

Bankruptcy Suit Targets Assets of Agillion Execs

By Lori Hawkins and Robert Elder Jr.

Austin American-Statesman – April 19, 2003

Seeking to recover as much money as possible from the bankruptcy of Agillion Inc., lawyers are going after the company's insurance policy and assets of its founders, the noted entrepreneurs Steve Papermaster and Frank Moss. In a lawsuit filed late Thursday in District Court in Travis County, Marsha Milligan, the trustee overseeing the Agillion bankruptcy, accuses executives of approving lavish spending for parties, marketing and hiring bonuses even as the company was headed for insolvency.

A lawyer for Papermaster and other Agillion directors and officers rejected the allegations, saying that Agillion, like many other companies in technology hot spots, was a victim of the severe downturn in the technology sector.

"This is nothing more than a case of a plaintiff's lawyer second-guessing business decisions long after the fact, with the benefit of hindsight," said Bruce Collins, a lawyer with Carrington Coleman Sloman & Blumenthal in Dallas. "The business decisions made by Agillion's officers and directors were consistent with the actions of many other companies in the technology sector at the time."

The company was formed in 1998 and led to bankruptcy less than four years later.

Also named in the suit are former director Dennis Jones and former executives Jim Travers, Dave Henkel and Phillip London.

Miguel Rodriguez, an Austin lawyer working with the trustee, said Agillion officials should be held responsible because they knew the company was doomed but did nothing to rein it in.

"These people knew the company could not succeed, but they continued to spend extravagantly and take on new debt," he said. "The extreme waste leaves the officers and directors with no protection."

One example cited in the lawsuit is from May 2000 that the suit estimates cost a half-million dollars. Exhibit A in the lawsuit is a photograph of Papermaster addressing employees on the trip from atop a horse while wearing a sombrero.

Other examples in the suit include a bash at an Austin restaurant for employees to watch the company's \$3 million Super Bowl ad in 2000.

Don Taylor, the Austin lawyer who filed the suit on behalf of the trustee, said creditors hope to recover money from the company's insurance policy and from the assets of Papermaster, Moss and the other officials. Bankruptcy trustees are court-appointed advocates for those owed money.

The suit doesn't ask for specific damages, but Agillion owes its creditors \$22 million. The list of creditors runs 23 pages and contains more than 400 names, including those of large corporations such as American Express and Cisco Systems, as well as dozens of small Austin services firms. The suit is the strongest move to date by creditors to recover money from the software startup, which formed in October 1998 and filed for bankruptcy in July 2002.

The entrepreneurial pedigrees of Papermaster and Moss had helped attract \$45 million in venture capital for the company, whose software promised to help small businesses interact with customers using the Internet.

Agillion ended up burning through \$67 million in its short life, while sales totaled just \$146,947, according to bankruptcy filings.

The money is gone, so creditors are looking to the insurance policy. Companies typically buy insurance to protect directors and officers, and it is common for trustees to pursue those policies as well as the assets of company officials in an effort to repay creditors.

"Trustees are doing their homework, and they're searching for assets, including those of the officers," said Mina Brees, an Austin lawyer at Munsch Hardt Kopf & Harr who specializes in creditors' rights and bankruptcy. "High-profile individuals who have been in the newspaper are often targets by shareholders or creditors."

Papermaster's and Moss' successes in previous ventures make them attractive targets for creditors. Papermaster founded software-services firm BSG Corp. in Houston at age 28. He made millions in 1991 by selling a big piece of his ownership to Novell Corp. founder Ray Noorda. Five years later, Medaphis Corp. of Atlanta bought BSG for \$350 million in stock.

Papermaster holds \$223,750 worth of stock in Austin-based software maker Vignette Corp. and \$369,915 worth of shares in e-commerce company Perficient Inc., according to securities filings.

Moss was chief executive of Tivoli Systems Inc., one of Austin's most successful software companies. He led the company through a record-breaking initial public offering in 1995 and oversaw its sale to IBM Corp. for \$743 million in 1996. Most recently, Moss was with a software-services firm in Boston. He couldn't be reached for comment Friday.

Papermaster, who lives in Austin, can be assured that some of his assets will be protected: The Texas Homestead Act shields a person's home from creditors. Papermaster's 14,000-square-foot home in the Rob Roy subdivision is valued at \$6.3 million, according to the Travis County tax assessor's records. A second, 5,100-square-foot home on Lake Travis is valued at \$1.4 million, according to tax records.