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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Investors' Suit Seeking \$50M Over Real Estate Fraud Revived

By **Todd Hutchinson**

Law360 (January 4, 2019, 7:49 PM EST) -- A Texas appeals court on Tuesday revived Renate Nixdorf GmbH & Co. and Watercrest Partners LP's suit seeking nearly \$50 million from lost real estate investments, saying the trial court erred when it dismissed claims that the money had been hidden from them in sham companies in order to avoid payouts.

The Fifth Court of Appeals said Nixdorf and Watercrest's allegations were plausible that once-prominent Dallas realtors W. Eric Brauss and his ex-wife Christine Martin had hidden money they owed former investors by moving it through a web of sham companies — TRA Midland Properties LLC, Pillar Income Asset Management, TRA Apt. West TX LP and nine others — in order to keep investors from collecting their settlements.

The money owed stems from lost real estate investments that a court found was the result of fraud and misconduct on the part of Brauss and Martin. Nixdorf had obtained a \$48.75 million judgment against Brauss, while Watercrest received a \$300,000 judgment against Martin.

The panel said that after considering the allegations in the second amended petition filed in February 2016 — during the time the court was reviewing an appeal by TRA Midland and Pillar that Nixdorf and Watercrest didn't have standing to sue in what the court referred to as Nixdorf I — the panel found it would have to overrule its earlier decision handed down in April 2016.

"We conclude TRA and Pillar did not establish the trial court lacked subject-matter jurisdiction over appellants' [Texas Uniform Fraudulent Transfer Act] causes of action against them," the panel wrote.

The panel said the second amended petition added additional defendants and more allegations that warranted a review.

"Having concluded nothing in the second amended petition triggers a clear legal or factual bar to appellants' causes of action, we conclude the trial court erred in granting the motion to dismiss," the panel wrote.

Nixdorf and Watercrest alleged \$40 million was transferred to Pillar Asset Management Inc. and not to TRA Midland in order to keep the assets from its creditors, and filed suit in 2013 against TRA Midland, Pillar and Midland Residential Investment alleging TUFTA violations.

In their **pursuit of almost \$50 million in settlements** against Brauss and Martin since 2012, Nixdorf and Watercrest have filed TUFTA claims against companies they allege have been helping them hide assets by allowing them to assign their ownership interests in several Midland, Texas, apartment buildings to companies that are alter egos of Brauss and Martin.

Nixdorf and Watercrest expanded their claims to include companies and individuals that received part of the \$40 million transferred to Pillar. They alleged that \$40 million was transferred to Pillar and not to TRA, and filed suit in 2013 against TRA.

The row **began in 2009**, when Brauss and Martin, who owned an interest in TRA Midland Properties, transferred their interest to Midland Residential Investment LLC. TRA sold the complexes to Pivotal in 2012. Pivotal assumed a \$130 million loan and paid \$40 million at the closing.

Representatives for Nixdorf, Watercress and the companies could not be reached Friday for comment.

Justices Ada Brown, David Bridges and Bill Whitehill sat on the panel for the Texas Court of Appeals for the Fifth District.

TRA Midland Properties LLC, TRA APT West TX LP, Transcontinental Realty Investors Inc., American Realty Investors Inc., H198 LLC, Triad Realty Services Ltd., Regis Realty Prime LLC, Chickory ILP, Sunchase American Ltd., Longfellow Arms Apartments Ltd., Vistas of Vance Jackson Ltd., Donald C. Carter and Robert T. Shaw Sr. are represented by Lawrence J. Friedman and Carter Boisvert of Friedman & Feiger LLP.

Pillar Asset Management is represented by Joe Kendall and Jamie J. McKey of Kendall Law Group PLLC.

Nixdorf and Watercress are represented by Todd J. Harlow of Cowles & Thompson PC and Byron K. Henry and Andrea K. Bouressa of Scheef & Stone LLP.

The case is Renate Nixdorf GmbH & Co. et al. v. TRA Midland Properties LLC et al., case number 05-17-00577-CV in the Court of Appeals for the Fifth District of Texas.

--Additional reporting by Michelle Casady and Jeff Sistrunk. Editing by Philip Shea.