
AUCTION RATE SECURITIES - NEVADA

Goldman, Sachs & Co. v. City of Reno

United States District Court, D. Nevada - January 25, 2016 - Slip Copy - 2016 WL 320120

On February 10, 2012, the City of Reno filed a complaint against Goldman Sachs ("GS") with the Financial Industry Regulatory Authority ("FINRA"), alleging wrongdoing with respect to $200 million of Auction Rate Securities ("ARS"). GS sued the City in this Court, asking the Court to declare that FINRA was an inappropriate forum in light of the forum selection clauses in the Broker-Dealer Agreements and the lack of any arbitration clauses in either the Broker-Dealer Agreements or the Underwriter Agreements.

The City subsequently consented to a permanent injunction against the arbitration. The Court then ordered the City to answer and file any counterclaims. The City answered and filed counterclaims for breach of fiduciary duty, fraud, and negligent misrepresentation. GS moved to dismiss the counterclaims as time-barred and for failure to state a claim.

GS argued that a three-year statute of limitations barred all of the counterclaims. If New York law applied to the counterclaims, a six-year limitations period applied. A three-year limitations period applied to all of the counterclaims if Nevada law applied.

The Court found that Nevada's choice of law rules govern the tort claims in this case despite the contractual choice-of-law clause. None of the counterclaims are contractual claims. The City's tort claims are therefore governed by Nevada law, including Nevada's choice of law rules.

Nevada courts apply the Restatement (Second) of Conflict of Laws to tort claims. In this case, all the counterclaims sound in fraud and thus Section 148 of the Restatement (Second) applies.

Following an analysis of Section 148, the Court held that because the fraudulent statements themselves were made from New York, that state's law should control. "The Restatement (Second) makes clear that the place where the fraudulent representations are made is more important (and is as important as the place of the tortious activity in a personal injury case) than the place of reliance and loss, which is difficult to determine conceptually in contractual cases such as this one." Therefore, New York's six year limitation period applied.

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