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Fragrance Co. In Contract Row Wants Conn. Jury Loss Tossed

By **Brian Steele**

Law360 (December 20, 2023, 7:48 PM EST) -- A formerly Native American-controlled shampoo fragrance supplier that lost an \$8.4 million bid for damages in a commercial contract feud now wants a Connecticut state court judge to undo last month's verdict in favor of its opponent, arguing that the jury was confused about the law.

In a Monday **motion** to set aside the verdict or hold a new trial, Native Materials LLC said that the CEO of Carrubba Inc., a Connecticut-based producer of botanical scents, admitted that his company had **not paid for services** under a 2006 contract that helped Carrubba become a Procter & Gamble supplier. Native Materials said that admission showed a clear violation of the deal the two companies had hashed out.

The motion also asks the judge to enter a verdict in favor of Native Materials and calls the Nov. 16 **Stamford trial outcome** a "manifest injustice."

"The jury had to have been confused because the admission of non-payment is a breach per se and clearly defies logic," the motion said. "Moreover, there was further confusion as the jury was never instructed on the definition of what constitutes the 'breach' for purposes of a breach of contract."

Native Materials was jointly owned by Choctaw Nation member Kimberly Chambers, of Oklahoma, and a company tied to fragrance industry veteran Grant Mudge of Connecticut, according to the October 2016 complaint. A trial management report that the parties jointly filed on Aug. 22 indicates that the state of Oklahoma administratively dissolved Native Materials in 2008, but in 2016, Mudge petitioned to have it restored as a legal entity and purchased Chambers' majority interest.

The Norfolk-based outfit claimed that it arranged an agreement for Carrubba to sell products to P&G, with Native Materials helping Carrubba meet corporate diversity and minority ownership requirements set by P&G and preferred by major retailers. Carrubba, however, did not pay the required 20% finder's fee for all sales, Native Materials claimed.

Counsel for Native Materials said during opening statements Oct. 31 that Mudge had worked for years with P&G predecessor Clairol, earned a preferential position in the company's supply chain and secured a deal whereby Carrubba would produce fragrances for P&G with Native Materials' assistance.

Monday's motion contends that Carrubba has failed to pay \$4.4 million. Native Materials asked the jury to award a minimum of about \$8.4 million in damages based on past and future sales, plus interest, attorney fees and punitive damages under the Connecticut Unfair Trade Practices Act.

Native Materials claimed that Carrubba had unsuccessfully tried to become a P&G partner for years. Carrubba nixed Native Materials more than 15 years ago, choosing instead to work through Harris & Ford LLC, another minority-owned distributor, Native Materials alleged.

During the trial, counsel for Carrubba, Anthony Musto, said that Native Materials went out of business without doing any distribution work for his client and told the jury that Native Materials was revived only so it could file the lawsuit.

Musto argued that Native Materials was a buyer's agent for P&G, rather than a distributor, and that

the designation banned it from receiving a back-end fee from Carrubba under P&G's ethics rules.

The jury agreed with Native Materials that it had performed its obligations under a valid contract with Carrubba, but jurors rejected claims connected to the alleged failure to pay the finder's fee.

Native Materials filed a motion days after the verdict asking for an extension of time to file an appeal, but Superior Court Judge Robert Guarino rejected the request, noting in a Nov. 21 order that the time to appeal would come after a ruling on a timely motion to set aside the verdict or hold a new trial.

Counsel for Native Materials, Eric D. Grayson of Grayson & Associates PC, told Law360 on Wednesday that his client has not received a penny on Carrubba sales totaling between \$15 million and \$22 million.

The verdict "is illogical, unfair and we believe against the great weight of the evidence," Grayson said in a statement. "We believe the jury must have been confused in understanding the instructions or charges, because they found that there was a contract, Native performed — yet Carrubba did not breach."

Grayson said Native Materials is planning to "exhaust all available legal remedies" to challenge the verdict. Carrubba never would have been able to do business with P&G unless Native Materials greased the wheels, he said.

Counsel for Carrubba did not immediately respond to requests for comment.

Native Materials is represented by Eric D. Grayson of Grayson & Associates PC.

Carrubba is represented by Daniel D. Portanova of the Law Office of Daniel D. Portanova PC, Dennis J. Kokenos of Marino Zabel & Schellenberg PLLC, and Anthony Musto.

The case is Native Materials LLC v. Carrubba Inc., case number FST-CV16-6030190-S, in the Stamford-Norwalk Judicial District of the Connecticut Superior Court.

--Additional reporting by Aaron Keller. Editing by Rich Mills.