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3rd Circ. Revives Suit Over $2.5M Bond Investment, Law360, ft. Christopher Nucifora

Christopher Nucifora, Co-Managing Partner of the Kaufman Dolowich & Voluck, LLP New Jersey Office, was mentioned in a Law360 article written by Emma Cueto.

Law360 (April 20, 2018, 5:25 PM EDT) — In a precedential decision on Thursday, the Third Circuit revived a suit over an investment opportunity turned sour that was dismissed after a $3.5 million settlement had already been reached, after new counsel argued that the federal courts did not have jurisdiction over the case.

Looking at the 2016 U.S. Supreme Court ruling in Americold Realty Trust v. Conagra Foods Inc., the panel concluded that the high court meant for traditional trusts and business trusts to be treated differently when determining citizenship and therefore the court did not have enough information to determine whether there was diversity of citizenship in family trust GBForefront LP's suit against investment adviser Forefront Management Group LLC and related entities.

The dispute between GBF and Forefront stretches back to 2011, when GBF filed a suit in Pennsylvania alleging that after the trust paid $2.5 million for a promissory note offered by Forefront, the company defaulted on its obligations. The parties agreed to settle in 2015 for $3.5 million.

However, GBF told the court later that year that Forefront had not been sticking to the terms of the settlement and asked that the court enter a previously agreed-upon $6.8 million consent judgment.

As the dispute sparked back up again, Forefront's new lawyers argued that the suit never belonged in federal court to begin with because there was no diversity of citizenship among the parties since both the beneficiaries of the trust and a member of Forefront were located in New Jersey. The district court agreed and dismissed the case.

On Thursday, however, the Third Circuit revived the suit, saying there wasn't enough information to determine whether diversity jurisdiction applied because it wasn't clear from the record if GBF was a traditional or business trust, which should be treated differently when determining citizenship. For a traditional trust, citizenship is determined by the citizenship of a trustee; for a business trust, citizenship is determined by all its members, according to the decision.

Christopher Nucifora of Kaufman Dolowich & Voluck LLP, an attorney for GBF, said he is looking forward to addressing the factual questions the court raised back at the district court. "We believe there's no question these trusts are traditional and the jurisdiction issue will be settled very quickly."

He also said, "This was a very well-prepared court and a very well-thought out decision."

Congratulations to Christopher Nucifora and his KD team (Kenneth Danielsen, Edward Abbott, and Erik Sardiña) for a successful outcome in the US Court of Appeals for the Third Circuit, which established new precedential law in the circuit.

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