

## 5th Circuit Bankruptcy Summary: In re R.E. Loans, L.L.C., No. 13-10468 (5th Cir. February 5, 2013) (per curiam)

5th Circuit Bankruptcy Summaries / May 12, 2014

R.E. Loans (“REL”) raised funds to make real estate secured loans to real estate developers. In July 2007, REL entered into a senior secured credit facility with Wells Fargo. In November 2007, REL and its member-investors entered into an “Exchange Offering” wherein member-investors exchanged their equity interest in REL for junior secured notes issued by REL. REL later filed bankruptcy and confirmed a plan whereby the REL estate released all claims against Wells Fargo. The member-investors filed a putative class action lawsuit in California state court against Wells Fargo, alleging that they were fraudulently induced into participating in the Exchange Offering. Wells Fargo filed an adversary proceeding in the bankruptcy court, arguing to enjoin the member-investors’ complaint on the grounds that the causes of action belonged to the REL estate and that the estate had released such claims. The bankruptcy court denied the motion and dismissed the adversary proceeding. On appeal, the district court affirmed the denial as to the Exchange Offering, holding that the causes of action raised by the member-investors were not property of the REL estate. Wells Fargo appealed to the Fifth Circuit. The member-investors sought dismissal of the appeal on mootness grounds on the grounds that the complaint in the California action had been significantly amended and therefore the lower courts’ review of the original complaint was no longer relevant. The Fifth Circuit granted the member-investors’ motion, finding the appeal moot because on appeal Wells Fargo challenged the allegations in the original complaint and the original complaint was no longer operative. The court noted that it was not holding that the amendment of a complaint alone will always be sufficient to moot an appeal under facts like these.