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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Investment Firm Wins \$1.3M In Suit Over Touse Claims

By Ian Thoms

Law360, New York (June 13, 2011) -- A Texas federal jury on Thursday awarded investment firm Fulcrum Credit Partners LLC \$1.27 million in a contract dispute over \$45 million worth of claims against bankrupt homebuilder Touse Inc.

According to Fulcrum, it reached an agreement in February 2010 to buy the claims against Touse from Strategic Capital Resources Inc., but the financing company backed out of the deal before the end of the month. Fulcrum responded by suing Strategic Capital.

"At the eleventh hour, Strategic Capital reneged and later told Fulcrum it instead accepted the offer of ... another buyer," Fulcrum said in its complaint.

After a four-day trial, the Texas federal jury determined that Fulcrum and Strategic Capital had reached an agreement and that Strategic Capital had broken it.

"We are pleased that the jury, after days of trial testimony, agreed that Strategic walked away from the deal," Fulcrum attorney Collin J. Cox of Yetter Coleman LLP said.

Strategic Capital attorney Jeff D. Otto of Thompson Coe Cousins & Irons LLP said the company has not decided whether to appeal. He declined to comment further.

According to the complaint, Fulcrum and Strategic Capital began negotiating the deal in October 2009. Fulcrum wanted to buy the claims against Touse as an investment. The claims represented Touse's obligation to buy back several hundred property lots, worth roughly \$46 million, from Strategic Capital.

In emails, Strategic Capital acknowledged the agreement to sell the claims to Fulcrum, according to the complaint. Fulcrum also had recordings of phone conversations between its executives and executives of Strategic, in which the parties repeatedly confirmed that they had a deal.

"Strategic Capital got seller's remorse about its contract with Fulcrum," the complaint said. Strategic Capital Chairman David Miller called the agreement "an absolute joke," according to Fulcrum.

Instead of going through on the apparent deal with Fulcrum, Strategic Capital opted to sell a \$20 million block of its claims to Jefferies Leveraged Credit Products LLC, according to the complaint.

"For Fulcrum, this was a complete surprise, wholly contrary to the parties' agreement and a blatant attempt to evade the terms to which Strategic Capital had agreed," the complaint said.

In a motion to dismiss, Strategic Capital denied that it had entered into a binding agreement with Fulcrum and attacked the investment firm's credibility, claiming it negotiated in bad faith.

According to the complaint, when Fulcrum tried to persuade the executive against abandoning the agreement, he replied: "Sue me."

Fulcrum is represented by Collin J. Cox, Douglas S. Griffith and April L. Farris of Yetter Coleman LLP.

Strategic Capital is represented by Jeff D. Otto and Michael B. Johnson of Thompson Coe Cousins & Irons LLP.

The case is Fulcrum Credit Partners LLC v. Strategic Capital Resources, case number 1:10-cv-00137, in the U.S. District Court for the Western District of Texas.

--Editing by Jonathan Jacobson.

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