

Seigfreid Bingham Successfully Defends Fraud and RICO Claim

In a complex business dispute arising out of a 2007 bond issuance in Branson, Missouri, the law firm of Seigfreid Bingham successfully defended its client, BCP Land Company LLC, a real estate developer, from claims of civil RICO and fraudulent nondisclosure, and damages arising from alleged failures to satisfy certain terms of a Trust Indenture. The claims were brought by the bond trustee, BOKF, N.A. The case was tried in the U.S. District Court for the Western District of Missouri, in the Southern Division. Judge Douglas Harpool presided over the 8-day jury trial. The 7-person jury reached a unanimous verdict on April 14, 2016. The dispute arose in connection with a \$16 million bond issuance that closed in July of 2007. The bonds were used to fund infrastructure improvements at the Branson Commerce Park Community Improvement District, a 345 acre mixed-use development in Branson, Missouri. In connection with the closing, the developer had deposited \$1.4 million with the bond trustee to temporarily secure repayment of the bonds. Additionally, the developer and several individual guarantors agreed to replenish the fund in the event the bond trustee was required to draw on the fund. As property within the development was sold to third parties, the developer was entitled to partial releases of the \$1.4 million. Simultaneously, the guaranty was reduced. In 2012 and 2013, the real estate developer held public auctions that resulted in the sales of 25 lots. Following the sales, the real estate developer requested that the bond trustee release amounts from the \$1.4 million reserve fund. For the 2012 sales, the bond trustee released \$962,646.61. The bond trustee refused to release amounts from the fund pertaining to the 2013 sales, claiming that the 2012 and 2013 sales were fraudulent transactions because the properties had been purchased by entities that were controlled by the developer, BCP Land Company. In early 2014, at the direction of its bondholders, the bond trustee sued the developer, seeking the return of the \$962,646.61 paid to the developer in 2012 and seeking a declaratory judgment that the trustee did not have to refund the developer \$246,706, as a result of the 2013 sales. The bond trustee later amended the suit to add civil RICO and fraud claims, and sought punitive damages, attorney's fees, and treble damages under the civil RICO statute. The jury trial began on April 4, 2016. On April 11, 2016, following the bond trustee's case in chief, the Court dismissed the civil RICO claims against all of the defendants. All evidence was concluded on April 12, 2016, and closing arguments occurred on the morning of April 13, 2016. Submitted to the jury were special interrogatories, addressing the factual issues of whether the 2012 and 2013 buyers were successors or affiliates of the developer and further whether the buyers were in a control relationship with the developer. Additionally, the jury considered the bond trustee's claim of fraudulent nondisclosure in connection with the 2012 sales. On April 14, 2016, the jury rendered its unanimous verdict in favor of BCP Land Company on the bond trustee's claim for fraud. The jury also found in favor of BCP Land Company on 24 of the 25 lots sold in 2012 and 2013. The result of the lawsuit is that BCP Land Company is entitled to retain the \$962,646.61 that the bond trustee released following the 2012 sales. Critically, the developer's and individual guaranty on the fund is reduced by \$14,439,699.20. For the 2013 sales, the bond trustee must release an additional \$125,903 from the fund, and the guaranty is reduced in the amount of \$1,888,545. The bond trustee made no settlement offers during the lawsuit. Fritz Riesmeyer, Brad Thoenen and Greg Whiston of Seigfreid Bingham represented BCP Land Company and its members at trial.