

February 2012 MPT

▶ *FILE*

MPT-2: In re WPE Property Development, Inc.

memo Rawson Hughes & Conrad · 22 Main Street · Springfield, Franklin 33755

to: Examinee
from: Thomas Perkins, Managing Partner, Tax Group
date: February 28, 2012
re: WPE Property Development, Inc.: Dispute with Trident Management Group

We represent WPE Property Development, Inc., a property developer in Springfield. WPE contracts with Trident Management Group to manage many of WPE's tax-exempt, low-income housing projects. Last year, Trident's mismanagement caused one of the properties to lose its tax-exempt status, resulting in substantial federal tax liability and penalties for WPE.

Since learning about the loss of the exemption, I have had many meetings and exchanges of correspondence with counsel for Trident, continuing until a few weeks ago, in an effort to resolve this matter short of litigation. These efforts have been unsuccessful, however. WPE has a long-standing and profitable relationship with Trident, wants it to continue, and doesn't want to sue Trident. The housing project at issue has been controversial from the start, and WPE would like to avoid any adverse publicity that a lawsuit would surely generate. Trident has assured us that it, too, wants to settle and has repeatedly asked us not to sue.

The one-year statute of limitations on WPE's breach of contract claim against Trident will run in 15 days. I sent Trident an agreement to toll the statute of limitations in January. Trident has not returned it but instead has imposed additional conditions for settlement. We have kept WPE fully informed of our negotiations and Trident's latest settlement conditions. However, WPE still maintains that it wants to avoid filing its complaint if at all possible to avoid the adverse publicity (and the consequences thereof). I attach the relevant correspondence, including my notes summarizing my initial meeting with WPE's CEO, Juan Moreno, last March.

Please draft a letter to Moreno for my signature analyzing the legal consequences to WPE if it decides not to file its complaint against Trident before the statute of limitations runs. You should discuss whether there are any theories under Franklin law that would allow WPE to pursue an action against Trident even after the statute of limitations has run and advise Moreno as to the likelihood of prevailing on those theories. Do not write a statement of facts, but be sure to incorporate all relevant facts into your analysis, state your conclusions, and explain your reasoning.

memo Rawson Hughes & Conrad · 22 Main Street · Springfield, Franklin 33755

to: FILE

from: Thomas Perkins

date: March 29, 2011

re: WPE Property Development, Inc.: Dispute with Trident Management Group

I met today with Juan Moreno, the CEO of WPE Property Development. He informed me that WPE had received a notice from the IRS that it had lost its tax exemption for a 200-unit low-income housing project it constructed four years ago at 316 Forest Avenue in Springfield. WPE had contracted with Trident Management Group to manage this as well as several other WPE housing projects. Moreno is convinced that Trident's mismanagement caused loss of the exemption because Trident failed to maintain the required percentage of low-income residents in the property and rejected many low-income applicants. Loss of the tax exemption is significant because WPE will incur substantial retroactive tax liability. It may also be exposed to lawsuits by the rejected housing applicants.

Moreno reminded me that the Forest Avenue project was controversial from the outset. Many qualified applicants were rejected as potential residents, and the Forest Lakes Neighborhood Association did not want the property built, claiming that it would add too much population density and accompanying demands on infrastructure.

The local media has not picked up on the loss of the tax exemption, but if a lawsuit is filed, they will almost certainly cover the story. Once word gets out, the resulting adverse publicity will likely lead to lawsuits from aggrieved housing applicants and hurt WPE's ability to obtain financing for similar projects in the future.

Moreno also told me that WPE does substantial business with Trident. While the loss of the exemption poses a risk of significant costs, including back taxes and penalties, the value of WPE's other business with Trident is far more substantial. Trident is also the only business in the region able to provide the services WPE needs on properties of this scale. This relationship has reinforced Moreno's desire to resolve this problem without a lawsuit, if at all possible.

RAWSON HUGHES & CONRAD, LLC
ATTORNEYS AT LAW
22 MAIN STREET
SPRINGFIELD, FRANKLIN 33755

April 12, 2011

Ms. Meg Hamilton
Evans & Glover
227 Washington Avenue
Springfield, Franklin 33703

Re: WPE Property Development, Inc.
316 Forest Avenue property

Dear Ms. Hamilton:

As you know, our client, WPE Property Development, contracts with your client, Trident Management Group, to manage many of WPE's tax-exempt properties in the Springfield area. On March 14, 2011, WPE received a notice from the Internal Revenue Service revoking its tax exemption for the property that Trident manages at 316 Forest Avenue in Springfield, on the ground that the property was being operated in violation of provisions of the Internal Revenue Code.

Because WPE stands to incur substantial federal taxes and penalties, we have drafted a complaint against Trident for breach of contract, which we intend to file unless the parties can reach a settlement. I have enclosed a copy of the draft complaint for your information. If your client is interested in discussing settlement, please contact me immediately.

Very truly yours,



Thomas Perkins

Enc.

cc: Juan Moreno, WPE CEO

E-mail from counsel for Trident Management Group

Date: April 15, 2011
To: Thomas Perkins, Counsel for WPE
From: Meg Hamilton, Counsel for Trident
Re: WPE/Trident—Forest Avenue property

Tom:

I read your letter and the attached complaint with interest and concern. We are in the midst of a tax audit on one of our other clients, and the place is a madhouse.

I would ask that you not file your complaint at this time, as we believe the matter should be settled without resort to costly litigation. I'll be in touch soon.

Best regards,

Meg

E-mail from counsel for Trident Management Group

Date: April 26, 2011
To: Thomas Perkins
From: Meg Hamilton
Re: WPE/Trident—Forest Avenue property

Tom:

I enjoyed meeting with you yesterday. Here are the points we discussed:

- Without admitting or conceding fault or any causal relationship between Trident's management of the Forest Avenue project and the exemption revocation, we will contact the IRS to determine what is needed to reinstate the tax exemption, and should reinstatement be reasonably attainable, Trident will do so at no cost to WPE.
- With the same preface, should WPE incur any reasonably ascertainable loss, Trident will make WPE whole.

I will consult with Trident to determine what other issues need to be resolved to obtain a final settlement. Again, we hope to reach an amicable resolution of any and all outstanding issues.

Best regards,

Meg

RAWSON HUGHES & CONRAD, LLC
ATTORNEYS AT LAW
22 MAIN STREET
SPRINGFIELD, FRANKLIN 33755

June 13, 2011

Ms. Meg Hamilton
Evans & Glover
227 Washington Avenue
Springfield, Franklin 33703

Re: WPE/Trident—Forest Avenue property

Dear Meg:

Within one week of your e-mail of April 26th, I sent you a draft settlement agreement. We then met several times—most recently three weeks ago. At that meeting, you told me that you would give me comments on my draft, but you have not done so.

Based on your April 26th e-mail, we understand that Trident has agreed that it will, without cost to WPE, obtain reinstatement of the tax exemption for the Forest Avenue property and will make WPE whole for any losses. Therefore, I expect that we will conclude our settlement agreement no later than the end of this month.

Unless we resolve this by the end of the month, we intend to file our complaint.

Sincerely,



Thomas Perkins

cc: Juan Moreno, WPE CEO

MPT-2 File

E-mail from counsel for Trident Management Group

Date: June 16, 2011
To: Thomas Perkins
From: Meg Hamilton
Re: WPE/Trident—Forest Avenue property

Tom:

I received your letter of June 13, 2011. We are going to get this resolved. As a general matter, our client has agreed in principle to the draft settlement. I will inform you soon of any additional items that require resolution. In my view, our settlement discussions are indeed on track, and there is no need for a lawsuit.

Best regards,
Meg

RAWSON HUGHES & CONRAD, LLC
ATTORNEYS AT LAW
22 MAIN STREET
SPRINGFIELD, FRANKLIN 33755

July 18, 2011

Mr. Juan Moreno
WPE Property Development, Inc.
6002 Circle Drive
Springfield, Franklin 33755

Re: Trident matter

Dear Juan:

Here's where we stand with Trident: We've had many meetings. They keep assuring us that they want to settle the matter and that the general settlement terms are acceptable. However, they still have not signed the agreement we forwarded.

I understand your desire to avoid litigation. However, I have a duty to advise you that if this delay continues, we may run up against the choice of suing Trident or having the statute of limitations run out. We will therefore need specific instructions from you as to how you would like us to handle this matter.

With kindest regards,



Tom

E-mail from Juan Moreno, WPE Property Development, Inc., to Tom Perkins

Date: July 20, 2011
To: Tom Perkins
From: Juan Moreno
Re: Trident matter

Tom,

Got your letter. I understand. Keep trying to settle. Keep me apprised. Let me know when I need to make a decision. Juan

RAWSON HUGHES & CONRAD, LLC
ATTORNEYS AT LAW
22 MAIN STREET
SPRINGFIELD, FRANKLIN 33755

October 4, 2011

Ms. Meg Hamilton
Evans & Glover
227 Washington Avenue
Springfield, Franklin 33703

Re: WPE/Trident Management Group—Forest Avenue property

Dear Meg:

We have communicated several times regarding this matter. Each time you have said that your client generally agrees with the settlement terms, but we still do not have a signed agreement.

We have accommodated your wishes and have held off on filing a complaint. If this matter is not resolved by October 25, 2011, we intend to file the action.

Sincerely,



Thomas Perkins

cc: Juan Moreno, WPE CEO

E-mail from counsel for Trident Management Group

Date: October 6, 2011
To: Thomas Perkins
From: Meg Hamilton
Re: WPE/Trident—Forest Avenue property

Tom:

I'll get back to you on the agreement soon. The settlement is still on track. There is no need to file your complaint.

Meg

**RAWSON HUGHES & CONRAD, LLC
ATTORNEYS AT LAW
22 MAIN STREET
SPRINGFIELD, FRANKLIN 33755**

January 10, 2012

Ms. Meg Hamilton
Evans & Glover
227 Washington Avenue
Springfield, Franklin 33703

Re: WPE/Trident—Forest Avenue property

Dear Meg:

In accordance with our telephone conversation earlier today, I understand that Trident agrees to toll for six months the statute of limitations with respect to WPE's claims for breach of contract against Trident for the loss of WPE's federal tax exemption and the resulting tax liabilities and penalties. To confirm our agreement, please sign and return this letter immediately.

As we discussed, I expect to receive a draft of a complete agreement settling all outstanding claims between WPE and Trident within two weeks.

Sincerely,



Thomas Perkins

cc: Juan Moreno, WPE CEO

Agreed: _____

Meg Hamilton

Counsel for Trident Management Group

Dated: _____

MPT-2 File

E-mail from counsel for Trident Management Group

Date: January 25, 2012
To: Thomas Perkins
From: Meg Hamilton
Re: WPE/Trident—Forest Avenue property

Tom:

Trident agrees that it will attempt to regain tax-exempt status for the Forest Avenue property and will, regardless of the outcome of those efforts, reimburse WPE for any losses it has incurred as a result of the exemption loss—again, without acknowledging any fault on Trident’s part.

However, because Trident is composed of two general partners, we will need the settlement agreement to include an allocation of WPE’s losses between them based on a percentage currently being negotiated by the partners. I will provide that percentage to you as soon as it is available.

Best regards,
Meg