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LENDER'S REFUSAL TO APPROVE PROPERTY SALE NOT INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS

SIXTH CIRCUIT AFFIRMS DISMISSAL OF $54 MILLION LAWSUIT BY REAL ESTATE DEVELOPER AGAINST GOLDMAN SACHS

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The Sixth Circuit, on March 29, 2023, affirmed the dismissal of a real estate developer's complaint against Goldman Sachs Specialty Lending Group LP, holding that Goldman Sachs' refusal to consent to a property sale could not be a tortious interference with business relations under Tennessee Law. BNA Assoc. LLC v Goldman Sachs Specialty Lending Group, L.P., 63 F4th 1061 (6th Cir 2023).

Ruby Tuesday had obtained a loan from Goldman Sachs and pursuant to the parties' credit agreement, Ruby Tuesday was required to obtain Goldman Sachs' consent to transfer any property subject to the agreement.

In March 2020, Ruby Tuesday separately entered into a purchase and sale agreement with real estate developer BNA Associates LLC, to sell to BNA its leasehold interest in a property that was subject to the credit agreement. The PSA made clear, in all caps and bold-font, that the sale was conditioned upon Goldman Sachs' consent. The sale was blocked after Goldman Sachs withheld its consent.

BNA subsequently commenced an action in the United States District Court for the Middle District of Tennessee asserting a claim for intentional interference with business relations (IIBR) against Goldman Sachs.

Pursuant to Tennessee law, a claim for IIBR requires (1) an existing business relationship; (2) knowledge of that relationship; (3) intent to cause a breach or termination of that relationship; (4) improper motive or improper means; and (5) damages. In a May 2022 decision, U.S. District Judge Waverly D. Crenshaw dismissed the complaint on the improper means prong.

The Sixth Circuit affirmed, explaining that "improper means" include "methods that violate an established standard of a trade or profession" and "sharp dealing, overreaching, or unfair competition" but cautioning that the tort should "not be interpreted in such a way as to prohibit or

undermine the ability to contract freely and engage in competition." The Sixth Circuit concluded that Goldman Sachs cannot be liable "for simply invoking its contractual right to block Ruby Tuesday from transferring its assets."

As the Court explained, perhaps Goldman Sachs was playing "hardball" but any "rational actor would likely have done the same, were it in their perceived best interest." A tortious interference claim requires much more than exercising a veto power afforded by contract.

MEET THE TEAM

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