

Corporate & Financial Weekly Digest

Posted at 12:55 PM on July 30, 2010 by [Bruce M. Sabados](#)

Plaintiff Sufficiently Pled the Existence of a Securities Contract to Survive Motion to Dismiss

Co-authored by [Jonathan Rotenberg](#)

Plaintiff brought claims for securities fraud under Kentucky's Blue Sky Laws in the U.S. District Court for the Western District of Kentucky, alleging that defendant convinced plaintiff to invest in International Tractor Co. (ITC), a purported supplier of heavy construction equipment. Plaintiff's complaint alleged that the investments were in fact part of a Ponzi scheme perpetrated by defendant, and that plaintiff lost substantially all of his \$1.6 million investment.

Defendant moved to dismiss plaintiff's securities fraud claims on a variety of grounds, including that the agreement by which plaintiff invested in ITC was not a contract for the sale of securities, as is required to state a claim under the Blue Sky Laws. Defendant argued that the "common scheme or enterprise" prong of the test for whether a contract is one for securities was not met because the complaint failed to allege any sharing or pooling of funds of individual investors, and instead alleged that plaintiff's investment was earmarked for specific purchases and was not combined with the investments of others.

In denying defendant's motion to dismiss, the court acknowledged that the precise nature of the contract entered into by the parties was not clear from the pleadings. Nevertheless, viewing the complaint in the light most favorable to plaintiff, the court found that plaintiff sufficiently pled a securities contract, by, among other things, alleging that defendant induced plaintiff to invest on the basis that plaintiff would share in the profits from ITC transactions and that other investors also put money into the firm.

Brantley v. Harris, 2010 WL 2889663 (W.D. Ky. July 21, 2010)

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC