

Communications Case Study

TAB and KeyBank

as of February 26, 2009

BACKGROUND

[Over the last several years across the country, there has been an epidemic of vocational school closings, too frequently under suspicious circumstances in which millions of dollars in student loan funds end up missing. Often, the student-borrowers of these failed schools do not enjoy the protections extended to students of schools certified and protected under federal student lending programs. Such students are exploited. Often, all they can show for their efforts are tens of thousands of dollars in debt without the commensurate training to enable them to pay those debts. Florida has been no exception. Recently, the flight school, Silver State Helicopters, closed under suspicious circumstances leaving thousands of students across the U.S., and hundreds in Florida alone, each without training and with tens of thousands of dollars of debt. Earlier this decade, Central Florida's Air Training Academy (ATA) suddenly ceased operations. The Students of that flight school failure were burdened by similar debts, but they had no effective legal remedy.]

In a recent pre-trial settlement, 51 students of a failed Central Florida flight school were freed from debts, most ranging from \$100,000 to \$120,000 per student. In 2005, the TAB Express International flight school in Deland, FL abruptly closed after accepting millions of dollars in these student loan funds from KeyBank, NA, a national bank headquartered in Cleveland, Ohio. When TAB closed, the money, which had already been placed in TAB's account, inexplicably disappeared.

KeyBank, unsuccessful in retrieving its money from TAB, sought to force the abandoned students (and co-signing parents and friends) to repay what the TAB flight school had taken, even though the students rarely possessed or controlled any loan funds. KeyBank characterized itself as a victim of TAB. The students, however, were missing the very skills set, for which they had bargained, to obtain the employment needed to repay the loans. The students were left wondering where their money, educations and career opportunities had gone. Florida's Attorney General investigated the practices of TAB Express and KeyBank, but lacked the jurisdiction to intervene in the bank's collection efforts. At last report, the FBI was investigating the operations of TAB Express.

In 2005, former TAB students, Jodi DeGrave and Keith Bergen, visited Kevin P. Kelly to explain their plight. Kelly, a litigation partner in the Orlando office of the statewide law firm GrayRobinson, explained the long odds the students faced. The bank was quite experienced in protecting itself in just such situations, and lawsuits against it had routinely failed. Not the least of the bank's tools was a clause in its promissory notes requiring the students to file any lawsuit against KeyBank in Ohio, its home state. Kelly explained Florida courts, as a general rule, enforce such venue clauses, though there were a couple exceptions to explore. An additional potential obstacle was the Bank's ability to remove the case from Florida state court to federal court, where similar lawsuits had been dismissed.

STRATEGY

Kelly knew that, without strength in numbers and a sound claim, the case would never see a jury. The first step to mounting a legal challenge was to craft an economic approach to funding the litigation. A contingency fee arrangement wasn't possible given that the students' primary aim was to be released from debts, not collect money. For numerous reasons, a class action was not advisable. Kelly advised the students to join forces and pool their resources. Kelly further advised at least 25 TAB students, interested in joining a legal action, would be necessary. This would create an economy of scales, making a legal challenge at least possible. To Kelly's surprise, not only did students, DeGrave and Bergen, amass a coalition, they returned with twice the number of participants Kelly advised was necessary.

With an economic approach adopted, Kelly sized up the legal challenges the students faced. Kelly informed the students that they had a difficult legal fight. Florida's legislature has curiously carved out an exception to Florida's consumer protection statute, the Deceptive and Unfair Trade Practices Act, specifically protecting only banks against claims by Florida's consumers. Kelly relied on alternative legal theories to pursue the same remedy the consumer protection law would otherwise have provided. In August 2005, Kelly sued TAB and KeyBank on behalf

of the students and their co-signers in Florida State Circuit Court. The lawsuit sought, among other things, to rescind the promissory notes which obligated the students and cosigners to repay their titanic debts.

Fortunately, more than one of the students were permanent residents of Ohio. This eliminated KeyBank's option of removing the case to the unfavorable federal court forum on the basis of diversity jurisdiction. In other words, the Ohio-based bank could not complain of prejudice in facing Florida plaintiffs in a Florida state court trial. Some of the plaintiffs were likewise Ohio residents.

OUTCOME/CURRENT SITUATION

As expected, KeyBank immediately challenged the Florida venue, arguing the loan documents required lawsuits be filed in Ohio. Enforcing such a clause would have effectively denied the students any remedy. The bank knew this. The students knew this. If the bank's argument prevailed, the students' economic coalition would be splintered.

The venue dispute was brought to the presiding judge, **Judge Edwin P. Sanders**. KeyBank presented Judge Sanders with copies of three federal district court orders, previously issued in Florida, dismissing similar lawsuits. Upon a court hearing, however, attended by numerous students whose futures were at stake, Judge Sanders ruled that exceptions were in play. He ordered the case was to remain in Florida state court. KeyBank immediately appealed the trial judge's decision. The appeals court, Florida's Fifth District Court of Appeal, agreed with Judge Sanders and issued a ruling affirming the decision to leave the case in Florida state court. Once back in the state trial court, the file was dusted off and the case was scheduled for a six-week jury trial in Deland, FL starting in March 2009. The case settled soon thereafter.

LESSONS LEARNED

- Kelly offered a creative solution to prospective clients facing steep economic obstacles to court action.
- Kelly predicted the main legal challenges in advance, thereby allowing him to craft the case to fit within the exceptions to problematic legal doctrines.
- As a result, the victims of a predatory trade school were able to place their troubles in the past by eliminating years of insurmountable debt.
- Gray Robinson's Litigation Practice is not just about prowess in court. It is a client-focused practice placing a premium on creative, flexible, cost effective solutions.

KEY PEOPLE



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