

# Judge Allows Claims Against ESOP Trustee Argent Trust Co. To Go Forward Because Plaintiffs Demonstrated Viable Claims

11.04.2020

On November 3, 2020, Judge Michael M. Mihm, U.S. District Court for the Central District of Illinois in *Lysengen v. Argent Trust Company, et al.* (Case No. 20-cv-1177), found that Argent Trust Company and the former shareholders of Morton Buildings, Inc. must face a lawsuit brought by a participant in the Morton Buildings, Inc. Employee Stock Ownership Plan (the “ESOP”).

The lawsuit claims that Argent, the trustee of the ESOP, caused the ESOP to purchase Morton Buildings, Inc. stock for \$147 million, which was more than fair market value, violating federal pension law. In denying the motion to dismiss and rejecting every argument made by the Defendants, the court made several important rulings in favor of the plaintiff here and for beneficiaries of ESOPs everywhere.

*First*, the court held that the Plaintiff could sue to invalidate the indemnification of Argent by Morton. In ESOP transactions, controlling shareholders of the company often force the company to indemnify the trustee who approves the deal on behalf of the ESOP and employees. In other words, the selling shareholders pick the trustee to represent the employees and force the employees to bear, via the ESOP’s ownership of the company, the trustee’s legal expenses when the employees sue the trustee for ERISA violations. Thus, when the employees sue the trustee for violations of the duties owed to the employees, they pay the trustee’s legal bills in advance. The court recognized the Plaintiff’s claim that this arrangement violates core ERISA principles prohibiting the use of plan assets to pay fiduciary liabilities.

*Second*, the court held the Plaintiff’s allegations were sufficient to state claims that the Defendants engaged in prohibited transactions and breached their fiduciary duties in the ESOP transaction. In so doing, the court rejected the Defendants’ attempts to characterize the Plaintiff’s factual allegations as legal conclusions and Defendants’ efforts to frame suspicious price movements in Morton’s stock as the inevitable result of the ESOP’s stock purchase.

## JUDGE ALLOWS CLAIMS AGAINST ESOP TRUSTEE ARGENT TRUST CO. TO GO FORWARD BECAUSE PLAINTIFFS DEMONSTRATED VIABLE CLAIMS

*Third*, the court reaffirmed the principle that, given concerns that plaintiffs generally lack access to information about their ESOP's dealings, plaintiffs alleging ESOP transactions violated ERISA's prohibited transaction rules have no duty in their complaint to negate affirmative defenses to such a claim.

The plaintiff is represented by Bailey Glasser ERISA litigation partners Gregory Y. Porter, Ryan T. Jenny and Patrick O. Muench. Bailey Glasser's ERISA practice represents participants in many ESOP lawsuits.

### **Attorneys**

Ryan T. Jenny

Patrick Muench

Gregory Y. Porter

### **Practice Areas**

ERISA, Employee Benefits & Trust Litigation