

MAY 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YASS MCNEIL, an individual; et al.,

Plaintiffs - Appellants,

v.

LONE STAR FUND V (U.S.), L.P.; et al.,

Defendants - Appellees.

No. 08-55662

D.C. No. 8:07-cv-01191-CJC-AN

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted May 8, 2009
Pasadena, California

Before: B. FLETCHER, FISHER and GOULD, Circuit Judges.

Plaintiffs Yass McNeil and Sam Sotoodeh appeal the dismissal of their class action lawsuit against Lone Star Fund V (U.S.), L.P. and related entities. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Plaintiffs allege that Lone Star was obligated to purchase their shares of Accredited Home Lenders Holding Co. at \$15.10 per share, pursuant to the offer to purchase shares that Lone Star extended to Accredited shareholders. However, under the terms of the tender offer, Lone Star could, with the written agreement of Accredited, amend the terms of the purchase offer prior to accepting the shares for payment. Although it came about as part of the settlement of litigation, Lone Star and Accredited agreed to reduce the purchase price from \$15.10 per share to \$11.75 per share before Lone Star had accepted shares for payment. Because Lone Star amended its offer, as allowed under the original terms of the offer, the plaintiffs cannot properly claim that Lone Star breached the offer to purchase by purchasing shares at the reduced price. Additionally, under the tender offer, the plaintiffs and other members of the putative class could have withdrawn their tendered shares at any time before Lone Star accepted the shares for payment, even after Lone Star reduced the share price. Thus, if they were unsatisfied with the reduced purchase price, they could have chosen not to sell their shares.

AFFIRMED.