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# Judge Won't Toss Suit Against GE Capital Over $3.6B Scheme

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A Florida bankruptcy judge on Thursday denied General Electric Capital Corp.'s bid to escape a suit alleging it participated in the $3.6 billion Ponzi scheme orchestrated by Tom Petters, paving the way for the claims to go to a jury.

U.S. Bankruptcy Judge Paul G. Hyman Jr. denied GE Capital's motion for summary judgment arguing that Barry Mukamal, the trustee for a major feeder fund to Petters, had no standing to bring his claims because they were claims common to all creditors and should be brought by the trustee for the Petters estate.

But the judge disagreed and said the bankruptcy code "provides no authority which would allow a bankruptcy trustee to commandeer such a cause of action."

In this case, GE Capital's alleged conduct injured Palm Beach Finance Partners LP, the bankrupt hedge fund Mukamal represents, and not the Petters entities, which were operated as sham corporations with the sole purpose of running the Ponzi scheme, according to the order. The judge said the Petters entities never had a conspiracy claim against GE Capital that would have become part of the Petters bankruptcy estate, so the Petters trustee does not have exclusive standing to pursue that claim against GE Capital.

"As a result, the plaintiff, as the Palm Beach funds' bankruptcy trustee, has standing to pursue the conspiracy claim against GE Capital, which claim became property of the Palm Beach funds' bankruptcy estate upon their bankruptcy filing," Judge Hyman said.

The judge also denied Mukamal's motion for partial summary judgment on three issues, including a request for a determination that there is no genuine issue of material fact that the underlying fraudulent conspiracy occurred and to have several of GE Capital's affirmative defenses rejected. The judge declined and instead said the issues should go to a jury.

Mukamal sued in September 2012, alleging that GE Capital became aware of a massive Ponzi scheme perpetrated by Petters, a Minnesota businessman to whom GE Capital had extended two revolving lines of credit totaling approximately $100 million between 1998 and 1999. Petters was later convicted of running the third-largest Ponzi scheme in history.

In August 2013, Judge Hyman tossed eight of Palm Beach Finance Partners' nine claims against GE Capital, but kept alive a claim that the lender knew of and perhaps committed at least one overt act that furthered Petters' scheme.

Petters is serving 50 years in federal prison for swindling investors from 1995 to 2008, by claiming to make money reselling consumer electronics to big-box retailers such as Wal-Mart Stores Inc. and Costco Wholesale Corp. Instead of executing any legitimate transactions, Petters forged business documents and diverted billions of investor dollars to bankroll his extravagant lifestyle and enrich his co-conspirators, according to his indictment.

Mukamal says two loans from GE Capital were critical to keeping his fraud alive. GE Capital underwrote $50 million and $55 million revolvers for Petters in 1998 and 1999, respectively. Revolvers work much like credit cards in that they are loans the borrower can pay back and subsequently reborrow on.

GE Capital discovered the fraud in 2000, when it checked on a deal with Costco and learned the company had never done business with Petters, according to the complaint. GE Capital didn't inform Palm Beach or any other investor despite an obligation to do so.

Mukamal is claiming $651 million in damages, plus prejudgment interest and punitive damages.

Mukamal's attorney Michael Budwick of Meland Budwick, P.A. said Judge Hyman's decision Thursday was "extremely favorable."

> "We are extremely pleased and anxious and eager to present GE Capital's misconduct to a jury and proceed to trial," Budwick said.

He said the parties have a pretrial conference set for July 11, at which point he expects the judge will set a date for trial. Budwick expects trial to start sometime either in late summer or early fall. An attorney for GE Capital could not immediately be reached for comment Thursday. Mukamal is represented by Michael S. Budwick and Solomon B. Genet of Meland Budwick, P.A.

GE Capital is represented by Robert J. Malionek, Roger G. Schwartz, Miles N. Ruthberg and Sean M. Berkowitz of Latham & Watkins LLP.

The adversary proceeding is Mukamal v. General Electric Capital Corp., case number 9:12-ap-01979, in the U.S. Bankruptcy Court for the Southern District of Florida.

The bankruptcy is In re: Palm Beach Finance Partners LP, case number 9:09-bk-36379, in the U.S. Bankruptcy Court for the Southern District of Florida.

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