



## Kramer Levin Wins Dismissal For Firm Accused of Running ‘Loan-To Own’ Scheme

BY TOM MCPARLAND

LAWYERS from Kramer Levin Naftalis & Frankel have secured the dismissal of all 17 counts in a sprawling lender liability suit that accused a Georgia-based real-estate firm of executing an illegal “loan-to-own” scheme involving a valuable piece of land on Dallas’ “\$5 Billion Mile.”

The March 4 decision, from U.S. District Judge Lewis J. Liman of the Southern District of New York, rejected claims by a group of developers, who said that the firm, Gamma Real Estate Capital, leveraged an \$82 million bridge loan to seize control of the \$550 million property.

Liman dismissed the suit with prejudice and denied the plaintiffs’ request to amend their complaint, saying that they had identified “no additional facts or legal theories that they might assert if given the opportunity to replead.”

According to court documents, the plaintiffs’ planned multi-billion-dollar development, known as Wade Park, had been expected to include two office towers, high-end retail, luxury housing units, five hotels and entertainment venues.

The plaintiffs, who have filed for bankruptcy in Georgia, accused Gamma, among other things, of “manufacturing a default on the bridge loan and then executing a stranglehold on plaintiffs’ ability to raise capital to pay their way out” by misappropriating assets, interfering with business relationships and committing a “wide variety of crimes.”

Initially filed as an adversary proceeding in the Wade Park plaintiff’s bankruptcy, the case was transferred to New York in 2020.

Gamma’s Kramer Levin attorneys cast the suit in court filings as a desperate ploy to regain control of the development after

defaulting twice on their loan, and argued that the foreclosure was done in accordance with commercial contracts that were “fully enforceable.”

“There is simply no basis for the [amended complaint] and its eighteen utterly false, illogical, implausible, conclusory and throw-everything-against-the-wall-in-the-desperate-hope-that-something-will-stick claims,” Kramer Levin partner Michael Dell wrote in a 51-page motion to dismiss last April.

In a 90-page opinion, Liman said that the plaintiffs’ own allegations were “utterly inconsistent” with the “conclusory assertion” that Gamma had “secretly intended Plaintiffs not to repay [the loan] and to take title to the Wade Park properties themselves.”

For example, Liman said Gamma agreed to several forbearances after the plaintiffs first defaulted in 2018. Even when the plaintiffs failed to repay the loan

the following year, Liman noted in the ruling, Gamma decided to put the deeds in escrow, rather than immediately exercise its right to foreclose on the properties.

“It was only after Plaintiffs still were not able to pay that in April 2019 defendants registered title to the Wade Park properties,” Liman said. “And even then, defendants’ conduct was inconsistent with the allegation that Defendants wanted to own the Wade Park project.”

In one passage, the judge also took aim at an allegation that Gamma officer Jonathan Kalikow

was “culpable” for a “verbal attack” that he unloaded on potential lenders.

“There are different ways of getting to yes,” Liman wrote. “Some use kindness; others use aggressive language; and some sometimes combine the two.”

In a statement Monday, Dell said his clients were “gratified by the court’s comprehensive and compelling rejection of plaintiffs’ baseless claims.”

Gamma was also represented by Kramer Levin special counsel Karen S. Kennedy, litigation associate Aaron Webman and

creditors rights partner Adam Rogoff.

The plaintiffs were represented by James Cobb and Jessica Caleb of Caplan Cobb in Atlanta, as well as David Bury Jr. of Stone & Baxter and Renee Beltranena Bea of Slarskey in New York.

An attorney for the plaintiffs did not immediately respond Monday to a request for comment.

The case was captioned *Wade Park Land Holdings v. Kalikow*.

@ Tom McParland can be reached at [tmcparland@alm.com](mailto:tmcparland@alm.com). Twitter @tom\_mcparland\_