

November 13, 2019

Mr. Horwitz represented Nigel Hudson, (“Hudson”) in an action against his former conservator, Lucas Foster, (“Foster”) based on breach of oral contract and Penal Code §495 (theft). Foster served as Hudson’s court appointed conservator following Hudson’s a very significant truck versus auto accident.

Almost as soon as the conservatorship was terminated, and Foster had the conservator check book taken away from him, he started borrowing money from Hudson. Foster leveraged his friendship, and the trust and confidence developed while he was Hudson’s Conservator, and thereafter, by asking Hudson to lend him money out of Hudson’s personal injury settlement proceeds.

Foster would always promise to pay “soon” or “as soon as my money comes in”, and, based thereon, took \$400,000 from Hudson.

During the litigation, Foster claimed that Hudson had not lent him any money, but, instead, was investing in Foster’s wholly owned company, Warp Films, Inc., and that, as Warp Films had made no money out of Hudson’s “investment”, Hudson was not due a return.

Additionally, Foster told Hudson that he needed \$60,000 to settle a bill from one of Hudson’s medical care providers. Hudson gave Foster the \$60,000 for the purpose of paying the bill. Foster negotiated a discount, and paid the provider \$54,704.64 which was accepted in full and final settlement. Foster did not tell Hudson that he paid less than the \$60,000 nor that Hudson was owed \$5,295.36 as a result of the lesser amount paid. In hiding the fact that he was withholding the \$5,295.36, and in not returning the money to Hudson, Foster was found to have violated Penal Code §496. [“Every person who ... receives any property that has been ... obtained in any manner constituting theft ..., knowing the property to be so stolen or obtained, or who ...withholds, or aids in ...withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.”]. As a result, Hudson was awarded triple damages and attorney’s fees.

Following trial, and after the court rendered its decision in Hudson’s favor in the amount of \$415,886.08, the court invited the parties to mediate a settlement of the remaining issues, which included the amount owed by Foster to Hudson for attorney’s fees, interest and costs, including a waiver of a statement of decision and all appellate rights. As a result of those negotiations, Mr. Horwitz secured a judgment in Hudson’s favor for \$700,000, with an agreed upon repayment schedule.