

When Hiding Assets Doesn't Work: How Mintz Levin Recovered \$20M for Cheated Client

By Jenna Greene

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Winning is great—but not if your client can't collect.

Faced with a defendant who tried just about every trick to hide assets, including a bankruptcy filing, offshore fund maneuvering and dissolution of the business, a team from Mintz Levin Cohn Ferris Glovsky and Popeo wouldn't take no for an answer.

After a 10-year fight, it paid off. On the first day of trial, their client, Taiwan-based Tatung Co., struck a deal yielding \$20 million in settlements and recoveries—versus \$500,000 it would likely have netted if it hadn't been willing to keep up the chase.



DAILY DICTA

JENNA GREENE

“The big lesson is to think of the world as a small place,” said Mintz Levin partner Daniel Pascucci, who was lead counsel in the case along with Joseph Dunn and co-counsel Joseph Wu of USAsia Law in La Jolla, California. “You just need to know

that the money is there, that it exists somewhere in the world under the control of someone you can attach liability to.”

The case started as a fairly straight-forward breach of contract suit. In 2006, Tatung agreed to make LCD televisions for Westinghouse Digital Electronics, which had acquired a worldwide license of the “Westinghouse” trademark for almost all consumer electronic goods.

According to the complaint, Westinghouse Digital was formed by Richard Houg and his family members, who also founded the multinational Taiwan-based conglomerate Chi Mei Companies.



Lauren Radack

Left to right: Daniel Pascucci and Joseph Dunn Mintz Levin

Tatung claimed it delivered the televisions to Westinghouse Digital, which sold them to retailers like Target and Costco, but Westinghouse refused to pay Tatung \$11 million for the goods.

The dispute—later amended to add alter-ego claims against Westinghouse Digital's parent company, Nexis, and Houg, the CEO—was to be adjudicated by the American Arbitration Association. After prevailing in discovery battles, Pascucci said the proceedings were “going in our favor... The writing was on the wall that we were going to win.”

According to Mintz Levin, on the eve of arbitration, Westinghouse Digital's parent company Nexis assigned all of Westinghouse's assets to an assignee under an assignment for benefit of creditors, leaving the company an empty shell. The parent company and Houg then each filed for bankruptcy protection, and all of Westinghouse Digital's assets were sold or moved offshore.

“They scuttled the company. ... We were at a fork in the road,” Pascucci said. “The money was gone.”

The big question: if Tatung continued to chase it, he said, would it just “be throwing good money after bad?”

The easiest option for Tatung was to get in line with other creditors and wait for the estate to be liquidated—an approach that would have yielded pennies on the dollar.

“We studied the situation very hard and advised the client to double down,” Pascucci said. Tatung, which he described as a “careful, conservative company,” agreed.

Using documents obtained in discovery during the arbitration and others from the assignee of the estate, Mintz Levin lawyers were able to follow the money and unravel the scheme.

The lawyers secured a judgment of alter-ego liability against Houng, as well as a judgment of non-dischargeability against him from the bankruptcy court. Then, they successfully defended it on appeal before the U.S. Court of Appeals for the Ninth Circuit.

But that wasn’t all. They went on to file a civil RICO claim in the U.S. District Court for the Central District of California against the operators and entities utilized to transfer Westinghouse Digital’s assets into related entities and for benefit of its ultimate owners.

Civil RICO claims are an extremely tough sell. According to a 2009 decision in the Southern District of New York, plaintiffs have a 2 percent success rate.

Tatung’s RICO complaint—233 pages, plus another 94 pages of exhibits—never made it to trial. But it survived more than 30 motions to dismiss and required two special masters to handle the workload.

Defense lawyers for the various entities (who seemed to be terminated at a dizzying pace) include Bird Marella Boxer Wolpert Nessim Dooks Lincenberg Rhow; LTL Attorneys LLP and Browne George Ross, with prior representation by Armstrong Teasdale and Troutman Sanders.

The Mintz Levin team was ready to go to trial in December in federal court in Santa Ana, California. According to Pascucci, the lawyers and support staff had said goodbye to their families for two months, and moved into a hotel where they set up three war rooms.

After the first day in court—an eight hour hearing on motions in limine, where Pascucci said U.S. District Judge David Carter indicated he would issue rulings favorable to Tatung, the case settled. The final documents were received on March 3.

Better yet, Pascucci said, the deal is fully collateralized. The first payment is due later this month.

So what are the lessons learned?

One big one is that California federal courts over the past two decades have been willing to expand their reach, he said. “Their long arm jurisdiction has gotten very expansive, provided there’s a sufficient nexus to the district.”

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