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RAZOR eNewsletter FROM O'Connor Carnathan & Mack

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Court Denies G.L. c. 231, § 6F Motion Despite Finding Claims Were Frivolous

Last month, the Suffolk Superior Court (Business Litigation Session) in *ERI v. Integral Fund, et al.* denied a motion for fees under G.L. c. 231, § 6F despite finding that the claims at issue were frivolous.

The *ERI* case stemmed from a multi-million dollar loan ERI made to certain borrowers. In addition to suing those borrowers for fraud and negligent misrepresentation, ERI also brought misrepresentation claims against certain non-borrower defendants. The Court allowed summary judgment with respect to those claims, concluding that there was no evidence that the non-borrowers played a role in the alleged misrepresentations. The non-borrower defendants then brought a motion for fees.

The Court found that the non-borrower claims were frivolous because there was no evidence that the non-borrowers "made, directed, or personally ratified any misrepresentations" and "[a] complete absence of factual support is sufficient to conclude that a claim is wholly insubstantial and frivolous." The motion failed, however, because the movants had failed to show that ERI did not advance the claims in good faith. The Court explained that ERI's litigation strategy had been to rely on circumstantial evidence in the hope of convincing the Court that the non-borrowers could be liable. ERI's lack of success in doing so did "not demonstrate the requisite bad faith." The Court also rejected the motion because ERI had survived summary judgment on its claims against the Borrowers, which were the "heart" of its case, and, therefore, the Court could not conclude that "all or substantially all" of ERI's claims were frivolous.

This case serves as an important reminder that frivolousness alone may not be sufficient to warrant imposition of an attorneys' fee award under G.L. c. 231, § 6F.

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