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Billionaire Brother Wins Trial in Long-Fought Sibling Rivalry

By Rebecca Beyer
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LOS ANGELES — A billionaire who made his fortune in real estate owes nothing to his older brother, a Superior Court jury found Thursday in a dispute that has had two trials and two trips to the California Court of Appeal.

Alan I. Casden, a real estate mogul who made an unsuccessful bid to buy the Los Angeles Dodgers for \$450 million in 2003, has been litigating against his older brother, Henry C. Casden, for eight years over a 20-year-old oral bonus agreement and the value of nearly 300,000 properties. *Henry C. Casden v. Alan Casden*, SC057275 (L.A. Super. Ct., filed May 20, 1999).

In 2006, Forbes listed Alan Casden, 61, as 645th out of the world's 793 billionaires. The magazine estimated his worth at \$1.2 billion.

Henry Casden, 62, an attorney in private practice in Palm Desert, said he felt Judge Cesar C. Sarmiento of Malibu made "a substantial amount of errors" in handling the case and said he would appeal. He referred other questions to his attorney Hillel Chodos, a private practitioner in Los Angeles, who did not respond to a request for comment.

After working for years as a transactional attorney, Henry Casden went to work for his brother's real estate company in 1988 and spent 11 years there. He left the company in 1999 and claimed he was entitled to a bonus based on an oral agreement he made with Alan when he began working at Casden Properties. He also claimed he was entitled to a declaration of his ownership of 277,777 Class B units he received as part of his partnership in a real estate investment with the company.

Alan Casden's attorney Thomas J. Nolan, a partner at Skadden, Arps, Slate, Meagher & Flom in Los Angeles, said Henry Casden claimed he was owed \$4.3 million based on an oral agreement.



Daily Journal file photo

Thomas Nolan, partner at Skadden, Arps, Slate, Meagher & Flom in Los Angeles, won a jury verdict for his client, billionaire Alan Casden.

Nolan said the agreement promised Henry Casden 10 percent of the after-tax income of the Casden Co. over the time of his employment.

According to Nolan, between 1988 and 1999, the Casden Co. had two "successful years" but in total lost \$6.6 million.

The dispute arose over how that 10 percent should be calculated. Nolan said Henry Casden argued he should be able to "cherry pick" the good years of the company while Alan Casden maintained the 10 percent should be calculated from the entire time period.

During that time, Nolan said, Henry Casden made \$7 million in salary and other bonuses while 50 Casden employees were laid off and other executives took pay cuts.

"Our basic theme was that Alan had treated his brother very well over all the years and that his brother was just greedy, and the jury agreed," Nolan said.

According to Nolan's trial brief, Alan Casden formed a Real Estate Investment Trust called Casden Properties in 1998

and Henry took a job working for the trust. As part of the agreement, he received the Class B property units. The units could be exchanged for value only if the trust had an initial public offering or was sold to or merged with another company.

In his brief, Nolan writes that Henry left his position and the company in May 1999, after four and a half months with the trust and 11 years with the company. He sued his brother and the company for severance pay and for a declaration of ownership of his properties. Alan filed a cross-complaint alleging Henry defrauded the company, claiming Henry never wanted to work for the company and instead signed employment agreements solely for the benefits.

The case first went to trial in March 2000 and summary judgment was granted in favor of Alan Casden's company on the claim for the 10 percent bonus. In May 2000, a jury found Henry had defrauded the company.

Henry appealed.

Billionaire wins Trial in Litigation With Brother

In July 2002, the Court of Appeal reversed the summary judgment and the trial judgment.

In 2003, the case was retried. Here, instead of seeking a declaration that said he owned the properties in question, Henry claimed he was entitled to \$10 million in damages and interest for the loss of the units (which had since been transferred in a merger) based on their May 1999 value.

In November 2003, the trial court dismissed Henry's bonus claim, finding a settlement agreement he signed released Alan from any obligation. The jury found Henry breached his fiduciary duty to Casden Properties and owed the company \$1 million. But the jury also awarded Henry \$450,000 for the company's breach of the severance agreement and just under \$5 million for his properties.

Henry appealed. This time so did Alan. The Court of Appeal ordered the case retried.

On Thursday, after a seven-day trial and 2½ hours of deliberations, the jury found the Casden Co. did not owe Henry any bonus based on the oral agreement and that the value of the properties at the time of Henry's resignation was zero. The properties could not be sold until one year after an initial public offering or a merger, neither of which had occurred in May 1999.

"We brought in an expert, and what the expert did, as the law instructed him to do, is he went back to May 12, 1999, and he placed a value on Henry's units as of that date and the 'no peek rule' — meaning you can't look at anything that might happen in the future," Nolan said.

The jury, he continued, found Henry had to live "by those restrictions that caused the units to have no value even though they ultimately were of value to the executives who remained at the company."

Nolan said the jury, which included two attorneys, told him afterward that they were influenced by the fact that Henry had been a transactional attorney for 35 years.

"They said he should be bound to the legal contracts that he signed and that his effort to make up oral promises from his brother just defied logic and could not be proven," Nolan said.

Nolan has represented Alan Casden in other cases, including a 2003 legal malpractice suit against 13 former attorneys who represented Casden in a real estate investment deal that resulted in a class action against Casden's company. Casden settled with investors for \$83 million. The malpractice case eventually settled as well.

Nolan also represented Casden when

the billionaire filed a State Bar complaint against Los Angeles County District Attorney Steve Cooley after Cooley told the Los Angeles Times that Casden was a target of an investigation into political campaign contributions. In the investigation, 14 of Casden's associates were indicted by a grand jury. The associates were accused of recruiting family and friends to donate to the campaigns of city council members, Los Angeles City Attorney Rocky Delgadillo and 2001 mayoral candidate Kathleen Connell. They allegedly repaid the contributors. Casden was never charged.

Nolan said the jury verdict in favor of Alan Casden against his brother was a "stunning victory."

Before the case ever went to trial, he said, Alan offered Henry \$8 million to settle the case. Before the latest trial, Henry refused an offer of "several millions of dollars," Nolan said.

"We think [the verdict] is a clear vindication of Alan and the company's position throughout this litigation — Henry had been generously compensated and he didn't deserve more," Nolan said.

Nolan did not rule out the possibility of another round.

"They certainly know the route to the Court of Appeal."