DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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COURT DISMISSES CLAIMS AGAINST INVESTORS FOR FUNDING ALLEGED "RENT-A-BANK" ARRANGEMENT, BUT "RENT-A-TRIBE" CLAIMS REMAIN

The United States District Court for the Eastern District of Pennsylvania partially granted a motion to dismiss brought by investors in a consumer loan program for their alleged participation in a "rent-a-bank" scheme.

The loan program involved high-rate loans to consumers made over the internet. The Pennsylvania Attorney General (AG) brought suit against the lenders, loan servicers, investors and others. The AG alleged that the defendants partnered with an out-of-state bank and later Native American tribes in what the court stated is "colloquially known as 'rent-a-bank' and 'rent-a-tribe.'" According to the complaint, the investors made an initial funding commitment in exchange for a fixed return on investment, which was later renamed a "participation interest." According to the complaint, the investors actively participated in the design and direction of the loan program with the tribal entities and determined the volume of lending by the tribal entities based on the investors' assessment of their own risk tolerance.

The AG claimed that the investors were liable under the Pennsylvania Corrupt Organizations Act for their conduct relating to the loan program and actions to circumvent the Pennsylvania usury laws applicable to loans made to Pennsylvania residents.

The Corrupt Organizations Act provides, in part, that it is unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

The investors moved to dismiss for failure to state a claim under the Corrupt Organizations Act for their involvement in the "rent-a-bank" scheme. In response to the motion, the AG argued "rent-a-bank" and "rent-a-tribe" are two phases of a single scheme that violated the Corrupt Organizations Act. In contrast, the investors argued that "rent-a-bank" and "rent-a-tribe" are two independent schemes, and that the court should dismiss Counts I, II and III for failure to state a claim with regard to the investor's alleged conduct in the "rent-a-bank" scheme.

The court found that in contrast to the AG's allegations about the investor's conduct in the "rent-a-tribe" scheme, the AG fails to show how the investors could be liable under the Corrupt Organizations Act for its alleged participation in the "rent-a-bank" scheme. The court noted the lack of allegations regarding the investor's conduct in the "rent-a-bank" scheme – either as a principal or as a participant involved in the operation and management of that scheme. The court held that while AG alleged that the investors provided funding for the bank loan program and created an entity to purchase participation interests in the loans made by the bank, such allegations failed to plead sufficient allegations that would render the investor liable under the Corrupt Organizations Act. The court stated that the investors would not incur liability for "merely funding an alleged unlawful enterprise."

Thus, the court dismissed Counts I, II and III against the investors for conduct related to the "rent-a-bank" allegations. The court noted in a footnote that Counts I, II and III remain pending against the investors for the conduct that was not the subject of the Motion to Dismiss, such as their involvement in the alleged "rent-a-tribe" scheme.

We will continue to monitor this case and keep you informed of future developments. We can provide advice on how to structure programs to minimize the risks associated with a "rent-a-bank," "true lender" or similar challenges.❑

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