
TRUST INDENTURE - NEW YORK

Quadrant Structured Products Co., Ltd. v. Vertin

Court of Appeals of New York - June 10, 2014 - N.E.3d - 2014 N.Y. Slip Op. 04114

Noteholder, individually and derivatively on behalf of corporate issuer of notes covered by trust indentures, sued issuer's purported indirect parent company, purported parent's affiliate, issuer's board of directors, and issuer as nominal defendant, asserting, *inter alia*, claims for breach of fiduciary duty, fraudulent transfer, breach of implied covenant of good faith and fair dealing, tortious interference with contractual relations, and civil conspiracy. The Delaware Court of Chancery dismissed complaint based on noteholder's failure to comply with indentures' no-action clauses. Noteholder appealed. The Delaware Supreme Court remanded with directions. The Court of Chancery issued report on remand, holding that motion to dismiss should be granted in part and denied in part. The Delaware Supreme Court certified questions of New York law to the New York Court of Appeals.

The Court of Appeals held that:

- No-action clauses of trust indentures, which do not refer to claims arising under the securities, do not apply to such claims, and
- No-action clauses in the case at bar did not apply, in absence of default.

No-action clauses of trust indentures for notes issued by corporation, which clauses applied only to contractual claims arising under the indentures, and which indentures triggered the trustee's duties only upon an event of default, did not preclude a noteholder, individually and derivatively on behalf of corporate issuer, from bringing claims seeking damages and injunctive relief for breaches of fiduciary duty, fraudulent transfer, breach of covenant of good faith and fair dealing, intentional interference with contractual relations, and conspiracy, against issuer's purported indirect parent company, purported parent's affiliate, issuer's board of directors, and issuer as nominal defendant, relating to alleged scheme to ensure that junior noteholders were paid, despite their inferior status vis-a-vis plaintiff noteholder's senior notes. There had been no default, and instead, the action was seeking to avoid default on senior notes held by plaintiff noteholder.

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