



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Kids Drink Co. Must Face Conspiracy Claims In Investor Suit

By **Reenat Sinay**

Law360 (November 5, 2018, 4:42 PM EST) -- The owners of a children's drink company must face conspiracy and fraudulent misrepresentation claims in an investor suit accusing them of mishandling investor loans and transferring assets to a new company to wipe out the debt, an Illinois federal judge ruled on Friday.

The investors, led by Thomas A. McNichols, accused the owners of Drink Blocks LLC, Tom and Marcie Weiss, of soliciting loans from the investors under false pretenses and conspiring with family friend Michael Patierno to shut down the company and avoid repayment by transferring all assets to a separate company, Patierno's Beverage Blocks Inc.

"These alleged facts, when looked at in total, demonstrate that defendants had an arrangement to work together to defraud plaintiffs," U.S. District Judge Virginia M. Kendall said of the conspiracy claim. "The timing, standing alone, strongly suggests that this was not a coincidence."

Judge Kendall also denied the stackable drink box company's owners' motion to dismiss, but tossed the investors' claims of conversion and aiding and abetting fraud, as well as the investors' request for attorneys' fees.

McNichols and the investors **filed their suit in March** following repeated unsuccessful attempts to recoup their losses and obtain financial information on Beverage Blocks.

Drink Blocks was formed by the Weisses in California in 2013 using disputed patents — unbeknownst to the investors — for an interlocking juice box design, according to the complaint.

The Weisses solicited loans from several investors in 2013 and 2014, promising prompt repayment or board positions that were never received, the investors said.

The investors alleged that from 2013 to 2017, rather than repaying the investors, the owners funneled more than \$350,000 of the money loaned to the company into their personal accounts.

In February 2017, Tom Weiss announced that Drink Blocks was shutting down because of financial stress and debts and that all assets would be transferred to a previously undisclosed lender, according to the complaint.

The lender, Michael Patierno, founded Beverage Blocks in 2016 in cahoots with the owners as part of their plan to wipe their liabilities, the investors alleged. Beverage Blocks owns

and operates Drink Blocks, continuing to sell its products under both names, according to the investors.

In upholding the investors' claim of fraudulent misrepresentation, Judge Kendall said that they had relied on encouraging but misleading statements by Drink Blocks' owners and would otherwise not have continued to invest.

"Weiss told them that he secured a royalty deal in South Korea that would bring in over \$1 million to the company, helping Drink Blocks to repay their loans," the judge said. "Plaintiffs relied on the truth of these statements and thought that the business was healthy enough that defendants would repay them their loans."

The Weisses escaped a conversion claim on Monday because of lack of specificity.

"The complaint continuously uses the terms loan and investment interchangeably," said Judge Kendall. "The complaint is devoid of any specific allegations of the terms of the loan or investment and whether they in fact had a right to repayment."

Judge Kendall also dismissed a claim against Patierno for aiding and abetting fraud, deeming the allegations insufficient to meet the pleading standard.

Representatives for both parties declined to comment on the pending case on Monday.

The investors are represented by Karnig S. Kerkonian and Elizabeth M. Al-Dajani of Kerkonian Dajani LLC, and E. Steven Yonover.

The defendants are represented by Paul B. Porvaznik and Kevin T. Mocogni of Kanaris Stubenvoll & Heiss PC.

The case is McNichols et al. v. Weiss et al, case number 1:18-cv-02125, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Peter Rozovsky.