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Calif. Can't Trim Claims It Reneged On \$2.3B Property Sale

By **Beth Winegarner**

Law360, San Francisco (July 22, 2013, 9:39 PM ET) -- A California state judge Monday refused to pare down a lawsuit claiming the state violated its contract with real estate investor California First by reneging on a \$2.3 billion deal to sell 11 state buildings, finding that California First had sufficiently pled the alleged breach.

San Francisco Superior Court Judge Marla Miller denied California's motion for judgment on the pleadings, saying she had been persuaded by California First's argument that the state let the parties' initial contract lapse, and then continued to negotiate without telling other parties that the operating contract had ended, before ultimately severing the agreement after then-Gov. Arnold Schwarzenegger was voted out of office.

Attorneys for the state argued that under the terms of the parties' real estate contract, the lawsuit must be pared back to a single breach-of-contract claim with a single remedy, specific performance. However, because the contract had lapsed, California First brought additional claims for breach of implied contract stemming from the continued negotiations, said Angela Agrusa of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor.

"The contract provides the remedy in case of a breach prior to closing. The sole and exclusive remedy is an action for specific performance," argued the state's attorney, Andrew Stroud of Mennemeier Glassman & Stroud, urging Judge Miller to throw out the plaintiffs' five additional claims, including breach of contract, breach of implied contract and breach of the covenant of good faith and fair dealing.

During discovery, the plaintiffs learned that the original contract between the state and California First auto-terminated on Nov. 18, 2010, and none of the potential buyers was notified, Agrusa said.

But the negotiations continued after that. "Under the law, a new contract may have been created," Agrusa argued. "But [under that contract] there is not a restriction on remedies. The new agreement does not have that limitation."

"OK, you've persuaded me," Judge Miller said. "I'm going to deny [the defendants'] motion in its entirety. I'm persuaded that there are factual issues here, and I cannot conclude that the complaint does not plead facts sufficient to sustain causes of action."

Facing a \$25 billion budget shortfall, California contemplated selling 11 of its state-owned buildings and conducted a competitive bidding process in late 2010 before entering an agreement to sell the buildings to California First for \$2.33 billion and then lease them back from the investor, according to the lawsuit California First filed in November of that year.

The properties include the Attorney General building, the Franchise Tax Board complex, the Department of Justice building, the California Emergency Management Agency building and the California East End complex in Sacramento; the Judge Joseph Rattigan building in Santa Rosa; the Elihu Harris building in Oakland; the Edmund G. Brown Public Utilities Commission building and the San Francisco Civic Center in San Francisco; and the Junipero Serra building and the Ronald Reagan State Building in Los Angeles, the complaint said.

The state touted the deal in an October 2010 press release, saying \$1.2 billion would go to the state's general fund while the remaining \$1.1 billion would pay off bonds on the buildings. The sale was set to close Dec. 15, 2010, but two former members of the Los Angeles State Building Authority Governing Board sued in mid-November, seeking to block the deal. A California state judge denied their motion for an injunction Dec. 10, 2010, the lawsuit said.

The plaintiffs appealed, and the California Court of Appeals issued a stay. State officials moved for relief from the stay, then petitioned the California Supreme Court for a writ of mandate, which the high court denied Dec. 28, 2010, the lawsuit said.

After California's new governor, Edmund G. Brown, was sworn in in January 2011, he reaffirmed the state's plan to sell the buildings. However, in early February, Brown announced the deal would not go through. The next day, California First received a notice "purporting to terminate the contract," the complaint said.

California First is represented by Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor.

The state is represented by Mennemeier Glassman & Stroud LLP.

The case is Jerry B. Epstein v. Arnold Schwarzenegger, case number CGC-10-505436, in the Superior Court of the State of California, County of San Francisco.

--Editing by Jeremy Barker.

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