

Bond Case Briefs

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MUNICIPAL ADVISORS - INDIANA

London Witte Group, LLC v. City of Marion

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

City brought action against advisor which provided financial advice to city regarding funding for a redevelopment project, which city financed but which developer was ultimately unable to complete, and alleged claims for negligence, breach of fiduciary duty, and constructive fraud and unjust enrichment.

The Grant Superior Court granted in part and denied in part advisor's motion for summary judgment. City appealed and advisor cross-appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions. City sought transfer, and transfer was granted. The Supreme Court affirmed in part, reversed in part, and remanded. On remand, jury trial was held, and the Superior Court entered judgment in favor of city. Advisor appealed.

The Court of Appeals held that:

- Issue of whether mayor engaged in intentional wrongdoing, as could, pursuant to doctrine of adverse domination, toll limitations period for city's claims, was jury question;
- Issue of whether mayor exercised ability to supervise and control city attorney and others who could investigate mayor's own alleged wrongdoing, as could, pursuant to doctrine of adverse domination, toll limitations period for city's claims, was jury question;
- Issue of whether advisor breached standard of care was jury question;
- Issue of whether advisor breached fiduciary duty was jury question; and
- Verdict awarding damages of over \$3 million, representing 95% of fault, against advisor was not excessive.

Advisor sufficiently renewed its prior motion for directed verdict at close of evidence, so as to preserve for appeal argument that trial court erred in denying motion, in case in which city, to which advisor had provided financial advice regarding construction project, asserted claims including negligence and breach of fiduciary duty against advisor, even if advisor could have been more specific in its arguments as to why trial court should enter judgment in its favor, where advisor referred to prior motion and made arguments on same grounds as those asserted in prior motion.

Issue of whether mayor engaged in intentional wrongdoing, as could, pursuant to doctrine of adverse domination, toll limitations period for city's claims, was jury question, in case in which city asserted claims for negligence and breach of fiduciary duty against advisor which provided financial advice to city regarding financing for a redevelopment project, in which city alleged that mayor had engaged in improper conduct, including receipt of improper financial benefits from developer and bond proceeds, and that this tolled limitations period for city's claims arising from advisor's alleged failure to tell city that developer lacked the money to complete the project.

Issue of whether mayor exercised ability to supervise and control city attorney and others who could investigate mayor's own alleged wrongdoing, as could, pursuant to doctrine of adverse domination, toll limitations period for city's claims, was jury question, in case in which city asserted claims for

negligence and breach of fiduciary duty against advisor which provided financial advice to city regarding financing for a redevelopment project, in which city alleged that mayor had engaged in improper conduct, including receipt of improper financial benefits from developer and bond proceeds, and that this tolled limitations period for city's claims arising from advisor's alleged failure to tell city that developer lacked the money to complete the project.

Issue of whether advisor to city was complicit in mayor's alleged wrongdoing, as could, pursuant to doctrine of adverse domination, toll limitations period for city's claims against advisor, was jury question, in case in which city asserted claims for negligence and breach of fiduciary duty against advisor which provided financial advice to city regarding financing for a redevelopment project, in which city alleged that mayor had engaged in improper conduct, including receipt of improper financial benefits from developer and bond proceeds, and that this tolled limitations period for city's claims arising from advisor's alleged failure to tell city that developer lacked the money to complete the project.

Issue of whether advisor to city breached standard of care was jury question, in city's negligence action against advisor which provided financial advice to city regarding financing for a redevelopment project for which city provided bond financing but which developer ultimately did not have the money to complete.

Issue of whether advisor breached fiduciary duty in providing financial advice to city regarding redevelopment project was jury question, in case arising from project for which city provided bond financing but which developer ultimately lacked the money to complete.

Verdict awarding damages of over \$3 million, representing 95% of fault, against advisor which provided financial advice to city regarding city's financing of a redevelopment project was not excessive, in case in which city asserted negligence and breach of fiduciary duty by advisor, alleging that advisor improperly failed to tell city that developer lacked the money to complete the project, despite advisor's assertion that it had limited role in outcome given city also alleged wrongdoing by mayor and others with regard to project, including mayor's receipt of financial benefits from developer; there was evidence that advisor had played an active role or at least had been complicit in wrongdoing of others.