

## Ex-Homebuilder Employees Seek Class Status In ESOP Suit

By **Michael Angell**

Law360 (September 17, 2020, 6:41 PM EDT) -- Three former employees of a Missouri-based homebuilder have asked an Illinois federal court to certify a class in a long-running lawsuit alleging trustee firm GreatBanc Trust helped two executives drain assets from the homebuilder's employee stock ownership plan.

The former McBride & Son Homes employees said Wednesday in a memorandum that their claims mirror those that any of the stock plan's participants could make against GreatBanc and the executives during the proposed class period between 2013 and 2017, and that the alleged raid on the plan hit all the members in the same way.

"The central issue is whether defendants caused losses to the plan because of their conduct," the former employees argued. "A judgment that defendants caused or engaged in prohibited transactions ... would apply to the plan as a whole and, thus, impact all class members equally [and] any money recovered will be paid to the plan, meaning that resolution of these issues will affect all participants who held stock in the [plan] at any time during the class period."

The former employees said the plan's 169 participants as of the end of 2016 put the case well above the threshold for class actions, and that their attorneys are experienced in similar cases involving the Employee Retirement Income Security Act, some of which took on GreatBanc.

The request for class certification also said the three named plaintiffs are committed to the lawsuit, as they were the ones to investigate the plan and reach out to counsel to "vigorously prosecute their claims."

"Plaintiffs are committed to advancing the class members' rights in this lawsuit, believe that they can fairly and adequately represent the interests of the members of the class, and have no known interest that would be adverse to or in conflict with those of the other class members," the certification request said.

The plaintiffs originally **filed** their proposed class action in November 2018, alleging GreatBanc and a broader group of McBride executives were behind the switch in the ESOP plan.

Their complaint alleged 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 homebuilder. 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, 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.

"GreatBanc, who was supposed to be the independent discretionary trustee of the [plan], was nothing but a rubber stamp for Eilermann and Arri, and failed to protect the [plan] participants every time it had the opportunity to act," according to the plaintiffs

McBride & Son then **struck back** seeking dismissal, arguing that some of the plaintiffs leading the suit did not have standing since they were not harmed by changes in the plan. The company claimed that some of the plaintiffs 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.

The defendants denied the allegations in an answer to a second amended complaint filed in February.

Attorneys for the parties did not return requests for comment.

The plaintiffs 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 Abbie Sarfo.