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Bluebonnet Hotel Ventures, LLC v. Wachovia Bank, N.A.

United States District Court, M.D. Louisiana - July 8, 2013 - Slip Copy - 2013 WL 3423106

Bluebonnet was created in order to construct a new hotel in Baton Rouge, Louisiana. Bluebonnet sought to issue tax-exempt Gulf Opportunity Zone ("GO Zone") bonds in order to finance the hotel's construction. Bluebonnet sought a letter of credit from Wells Fargo. A term sheet was executed and signed by a Wells Fargo and Milford Wampold ("Wampold"), the real estate developer and managing member of Bluebonnet.

As Wells Fargo continued evaluating Bluebonnet's application, complications with its proposed contractors forced Bluebonnet to repeatedly delay and change plans for the hotel, which modified essential details as previously laid out in the original term sheet. Due to the change in the plans and information from Bluebonnet, Wells Fargo was not able to go through on the original term sheet. The GO Zone bonds were granted approval in September of 2007, and were issued in May of 2008. Two weeks before the issuance of the bonds in May of 2008, and 13 months after the execution of the original term sheet, Bluebonnet attempted to gain a provisional \$2.5 million letter of credit from Wells Fargo in order to preserve its bond allocation. Wells Fargo informed Bluebonnet that it "could not issue a partial or dry closing in the two weeks provided. Bluebonnet closed on alternative, limited financing from Regions Bank to preserve the bond allocation.

After the original term sheet was signed, on May 1, 2007, Wampold signed a swap contract on behalf of Bluebonnet at Wells Fargo's suggestion. The purpose of the swap contract was to hedge the floating interest rates on the anticipated bonds that Bluebonnet intended to issue by adjusting Bluebonnet's "put" payments to a fixed rate. Should the interest rates rise above the fixed rate, Wells Fargo would pay the difference, and if the interest rates fell below the fixed rate, Bluebonnet would pay Wells Fargo the difference. Before Wampold signed the contract, he was made aware that it required his personal guaranty because it would be executed independently of any other financing he might receive from Wells Fargo. Wampold delayed the start date of the swap contract six times, making the effective date May 2, 2008, nearly a year later than the original August 1, 2008 start date. During this time, the interest rates on the bonds dropped significantly, so that Wampold had to pay the difference in the rates.

After securing the funding from Regions Bank to cover the bonds, Wampold returned to Wells Fargo to obtain permanent financing through a letter of credit for the hotel. Wells Fargo was unable to grant a letter of credit under the original term contract due to Wampold's late changes to the hotel design in 2009, which differed from the original 2007 hotel design. Wampold ultimately financed the project from a loan from Regions Bank.

Wampold subsequently brought this action to rescind the swap contract for failure of cause, negligence, and detrimental reliance. Wampold claimed that the principal cause of the swap agreement was the anticipated letter of credit which never materialized. Wells Fargo filed a Motion to Dismiss.

Louisiana law contemplates the possibility that changed circumstances may constitute a failure of

cause when the “cause” is within the control of the party seeking to enforce the contract. Nevertheless, the Court found that the record contradicts Bluebonnet’s claim that its determined or determinable cause for the swap contract was to fix the rate on its anticipated bond issuance, contingent upon Wells Fargo’s extending a line of credit. This financial instrument was intended to, in speculative—and ultimately incorrect—anticipation of rising interest rates, provide Bluebonnet with a stable and potentially cost-effective method of making payments to any bond holders wishing to exercise their “put” rights on bonds that it desired to release

Wells Fargo’s motion for summary judgment was granted.

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