

STATEMENT OF THE CASE

This case involves a very complex, multi-million dollar transaction involving corporations and limited partnerships based in Corpus Christi, Texas and Dallas, Texas. Plaintiffs assert in this case that these Texas entities operated in conjunction with, or on behalf of, numerous other individuals and entities – including Appellees Farallon Capital Partners, L.P.¹ and the Hapsmith group of companies² – to defraud a group of over three-hundred German investors out of approximately sixty-million dollars (\$60,000,000). Approximately two-hundred thirty of the German investors defrauded in this scheme are Plaintiffs in this case. (1 CR 135-139, 167)

Plaintiffs allege that the scheme involved the mid-1990's solicitation by Defendant Michael Vogelbacher, a German national, and his Defendant Rosche group of companies, of hundreds of German investors to invest in the building and operation of the Washington Supermall, a large mall complex located in Seattle, Washington. These German investors were induced into investing in one of four Texas limited partnerships run by Defendant Vogelbacher which, in turn, became limited partners in the entity that owned the Supermall project – the Texas-based Washington Supermall Interests, LP. Defendant Vogelbacher's Rosche companies, together with Appellee Hapsmith Development Corporation, ran Washington Supermall Interests, LP and the Supermall. Other entities, including Appellee Farallon Capital Partners, LP and most of the remaining Hapsmith Appellees, became limited partners in Washington

¹ Appellee Farallon Capital Partners, L.P. will be referred to herein as "Farallon Partners".

² The Hapsmith group of companies that are Appellees in this action are: The Hapsmith Company, Hapsmith Development Corp., Hapsmith Auburn IV, LP; Hapsmith Interests IV, LP; Hapsmith Partners IV, LP; Hapsmith Properties III, LP; and Hapsmith Properties IV, LP. These entities will jointly be referred to herein as the "Hapsmith Group" or simply "Hapsmith".

Supermall Interests, LP, together with the German investors' four Texas limited partnerships. (1 CR 167 173)³

Plaintiffs assert that, from the start, certain defendants, including Hapsmith defendants took huge fees and "redemptions" that drained nearly half of Plaintiffs' investment monies before construction of the Supermall even began. Plaintiffs further assert that, during the construction phase, certain Defendants, including the Hapsmith defendants, operated a "ponzi scheme" transferring millions of dollars in funds through "loans" and "advances" to other unrelated entities. Finally, Plaintiffs contend that, at the end of the scheme, after the money-drained Supermall project was sold in January of 1998, the remaining funds were distributed to the entities that had assisted the Rosche and Hapsmith entities in their scheme, including Appellee Farallon Partners, in improper preferential distributions that ultimately left the German investors with nothing to show for their sixty-million dollar investment. (1 CR 167-173).

Although the scheme also involved companies from California (such as Appellees Farallon Partners and the Hapsmith Group), and the Supermall property in Seattle), Plaintiffs assert that the core of the scheme was based in Texas. All of the money that the German investors invested into the scheme was invested into four Texas limited partnerships based in Corpus Christi. The key entity in the case that actually owned the Washington Supermall - Washington Supermall Interests, LP - was based in Texas. Its general partner - RH

³ "CR" designates the clerk's record, and "RR" designates the reporter's record. Record copies of the depositions taken for this special appearances are attached to Plaintiffs' Response to the Special Appearances of Farallon Capital Partners, L.P. and the Hapsmith Defendants. (1 CR 183). Unfortunately, the District Clerk's office erroneously omitted the exhibits to this Response from the clerk's record. Appellants were unaware of this until the record page numbers were recently compared. Plaintiffs have requested that the District Clerk's office supplement the record with these omitted exhibits to 1 CR 183. As a result, these exhibits - which contain the deposition of the Hapsmith Group's designated corporate representative with exhibits, and the deposition of Farallon Partners' designated corporate representative with exhibits, will be referred to herein as (1 CR 183; Hap. Depo at __; Exh. __) or (1 CR 183; Far. Depo at __; Exh. __). Plaintiffs will supplement with supplemental record cites when the supplemental record is prepared to include the erroneously omitted exhibits.

Development LP - was based in Texas. All of the money from the German investors was placed in Texas limited partnerships for investment in the Texas-based Washington Supermall Interests, LP. (1 CR 167-173)

Although there are many defendants in this case, the two at issue in this appeal are Farallon Capital Partners, L.P. and the Hapsmith Group of companies. Plaintiffs have alleged that Hapsmith was at the center of the scheme in this case, acting together with Defendant Vogelbacher and his Defendant Rosche group of companies to operate the central entity, the Texas-based Washington Supermall Interests, LP, for their own benefit, and to the detriment of the Plaintiffs. (1 CR 165-167)

Plaintiffs have alleged that Farallon Partners, a limited partner in Washington Supermall Interests, LP, misappropriated several million dollars of Plaintiffs' investment funds when it took an improper preferential distribution from Texas-based Washington Supermall Interests, LP in violation of the partnership agreement after the sale of the Supermall. (1 CR 165-167)