

## Realtors sue, say wealthy clients cheated them

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Realtors Scott Lewis and Amy Lyons thought they were due for a big payday last summer after the wealthy heirs to the Dart Container Corp. fortune said they were interested in buying a Southwest Florida ranch.

But while brothers Kenneth and Robert Dart ultimately acquired their target -- a 5,700-acre DeSoto County cattle and citrus spread -- the real estate agents got nothing.

In July, the pair sued in Sarasota County Circuit Court, seeking a more than \$200,000 transaction commission from the Dart brothers.

In court documents, Dart attorneys contended that a commission was not owed because the brothers bought not the real estate itself, but the stock of the corporate entity that controlled it.

Michael C. Schafer, of Sarasota, a Dart intermediary, called it a "business transaction," according to court records. He declined to comment for this article, as did other Dart representatives and affiliates.

"The current demand for \$200,000 is unacceptable," S. Stanley Gilhool, a lawyer at Dart Container headquarters in Michigan, wrote in court documents.

"It would, in our eyes, represent a windfall."

Gilhool, too, did not return a reporter's calls for comment.

### A previous relationship

Lewis was no stranger to the Darts when the potential deal for the ranch came about.

He had already, through Schafer, sold the family various properties -- including a pair of homes, one adjacent to 3,200 acres the brothers bought within Turner Ranch, according to a letter contained in the lawsuit.

For anyone in business, the Darts would be hard to forget. Both Kenneth Dart and his brother, Robert, elected to give up their U.S. citizenship 20 years ago and claimed Belize as their home country, reportedly to reduce their tax bills.

Kenneth Dart now lives on Grand Cayman Island and runs a global hedge fund. He has done very well, of late, acquiring distressed government debt and re-selling it. This spring, he cashed in on Greek debt, with returns of nearly 40 percent, according to a report in the New York Times in May.

To find someone with specific knowledge of ranch-style properties -- and ones that could be developed, as the Darts requested -- Lewis turned to Amy Lyons, an Arcadia real estate agent with Keller-Williams Peace River Properties, who specializes in farms.



STAFF PHOTO / DAN WAGNER

Realtors Scott Lewis and Amy Lyons at 2 X 4 Ranch in Arcadia. Lewis and Lyons have sued, seeking commission they say they earned in the sale of the 5,700-acre property.

"I said, 'I've got the perfect thing, but it is going to auction in two weeks,' " Lyons told Lewis.

The 2x4 Ranch had been owned for years by the Carlton family, longtime Florida landowners. But in 2006, owner Dr. Barbara Carlton sold the place for roughly \$50 million to a pair of Fort Myers developers, Joe and Tony Cameratta.

To buy it, the father-and-son team formed Charlee LLC and borrowed \$52 million, primarily from Farm Credit Bank of Southwest Florida. They subsequently obtained state approvals to build up to 10,000 homes on the land.

But a year later, as Florida's heady real estate market began to sink, the Cameratta's leveraged deal went south. Charlee started receiving foreclosure notices.

In 2010, Farm Credit completed the foreclosure and tried to sell the ranch for \$29 million, then \$20 million.

Despite a glossy, 35-page brochure with color pictures of contented cows, a tree-lined road, maps -- even a list of the property's 20 working wells and their depth -- the bank received no offers.

Frustrated, in September 2011 Farm Credit set the ranch for auction.

Lyons and Lewis, meanwhile, made oral commission arrangements: Lyons with Farm Credit and Lewis with the Darts, through Schafer.

With two weeks before the property was to go under the gavel, Lyons scurried to arrange a showing. Together, she and Lewis answered a flurry of questions from Schafer.

But at auction, the Darts' bid was topped by a local farming family with Kentucky roots, said Don Rice, the chief executive of Farm Credit.

Schafer then advised Lewis that the Darts were still interested in property, and he asked Lewis to continue hunting, the Realtors' lawsuit stated.

But thanks to a long-standing Farm Credit policy -- that bidders were aware of in advance -- the sale wasn't over. The original borrower, the policy stated, still had 24 hours after the auction to match the winning bid -- with cash -- and retain ownership.

A little before noon the following day, Rice recalls, "they came in with the money."

When they found out, Lewis and Lyons concluded that the Darts had gotten together with the Fort Myers developers, paid Farm Credit off and acquired Charlee LLC.

"It was a loophole that the Darts exercised, and basically nobody was happy about it except the Camerattas and the Darts," Lyons said.

Schafer did offer the Realtor pair some consolation: He told them the Darts would pay them \$25,000 plus their costs -- and nothing more, the pair's lawsuit stated.

After failing to get satisfaction from several demand letters, emails and phone calls, Lyons and Lewis sued in July.

Ironically, if the 2x4 Ranch transaction had had Realtors on both sides of it, it would be subject to an arbitration panel hearing under guidelines established by the Florida Association of Realtors.

In court, the issue over the commission could go either way, said Sylvia Golden Norris, a Sarasota attorney who specializes in real estate litigation.

Norris said the plaintiffs would most likely allege the Darts gained from "unjust enrichment."

"It would seem to me the unjust enrichment argument might have some meat to it," Norris said.

"It is basically saying, 'I offered you something. You accepted it. I expect to get paid.'"

But the lawsuit never got that far. Attorneys for Dart Container succeeded in transferring the case to federal court, in August.

That was an added expense the Realtors said they could not handle.

"For me to get a federal litigator, it is going to cost me \$30,000 to \$50,000 just as a retainer for expenses," Lewis said.

To save money, the pair hired Scott's older brother, Kurt, a retired attorney.

In late August, the Realtors persuaded the court to dismiss the case, without prejudice. They hope to refile the case soon -- again in circuit court in Sarasota -- and this time craft it in such a way that it cannot be transferred.

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