

# IN THE NINTH COURT OF APPEALS

---

09-21-00178-CV

---

**L&S PRO-LINE, LLC AND LEE BURKETT  
V.  
GARRETT GAGLIANO, SNOOK HOLDINGS, LLC, AND  
TACTICAL AUTOMATION, INC.**

---

**On Appeal from the 457th District Court  
Montgomery County, Texas  
Trial Cause No. 18-06-07704-CV**

---

## **JUDGMENT**

THE NINTH COURT OF APPEALS, having considered this cause on appeal, concludes that the judgment of the trial court should be affirmed in part, reversed and rendered in part, and reversed and remanded in part.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that portion of the trial court's judgment granting Garrett Gagliano's Motion for Partial Summary Judgment and holding that Lee Burkett's purported exercise of Section 12.7(b) of the L&S Pro-Line Company Agreement was ineffective is reversed, and judgment is rendered that Lee Burkett's exercise of Section 12.7(b) of the L&S Pro-Line Company Agreement was effective June 11, 2019; and that portion of the trial court's judgment granting Garrett Gagliano's Motion for Partial Summary Judgment holding that Tactical Automation, Inc. is a third-party beneficiary of the L&S Pro-Line Company Agreement is reversed, and judgment is rendered that Tactical is not a third-party beneficiary of the L&S Pro-Line Company Agreement.

IT IS FURTHER ORDERED that those portions of the trial court's judgment against L&S Pro-Line, LLC and Lee Burkett and to Tactical Automation,

Inc. are reversed, including the trial court's judgment against L&S Pro-Line, LLC and to Tactical Automation, Inc. for breach of contract in the amount of \$2,389,725.29; and against Lee Burkett and to Tactical Automation, Inc. for breach of contract in the amount of \$2,389,725.29, and judgment is rendered that Tactical Automation take nothing against L&S Pro-Line, LLC and Lee Burkett.

IT IS FURTHER ORDERED that the portions of the trial court's judgment regarding the parties' breach of contract claims are reversed and remanded for further proceedings consistent with this Court's opinion, including the trial court's judgment against L&S Pro-Line, LLC and Lee Burkett and to Garrett Gagliano; the trial court's judgment against L&S Pro-Line, LLC and to Garrett Gagliano for breach of contract in the amount of \$2,638,101.05; against Lee Burkett and to Garrett Gagliano for breach of contract in the amount of \$2,638,101.05; against L&S Pro-Line, LLC and to Garrett Gagliano for reasonable and necessary legal fees Garrett Gagliano incurred in this proceeding through trial and completion of the trial proceedings in the amount of \$1,170,000; against Lee Burkett and to Garrett Gagliano for reasonable and necessary legal fees Garrett Gagliano incurred in this proceeding through trial and completion of the trial proceedings in the amount of \$1,170,000; against L&S Pro-Line, LLC and to Garrett Gagliano for reasonable and necessary court costs and expert witness fees in the amount of \$113,190; against L&S Pro-Line, LLC and to Garrett Gagliano for reasonable and necessary appellate attorney fees; and against Lee Burkett and to Garrett Gagliano for reasonable and necessary appellate attorney fees.

IT IS FURTHER ORDERED that the portions of the trial court's judgment regarding the parties' breach of fiduciary duties claims are reversed and remanded for further proceedings consistent with this Court's opinion, including against Lee Burkett and to Garrett Gagliano for breach of fiduciary duty in the amount of \$5,553,163.45; and against Lee Burkett and to Garrett Gagliano, standing in the shoes of L&S Pro-Line, LLC, for breach of fiduciary duty in the amount of \$5,553,163.85.

IT IS FURTHER ORDERED the portions of the trial court's judgment regarding punitive damages are reversed and remanded for further proceedings consistent with this Court's opinion, including against Lee Burkett and to Garrett Gagliano as punitive damages for Lee Burkett's malicious, grossly negligent and intentionally self-enriching breach of fiduciary duty in the amount of \$5,276,202.10; and against Lee Burkett and to Garrett Gagliano, standing in the shoes of L&S Pro-Line, LLC as punitive damages for Lee Burkett's malicious, grossly negligent and intentionally self-enriching breach of fiduciary duty in the amount of \$11,106,329.70.

IT IS FUTHER ORDERED that the those portions of trial court's judgment containing certain findings or orders are reversed and remanded for further proceedings consistent with this Court's opinion, including: Lee Burkett's purported exercise of Section 12.7(b) of the L&S Pro-Line Company Agreement was ineffective; Lee Burkett did not effectively purchase any of Garrett Gagliano's interest in L&S Pro-Line, LLC on June 11, 2019, under Section 12.7(b) of the L&S Pro-Line Company Agreement; L&S Pro-Line, LLC takes nothing as to any of its affirmative claims; Lee Burkett takes nothing as to any of his affirmative claims; L&S Pro-Line, LLC did not issue to Garrett Gagliano all distributions under Section 6.3 of the L&S Pro-Line Company Agreement; Tactical Automation, Inc. is a third-party beneficiary of the L&S Pro-Line Company Agreement; L&S Pro-Line, LLC's Officer Removal claim is dismissed; Garrett Gagliano should not be removed as a manager, CFO and Treasurer of L&S Pro-Line, LLC under the L&S Pro-Line Company Agreement and he is allowed to participate in any vote authorized by the L&S Pro-Line Company Agreement or Texas law on such issues; L&S Pro-Line, LLC is a closely held limited liability company and Garrett Gagliano and Lee Burkett are its only Members; as such, Garrett Gagliano has standing and it is equitable for him to bring a direct and derivative suit against Lee Burkett for the benefit of L&S Pro-Line, LLC and for the benefit of Garrett Gagliano himself as a Member of L&S Pro-Line, LLC; Garrett Gagliano was

named as a defendant in this lawsuit precisely because he is a Member, Manager, and officer of L&S Pro-Line, LLC and he prevailed on each and all matters asserted against him; as such, Garrett Gagliano is entitled under Section 14.1 of the L&S Pro-Line Company Agreement to indemnification from L&S Pro-Line, LLC for all his costs, expenses, and attorney fees incurred in connection with the lawsuit; Lee Burkett committed a Terminating Event under the L&S Pro-Line Company Agreement because of his (i) neglect of his duties to the L&S Pro-Line Company Agreement as a result of his, (ii) fraud and dishonesty in connection with his fiduciary duties to L&S Pro-Line, LLC, and (iii) breach of section 9.6 of the L&S Pro-Line Company Agreement; Lee Burkett is required to sell his ownership interest in L&S Pro-Line, LLC under Sections 8.6 and 9.5 and Exhibits B and D of the L&S Pro-line Company Agreement because Lee Burkett committed a Terminating Event under the L&S Pro-Line Company Agreement; Lee Burkett is ORDERED to transfer his ownership interest in L&S Pro-Line, LLC to Garrett Gagliano, the remaining member of L&S Pro-Line, LLC, pursuant to and in conformity with Sections 8.6 and 9.5 and Exhibits B and D of the L&S Pro-Line Company Agreement; it is equitable and just for Garrett Gagliano to be awarded against Lee Burkett and L&S Pro-Line, LLC reasonable legal fees Garrett Gagliano incurred to pursue and defend against various declaratory judgment claims made in this proceeding; and it is equitable and just for Garrett Gagliano to be conditionally awarded against Lee Burkett and L&S Pro-Line, LLC appellate attorney fees.

IT IS FURTHER ORDERED that those portions of the trial court's judgment entering an injunction against L&S Pro-Line, LLC and Lee Burkett are reversed and remanded for further proceedings consistent with this Court's opinion.

IT IS FURTHER ORDERED that the following portions of the trial court's judgment are affirmed, including: L&S Pro-Line, LLC voluntarily non-suited its Texas Theft Liability Act claim to avoid an unfavorable ruling on the merits, as

such Garrett Gagliano is the prevailing party under the Texas Theft Liability Act; Garrett Gagliano, Snook Holdings, LLC and Tactical Automation, Inc. are not entitled to recovery of attorney fees specifically under Chapter 38 of the Texas Civil Practice and Remedies Code because L&S Pro-Line, LLC is a limited liability company; judgment against L&S Pro-Line, LLC and to Snook Holdings, LLC for breach of contract in the amount of \$109,239.12; judgment against L&S Pro-Line, LLC and to Garrett Gagliano for additional and reasonable and necessary legal fees to defend and prevail against L&S Pro-Line, LLC's theft claim under the Texas Theft Liability Act through trial in the amount of \$30,000 and conditional attorney's fees to defend on appeal; judgment against L&S Pro-Line, LLC and to Snook Holdings, LLC for reasonable and necessary attorney's fees incurred through trial in the amount of \$39,000 and conditional attorney's fees to defend on appeal; and the trial court's sanction award.

All costs of the appeal are assessed against Garrett Gagliano and Tactical Automation, Inc.

Opinion of the Court delivered by Chief Justice W. Scott Golemon

June 28, 2024

**AFFIRMED IN PART, REVERSED AND RENDERED IN PART,  
REVERSED AND REMANDED IN PART**

\*\*\*\*\*

Copies of this judgment and the Court's opinion are certified for observance.



Carly Latiolais  
Clerk of the Court