

# Jenner & Block Secures Appellate Victory for US Tsubaki Holdings

## News

May 27, 2021

Jenner & Block obtained a resounding victory when the New York State Supreme Court Appellate Division, First Department ruled on a critical appeal. The court unanimously reversed a trial court decision, reinstating all four fraud causes of action (for fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, and aiding and abetting fraud) that the trial court had dismissed.

In 2019, our client US Tsubaki Holdings (USTH) filed a complaint against former owners of Central Conveyor Holdings, Inc. and their affiliates based on conduct that occurred at the company before the acquisition, alleging contract breaches and that false representations and warranties made to USTH in conjunction with the sale fraudulently induced USTH to acquire Central Conveyor. Throughout the sales process and then in the purchase and sale agreement (PSA), the Sellers represented that Central Conveyor was a quality operation, with promises that the company had an adequate system of internal controls over financial reporting, that it was in compliance with all aspects of employment, labor, and tax laws, that its financial statements were accurate, and that the company had no undisclosed legal or tax liabilities.

Last year, the trial court dismissed USTH's fraud claims. On May 20, the appellate court agreed with USTH on the fundamental principle that the fraud stemmed from corporate misconduct at Central Conveyor—with special attention paid to the fact that “kickbacks and timesheet fraud were how the Company ensured profitability.” The court also agreed on every aspect of whether USTH's pleading adequately met the fraud pleading standard. On aiding and abetting fraud, the court concluded that USTH's Amended Complaint alleges the elements of aiding and abetting fraud against all three relevant defendants. In particular, it recognized that the act of signing the PSA helped to “mov[e] the fraud to fruition” and therefore could constitute substantial assistance. Finally, on the threshold legal issue of whether the fraud claims duplicate the contract claim, the court reaffirmed precedent holding that fraudulent misrepresentations of present facts memorialized in representations and warranties may sustain a claim for fraud. In addition, the court recognized that the PSA specifically preserved USTH's ability to sue for fraud.

Partner Ian Heath Gershengorn argued the appeal. Partner Brent Caslin has led the litigation team, which included Partners Elizabeth A. Edmondson and Brian J. Fischer, Associates Olivia Hoffman,

Andrew G. Sullivan, Ethan C. Wong, Allison N. Douglis, and former associate Eric Lamm. Invaluable assistance was provided by Partners Jessica Ring Amunson, Donald E. Batterson, Ishan K. Bhabha, Miwa Shoda, and Zachary C. Schauf and Paralegal Chris Ward.

## **Related Attorneys**

### **Jessica Ring Amunson**

Partner  
jamunson@jenner.com  
+1 202 639 6023

### **Donald E. Batterson**

Partner  
dbatterson@jenner.com  
+1 312 923 2607

### **Ishan K. Bhabha**

Co-Managing Partner  
+1 202 639 6000

### **Brent Caslin**

Partner  
bcaslin@jenner.com  
+1 213 239 5150

### **Allison N. Douglis**

Partner  
adouglis@jenner.com  
+1 212 303 2505

### **Elizabeth A. Edmondson**

Partner  
eedmondson@jenner.com  
+1 212 891 1606

### **Brian J. Fischer**

Partner  
bfischer@jenner.com  
+1 212 891 1629

### **Ian Heath Gershengorn**

Partner  
igershengorn@jenner.com  
+1 202 639 6869

**Zachary C. Schauf**

Partner  
zschauf@jenner.com  
+1 202 637 6351

**Miwa Shoda**

Partner  
mshoda@jenner.com  
+1 213 239 5171

**Andrew G. Sullivan**

Special Counsel  
agsullivan@jenner.com  
+1 213 239 2263

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