UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Christpher C. Fucci, et al. v. William Bowser, et al.

Fucci · No. 2:20-cv-00004-DBB-DAO · Decided January 23, 2026

SUMMARY

The court denied the Hamrick Defendants' motion to dismiss under Federal Rule of Civil Procedure 41(b) and motion for judgment on the pleadings under Rule 12(c). The court held that the alleged delay in discovery did not warrant dismissal for failure to prosecute and that the plaintiffs plausibly pleaded claims involving unregistered securities, securities fraud, and control-person liability. Because the federal claims were not dismissed, the court did not address the defendants' subject-matter jurisdiction and sanctions arguments.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	January 23, 2026
DOCKET	2:20-cv-00004-DBB-DAO
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiffs brought federal securities-law and state-law claims arising from the purchase of tenant-in-common interests in real estate. Certain defendants moved to dismiss under Federal Rule of Civil Procedure 41(b) for abandonment, failure to prosecute, and violation of the scheduling order, and moved for judgment on the pleadings under Rule 12(c).
STANDARD OF REVIEW	A Rule 41(b) dismissal is evaluated under the five Ehrenhaus factors: actual prejudice to the defendant, interference with the judicial process, culpability of the litigant, prior warning of dismissal, and the efficacy of lesser sanctions. A Rule 12(c) motion is evaluated under the same standard as a Rule 12(b)(6) motion; the court accepts well-pleaded facts as true, draws reasonable inferences for the nonmoving party, and asks whether the complaint states a facially plausible claim.
PRECEDENTIAL VALUE	unpublished district court opinion
PARTIES	Christpher C. Fucci, et al. v. William Bowser, et al.

TOPICS

motions to dismiss | motion for judgment on the pleadings | civil procedure | commercial litigation | real estate

PRACTICE AREAS

civil procedure | commercial litigation | commercial | real estate

QUESTIONS PRESENTED

1. Whether plaintiffs' failure to move formally to amend the scheduling order and their delayed discovery warranted dismissal under Federal Rule of Civil Procedure 41(b).
2. Whether plaintiffs plausibly alleged that their tenant-in-common interests were investment-contract securities under federal securities laws.
3. Whether the defendants established at the pleading stage that the securities offerings qualified for the private-offering or Regulation D registration exemptions.
4. Whether the defendants could plausibly qualify as statutory sellers under Section 12(a)(1) of the Securities Act.
5. Whether the defendants' arguments warranted dismissal of plaintiffs' Rule 10b-5 securities-fraud claims.
6. Whether dismissal of the control-person-liability claims was warranted.
7. Whether the court needed to address subject-matter jurisdiction and sanctions arguments after denying dismissal of the federal claims.

HOLDINGS

1. Dismissal was not warranted because the defendants agreed to delay discovery, failed to show substantial prejudice or significant interference with the judicial process, and the plaintiffs' failure to amend the scheduling order was not shown to be willful or in bad faith.
2. A motion for judgment on the pleadings is evaluated under the Rule 12(b)(6) standard, with well-pleaded facts accepted as true and reasonable inferences drawn for the nonmoving party.
3. The court could not conclude at the pleading stage that plaintiffs' tenant-in-common interests were not securities because plaintiffs plausibly alleged passive investment contracts in which profits were expected from Noah's development and management efforts.
4. The defendants failed to establish at the pleading stage that either the private-offering exemption or the Regulation D exemption applied.
5. Plaintiffs plausibly alleged that the Hamrick Defendants were statutory sellers because they solicited the purchases and received substantial commissions, even if they did not directly transfer title.
6. The Rule 10b-5 claims were not dismissed because the defendants addressed only subsection (b) and did not challenge the claims under subsections (a) and (c); the court would not make arguments for the moving parties.

7. The control-person-liability claims were not dismissed because plaintiffs plausibly alleged a primary securities-law violation and control over the primary violators, and the court rejected the defendants' challenge to the underlying claims.

KEY QUOTATIONS

> *"The sanction of dismissal with prejudice for failure to prosecute is a 'severe sanction,' a measure of last resort."* (7)

> *"At this stage, the court cannot conclude as a matter of law that Plaintiffs' TIC interests are not securities under federal law."* (12)

> *"The court will not make the Hamrick Defendants arguments for them."* (15)

FACTUAL BACKGROUND

Plaintiffs purchased tenant-in-common interests in four proposed event-venue properties through Rockwell Debt Free Properties and Noah Corporation's Construction TIC program. Plaintiffs allege that escrowed funds were rapidly transferred to Rockwell and Noah, which used the money for prior-investor returns and personal expenses rather than constructing the venues. The Hamrick Defendants allegedly referred plaintiffs to the investments, distributed misleading marketing materials, made favorable representations about Noah, and received more than $5 million in commissions.

PROCEDURAL HISTORY

Plaintiffs filed the action in January 2020 and filed the operative amended complaint on August 17, 2021. The parties deferred discovery while related defendants litigated arbitration and stay issues. After the Tenth Circuit returned jurisdiction in October 2025, plaintiffs filed a status report, and the Hamrick Defendants moved to dismiss and for judgment on the pleadings. The district court denied the motion in its entirety.

DISPOSITION

denied

CASES CITED

- Olsen v. Mapes, 333 F.3d 1199, 1204 (10th Cir. 2003)
- Mobley v. McCormick, 40 F.3d 337, 340-41 (10th Cir. 1994)
- Ehrenhaus v. Reynolds, 965 F.2d 916, 921 (10th Cir. 1992)
- Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co., 497 F.3d 1135, 1143-45 (10th Cir. 2007)
- Jones v. Thompson, 996 F.2d 261, 265 (10th Cir. 1993)
- DeBardeleben v. Quinlan, 937 F.2d 502, 504-05 (10th Cir. 1991)
- Rogers v. Andrus Transp. Servs., 502 F.3d 1147, 1152 (10th Cir. 2007)
- Colony Ins. Co. v. Burke, 698 F.3d 1222, 1228 (10th Cir. 2012)
- Park Univ. Enters., Inc. v. Am. Cas. Co. of Reading, PA, 442 F.3d 1239, 1244 (10th Cir. 2006)

- Sutton v. Utah State Sch. for Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- VDARE Found. v. Colorado Springs, 11 F.4th 1151, 1158-59 (10th Cir. 2021)
- Murphey v. Mid-Century Ins. Co., No. 13-2598, 2014 WL 2619073, at *7 (D. Kan. June 12, 2014)
- SEC v. W.J. Howey Co., 328 U.S. 293 (1946)
- Foxfield Villa Assocs., LLC v. Robben, 967 F.3d 1082, 1090 (10th Cir. 2020)
- SEC v. Scoville, 913 F.3d 1204, 1220 (10th Cir. 2019)
- Crowley v. Montgomery Ward & Co., 570 F.2d 875, 876-77 (10th Cir. 1975)
- Demarco v. LaPay, No. 2:09-cv-190, 2009 WL 3855704, at *4 (D. Utah Nov. 17, 2009)
- SEC v. Edwards, 540 U.S. 389, 393 (2004)
- SEC & Exch. Comm'n v. GenAudio Inc., 32 F.4th 902, 940 (10th Cir. 2022)
- Quinn & Co. v. SEC, 452 F.2d 943, 945-46 (10th Cir. 1971)
- United States v. Arutunoff, 1 F.3d 1112, 1118 (10th Cir. 1993)
- SEC v. Ralston Purina Co., 346 U.S. 119 (1953)
- Pinter v. Dahl, 486 U.S. 622, 642, 647 (1988)
- United States v. Vontress, No. 22-3119, 2024 WL 5074634, at *4 (10th Cir. 2024)
- Mitchell v. City of Moore, 218 F.3d 1190, 1199 (10th Cir. 2000)
- Northington v. Jackson, 973 F.2d 1518, 1521 (10th Cir. 1992)
- Philadelphia v. Fleming Companies, Inc., 264 F.3d 1245, 1270 (10th Cir. 2001)
- Maher v. Durango Metals, Inc., 144 F.3d 1302, 1305 (10th Cir. 1998)
