

Texts Were Intentionally Deleted In Hotel Suit, Investors Say

By **David Minsky**

Law360 (April 4, 2024, 8:35 PM EDT) -- Two investors have urged a Florida state court to impose severe penalties on the managers of a hotel enterprise after WhatsApp text messages in a \$15 million lawsuit were allegedly deleted intentionally, saying the communications were critical to proving that their equity interests were wrongly taken from them.

Jose Renteria and Juan Montes De Oca said Eleventh Judicial Circuit Judge Thomas Rebull should order sanctions over the deleted WhatsApp messages and other electronic communications showing how Eurocon LLC managers Orlando Padron and Henry Contreras conspired to steal the investors' 25% interest in the company, according to a **motion for spoliation sanctions** filed Tuesday in Miami-Dade County.

"The individual defendants had an ongoing duty to preserve documents from the day [they] conspired to steal plaintiffs' interest in Eurocon," the motion said. "Yet to this date, the individual defendants continue, on a daily basis, to destroy their written communications. Every 24 hours."

The plaintiffs brought their **suit** against Padron, Contreras, Eurocon and two other parties in July 2022. In the complaint, Renteria and Montes De Oca said their equity interests were diverted into a separate company controlled by the Eurocon managers in June 2020, shortly after they provided capital necessary to keep the company afloat amid the coronavirus pandemic.

The two other defendants listed in the suit are Roca Investment LLC and Ruzafa LLC, which Padron and Contreras allegedly used to steal the plaintiffs' equity. The plaintiffs are seeking at least \$15 million in damages.

Renteria and Montes De Oca say their initial investment began in 2011 with \$4 million in the form of a loan, which was ultimately converted into equity. The plaintiffs created a limited liability company to complete the conversion, and that company became a member of Eurocon with a 25% interest, according to the suit.

The alleged plot to squeeze out the plaintiffs began in 2016, when the defendants informed the two that the bank was requiring them to be indirect owners in order for Eurocon to receive a restructuring loan. Renteria and Montes De Oca say they were told to transfer their equity interest to Roca Investment, in which Padron and Contreras were the only members — although the plaintiffs remained beneficial owners, according to the lawsuit.

The arrangement lasted for several years until profit sharing stopped when the company started experiencing financial difficulty due to the pandemic, according to Evan J. Stroman of Diaz Reus & Targ LLP, who represents the plaintiffs. The company had a \$750,000 loan payment due and were about \$500,000 short, so the defendants asked the plaintiffs to contribute \$125,000, which was their required share of the payment as 25% owners, Stroman said.

The plaintiffs allege that after they provided the money in May 2020, the defendants proceeded to transfer their 25% stake to Ruzafa before cutting off contact. The plaintiffs sent a demand letter stating that they wanted to stop being beneficial owners and have equity put

back into the company under their names again, according to their motion.

On June 4, 2020, Stroman said, the defendants became aware that they might be sued and were required to retain the electronic communications on WhatsApp, which they used to conduct their business.

"Once you reasonably anticipate litigation in Florida, you must preserve the relevant electronically stored information," Stroman told Law360 on Thursday. "The defendants we know here did the opposite of that."

In the spoliation motion, the plaintiffs said WhatsApp was used for "substantive business discussions" based on sworn testimony from the defendants. Documented email evidence also showed the defendants used WhatsApp, according to the motion.

After the lawsuit was filed in 2022, the plaintiffs said the defendants weren't able to produce any discovery on the WhatsApp messages and other electronic communications. Additionally, the plaintiffs said the defendants enabled the auto-delete feature of WhatsApp when it became available in late 2021. That meant the defendants had to have manually deleted all the previous WhatsApp communications going back to at least May and June 2020, according to Stroman.

The motion stated that sanctions should include a judgment in the plaintiffs' favor, giving a jury instruction to assume the lost information was unfavorable to the defendants and pay at least \$10,000 — not including attorney fees.

"What the defendants did is so easy to replicate by anyone once they anticipate litigation," Stroman said. "They knew what they were doing was wrong."

Representatives for the defendants did not immediately respond to requests for comment Thursday.

The plaintiffs are represented by Evan J. Stroman, Michael Diaz Jr. and Zhen Pan of Diaz Reus & Targ LLP.

The defendants are represented by Ivan B. Gonzalez of BRAAM PLLC.

The case is Renteria et al. v. Padron et al., case number, 2022-012692-CA-01, in the Eleventh Judicial Circuit Court of Florida.

--Editing by Linda Voorhis.