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# Homebuilder Workers Land Cert. In GreatBanc ESOP Suit

By [Celeste Bott](#)

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Law360 (February 22, 2021, 9:13 PM EST) -- An Illinois federal judge granted class certification Sunday to 171 former [McBride & Son Homes](#) employees in their suit alleging GreatBanc Trust helped two executives drain assets from the homebuilder's employee stock ownership plan, saying he was unpersuaded by the company's argument that the class is unworkable.

The homebuilder [argued in October](#) that the proposed class definition "sweeps in" participants who may not have held stock at the time of the challenged acts, but U.S. District Judge Matthew Kennelly disagreed, saying the proposed class is clearly defined. And the workers aren't seeking individualized awards for the class members, but are instead seeking to recover the plan's losses, he said.

"The plaintiffs explain that if the plan recovers its losses via this lawsuit, it will then allocate any recovery to plan participants' individual accounts in accordance with the terms of the plan," Judge Kennelly said. "Accordingly, the defendants' argument — that members of the proposed class suffered distinct economic injuries during the 2013 and 2017 transactions and therefore the class is indefinite — lacks merit."

And the Seventh Circuit has rejected arguments like the one McBride raised in its opposition motion, when it said class members lack standing because they left the plan or didn't hold stock at the time of the transaction, the judge said.

He cited the appellate court's 2007 finding in [Harzewski v. Guidant Corp.](#), in which it held that participants who retired and "cashed out their pension benefits ... and so ceased to be participants in the pension plan" remained "participants" for the purposes of a class action because they were looking to recover amounts that allegedly should have been in their accounts.

The homebuilder also contended a "significant number" of former McBride employees have released claims against the company through separation or employment agreements, which vary in their language and terms and are subject to individualized defenses, but the existence of releases doesn't doom class certification, Judge Kennelly said.

All claims center on two transactions, the judge said: a 2013 reorganizing of the ESOP, and a November 2017 redemption of all of the outstanding shares of common stock held by the plan at \$187 per share, a price the class contends was below fair market value. Even with factual differences among certain class members, the claims uniformly concern the harm to the plan in the wake of that 2017 transaction, the judge said.

"The fact that some plan participants voted to approve a transaction that the plaintiffs claim harmed the plan does not prevent them from satisfying the typicality requirement," he said.

Judge Kennelly has certified a class that includes all participants in the McBride & Son ESOP, and the beneficiaries of such participants, at any time between March 29, 2013, and December 15, 2017.

The workers originally [sued in November 2018](#), alleging GreatBanc and a broader group of McBride executives were behind the changes in the employee stock ownership plan.

They claim that McBride CEO John F. Eilermann and Chief Financial Officer Michael D. Arri reorganized the ESOP over the class period so that it no longer held shares directly in the company. Instead, the plan held a certain class of "units" in McBride after it was converted into a limited liability company from an S corporation, according to the complaint.

The conversion gave the two executives a greater stake in the company through different classes of units and higher payouts than available under the employee units, with the net effect being that the value of employee units fell over time, the lawsuit said. GreatBanc signed off on the conversion, in violation of its role of fiduciary, the complaint alleged.

McBride then struck back seeking dismissal, arguing that some of the employees leading the suit did not have standing since they were not harmed by changes in the plan. The company claimed that some of the workers had their shares converted to cash prior to one of the transactions outlined in their complaint.

An Illinois federal judge [dismissed claims](#) in the original complaint against lower-level McBride executives and administrators of the ESOP, but let stand the claims against GreatBanc, Eilermann and Arri.

Representatives for the parties could not be immediately reached for comment Monday.

The employees are represented by Gregory Y. Porter, Patrick Owen Muench, Ryan Thomas Jenny and Mark George Boyko of [Bailey & Glasser LLP](#), and Thomas Everett Clark Jr. of [Wagner Law Group PC](#).

GreatBanc Trust Co. is represented by Michael L. Scheier, Brian P. Muething, Jacob Deniro Rhode and Ross David Taylor of [Keating Muething & Klekamp PLL](#).

McBride & Son, Eilermann and Arri are represented by Daniel J. Broderick Jr. and Brendan R. Youngblood of [Cassiday Schade LLP](#), and Lars C. Golumbic, Sarah M. Adams and Shaun Group Gates of [Groom Law Group Chtd.](#)

The case is Godfrey et al. v. GreatBanc Trust Co. et al., case number [1:18-cv-07918](#), in the [U.S. District Court Northern District of Illinois](#).

--Editing by Breda Lund.

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