

The Defendants originally sued by Plaintiff consisted of certain of its employees, certain entities involved in the sale of the bonds; Plaintiff's fiscal advisor, certain officers of 38 Studios, 38 Studio's insurance carrier, as well as attorneys and law firms for Plaintiff that functioned as general counsel and as bond counsel in connection with the bonds, not sued by Plaintiff because it had availed itself of protection under the provisions of Chapter 7 of the Bankruptcy Code less than six months following the issuance of the bonds.

As indicated, this litigation commenced in 2012 and has been vigorously litigated by the parties ever since. A number of Defendants have settled, including Plaintiff's outside law firm, which acted as its general counsel, together with the partner in that firm who functioned as its primary counsel and was the Secretary of the EDC; the outside law firm that functioned as bond counsel to the EDC in connection with the \$75 million bond issue hereinabove referred to, together with the partner in that firm with primary responsibility in connection with the bond issue. Also settling were the Executive Director and the Deputy Executive Director of Plaintiff, its two senior officers.

To date, all payments due to the holders of the issued bonds have been made in accordance with their proposed dates of payment. The source of the payments, rather than being payments to be made by 38 Studios pursuant to its agreements, have come from the original reserve funds set aside from the proceeds of the bond issue as aforesaid, together with funds received by EDC from settlements obtained from the settling Defendants, also payments authorized by the General Assembly pursuant to the so-called moral obligation aspect of the bond issue, and certain other miscellaneous funds held or paid into the reserve accounts.

Recently, after a lengthy investigatory process, the Security and Exchange Commission, an agency of the United States, brought suit against Plaintiff, Wells Fargo Securities, LLC (a

Defendant herein), Peter M. Cannova (an employee of Wells Fargo and not a defendant in the instant action), and against the former Executive Director and Deputy Executive Director of Plaintiff herein. The SEC action is pending in the United States District Court for the District of Rhode Island as civil action number 1.16-cd-00107-JJM.

Certain of the Defendants in this case, that is to say the case pending in the Providence County Superior Court, have moved that this Court stay all further proceedings pending final resolution of the SEC litigation in the Federal Court system. Defendants, Wells Fargo and Barclays Capital, Inc., argue, inter alia, that the Federal Courts have more familiarity with the statutory and regulatory scheme with respect to securities law, that findings in the State Court proceeding may be at variance from well-established securities law jurisprudence and that certain findings in this litigation might be inconsistent with findings in the Federal proceedings. The Defendants point to the anomaly that Plaintiff here is indeed a Defendant, together with Wells Fargo, in the proceedings brought by the SEC as regulator.

The EDC resists Defendants' motion arguing, among other things, that the Federal litigation has just commenced, that its response to that suit is not presently due, that there is no assurance that a resolution of that proceeding will in any way impact the disposition of this matter, that Plaintiff's claims here are Rhode Island common law in nature while the Federal litigation is incident to alleged violation of Federal Securities law, and that while claims under the 1934 Securities Act (against Wells Fargo) are subject exclusively to suit in the Federal system, claims under the 1933 Securities Act (such as those asserted by SEC against the EDC) are cognizable both in the Federal and State Courts.

Further, Plaintiff correctly makes the point that the SEC action is to acquit the rights of the investing public while the State action is brought against the Defendants claiming a violation of rights and of duties owed to Plaintiff by the Defendants and by each of them.

In the final analysis, this Court notes that the stay request is addressed to the sound discretion of the trial justice. This Court believes under all the attendant circumstances, such as:

- (1) The nearness of the date set for trial after the passage of almost four years since the bringing of this suit, as compared to the approximately three months since the Federal proceeding was instituted;
- (2) The voluminous discovery, together with its concomitant expense, that has occurred in this case; (The Court notes that approximately eight-five depositions have been taken, some lasting for a number of days, extensive and expensive document production has occurred. The Court has been told that over one million pages of documents have been produced.)
- (3) Days totaling literally months in Court motion practice has occurred;
- (4) The disparate nature of the claims; i.e., damage to the investing public in violation of Federal Securities law in the Federal litigation, as opposed to alleged damage to Plaintiff primarily pursuant to State common law causes of action in the State Court proceeding;
- (5) The failure of the moving parties to establish undue prejudice;

that it would constitute an abuse of its discretion to stay these proceedings pending a final determination of the Federal litigation which might not and likely would not impact the claims remaining in the case at bar.

Accordingly, the motions to stay are denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rhode Island Economic Development Corp. v. Wells Fargo Securities, LLC, et al.

CASE NO: PB 12-5616

COURT: Providence County Superior Court

DATE DECISION FILED: June 1, 2016

JUSTICE/MAGISTRATE: Silverstein, J.

ATTORNEYS:

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For Defendant: See attached list

Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et als.
C.A. No. PB 12-5616

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