

230476

3-06 CV-792-G

CIVIL ACTION NO. _____

ORIGINAL COMPLAINT

PARTIES

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3. Kasten is an individual who resides in the State of Wisconsin who may be served at his business address, 3565 East Bernard Avenue, Cudahy, Wisconsin.

4. Sportsites LLC ("Sportsites") is a limited liability company organized under the laws of the State of Wisconsin. Sportsites LLC may be served by serving its registered agent, James Kasten, 3565 East Bernard Avenue, Cudahy, Wisconsin.

5. Kasten Family Limited Partnership ("KFLP") is a limited partnership organized under the laws of the State of Wisconsin. It may be served by serving its registered agent, James Kasten, at 118 E. Ironwood Lane, Mequon, Wisconsin.

6. Sportsites R/E, Inc. ("Sportsites R/E") is a corporation organized under the laws of the State of Wisconsin. It may be served by serving its registered agent, James Kasten, 3565 East Bernard Avenue, Cudahy, Wisconsin.

7. Iceport Foundation, Inc. ("Iceport Foundation") is a corporation organized under the laws of the State of Wisconsin. It may be served by serving its registered agent, James Kasten, 3565 East Bernard Avenue, Cudahy, Wisconsin.

8. Sportsites, Sportsites R/E, Iceport Foundation and KFLP are collectively referred to herein as the "Kasten Entities." Kasten owns and controls, directly or indirectly, all of the Kasten Entities.

9. Branovan is an individual who resides in the State of Wisconsin, and may be served at his business address at 3565 East Bernard Avenue, Cudahy, Wisconsin.

10. Sportscomm Cudahy, LLC ("Sportscomm") is a limited liability company organized under the laws of the State of Wisconsin. It may be served by serving its agent, Scott Branovan as manager of Sportscomm Management, LLC at 3565 E. Barnard Ave.,

Cudahy, Wisconsin. Sportscomm is, with respect to the matters alleged in this Complaint the successor in interest to Sportscomm Management LLC and Iceport LLC.

11. Branovan Family LLC (“BFLLC”) is a limited liability company organized under the laws of the State of Wisconsin. It may be served by serving its registered agent for service, Scott Branovan at W288 N3759 Woodline Ct., Pewaukee, Wisconsin.

12. Slapshot Hockey LLC (“Slapshot”) is a limited liability company organized under the laws of the State of Wisconsin. It may be served by serving its registered agent for service, John M. Wirth, 731 North Jackson Street, Suite 900, Milwaukee, Wisconsin.

13. Iceport Leasing LLC (“Iceport Leasing”) is a limited liability company organized under the laws of the State of Wisconsin. It may be served by serving its registered agent for service, John M. Wirth, 731 North Jackson Street, Suite 900, Milwaukee, Wisconsin.

14. Sportscomm Venues LLC (“Sportscomm Venues”) is a limited liability company organized under the laws of the State of Wisconsin. It may be served by serving its registered agent for service, John M. Wirth, 731 North Jackson Street, Suite 900, Milwaukee, Wisconsin.

15. Sportscomm, BFLLC, Slapshot, Iceport Leasing, and Sportscomm Venues are collectively referred to below as the “Branovan Entities.” All of the Branovan Entities are directly or indirectly owned and controlled by Branovan.

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over all of the Defendants because, as shown in more detail below, all of them have engaged in business within the State of

Texas by participating in business transactions with Texas residents that are the basis of the claims in this case, by making fraudulent communications to Texas residents that are the basis of the claims in this case, and by entering into contracts with Texas residents that were performable in part within the State of Texas.

17. This Court has subject matter jurisdiction of the claims herein because as shown in more detail below, the matter in controversy exceeds the jurisdictional limit established in 28 U.S.C. §1331(a) and the parties are citizens of different states.

18. Venue is proper in this Court because the Defendants are subject to personal jurisdiction in this division and district and they are therefore residents of it for the purposes of 28 U.S.C. §1392(a) and because this is a district in which a substantial part of the events or omissions giving rise to the claim occurred.

FACTS COMMON TO ALL CLAIMS

19. Beginning in 2002, Kasten, Sportsites and other Kasten Entities began promoting a development project known as the Cudahy Iceport. The project called for the development of a regional ice hockey and ice sports arena surrounded by retail and hotel developments. Kasten held himself and Sportsites out as having special expertise in mixed developments of this kind.

20. Kasten and the Kasten Entities were able to persuade the City of Cudahy and others to participate in the project by lying about their expertise, financial resources, and the availability of financing for the project. Before the end of 2002 Kasten and the Kasten Entities had entered into various development agreements that, in essence, gave

Kasten a large tract of land at no cost and obligated the City of Cudahy to provide permanent financing for the project through municipal bonds.

21. Some time in late 2002 or early 2003 Kasten was joined in his efforts by Branovan, who claimed to have expertise in the management of ice hockey and other sports arenas. Shortly thereafter, one or more of the Branovan Entities entered into management agreements with the Kasten entities that gave the Branovan Entities the right to manage the proposed hockey arena.

22. Although groundbreaking ceremonies were held in April of 2003, Kasten, Branovan, and their respective entities were unable to develop the project as they had originally promised because they did not have the financial resources, financing, and expertise claimed. In order to induce the City of Cudahy to allow the project to continue they made a series of false representations to the City and others about their ability to get financing and their own financial resources.

23. By mid-2004 the financial condition of the Kasten and Branovan entities was desperate because they did not have the money needed to pay various vendors and lawyers who had extended credit to them based on their false representations about their ability to handle the project. They therefore approached Steve Wiederholt (“Wiederholt”), an investment advisor, about finding additional investors for the project.

24. In August of 2004 Wiederholt approached the Plaintiffs about investing in what he said were “corporate bonds” that would provide “bridge financing” for the Iceport Project. He had been told by Branovan and Kasten, and therefore told the Plaintiffs, that the project would obtain permanent financing within six months and that

they would be repaid their investment plus 12%, an effective annual rate of return of 24%. He also told them, again acting under the instructions of or in concert with Branovan and Kasten, that Kasten had a net worth of more than eight million dollars, that the loans would be guaranteed by Kasten, Wiederholt and two other individuals, Carl Valiment and Daniel Ringsred. Finally, he told them that their investment would be used to begin construction of the Project.

25. All the representations made by Kasten and Branovan through Wiederholt were false. In particular, (1) the money being raised was not to start construction, but to pay off past debts of Kasten and Branovan and their entities, (2) there were no realistic prospects of the completion of financing because of the numerous defaults to vendors and others who had filed liens on the land in the Project, and (3) Kasten and his entities did not have a net worth of more than eight million dollars, but were instead almost broke.

26. In addition to the false representations from Kasten and Branovan they failed to tell Widerholt, and he therefore failed to tell the Plaintiffs, about existing lawsuits over unpaid debts and political opposition to the project. These omissions made even his truthful representations about the project and investment misleading.

27. Based on these and other false representations and material omissions the Plaintiffs invested the following amounts:

Cokely	\$100,000
Ross Kawamoto	\$50,000
Stan Kawamoto	\$50,000
Madrigal	\$50,000
Lasky	\$25,000
Stone	\$25,000

28. In addition to the Plaintiffs, Kasten, Branovan and Wiederholt persuaded 11 other investors to invest a total of more than \$3,000,000 in the project.

29. All of the money obtained by Wiederholt was, on information and belief, used for or transferred directly to the Kasten and Branovan entities. In particular, it was used to pay for past debts incurred by those entities to contractors, suppliers, lawyers, and in some cases to was paid directly to Branovan and Kasten as “salaries” or “fees.” The basis for this allegation is subsequent claims by Branovan that the money was used for construction costs and salaries, and the fact that newspaper articles from early 2004 show that almost all construction costs for the project were incurred before the investments were made, and that almost no costs were incurred afterwards.

30. By early 2005, Kasten and Branovan had still not found the financing needed for the Iceport Project. In order to induce the Plaintiffs and others to refrain from filing suit, Branovan, Kasten and their respective entities continued making false statements about the project and its prospects both directly to the Plaintiffs and indirectly to them through press releases and press interviews related to the Project. This included optimistic reports in February 2005 and June of 2005 that claimed the Kasten and Branovan entities were working on or were close to closing the financing for the project. In fact, Kasten and Branovan knew that their financing was precarious at best, that they had no written commitments for permanent financing at all, and that there was increasing political pressure for the City of Cudahy to exercise its right to terminate the project and re-take the land given the Kasten and the Kasten Entities.

31. Beginning in February of 2006 Branovan, Kasten, and their respective entities apparently reached tentative agreements with the other necessary parties so that a financing transaction could close and the Iceport Project could start. It appears that the structure of the transaction called for separating the commercial real estate development from the hockey rink, and for an interim construction loan on the hockey rink to be made by a group of lenders who would be repaid out of bonds issued by the City of Cudahy.

32. Because the claims of the Plaintiffs and other investors were an impediment to the newly structured transaction, Branovan, Kasten and their respective entities began a concentrated effort to obtain releases from the Plaintiffs and other investors. In order to induce the Plaintiffs to execute releases they sent a "Confidential Disclosure Memorandum" to each of the Plaintiffs and requested that, in reliance on it, the Plaintiffs execute a requested release and waiver. The Memorandum proposed that the Plaintiffs release their existing claims and accept in lieu thereof a right to participate in a future payments which would not equal their original investment plus interest, and might be substantially less. This Memorandum contained false and misleading statements about the history of the Project and about the use of the money originally invested by the Plaintiffs. For example:

- The Memorandum does not adequately disclose the fact that the newly structured transaction called for separation of the Iceport Project into separate commercial and hockey rink projects, and that this separation would, in effect, release Kasten, the Kasten Entities, and the commercially developed land from any obligation to the Plaintiffs.
- The Memorandum states on page ii that the Plaintiffs' investment had been used "to commence construction" of the project when in fact it was used to pay construction debts that had been incurred months or years before.

- The Memorandum states on page ii that the construction lender, “CSMC, Inc.” “decided that it would not allow the repayment of any of the Loans.” In fact, on information and belief, CSMC never refused to allow repayment of the Plaintiffs’ investments. Rather, it merely restricted the use of the loan it was making, and would have permitted Kasten, Branovan and their respective entities to repay the investments from their own funds.
- The Memorandum fails to disclose the true history of the Project, and in particular fails to disclose in a meaningful way the benefits accruing to Kasten from the Project and the fact that it was Kasten and the Kasten entities who were the primary beneficiaries of the Plaintiffs’ investment. In particular, the Memorandum fails to disclose the fact that the building of the ice hockey arena was only a part of the entire Iceport Project, and that as a result of the proposed transactions Kasten and the Kasten entities would retain ownership and control of significant amounts of real estate outside the land used for the hockey arena, and that the Plaintiffs’ money was used, in part, to develop and obtain lien releases for this land.
- The Memorandum fails to disclose the intimate relationship between Branovan, the Branovan entities, and Roustan, Inc.. Branovan was, and on information and belief still is an employee of Roustan, Inc. or one of its affiliates. As a result of the transactions proposed in the Memorandum Roustan, Inc. was to obtain an ownership interest in the hockey arena and lucrative contracts for services and equipment used in the arena. Some of those contracts were through Iceport Leasing, one of the Branovan entities, which expected to profit from them. In addition at least three other individuals employed by Roustan or its affiliates were to be given management positions in the management of the hockey rink.
- The Memorandum states that Sportsites LLC paid \$246,000 of the expenses incurred in the transaction and that it will be reimbursed by the contemplated transaction. This statement is misleading because the Memorandum fails to disclose that those expenses were paid not with Sportsites’ own funds, but, on information and belief, with the money invested by the Plaintiffs and others. Thus, while asking the Plaintiffs to take a reduced amount Branovan, Kasten and their entities would be paid in full for expenses they paid with the Plaintiffs’ funds.
- The Memorandum fails to disclose that Branovan, Kasten and their respective entities had not taken any steps to verify the existence and commitment of the the “consortium of lenders” who were to provide the construction financing, and that in this consortium a single lender, who was not the lead lender for the consortium, accounted for more than two thirds of the amount of the loan.

33. The Memorandum does disclose, in considerable detail, various risks associated with the future performance of the hockey arena; however, in general it fails to disclose the extent to which the parties who were to be released; that is, Branovan, Kasten and their various entities, had previously profited from the Iceport Project and expected to profit from it in the future, and failed to disclose the extent of the property and assets that were exposed to the Plaintiffs' claims and were to be protected by the releases. In short, the Memorandum was written primarily to scare the Plaintiffs and other investors into taking a deferred payment and release instead of pursuing their legitimate claims against Kasten, Branovan, and their respective entities.

34. Each of the Plaintiffs executed the requested release and waiver, thus "investing" in the new transaction and its promises of future payment.

35. The new transaction did not close. It is not clear whether it will ever close, but in any event the release and waiver forms are, by their own terms, ineffective because of that failure. However, the Plaintiffs incurred thousands of dollars in legal fees in reliance on the Memorandum and its misleading statements and omissions.

CONSPIRACY ALLEGATION

36. Branovan, Kasten and their respective entities conspired to commit each of the wrongs alleged below. In particular:

37. Each of the Kasten and Branovan entities except Sportsites was a single purpose entity created for the Iceport Project and acting entirely through either Branovan or Kasten individually. Each of the entities acted in concert with the others in a manner consistent with its individual purpose and in order to achieve the same overall goal of

developing the project and the immediate goal of raising money for the project through fraud. Branovan and Kasten as individuals shared the common purpose in 2004 of raising money to pay past debts and their own fees and expenses, and each took whatever actions were appropriate to creating the impression that the Iceport Project was financially viable by making statements to the press and to Wiederholt consistent with that purpose.

COUNT ONE
(BREACH OF CONTRACT)

38. Plaintiffs reallege and incorporate by reference each of the allegations above.

39. The “bonds” sold by the Defendants to the Plaintiffs represented a debt obligation of the Kasten and Branovan entities that has not been repaid and is past due. The Plaintiffs are entitled to judgment against the Defendants, jointly and severally, for the amounts of their investments plus pre-judgment and post-judgment interest from the date of the investment until the date of payment.

40. In addition, this claim is one for which attorneys fees may be recovered under Chapter 38 of the Texas Civil Practice & Remedies Code, and the Plaintiffs are entitled to judgment in the amount of their reasonable attorneys fees herein.

COUNT TWO
(COMMON LAW FRAUD)

41. Plaintiffs re-allege and incorporate by reference every allegation above.

42. The Plaintiffs were induced to invest in the Iceport Project by the fraudulent statements and omissions of Kasten, Branovan and their respective entities described in detail above. They have lost the entire value of their investment and are

therefore entitled to judgment in the amount of that investment plus pre-judgment and post-judgment interest as provided by law.

COUNT THREE
(VIOLATIONS OF TEXAS SECURITIES ACT)

43. Plaintiffs re-allege and incorporate by reference every allegation above.

44. The investments originally sold to the Plaintiffs were “securities” as that term is defined by the Texas Securities Act. The investments sold to the Plaintiffs in April of 2006 were also “securities.”

45. Kasten, Branovan and their respective entities all sold or offered for sale the securities originally purchased by the Plaintiffs in 2004 and those purchased in 2006.

46. Kasten and his entities were issuers of the securities purchased by the Plaintiffs in 2004 as the word “issuer” is defined in the Texas Securities Act. Branovan and his entities were issuers of the securities purchased in 2006.

47. Kasten and his entities, and Branovan and his entities, were control persons as that term is defined in Section 33 of the Texas Securities Act.

48. The sales of securities to the Plaintiffs in 2004 and 2006 were made in violation of Section 33 of the Texas Securities Act, and the Plaintiffs are, therefore, entitled to judgment for the relief provided in that Section.

PRAYER

49. WHEREFORE the Plaintiffs request that the Defendants be cited to appear and answer herein, and that on final trial they have judgment for all the relief

requested above, plus such other and further relief, whether at law or in equity, as to which they may show themselves justly entitled.

Respectfully submitted,



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