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INDUSTRIAL DEVELOPMENT BONDS - PENNSYLVANIA

Katzen & Boyer v. Clearfield County Industrial Development Authority, et. al.

United States District Court, W.D. Pennsylvania - June 11, 2021 - Slip Copy2021 WL 2402005

Holder of industrial development bonds (Bonds) brought action alleging that Developers engaged in a scheme to deprive the Bondholders of additional contingent rental interest by fraudulently concealing and diverting rental revenue to a straw party, and by failing to accurately report the revenue generated by the Project Facility. Bondholders also alleged that Developer was suppressing the amount of additional contingent appreciation interest due to the Bondholders by refusing to provide information by which Paying Agent's appraiser could make an accurate appraisal of the Project Facility.

Bondholders alleged claims for: breach of contract; tortious interference with contract; unjust enrichment; and, conspiracy.

Developers and related parties moved for summary judgment.

The District Court held that:

- Bondholders stated a plausible claim for the tort of intentional interference with a contract against Developers;
- Bondholders stated a plausible claim of unjust enrichment against Developers;
- Bondholders stated a plausible claim of civil conspiracy against Developers;
- Developers were not entitled to dismissal of the claim for punitive damages at this stage of the proceedings;
- Bondholders stated plausible claims for tortious interference, unjust enrichment against the parties alleged to have engaged in the scheme to deprive Bondholders of additional contingent rental interest by fraudulently concealing and diverting rental revenue;
- Bondholders allegations are sufficient to plausibly state the fiduciary relationship element of a breach of fiduciary duty claim under Pennsylvania law, whether that relationship is classified as trustee/beneficiary or principal/agent;

The gist of the action doctrine did not apply because the gravamen of the tort claim was not the alleged violation of Developers' contractual obligations to the Bondholders as third-party beneficiaries under the Mortgage Loan Agreement, but instead was his intentional interference with the contractual obligations of the Industrial Development Authority and M&T Bank as Paying Agent under the Debt Resolution and the Bonds. Developers were not a party to either the Debt Resolution or the Bonds, and neither the Debt Resolution nor the Bonds created any direct contractual relationship between the Bondholders and Developers. Rather, it was the contractual obligations of the IDA and M&T Bank under the Debt Resolution and the Bonds with which Bondholders alleged Developers tortiously interfered.

The relationship between Developers and the Bondholders at the heart of the unjust enrichment claim was not founded on a direct contract between those two parties. Rather, the contract at issue is the Mortgage Loan Agreement between Developers and M&T Bank, as the agent of the IDA, to which the Bondholders are third party beneficiaries. And a third-party beneficiary to a contract, like the Bondholders, may bring an unjust enrichment claim when the defendant has "received and retained a benefit" from the plaintiff "which would be unjust to retain" without some payment to the plaintiff.

Because the question of whether punitive damages are proper often turns on the defendant's state of mind, this question frequently cannot be resolved on the pleadings alone, but must await the development of a full factual record at trial.

Bondholders' allegations that they are in a fiduciary relationship with M&T Bank which imposes common law duties to "protect, manage and preserve" the rights of the Bondholders related to the revenue generated by the Project Facility beyond the duties owed under the terms of the transaction documents, if believed, are sufficient to plausibly meet the first element of a breach of fiduciary duty claim under Pennsylvania law.

"Here, Plaintiffs allege that their breach of fiduciary duty claim is predicated on M&T Bank's violation of a broader duty imposed by common law that arises from the fiduciary relationship existing between the Bondholders and the Bank, and that this duty exists regardless of any other obligations of the Bank imposed under the Mortgage Loan Agreement and Bonds. While there may be some overlap between the Bondholders' breach of contract and breach of fiduciary duty claims against M&T Bank, the Court is satisfied that the Bondholders' breach of fiduciary duty claim states enough distinct facts to give it a legal basis separate and apart from the contractual relationship between the parties. Accordingly, the Court concludes that Plaintiffs' breach of fiduciary claim as pled against M&T Bank is not precluded as a legal matter by the gist of the action doctrine."

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