

Corporate & Financial Weekly Digest

Posted at 12:11 PM on January 14, 2011 by [William M. Regan](#)

Investors' Securities Fraud Claims Against Escrow Company Denied

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Plaintiffs sued an escrow company for its role in a Ponzi scheme in which, according to a finding of fraud contained in a separate default judgment, non-parties Bradley Holcom and Jose Pinedo stole more than \$6.4 million of plaintiffs' investments. Plaintiffs asserted claims for, among other things, securities fraud under Sections 10(b) and 20(a) of the Securities Exchange Act, and aiding and abetting fraud. Defendant Citizens Title & Trust, Inc. moved to dismiss the securities fraud and aiding and abetting fraud claims, which motion was granted by the U.S. District Court for the Southern District of California.

Plaintiffs invested cash with Mr. Holcom and Mr. Pinedo to allow them to purchase real property in Arizona, in exchange for which plaintiffs would receive an interest in the related promissory note and deed of trust. Plaintiffs contend that Mr. Holcom and Mr. Pinedo purchased properties with plaintiffs' money, but rather than providing the investors with security interests in the properties, plaintiffs received a worthless "investment contract." The real property, which had been purchased with plaintiffs' money but actually was owned by Mr. Holcom and Mr. Pinedo or their controlled entities, subsequently would be sold to innocent third parties. According to plaintiffs, Citizens opened escrow accounts, acted as the escrow holder, and executed and delivered promissory notes and deeds of trust in connection with these transactions.

Plaintiffs contended that Citizens knew Mr. Holcom and Mr. Pinedo intended to defraud plaintiffs and actively participated in the entirety of the fraudulent scheme.

In granting Citizens' motion to dismiss the Section 10(b) claim, the court found that plaintiffs had not only failed to allege either a misstatement or omission of material fact by Citizens upon which plaintiffs relied and which proximately caused plaintiffs' injury, but also that plaintiffs failed to raise a strong inference that Citizens intentionally or recklessly made false or misleading statements that injured plaintiffs. As to the Section 20(a) claim, the court held that plaintiffs failed to show that Citizens exercised the requisite control over Mr. Holcom or Mr. Pinedo to induce them to engage in acts that violated the securities laws. (*Meram v. Citizens Title and Trust, Inc.*, 2011 WL 11463 (S.D.Cal. Jan. 3, 2011))