

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 28, 2019

Lyle W. Cayce
Clerk

No. 17-30092

JOSEPH BROYLES; M. BADI ASBAHI; PRESTON CLOYD; STEVE COLLINS; EILEEN COLLINS; CHARLES RICHEY; ANNE RICHEY; SUSAN B. BENINATI; RUSS P. BARRANCO; JANICE B. VIRGADAMO; JODY A. BARRANCO; KAREN L. BARRANCO; MUNICIPAL EMPLOYEES RETIREMENT SYSTEM OF LOUISIANA; FIREFIGHTERS RETIREMENT SYSTEM; REGISTRAR OF VOTERS EMPLOYEE RETIREMENT SYSTEM,

Plaintiffs-Appellants

v.

COMMONWEALTH ADVISORS, INCORPORATED; WALTER A. MORALES,

Defendants - Appellees

Appeal from the United States District Court
for the Middle District of Louisiana

Before DENNIS, OWEN, and SOUTHWICK, Circuit Judges.

JAMES L. DENNIS, Circuit Judge:

The issue in this appeal is whether the investor plaintiffs have Article III standing to sue their former investment advisers for securities fraud under Louisiana law. To establish a securities fraud claim under Louisiana law a plaintiff must show that “(1) the defendant made an untrue statement of a material fact; (2) the plaintiff did not know of the untruth; and (3) the defendant knew, or in the exercise of reasonable care could have known, of the

No. 17-30092

untruth.” *Meadaa v. Karsan*, 822 F.3d 202, 206 (5th Cir. 2016). Investor plaintiffs’ petition stated a cause of action for securities fraud against their former investment adviser and its CEO for fraudulently inducing them to purchase over \$95 million in falsely inflated hedge fund securities. The defendants filed an answer asserting that plaintiffs lacked standing to sue them directly because the hedge funds were Delaware corporations and the law of that state requires that plaintiffs must join the hedge funds in bringing a derivative action. The investor plaintiffs moved for partial summary judgment recognizing their standing. The district court, however, sua sponte granted summary judgment for the defendants holding that Delaware law required investor plaintiffs to bring a derivative claim in behalf of the hedge funds.

We conclude plaintiffs have Article III standing and therefore vacate the district court’s summary judgment to the contrary and remand for further proceedings. The district court erred in deciding that plaintiffs lacked standing under Delaware law to bring a direct action against their investment advisers rather than initiating a derivative action in behalf of the hedge funds that the advisers had assembled and managed for fraudulent inducement purposes. The investor plaintiffs adequately supported their motion for partial summary judgment demonstrating their Article III standing with appropriate evidence of their injury-in-fact that arose immediately upon their purchase of the falsely overvalued securities; were induced and caused by the defendant advisers’ fraudulent advice and solicitations; and likely will be redressed by a favorable decision on the merits. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The district court erred by refusing to grant the plaintiffs’ motion and by instead granting summary judgment sua sponte for the defendant investment advisers. Standing requires only that the investor plaintiffs have an arguable, rather than a valid, cause of action along with the irreducible

No. 17-30092

triad of elements. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Under the circumstances of this case, it is at least arguable that Delaware law does not relegate the investor plaintiffs to a derivative action in behalf of the hedge funds for losses indirectly caused them by the funds' decline or lack of value, but instead recognizes their cause of action directly against the defendant sellers of the hedge fund securities for securities fraud under Louisiana law. In *Citigroup Inc. v. AHW Investment Partnership*, 140 A.3d 1125, 1126, 1139–41 (Del. 2016), the Delaware Supreme Court made clear that securities fraud claims directly against perpetrators created by the laws of other states for the fraudulent inducement of the purchase, sale or holding of securities are not converted into derivative actions merely because the securities were issued by a Delaware corporation or entity.

VACATED and REMANDED.