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RE Investor Tries Again To Revive \$1.4M Davis Cedillo Suit

By Jeremy Heallen

Law360, Houston (March 07, 2014, 6:02 PM ET) -- A Texas appeals court was asked Thursday to reconsider its decision that a foreign real estate investor lacking state business registrations cannot pursue litigation against Davis Cedillo & Mendoza Inc. for allegedly facilitating a secret \$1.4 million loan the investor's ex-partner secured against joint venture assets.

Liechtenstein-based Immobiliere Jeunesse Etablissement asked the 14th District Court of Appeals to throw out its Feb. 6 decision refusing to address a trial court's order that the company must register with the Texas Secretary of State before the case against Davis Cedillo can proceed.

IJE said in a motion for rehearing that the appeals court incorrectly concluded that the company has the "adequate remedy" of appeal when it refused to consider IJE's mandamus argument that Section 9.051 of the Texas Business Organizations Code does not require IJE as a "foreign filing entity" to register with the state before maintaining litigation that "arises out of the transaction of business" in Texas.

"The court's holding now leaves IJE with a 'Hobson's choice' which is either to register with the Secretary of State as a foreign filing entity (when legally not required to do so) or, forfeit the right to pursue its claims against the real parties," the motion said. "Neither choice gives IJE an adequate remedy at law."

IJE says that if it complies with the trial court's order that it register in order to restart the suit against Davis Cedillo, it will incur significant fees and penalties going back several years, which it will likely never recover even if IJE turns out to be correct that the registration requirement didn't apply.

"Even assuming ... that IJE could preserve a justiciable issue on a later appeal, there is no mechanism to compel the Secretary of State to refund IJE's registration fees, penalties and interest after a favorable appeal," the motion said.

IJE launched the suit in August 2012, alleging that attorneys with Davis Cedillo and a banker at InterContinental National Bank enabled the venture's general partner Michael H. Beucler to quietly obtain \$1.4 million in personal loans, using the partnership's assets as security.

The joint venture owned two tracts of land in northern Harris County, which eventually were developed into an affordable housing apartment complex, according to the suit. Before construction, the partnership had paid off the debt on the land and owned it free and clear, the suit says.

But IJE claims that Beucler closed on two separate loans totaling \$1.4 million that were secured by the properties. Having obtained the loans without notifying the limited partners, Beucler was able to then use the proceeds to provide a capital infusion to a struggling construction management company he owned, the suit said.

When the loan later matured, Beucler and lawyers with Davis Cedillo allegedly negotiated a refinance of the loan with Texas Capital Bank, the suit said.

In 2004, when the partnership obtained project financing for the apartment complex through KeyBank National Association, Beucler's personal loan was quietly paid off with the proceeds, IJE claims.

IJE claims that since Beucler's lawyers also represented the limited partners, they breached their fiduciary duty by facilitating the loan transactions.

Shortly after it was filed, Davis Cedillo partner Ricardo Cedillo lambasted the suit as "Rambo litigaiton" and called the factual allegations "bullshit."

IJE is represented by David Eric Kassab and Lance Christopher Kassab of The Kassab Law Firm.

Davis Cedillo is represented by Harry M. Reasoner, Patrick W. Mizell, Gwen J. Samora and Stacey Neumann Vu of Vinson & Elkins LLP.

The case is In re: Immobiliere Jeuness Etablissement, case number 14-13-00771-CV, in the Fourteenth District Court of Appeals for the State of Texas.

--Editing by Emily Kokoll.

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