

Kluger Kaplan Duo Work Through Suit for Dealership Sale

By Mary Hladky

The Dealmakers: Abbey Kaplan and Jeffrey Berman

The Deal: The lawyers with Kluger, Kaplan, Silverman, Katzen & Levine represented Group 1 Automotive Inc. in its April 2 acquisition of Prestige Audi in North Miami Beach, one of the nation's top 10 Audi dealerships.

The deal, which was all but done a year ago, hit the skids and was finalized only after the filing of a lawsuit and counterclaim, eventual settlement and some final skirmishing in court.

Details: Houston-based Group 1—a publicly traded company that owns and operates 152 car dealerships, 197 franchises and 38 collision centers in the United States, United Kingdom and Brazil—contends it had signed agreements to buy Prestige Motor Car Imports Inc. for \$72 million last spring.

But when Prestige allegedly did not follow through on its obligations and then said it was backing out of the deal, Group 1 filed suit last June 18 to compel the sale.

At issue were the sale price and whether a final agreement had actually been reached.



Abbey Kaplan and Jeffrey M. Berman, with Kluger, Kaplan, Silverman, Katzen & Levine PL.

“For reasons that will forever be unknown to my client, the sellers claimed there was no binding agreement and refused to sell the dealership and related real estate on the agreed-upon terms,” Kaplan said.

Kaplan said Prestige officials claimed they had made a mistake in calculating a sale price.

Prestige's attorney, Robert Zarco of Zarco Einhorn Salkowski & Brito, agreed there was an issue on how the purchase price was calculated. While he did not provide further explanation in an April 23 interview, he has previously told the Daily

Business Review that sale price should have been \$10 million to \$12 million more.

Zarco filed a counterclaim for breach of contract as well as breach of confidentiality, alleging Group 1 breached the asset purchase agreement by disclosing confidential terms of the deal to the public and other dealers.

Kaplan contended the counterclaim “had no merit whatsoever.” Asked if the sale would have closed had Group 1 not sued, Kaplan said, “not a chance.”

Zarco said both the suit and counterclaim spurred a resolution. “I believe the litigation going both ways created certain risks which brought the parties together to work out mutually agreeable terms,” he said.

The litigation was in its early stages when Group 1 deposed Cecile Jacome, the trustee of the Irvin David Irrevocable Trust that owns the dealership, Kaplan said. Soon after, Group 1 sought a summary judgment ruling.

“I believe the taking of a key deposition early in the case sped up the process (of a settlement),” Kaplan said. “The lawyers and the parties saw where the end result would come out.”

He also credits the working relationship he has with Zarco. “One of the reasons this case was able to get resolved early on was the fact our office has a good working relationship with opposing counsel,” he said. “When you have senior lawyers that can see the goal line early on, it becomes much easier to work a settlement without going through a massive expenditure of fees and aggravation.”

Even after the two sides had a settlement agreement, Kaplan said Prestige was not complying with its terms. But the two teams of lawyers were able to resolve the remaining differences.

Zarco returns Kaplan’s compliment. “The extremely professional level of interaction between Zarco and Kaplan played a huge role in the parties’ ultimate ability to settle the case in what both parties perceived to be a win-win situation,” he said.

Since the terms of the settlement were confidential, both Zarco and Kaplan are circumspect about the final sale price.

“It was a very, very good result for my client and, in my view, a very good result for Prestige as well,” Kaplan said.

“Both parties got what they hoped for,” Zarco said. “The terms for Prestige were more favorable than they originally were.”

Now that the deal is finally done and Group 1 is operating the dealership, “everyone has a smile on their face,” Kaplan said. The attorneys said the deal did not include the land the Audi dealer sits on at 14780 Biscayne Blvd., Prestige’s Lamborghini dealership or its used exotic cars business.

Gate 1 is now leasing the property and plans to build a new facility on 4.5 acres it purchased near the current site.

Brett David is chief executive of Prestige and son of the company’s founder. Zarco said David took over the dealership at the age of 18 when his father died of a heart attack, just as the country spiraled into the Great Recession.

“I am very happy to see that an extremely hard working young man and his family were able to capitalize and benefit from so many years of hard work,” he said.

Comment: “My client got exactly what it wanted, and Prestige got exactly what it was entitled to,” Kaplan said.

Background: Kaplan is a litigator who is a founding member of his Miami-based law firm. Berman is an associate who focuses on complex business litigation.