

loan commitment fee was a material change in the Agreement. The material change modified the original letter Agreement. The intent of the parties in the letter Agreement was to use the funds for closing. The funds were not used for the purpose represented to Mr. Trenchuk.

Further, Mr. Trenchuk has asserted numerous additional affirmative defenses including:

A lack of causation, as the Church choosing not to close on the property is the proximate and legal cause of the loss of funds. By mutual agreement or modification as the parties agreed, the funds would be sent to Kennedy funding for purpose of a loan commitment fee.

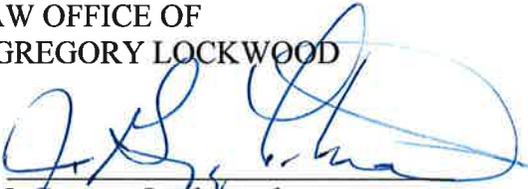
There was a lack of consideration, as Mr. Trenchuk received no consideration in exchange for the letter Agreement.

This is an appeal from a Summary Judgment decision. As the record indicates, there are many issues of material facts in dispute.

Basic justice would require this matter be referred back to the trial court for jury trial that can sort through the facts and determine credulity of the witnesses. It is respectfully requested that this matter be remanded back for trial by a jury.

Respectfully submitted this 12th day of November 2019.

LAW OFFICE OF
J. GREGORY LOCKWOOD

By 

J. Gregory Lockwood
WSBA #20629
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Vickie Fulton, do declare that on November 12, 2019, I caused to be served a true and correct copy of the foregoing to the following listed party(s) via the means indicated:

Shelley N. Ripley
Witherspoon Kelly
422 West Riverside, Ste 1100
Spokane, WA 99201

U.S. Mail
Facsimile
Hand Delivery
Via Court's Portal

DATED November 12, 2019.



Vickie Fulton

LAW OFFICE OF J. GREGORY LOCKWOOD PLLC

November 12, 2019 - 2:55 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36565-4
Appellate Court Case Title: Spokane Slavic Baptist Church v. Joe Trenchuk, et al
Superior Court Case Number: 17-2-03906-8

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