

U.S. Supreme Court Declines to Review Second Circuit Ruling That Syndicated Term Loans Are Not Securities

Steven Coury and Manny Marcos

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The U.S. Supreme Court has declined to hear an appeal in the *Kirschner* case, in which the U.S. Court of Appeals for the Second Circuit upheld a 2020 ruling by the U.S. District Court for the Southern District of New York that syndicated loans are not securities.

The case was originally brought by Marc S. Kirschner, a trustee of the Millennium Lender Claim Trust, in which he alleged, among other things, that a \$1.775 billion syndicated loan transaction violated state securities laws due to actionable misstatements and omissions that were made to the investors. The lower court applied the *Reves v. Ernst & Young* "family resemblance" test and found that factors weighed in favor of determining that the syndicated loan was not a security. The case was then appealed to the U.S. Court of Appeals for the Second Circuit, which found that the lower court had properly dismissed the securities law claims under the *Reves* test.

The U.S. Supreme Court's denial of the petition for certiorari review leaves in place the Second Circuit Court's ruling that syndicated loans are not securities. As we explained in an earlier Real Estate Alert, a ruling that syndicated loans are securities would have had a significant disrupting effect on both the market and the law pertaining to syndicated loan transactions.

If you have questions on this or any other real estate matter, please contact Steven Coury, Partner (courys@whiteandwilliams.com; 212.631.4412) or Manny Marcos, Associate (marcosm@whiteandwilliams.com; 646.766.1353), or another member of the Real Estate group.

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