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In re Allstate Life Ins. Co. Litigation

United States District Court, D. Arizona - June 10, 2013 - Not Reported in F.Supp.2d - 2013 WL 2474508

At issue in this lawsuit was the offering and sale of $35 million in revenue bonds (the "Bonds") used to finance the construction of an Event Center in the Town of Prescott Valley, Arizona. Plaintiffs in this case were entities and individuals who purchased in the Bond offering in November 2005 (the "Bondholders"). They include Allstate Life Insurance Company and a number of individual plaintiffs whose interests were represented by the Indenture Trustee of the Bonds, Wells Fargo.

The defendants in this case were numerous. They included the underwriters for the bonds, attorneys for the underwriters, and the various entities that received the proceeds for the bonds and built the Event Center. For the purposes of this motion, the relevant defendant was the law firm Stinson Morrison Hecker's ("Stinson"), who served as underwriters' counsel for the offering. Stinson initially represented only the underwriter Stern, but later represented all the underwriters participating in the offering.

This action was based on a number of misstatements purportedly made by all defendants. These misstatements were allegedly made in the Preliminary Official Statement and the Official Statement. The OS provided two sources for paying debt service on the Bonds: (1) the net operating income from the Event Center and (2) Transaction Privilege Tax Revenues ("TPT Revenues"), allegedly pledged by the Town of Prescott Valley, consisting of sales taxes generated by the Event Center and certain areas near the Event Center. The alleged misstatements pertained to: (1) the annual attendance and profitability of the Event Center; and (2) the existence of a lien or other security device on the TPT Revenues for the benefit of the Bondholders.

Plaintiffs alleged that the defendants failed to disclose the existence of two feasibility reports, and that the OS stated that no feasibility reports had been prepared on its projections at all. Since its opening, the Event Center failed to recognize profit at the level of the projections set forth in the OS.

Plaintiffs also asserted claims based on alleged drafting errors in the bond documents. Plaintiffs claimed that the OS falsely stated that the debt service on the Bonds would be "secured" by a first lien on the TPT Revenues. They allege that due to defective drafting in certain Bond documents, no such lien exists. Plaintiffs allege that, because of these drafting errors, the Town of Prescott Valley has refused to deliver TPT Revenues for debt servicing on the Bonds, thus harming the Bondholders.

Stinson brought a Motion for Summary Judgment. The burden thus fell on Plaintiffs to raise a material issue of fact that Stinson made the misleading statements or was so involved in drafting the OS that it had actual knowledge of misleading facts, giving rise to a duty to disclose.

The court concluded that reasonable juror could find, based on the above evidence, that Stinson substantially participated in the drafting, preparing, and reviewing of the POS, which was part of the OS containing the misleading statements alleged by Plaintiffs to constitute an unlawful sale of securities under A.R.S. § 44–1991. Moreover, a finder of fact could determine, based on the evidence

set forth by Plaintiffs, that Stinson spent enough time reviewing and editing the POS that it had actual knowledge of the misstatements contained in the POS, thus giving rise to a duty to disclose, given their substantial role in the transaction. Stinson's Motion for Summary Judgment was therefore denied on Plaintiffs' § 44–1991 claim.

Plaintiffs provided evidence of Stinson's substantial assistance in reviewing and proposing changes to the POS and issuing a clean 10b–5 opinion that was a condition precedent to the underwriters' purchase of the bonds. These were all steps along the process which culminated in the fraudulent sale of the bonds to Plaintiffs, the primary violation. Based on this evidence, a reasonable fact-finder could conclude that Stinson's actions, in the aggregate, constitute "more than a little aid." Wells Fargo, 38 P.3d at 26. Stinson's Motion for Summary Judgment on the aiding and abetting claim was therefore denied.

However, Plaintiffs have to overcome Stinson's showing that there was no material issue of fact that Stinson did not supply any information to the Plaintiffs. As such, Stinson's Motion for Summary Judgment was granted on Plaintiffs' claim of negligent misrepresentation.

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