
<i>Stark Trading v. Falconbridge Ltd.</i>- Seventh Circuit Affirms Dismissal of 10b-5 Claim on Evidence of Plaintiffs' Contemporaneous Knowledge of Alleged Fraud

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On January 5, 2009, the United States Court of Appeals for the Seventh Circuit, in an opinion by Judge Richard Posner, found that a plaintiff had not proven the detrimental reliance element of a Securities Exchange Commission Rule 10b-5 claim where the plaintiff voiced suspicion that a tender offer may have been fraudulent, but nonetheless agreed to go through with the deal. (1) The opinion holds that where a sophisticated institutional investor believes a tender offer to be fraudulent, it should hold its stock and try to block the deal, rather than tender its shares and retrospectively sue for securities fraud.

I. Facts and Procedural History

In February 2004, Brascan Management Corp. ("Brascan"), a Canadian asset management company, held 41% of the shares of Noranda Corp. ("Noranda"), a Canadian mining company. Noranda in turn owned 59% of Noranda's subsidiary, Falconbridge Corp. ("Falconbridge"). Falconbridge's remaining shares were widely held, including by Stark Trading and Shepherd Investments International, Ltd. ("Plaintiffs"), a pair of hedge funds.

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