Judge Allows UDF Lawsuit Against Kyle Bass and Hayman Capital to Move Forward

A Dallas County Court has denied a motion by hedge fund manager Kyle Bass to dismiss a lawsuit filed by United Development Funding against him and his firm Hayman Capital, which held a short position in one of UDF's entities. UDF sponsors several non-traded real estate investment trusts, as well as a traded REIT, United Development Funding IV (NASDAQ: UDF).

The lawsuit claims that the UDF funds were "extensively" damaged due to disparaging statements made by defendants Bass and Hayman, including that UDF operated as a Ponzi scheme.

In late 2015, Bass anonymously authored and posted a series of online reports on an investor networking website that detailed unsubstantiated claims against UDF that sent stock prices plummeting.

It was later revealed that Bass and Hayman Capital were shorting UDF IV after he launched the website www.UDFexposed.com. UDF believes that Bass and his funds raked in profits of an estimated $60 million or more as a result of their short position.

UDF claims that following the Ponzi accusations, it lost access to credit and capital markets and was forced to sell its assets at reduced prices and to pay off many of its loans. The company also noted that it lost builder and developer customers and future investors, which allegedly caused damages in the hundreds of millions of dollars.

Bass and Hayman attempted to have UDF's lawsuit dismissed by filing a motion under the Texas Citizen's Participation Act, known as an anti-SLAPP motion, arguing that they were exercising their rights of free speech in publishing negative material concerning UDF’s business, and that the speech was made without actual malice.

In March, the court authorized limited discovery, including the production of some documentary evidence. After an extended evidentiary hearing, the court ruled in favor of UDF, allowing the lawsuit to proceed to trial.

“We are very pleased with the court’s ruling and the court’s allowance of limited discovery prior to the ruling,” said UDF’s Hollis Greenlaw. “The limited discovery granted by the court allowed us to see this coordinated plan documented in the emails and texts of Bass and Hayman. We intend to pursue the lawsuit to trial as expeditiously as possible, and we look forward to our day in court.”

The ruling enables UDF to move beyond the initial, limited discovery into full discovery on the merits of the case. However, Bass and Hayman can further delay discovery by appealing the ruling, if they are unwilling to proceed with the trial court case at this time.

UDF has submitted 11 affidavits to the court that included testimony from developers, a banker, brokers, investors, executives, and a forensic accounting expert who was formerly Ernst & Young’s fraud investigations practice leader in the Americas.

Bass’s Hayman Capital hedge funds focus primarily on short-selling stocks, or betting that a company’s stock price will decline. Bass is best known for betting against subprime mortgages and securing massive profits for himself in 2008 following the housing market crash, and was profiled in the bestselling book, *The Big Short* by Michael Lewis.

UDF claims that Bass was under pressure to hit another big payout after a series of losses and made UDF his target, engaging in a “short-and-distort” scheme where a “short seller spreads false and damaging information about the target company it is betting against in order to harm the business and its stock price.”

In December 2015, UDF disclosed that it was the subject of a non-public fact-finding SEC investigation that started in April 2014, and a few months later its Grapevine, Texas headquarters was raided by the FBI.

UDF believes that Hayman’s general counsel Christopher Kirkpatrick, a former branch chief of the SEC’s enforcement division, contacted his old employer, as well as the FBI and the United States Attorney’s Office in Dallas “to prompt those agencies to take some public action against UDF that defendants understood and hoped would spook investors.”

Since listing on NASDAQ in June 2014 until December 2015, UDF IV had traded in a range of $16.02 to $19.95 per share. By mid-February 2016, UDF IV traded below $4 per share, before trading was halted by NASDAQ. The company was delisted in October 2016 for failing to file its 2015 annual financial reports and subsequent quarterly reports with the SEC.

UDF alleges that the delisting was part of Hayman Capital’s plan to buy discounted shares of UDF IV in the over-the-counter market from institutional investors, since UDF IV was no longer in the Russell 2000 Index.

The UDF funds had previously raised more than $1.2 billion in investor capital between 2003 and December 2015. UDF V, a non-traded REIT seeking to raise $1 billion, terminated its offering in March 2016.

The complaint alleges multiple counts including business disparagement, tortious interference, civil and conspiracy. Plaintiffs demand a trial by jury on all issues and seek monetary relief in excess of $1 million for damages, disgorgement, pre-judgment interest, attorney’s fees, and other relief.

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