

Bond Case Briefs

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BONDS - INDIANA

London Witte Group, LLC v. City of Marion

Court of Appeals of Indiana - October 10, 2023 - N.E.3d - 2023 WL 6562947

A few years before 2008 or 2009, the YMCA in Marion moved into a new space, leaving the old YMCA building in downtown Marion vacant. In 2008 or 2009, the City began discussions with Michael An, a developer from California. An proposed a redevelopment of the old YMCA building into a combination of hotel, restaurant, retail, and commercial spaces ("the YMCA project"). He estimated that the project would cost around \$5.5 million. The City was willing to provide bond financing in the amount of \$2.5 million, meaning that An had to come up with \$3 million from other sources.

The bonds would be funded from a tax-increment financing (TIF) district, with London Witte Group's (LWG) role being to determine "how much room is in the TIF district to do this project." Essentially, LWG's primary job was to ensure that the City could pay back the bonds.

First Farmers Bank emerged as the prospective bond buyer. The Bank and the City each expected that An would provide proof that he had attained the additional \$3 million in financing. The Bank and the City subsequently accepted An's assurances that he had secured the additional financing.

LWG's assurances satisfied the Bank, because the bonds were issued on December 16, 2009. At some point, construction began, but it was never completed. The City refinanced the bonds in 2011, after which An continued to work on the project and to look for investors.

The City sued An's estate. The primary allegation from which the City's claims against LWG stemmed is that LWG "not only failed to tell the City that An lacked the money to complete the project, it prevented the Bank from learning it—a fact which would have stopped, or at least substantially changed, the bond issue."

During the discovery process, the City allegedly first became aware that bond proceeds were used to provide personal benefits to Mayor Seybold, including payment of the premium on a life insurance policy, cash payments to Mayor Seybold's wife, and contributions to Mayor Seybold's political campaigns. Moreover, An was allegedly told that the City would invest in his project only if he hired the Mayor's brother, Chad.

The trial court entered an order granting LWG's motion with respect to the claims for negligence and breach of fiduciary duty and denying it with respect to the claim for constructive fraud/unjust enrichment. The trial court found that the negligence and breach of fiduciary duty Counts are based on the two-year statute of limitations. However, the Court denied the relief requested in the summary judgment motion as to the constructive fraud/unjust enrichment claim. That claim is based on the six-year statute of limitations, which did not begin to run until LWG's work on the 2011 Refinancing was completed.

The Supreme Court of Indiana reversed as to the statute of limitations claims. The Indiana Supreme Court adopted the doctrine of adverse domination as a potential avenue for tolling a statute of

limitation in Indiana.

The case proceeded to trial and the jury entered a verdict against LWG in the amount of \$3,121,624.00. LWG appealed and the Court of Appeals affirmed. LWG filed a motion for a directed verdict, which was denied.

LWG challenged the trial court's determination that the City presented sufficient evidence of both intentional wrongdoing and domination by the Mayor to survive its directed verdict motions.

The trial court determined that a directed verdict was improper because there was sufficient evidence to support a reasonable inference of wrongdoing, or at least that would allow reasonable persons to differ as to the result. Upon review, the Court of Appeals reached the same conclusion as the trial court.

The Court of Appeals also found that the evidence supported the reasonable inference that Mayor Seybold exerted control over the investigation such that any wrongdoing on his behalf would not be discovered. The Court of Appeals concluded that the trial court did not abuse its discretion in denying LWG's motion for a directed verdict on the City's claim of adverse domination.