

Financials Restructuring Partners, Ltd. v Security Pac. Bancorp.
2014 NY Slip Op 31211(U)
May 5, 2014
Sup Ct, NY County
Docket Number: 651277/2013
Judge: O. Peter Sherwood
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIALS RESTRUCTURING PARTNERS,
LTD., and HOLDCO ADVISORS, L.P. as manager
for Financials Restructuring Partners, Ltd.,

X
Index No. 651277/2013

ORDER

Plaintiffs,

-against-

SECURITY PACIFIC BANCORP,

Defendant.

X
THE HONORABLE O. PETER SHERWOOD:

Plaintiffs, Financials Restructuring Partners, Ltd. (“FRP”) and HoldCo Advisors, L.P. (“HoldCo”), as manager and power of attorney for Financials Restructuring Partners, Ltd. have moved for summary judgment in lieu of complaint pursuant to section 3213 of the New York Civil Practice Law and Rules (“CPLR”), against defendant, Security Pacific Bancorp, Inc. (“Security Pacific”). FRP seeks entry of judgment against Security Pacific in the amount of \$6 million in principal plus accrued interest and costs as applicable. FRP’s motion is GRANTED for the reasons discussed below.

I. Background

A. The Parties

Plaintiff, HoldCo Advisors, L.P. is a Delaware limited partnership acting as manager of Financials Restructuring Partners, Ltd. Plaintiff FRP, in turn, is a limited liability company organized under the laws of the Cayman Islands. FRP holds 100% of the \$6 million notional of trust preferred securities (“Capital Securities”) issued by Security Pacific’s subsidiary trust, Security Pacific Statutory Trust V (the “Trust”) and for which Security Pacific has guaranteed payment. Pursuant to a General Power of Attorney dated as of February 5, 2013, FRP has

authorized HoldCo to perform any lawful action on FRP's behalf vis-à-vis Security Pacific, including bringing this lawsuit. HoldCo thus acts on behalf of FRP in this matter.

Defendant, Security Pacific Bancorp, Inc. is a California corporation with the primary purpose of serving as a bank holding company for Security Pacific Bank, a regulated bank operating in Los Angeles, California (the "Bank"). The Bank failed in November 2008 and was seized by the Commissioner of the California Department of Financial Institutions on November 7, 2008. The Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver. The FDIC then executed a purchase and assumption agreement with Pacific Western Bank, pursuant to which, Pacific Western Bank acquired substantially all the assets and deposits of the Bank.

B. The Capital Securities and the Debentures

Plaintiffs commenced this action under CPLR 3213 based upon FRP's ownership of \$6 million in principal of Capital Securities issued by the Trust and guaranteed by Security Pacific.

To issue the Capital Securities, Security Pacific and the Trust executed the documents (collectively, the "Trust Documents"): (i) that certain Indenture dated as of November 12, 2004, between Security Pacific Bancorp, Inc., as issuer, and JPMorgan Chase Bank, as indenture trustee (the "Indenture"); (ii) that certain Amended and Restated Declaration of Trust dated as of November 12, 2004 (the "Trust Declaration"); and (iii) that certain Guarantee Agreement dated November 12, 2004 (the "Guarantee"). On or about March 11, 2011, FRP acquired all \$6 million of Security Pacific's Capital Securities.

Plaintiffs have submitted an affidavit sworn to by Jeffrey Katz, Vice President of Bank of New York Mellon ("BNY") who states that BNY is holding on behalf of FRP, Capital Securities sponsored by Security Pacific and issued by the Trust and attests to the signed letter from BNY

confirming that FRP currently holds \$6 million of Security Pacific's Capital Securities, and identifying them by CUSIP number 8148499A8.

C. Security Pacific's Exercise of Its Right to Defer Interest Payments

On August 1, 2008, Security Pacific sent a letter to the Trustee, exercising its right to defer interest payments on the Capital Securities. The maximum period for the deferral of interest is set by the Indenture at 20 consecutive quarters. The 20 consecutive quarterly deferral period thus expired on August 1, 2013. No payment has been made since the expiration of the deferral period.

D. Event of Default

In their motion, plaintiffs presented evidence of multiple "Events of Default" under the Indenture allowing for acceleration of the entire amount owed by Security Pacific to FRP:

First, Security Pacific has defaulted under Section 5.01(e) of the Indenture because the FDIC was appointed as receiver for Security Pacific's wholly-owned bank subsidiary, the Bank;

Second, Security Pacific has defaulted under Section 5.01(f) of the Indenture because: (i) it has lost its primary asset, the Bank, and has failed to remit any payments on account of the Capital Securities since at least May 2009, meaning it is generally failing to pay its debts as they become due; and (ii) it has consented to the FDIC's receivership of the Bank;

Third, Security Pacific has defaulted under Section 5.01(a) of the Indenture by failing to make payments on the Capital Securities since May 2009.

Fourth, Security Pacific has defaulted under Section 5.01(d) by failing to comply with the covenant set forth in Section 3.07; specifically Security Pacific covenanted not to "sell, convey, transfer or otherwise dispose of all or substantially all of its property" absent specific

circumstances which have not been met, and the seizure and subsequent sale of the Bank constitute such prohibited disposal of Security Pacific's primary asset.

Security Pacific has thus defaulted under at least sections 5.01(a), 5.01(d), 5.01(e), and 5.01(f) of the Indenture. Each of these defaults constitutes an Event of Default that "is continuing" and "is attributable to the failure" of Security Pacific to make timely payments on the Capital Securities, and each result in the principal and interest on the Debentures being immediately due and payable. Such defaults directly affect Capital Securities holders' rights under the Trust Documents, and go to the core of Security Pacific's obligations and the Capital Securities holders' benefits under the Trust Documents. Accordingly, the Trust Declaration has granted the Capital Securities holders direct rights of action in the event of non-payment, and FRP, as the sole holder of 100% of Security Pacific's Capital Securities, has direct standing to bring this action. HoldCo, as FRP's manager and power of attorney, also has this right.

II. Damages

The plaintiffs are entitled to recover the full \$6 million principal amount under the Capital Securities plus interest accruing at a 3-month LIBOR + 1.95% thereafter. *See* Indenture § 2.10; *see also* Trust Declaration, Annex 1, p. A-I-1 – A-I-2. The total accrued interest on the Debentures and Capital Securities to date is \$2,492,432.

III. Order

Now upon reading and filing Plaintiffs' Summons, Notice of Motion for Summary Judgment in Lieu of Complaint, Memorandum of Law in Support of Motion for Summary Judgment in Lieu of Complaint, dated April 17, 2013, together with the exhibits annexed thereto, Affidavit of Vik Ghei in Support of Motion for Summary Judgment in Lieu of Complaint sworn on April 15, 2013, together with the exhibits annexed thereto, Request for Judicial Intervention

and Request for Judicial Intervention Addendum (the "Motion Papers") and Plaintiffs having submitted proof of service upon Security Pacific, and upon further consideration of the Affidavit of Steven Gomes authenticating and confirming FRP's beneficial ownership of the Capital Securities, and Defendant having failed to answer or otherwise appear in this case; and the Court on January 2, 2014 having issued its Decision and Order, in relevant part, granting Plaintiff's Motion for Summary Judgment In Lieu of Complaint in the matter *Financials Restructuring Partners III, Ltd. and HoldCo Advisors, L.P., as manager for Financials Restructuring Partners III, Ltd. vs. Riverside Banking Company*, Index No.650934/2013 (the "Riverside Matter"), and the Court on March 19, 2014, having directed Plaintiffs to apply the Court's reasoning in the Riverside Matter to settle the order in this case;

IT IS THEREFORE

ORDERED that motion for summary judgment in lieu of complaint by Financials Restructuring Partners, Ltd. and HoldCo Advisors, L.P., as manager for Financials Restructuring Partners, Ltd. is GRANTED in full; and it is further

ORDERED that defendant shall pay to plaintiffs the full amount of \$6,000,000 in principal, plus accrued interest as calculated above, totaling \$2,492,432; and it is further

ORDERED that Security Pacific shall also pay to plaintiffs any post-judgment interest accruing at the statutory rate of 9% pursuant to CPLR § 5004, beginning from the date of entry of this order; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Dated: 5.5.2014

ENTER:



J.S.C.

O. PETER SHERWOOD