

Mattress Firm Fraud Defendant Claims Retailer Has 'Unclean Hands' In Real Estate Conspiracy

January 17, 2018 | Jarred Schenke, Bisnow Atlanta

The handful of parties Mattress Firm sued last year alleging a multistate real estate fraud and conspiracy have denied any wrongdoing in a series of court filings, and challenged Mattress Firm's standing in the Texas civil case.



Former in-house real estate executives Bruce Levy and Ryan Vinson, former Colliers International Atlanta executive Alexander Deitch, along with three developers and their principals — Nashville-based Oldacre McDonald, Illinois-based Quattro Development and Florida-based Win — denied orchestrating an alleged multistate real estate fraud scheme that sought to steer Mattress Firm toward more expensive real estate deals in exchange for kickbacks from a select group of developers, according to court documents.

Colliers International Atlanta and Madison Development Group did not file answers in Harris County, Texas, court as of press time.

While Levy and Deitch made general denials, Vinson's attorneys took his defense a step further, claiming his former employer has no right to sue him because it has "unclean hands," according to documents.

"[Mattress Firm] is not entitled to recovery because plaintiff's alleged injuries are caused in whole by plaintiff's own acts and not the acts of Mr. Vinson," Vinson's attorney said in court filings.

Alexander Chae, a partner at Houston-based law firm Gardere who is representing Vinson, is asking the court to dismiss Vinson from the lawsuit.

"At this point, we're going to vigorously defend against those claims," Chae said Monday. "They don't have any merit."

While Vinson's attorneys do not reveal any details on how Mattress Firm may also be at fault, in its answer, they cite "consent" and "ratification," which indicates the retailer had some knowledge of the alleged scheme, Los Angeles-based real estate attorney Zach Schorr said.

"You can read into it that [Vinson's attorneys] think there's something there," Schorr said.

The "dirty hands doctrine" is a common response in lawsuits, and allows the defense to dig for more information in the discovery process. Mattress Firm's claims against Levy, Vinson and Deitch start with Levy's hiring in 2009, but, in earlier court documents, Mattress Firm accused Levy and Vinson's predecessor of a similar scheme.

It Happened Before

In 2009, Mattress Firm sued its former in-house vice president of real estate, Gary D. White, along with a Texas-area developer and a flooring company. The retailer accused the trio of padding up to an extra dollar per SF for every new Mattress Firm store and remodel job from 2004 until 2008. The total contracts amounted to more than \$36M during the course of the scheme, Mattress Firm alleged.

Mattress Firm dismissed its claims against the developer and flooring company in late 2009, according to documents. It was unclear if the parties settled. White himself later filed for bankruptcy in Texas. It was unclear as of press time if he settled with Mattress Firm.

The last place listed at White's employment was with Dallas-based Royal Seal Cos. President Gene Colley confirmed White had worked there, but said he died in the summer of 2016. Bisnow was unable to independently corroborate that information as of press time. White's Dallas bankruptcy attorney, Joyce Lindauer, said by email she has no current knowledge of his whereabouts.

A Mattress Firm spokesperson declined to comment on White.

The Other Defenses

This is the latest salvo in Mattress Firm's lawsuit that charges Vinson, Deitch and Levy conspired to defraud the company of tens of millions of dollars.

According to the initial lawsuit, Levy, Deitch and Vinson were responsible for some 1,500 new stores during the more than seven years they directed Mattress Firm's real estate operations, not even accounting for hundreds of more lease renewals. Today, the firm operates more than 3,400 stores.

Florida-based Win-Development and its principals Jesse McInerney and Owen Ewings also denied Mattress Firm's claims in court filings. Nashville-based Oldacre McDonald and its principal, Mark McDonald, claim they have been "swept up in this lawsuit" in an "apparent attempt by [Mattress Firm] to reach more pockets," attorneys stated in documents.

"Oldacre McDonald cannot comment about the specifics of this litigation other than to state that the allegations in the lawsuit are totally without merit — accusing a host of completely independent national developers of similar behavior in separate markets involving unrelated projects," McDonald wrote in an email. "These accusations are preposterous and will be proven so in due course. The motion to dismiss the case is totally appropriate considering our company is not subject to the jurisdiction of the courts in Texas."

In court documents, Oldacre McDonald also said Mattress Firm failed to offer any facts or specific instances that it was involved in a conspiracy against the retailer. Plus, Oldacre McDonald's attorneys argue, Mattress Firm cannot pursue them for making profits based on above-market rents since the retailer signed the lease. "In short, the doctrine of unjust enrichment does not operate to rescue a party from the consequences of a bad bargain, and the enrichment of one party at the expense of the other is not unjust where it is permissible under the terms of an express contract," Oldacre McDonald attorneys wrote in court documents, citing Texas law.

Attorneys for Illinois-based Quattro Development and its co-founder, Michael Liyeos, argue that Mattress Firm makes no allegations of any wrongdoing on a store it developed with an affiliate in Lubbock, Texas. While Mattress Firm does claim Quattro helped Deitch conceal ownership of a Mattress Firm location in Arkansas, the developer's attorneys claim Texas law has no jurisdiction over properties in that state.

Quattro and Liyeos also deny that they ever owned a private jet, countering allegations that the developer offered Deitch, Levy and Vinson flights on it, which Mattress Firm claimed in its lawsuit.

Jay Rickey and Kyle Hagerty contributed reporting to this story.