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JURISDICTION - TEXAS

Preston Hollow Capital, LLC v. Bouldin

United States District Court, S.D. Texas, Galveston Division - January 30, 2020 - Slip Copy - 2020 WL 486783

Preston Hollow, an independent municipal finance company, filed this case back in June 2019, seeking to recover millions of dollars from Mark Bouldin ("Bouldin") under a guaranty agreement.

Bouldin, a Florida resident, is the President of Senior Care Ownership one of the entities with an ownership interest in Senior Care. The lawsuit alleges that Senior Care borrowed roughly $44 million raised through the sale of tax-exempt bonds to construct senior living facilities. Preston Hollow invested more than $21 million in the financing. Bouldin guaranteed the bond and loan obligations of Senior Care.

Branch Banking and Trust Company ("BB&T") was the original indenture trustee with respect to the bonds and the loans relating to the financing. Because BB&T was formed under North Carolina law and has its principal place of business in North Carolina, BB&T is a citizen of North Carolina for purposes of the diversity jurisdiction analysis.

In August 2019, Preston Hollow added Senior Care as a defendant, suing Senior Care for the unpaid loan Bouldin had guaranteed.

On January 8, 2020, the judge entered an order requiring Preston Hollow, as the plaintiff in this action, "to file a letter explaining the citizenship of all parties within seven days." Preston Hollow submitted a letter on January 15, 2020. In that letter, Preston Hollow informed me that it believes that Defendant Senior Care Living VI, LLC ("Senior Care") has three members: Senior Care Ownership, Inc. ("Senior Care Ownership 3"), which is a corporation organized under the laws of Florida with its principal place of business in Florida; and two limited liability companies. Preston Hollow represented to that it is unable to determine the membership of those two limited liability companies. In its January 15, 2020 letter, Preston Hollow also indicated that it has 66 members, seven of whom are individuals, 28 are partnerships or limited partnerships, 16 are limited liability companies, nine are trusts, three are employee retirement or pension benefit plans, and three are other business organizations. Preston Hollow said that its members prefer not to disclose details of their involvement in Preston Hollow.

Importantly, Preston Hollow argued that the citizenship status of its members is not relevant because Preston Hollow is not a real party in interest in this case. Instead, Preston Hollow asserted that it is suing exclusively as an agent of BB&T, the real party in interest.

The judge rejected Preston Hollow's claim that it is merely bringing this lawsuit in a representative capacity on behalf of BB&T. "Tellingly, Preston Hollow is unable to point to any document that gives it the authority to bring a claim on behalf of BB&T, the trustee. Instead, Section 7.20 of the MTI expressly provides that Preston Hollow has the right to bring a claim "in lieu of" the trustee." "It is clear that Preston Hollow has the right to bring an affirmative claim for relief *instead* of the trustee, not *on behalf of* the trustee. This is a significant distinction, which ultimately means that Preston

Hollow is acting as a representative of the bondholders, not as an agent for the trustee.

The judge noted that, far from acting solely in a representative capacity, Preston Hollow has a pecuniary interest in this litigation and fully expects to receive a significant portion of any damage award obtained in this case. “In conclusion, I find that Preston Hollow is a real and substantial party to the controversy pending before me. Preston Hollow is not only a representative of all the bondholders, it is also a real party in interest with its own stake in the litigation.”

“Preston Hollow has indicated that its 66 members prefer not to disclose details of their involvement in Preston Hollow. While I appreciate this, I believe such information is essential for me to determine whether diversity jurisdiction exists. To this end, I (again) order Preston Hollow to file a letter explaining the citizenship of Preston Hollow’s members. Such letter should also be filed by Friday, January 31, 2020.”

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