

Lawsuit and Sworn Testimony Reveal Lennar Conspiracy Orchestrated by CEO Miller

Lennar is a company that will stop at nothing to make money. The management has a “win at all costs” mentality that causes them to cross far over the lines of ethical business practices, into downright malicious, vindictive, unethical, and sometimes illegal behavior.¹ The most recent conspiracy pits Lennar against Nicolas Marsh once again, a real estate developer who helped create one of Lennar’s “most successful” real estate ventures. Yet Lennar refuses to pay Mr. Marsch his portion of the profits, instead using the legal system and unethical war tactics to bankrupt him and keep his profits for themselves.

There are six key components of this recent conspiracy to strangle an opposing party with unfair, unethical, and possibly illegal means. This previously undisclosed series of events is substantiated by both a new lawsuit and then sworn testimony of one of the conspirators.

1. **On April 3, 2009, Lennar executives including CEO Stuart Miller and criminal defense lawyer Daniel Petrocelli proposed a scheme to cause Nicolas Marsch and his related entity Briarwood to lose their ownership interest in HCC and The Bridges.**² The proposed conspiratorial deal with KBR,³ a part owner of KRMW Real Estate Investment Group, was intended to strip Mr. Marsch of ownership while giving KBR an even greater ownership stake in HCC and The Bridges than they were entitled to under the KRMW operating agreement.

Under the KRMW operating agreement, Mr. Marsch contributed all proceeds from legal claims against Lennar in The Bridges matter. He also contributed his entire ownership interest in HCC and The Bridges to KRMW, and agreed to pay all related litigation costs. KBR contributed \$4.19 million cash to the KRMW deal. KBR effectively owned only 5%⁴ of HCC and The Bridges through this deal, and was hoping to be victorious in the Lennar litigation to reap the benefits of this ownership.

As part of the deal, all parties agreed that they would “cooperate together toward the acquisition of the interests in HCC not held by Briarwood for the benefit of KRMW.”⁵ In other words, they would work together to prevail in the Lennar litigation. They further agreed “that neither of us will circumvent these efforts to acquire such interests for the benefit of KRMW and will not acquire such interests for either of our own benefit or the benefit of our affiliates to the exclusion of KRMW without the written approval of each of us.”⁶

Notwithstanding this agreement, Michel Kucinski of KBR participated in secret negotiations with Lennar executives on April 3 to cut Mr. Marsch out of the deal and enhance KBR’s own monetary interests. Mr. Marsch would be left with no money, no right to receive any distribution, and no right to continue to litigate the matter.

¹ FDI has been retained by Mr. Marsch in his litigation against Lennar, and in January of 2009 was sued by Lennar in Florida.

² This entire conspiracy is laid out in the filing of lawsuit 37-2009-00090462-CU-BC-CTL, Briarwood Capital, LLC v KBR Group, LLC, filed in San Diego County on May 22, 2009.

³ Please see attached deposition of Michel Kucinski, part owner of KBR. Pages 127 to 153 of the testimony detail the meeting and the offer made by Lennar to KBR in their meeting to conspire to squeeze Nicolas Marsch out of his HCC and The Bridges ownership and distribution.

⁴ Please see attached deposition of Michel Kucinski, page 101.

⁵ Please see attached Civil Complaint filed in San Diego County, page 9.

⁶ Ibid.

As a result of the conspiracy, KBR would receive \$9 million in cash, and KBR's effective ownership of HCC and The Bridges would go up to 10%. This "no lose" offer made by Lennar to KBR in exchange for double-crossing Mr. Marsch and violating the operating agreement of KRMW is undoubtedly far more attractive than rolling the dice in continued litigation. Lennar wins as well, as Mr. Marsch would be stripped of all rights to continue to pursue the HCC and The Bridges litigation, and Lennar will never have to distribute to Marsch his portion of profits from the real estate project.

- 2. When it's time to distribute profits, HCC and The Bridges is a financial loser despite grossing over a half a billion dollars. When it's time to conspire with a third party, HCC and The Bridges has value.** Oddly enough, Lennar management has represented in litigation that HCC and The Bridges lost money, and therefore Mr. Marsch is not due any "profit distribution" from the project. Yet in the Lennar executives' offer to KBR on April 3, they were prepared to give KBR a 10% "ownership interest" in that very project as part of the proposed conspiracy.

When convenient for Lennar, the project is unprofitable. When trying to induce a party to double-cross its business partner, then the project has value which is offered as compensation for cooperation. Either The Bridges is profitable or it is not, but the most recent conspiratorial activities suggest that the project has profits and value, in direct contradiction to representations made by Lennar management in the Marsch litigation.

Is this a simple mistake? Of course not. It's clear that HCC and The Bridges has always had value, but that Lennar is intent on depriving Mr. Marsch of his rightful portion of the profits. Giving up 10% of the profits to an entity like KBR is a small price to pay to prevent Mr. Marsch from getting the remainder of his 50% of the profits.

- 3. The CEO of public company Lennar is orchestrating this conspiracy.** This is not a case of minor dispute between parties. This is a multi-million dollar dispute over which the top executives of a company traded on the New York Stock Exchange will take a full day out of their lives to fly to a meeting with a party related to one of their adversaries.

Lennar executives Stuart A. Miller (President and Chief Executive Officer), Jonathan M. Jaffe (Vice President and Chief Operating Officer), and Rick Beckwitt (Executive Vice President) flew to San Diego in furtherance of their conspiracy against Nicolas Marsch. These three, headed up by Mr. Miller, and along with their criminal attorney Daniel Petrocelli, went to make the above offer to KBR participants Michael Kucinski, Randy Rivera, Shawn Wamstad, and Bob Blanchard.

They aren't just trying to settle a dispute. They aren't just employing good litigation strategy.

These public company executives are doing whatever it takes to bury Mr. Marsch, even if that includes conspiring with other parties to cheat Mr. Marsch out of his money and his rights. They cannot claim this is the work of a rogue employee or an out-of-control attorney. They all played active roles in crafting and proposing the conspiracy to cheat Mr. Marsch out of his ownership interest in profit distributions of HCC and The Bridges.

- 4. Lennar executives admitted in their meeting with KBR representatives that the company's strategy is to outspend Mr. Marsch, rather than fight fairly through the**

legal system.⁷ They know they have far more money than Mr. Marsch, and with almost unlimited financial resources at their disposal, they can continue to make litigation expensive until Mr. Marsch is bankrupt. They aren't interested in having a judge or jury decide the case on its merits. Instead, they want the other side to be forced into a position in which he cannot continue to fight. This isn't the first time Lennar has used an apparent strategy to outspend the other side.

In Mr. Kucinski's first deposition, he confirmed this strategy to financially devastate Mr. Marsch in the litigation process:

Q: And lastly, you represented to Mr. Marsch the Saturday following the Friday meeting that Mr. Petrocelli said that it has essentially been Lennar's campaign to outspend Mr. Marsch and they know the detailed extent of his financial condition and they have him right where they want him in the litigation in terms of not being able to go forward: is that right?

Mr. Petrocelli: Objection, the question assumes facts not in evidence, compound, vague and ambiguous, argumentative and lacks any good faith basis.

Ms. Kope: Join.

A: I think that it's Mr. Marsch's assertion to which I believe is true.

In his second deposition, Mr. Kucinski reiterated Lennar's "financial strategy" to take down Mr. Marsch:

Q. You were of the mindset that it was probably true that Lennar was attempting to outspend Mr. Marsch in the Bridges litigation, at least as of April 3, 2009, right?

Mr. Petrocelli: Vague and ambiguous.

Mr. Williams: Join.

The Witness: I don't think it's outspend as much as outlast. I think Mr. Marsch -- Mr. Miller, it was my impression, would have gone to any length to make sure that he would not -- they wouldn't drop the suit.

BY MS. HOLMES:

Q. And when you say Mr. Miller would have gone to any length to outlast Mr. Marsch in the litigation, what did you understand Mr. Miller to mean by that?

A. Well, they were my words, but he said that he was going to see this through, and I assume that to be all the way through the end. So it didn't matter whether it was favorable, appealable, they were just going to see it through.

⁷ Please see attached Volume 2 deposition of Michel Kucinski, part owner of KBR. Pages 226 to 229 of the testimony discuss Lennar's intent to outspend Mr. Marsch.

Q. And you had testified earlier, though, that you believed that Lennar was -- as part of that effort to see the Bridges litigation all the way through, that they were trying to outspend Mr. Marsch, right?

Mr. Petrocelli: Objection. Lacks foundation

The Witness: Again, I think "outspend" is a word used by Mr. Marsch. I think Lennar has no issues with doing whatever legal work needs to be done to achieve their point. I don't --

BY MS. HOLMES:

Q. Go ahead.

A. I know litigation is expensive, and I know Mr. Marsch is not in the same financial position as Lennar.

Q. And when you say that Lennar has no issues in seeing whatever needs to be done in litigation, you mean financial issues?

Mr. Petrocelli: Objection.

The Witness: Those are my words, yes.

Mr. Petrocelli: Vague and ambiguous.

BY MS. HOLMES:

Q. And you believed that to be true at least still as of April 3, 2009, right?

Mr. Petrocelli: Vague and ambiguous.

The Witness: I believed what to be true, I'm sorry?

BY MS. HOLMES:

Q. That Lennar was in a stronger financial position than Mr. Marsch in the litigation against him, and that Lennar had no financial issues with respect to fully and zealously litigating their claims against Mr. Marsch.

Mr. Petrocelli: Vague and ambiguous and compound.

The Witness: Yes. Mr. Marsch had repeatedly said to me in meeting after meeting that Lennar has spent in the order of 25 to \$30 million on the case, as opposed to where he was at, and they were not going away.

5. **Lennar's litigation is, in fact, their business model. Simply stated, no one gets paid. Not now, not ever.** The number of lawsuits against the company for failure to pay profits, fees for services, or even basic contractor bills bears witness to the fact that a clear pattern emerges. The company uses (abuses) the legal system in classic "racketeering" fashion, seeking to prevent legitimate legal claims for breach against the company by burying the little guy in the legal process. Lennar hopes that the issues surrounding failure to pay their bills as promised never reaches the courts. In other

words, the company engages in a premeditated plan to pay their lawyers rather than their binding obligations. The company leverages the bad economy and the inability of “smaller” entities to fund expensive litigation, in order to not pay as promised.

6. **Anyone who opposes Lennar or accuses them of unethical or illegal acts is immediately branded by Lennar as attempting to “defame” the company.** Those who question Lennar’s pattern of behavior or expose the company’s scandalous conduct are threatened with litigation. In our case, Lennar actually commenced litigation in an attempt to silence critics of the company’s business practices and general conduct.