

STATE OF INDIANA)
) SS:
COUNTY OF GRANT)

GRANT SUPERIOR COURT NO. 3
CASE NO. 27D03-1612-MI-000168

CITY OF MARION, the Plaintiff

v.

LONDON WITTE GROUP, LLC;
CHAD MYRDDIN SEYBOLD;
ESTATE OF MICHAEL Y. AN,
GLOBAL INVESTMENT CONSULTING, INC., and
WORLD ENTERPRISE GROUP, INC.;

the Defendants

FILED

JUL 08 2019

Pamela Kay Harris
CLERK GSC 3

Order Granting in Part and Denying in Part London Witte's Motion for Summary Judgment

On July 8, 2019 the following appeared for oral argument on the May 17, 2019 London Witte Group, LLC's Motion for Summary Judgment ("the SJ Motion") concerning the September 29, 2017 First Amended Complaint ("the Complaint") filed by the City of Marion ("the City"):

- The City of Marion ("the City") appeared by Attorneys Philip A. Whistler, Thomas R. Hunt, and Eric J. McKeown;
- London Witte Group, LLC ("London Witte") appeared by Attorneys Thomas F. Falkenberg, Michael E. Brown, and Katherine Plominski-Gloede; and
- Chad Myrddin Seybold ("Chad Seybold") appeared by Attorney Adam Davis.

Count V Negligence and Count VI Breach of Fiduciary Duty

The Court grants the relief requested in the SJ Motion as to Count V Negligence and Count VI Breach of Fiduciary Duty. Those Counts are based on the two-year statute of limitations contained in Ind. Code § 34-11-2-4(a). The two-year period had expired long before February 16, 2017 when London Witte signed a tolling agreement with the City.

London Witte's work for the City as it relates to this case was divided into two parts:

- The December 1, 2009 Series 2009 Bonds for a principal amount of \$2,500,000; and
- The February 15, 2011 Refinancing of the 2009 Bonds and consolidation of obligations from other City projects.

London Witte's work on the 2009 Bonds and its work on the 2011 Refinancing are intertwined. At the latest the City became aware that bond funds may have been misappropriated in the Spring of 2014. As a result the City's Corporate Counsel

employed a forensic accounting firm to investigate and the City requested an investigation by the State Board of Accounts. The Court determines that at the latest the statute of limitations for Counts V and VI began to run as of the Spring of 2014.

The Court finds that the City may not rely upon the continuous representation nor the adverse domination nor fraudulent concealment raised in the City's and London Witte's motions, briefs, and oral argument to extend the begin date for the two-year statute of limitations for Counts V and VI.

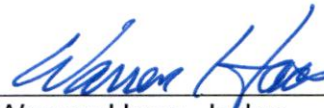
The two-year statute of limitations for Counts V and VI ran as of the Spring of 2016, long prior to the date London Witte agreed to toll any applicable statute of limitations.

Pursuant to Ind. Trial Rule 56(C) the Court finds that no just reason for delay exists. The Court enters a final judgment in favor of London Witte and against the City as to Counts V and VI. Those Counts are dismissed.

Count VII Constructive Fraud/Unjust Enrichment

The Court denies the relief requested in the SJ Motion as to Count VII Constructive Fraud/Unjust Enrichment. Count VII is based on the six-year statute of limitations contained in I.C. § 34-11-2-7(4) and did not begin to run until London Witte's work on the 2011 Refinancing was completed. If the City and London Witte are unable to reach an agreement, the jury will decide if a judgment should be entered in favor of the City and against London Witte as to Count VII

Signed on July 8, 2019.



Warren Haas, Judge
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