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Stifel, Nicholaus & Co., Inc. v. Godfrey & Kahn

United States Court of Appeals, Seventh Circuit - November 24, 2015 - F.3d - 2015 WL 7454484

Non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation brought action seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum.

The United States District Court granted plaintiffs' motion for a preliminary injunction in part and denied it in part. Parties appealed.

The Court of Appeals held that:

- Tribal court exhaustion was not required;
- District court did not abuse its discretion in limiting presentation of evidence and argument concerning preliminary injunction;
- Tribal economic development corporation was not fraudulently induced into entering bond transaction;
- Resolutions operated as waivers of sovereign immunity;
- Resolutions were not void as unapproved management contracts;
- Tribal court action did not fall within exception for tribe to exercise jurisdiction over nonmembers;
- Federal court had authority to determine limits of tribal court's jurisdiction, as matter "arising under" federal law; and
- Counsel to tribal economic development corporation, who also was bond counsel to bond transaction, could rely on forum selection clauses in bond documents.

Tribal court exhaustion was not required in action brought by non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum, since documents governing transaction contained valid and effective waivers of tribal sovereign immunity and consent to jurisdiction of Wisconsin courts to exclusion of any tribal courts. Although tribal action was pending, principal dispute between parties concerned application of federal statute.

District court did not abuse its discretion in limiting presentation of evidence and argument concerning preliminary injunction, in action brought by non-Indian brokerage firm and bondholders that were involved in commercial transaction with tribal economic development corporation seeking declaratory judgment that tribal court lacked subject-matter jurisdiction over them and preliminary injunction preventing any further action by tribe and its economic development corporation in pending matter against them in that forum. Plaintiffs did not impede ability of corporation to obtain evidence needed to raise defense during course of preliminary injunction briefing and district court

provided it with adequate time to develop its arguments.

Tribal economic development corporation was not fraudulently induced under Wisconsin law into entering bond transaction with non-Indian brokerage firm and bondholders that contained waivers of tribal sovereign immunity and consent to jurisdiction of Wisconsin courts to exclusion of any tribal courts. Corporation did not rely on alleged misstatements in approving bond transaction, and statements by representative of brokerage were not false.

Tribal and bond resolutions affirmatively approving and acknowledging actions that already had been taken, namely that tribe had "provide[d] a limited waiver of sovereign immunity from suit," operated as waivers of sovereign immunity, including as to tribal economic development corporation, in bond transaction with non-Indian brokerage firm and bondholders, where resolutions provided that "Corporation waive[d] its immunity from suit with respect to any dispute or controversy arising out of the Indenture, the Security Agreement, the Bond Placement Agreement, the Bonds, this Bond Resolution and including any amendment or supplement which may be made thereto, or to any transaction in connection therewith."

Tribal and bond resolutions that contained waivers of sovereign immunity were not void as unapproved management contracts. Although tribal resolution required bondholder approval for choice of replacements, it did not require bondholder approval to remove key management employees, and otherwise did not fundamentally alter language in governing documents.

Tribal court action seeking to void bond documents on basis that they were unapproved management contracts under IGRA, and seeking to void tribal agreement and tribal resolution because they were not approved by referendum vote of members of tribe or Secretary of the Interior as required by Tribal Constitution, did not fall within exception for tribe to exercise jurisdiction over nonmember initial purchaser of bonds, since action did not seek to regulate any of purchaser's activities on reservation. Actions of nonmembers outside of reservation did not implicate tribe's sovereignty.

Tribal court action seeking to void bond documents on basis that they were unapproved management contracts under IGRA, and seeking to void tribal agreement and tribal resolution because they were not approved by referendum vote of members of tribe or Secretary of the Interior as required by Tribal Constitution, did not fall within exception for tribe to exercise jurisdiction over nonmember initial purchaser of bonds. Action did not address any on-reservation actions, much less actions that threatened tribal self-rule, action focused only on financial consequences of adhering to freely negotiated commercial transactions, and exception was not so broad to include economic effects of its commercial agreements that affected tribe's ability to provide services to its members.

Federal court had authority to determine limits of tribal court's jurisdiction, as matter "arising under" federal law, even though adjudicative authority of Indian tribe allegedly was limited by contract and plaintiff's claims were not premised on federal law.

Counsel to tribal economic development corporation, who also was bond counsel to bond transaction, could rely on forum selection clauses in bond documents. Although counsel was not party to bond transaction, "affiliation" was not limited to entities that were only related through corporate structure, and it was intimately involved in negotiations leading to, and documents embodying, bond transaction, and would have been bound by forum selection clauses in bond documents.

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