

## Trustee Alex Moglia Recovers \$25 Million In Chicago Bankruptcy Litigation

**Alex Moglia, the chapter 7 trustee for the bankrupt Pasquinelli Homebuilding Family of companies has now concluded \$25 million in back-to-back, Bankruptcy Court-approved settlements with the defendants in long-running litigation before the United States District Court of the Northern District of Illinois. The first of these settlements, worth \$3.5 million, was reached with the outside directors for Pasquinelli Homebuilding, LLC (the "Outside Director Defendants"). The second settlement, worth \$21.5 million, was reached with the Pasquinelli companies' principals and insiders (the "Pasquinelli Defendants"), as well as those Pasquinelli family-affiliated persons and entities who were alleged to have been transferees of Debtor assets (the "Trust Defendants"). In return for those payments, the defendants received releases in the federal litigation and in related federal and state court proceedings.**

The Pasquinelli companies consisted of a pyramid of more than two hundred privately held homebuilding entities that operated in multiple Midwestern and Southern states. Pasquinelli Homebuilding LLC ("PHB") sat on the apex of that pyramid. Those companies filed a voluntary Chapter 7 bankruptcy in 2011, several years after they had ceased operations. Their creditors elected Alex Moglia as the Chapter 7 trustee shortly after the filing.

The Pasquinelli Defendants were defendants in connection with the Trustee's breach of fiduciary duty, gross negligence, and civil conspiracy claims. Those claims sought redress for transfers of Debtor money and assets to themselves, to other companies and entities that those Defendants owned and/or controlled, and to Pasquinelli family members, allies, and family trusts. Certain of the Pasquinelli Defendants were subjects of the Trustee's alter ego and aiding and abetting claims and, with other Defendants, subjects of the Trustee's claims for constructive and actual intent fraudulent transfers.

The Trust Defendants were generally parties that existed outside of the PHB pyramid of holding and operating companies that constructed Pasquinelli/Portrait Homes homebuilding enterprise. Those Defendants were sued because they were not only direct and indirect recipients of money and other assets flowing out from PHB, but because they also helped orchestrate the funneling of millions of dollars out of the Debtors and away from the Debtors' creditors. These diversions of Debtor assets occurred although the Trust Defendants, like the Pasquinelli Defendants, could see the impending insolvency of the Debtors – long before it was visible to others. On the basis of this misconduct, Trustee Moglia sued the Trust Defendants for fraudulent transfers, breaches of contract, and an accounting of all monies that certain Trust Defendants received from the Debtors.

Trustee Moglia sued the Outside Director Defendants for the damages caused by their gross negligence; breaches of fiduciary duty and their aiding and abetting of the Pasquinelli family directors' own breaches of fiduciary duty. The gravamen of these claims was that the Outside Directors failed to employ the considerable powers conferred on them by the PHB Operating Agreement to stop insider stripping of PHB and its affiliated companies. In so doing, they not only breached their own fiduciary duties to PHB, they aided and abetted the insider Defendants in breaching their own fiduciary duties to PHB.

The defendants denied any liability for any of the misconduct alleged by the Trustee, but ultimately agreed to the settlements described above.

The Diamond McCarthy LLP team was led by partners Jim McCarthy, MaryAnn Joerres and David Reynolds. Diamond McCarthy acted as special litigation counsel to the Trustee in connection with this litigation. Mark Fisher and Jin Yan, both partners in Schiff Hardin's Chicago office, acted as local counsel in the litigation and as the Trustee's general counsel in the Pasquinelli company bankruptcy proceedings.

The Pasquinelli bankruptcies are jointly administered under *In re Pasquinelli Homebuilding, LLC*, Case No. 11-bk-14829 (Bankr. N.D. Ill.). The main piece of federal district court litigation is styled *Moglia v. Bruno Pasquinelli, et al.*, Case No. 13-cv-05024 (N.D. Ill.).

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