Bond Case Briefs

Municipal Finance Law Since 1971

BONDS - ARKANSAS

First Arkansas Bank & Trust, Trustee v. Gill Elrod Ragon Owen & Sherman, P.A.

Supreme Court of Arkansas - April 18, 2013 - S.W.3d - 2013 Ark. 159

Supreme Court of Arkansas discusses the liability of issuer's counsel to purchasers in bond offering, finding: 1) no liability under state securities act; 2) no relationship giving rise to a duty under contract, negligence, or breach of a fiduciary duty; but 3) existence of a question of material fact as to whether liability could flow to the law firm under the fraud exception to privity set out under the attorney-malpractice statute.

Developer acquired property and filed a petition with the city of Fayetteville to form a municipal property owners' district, which was approved. The district intended to issue tax-free municipal bonds in order to finance public works.

The district issued Series A and Series B bonds. Only Series B bonds are at issue in this case. Pursuant to the POS, the Series B bonds were "limited obligations of the District, to which the District has pledged the Capital Improvement Use Fee Revenues and a mortgage of the land located with[in] the District that is owned by the Developer." The Series B bonds were to be paid by collection of the Capital Improvement Use Fees.

Developer defaulted on payment of the Capital Improvement Use Fees on the Series B bonds. Subsequently, developer defaulted on the original mortgage securing the purchase of the development property, and the property was sold. Appellants sued the law firm that drafted the POS, alleging that the loss of security had compromised their Series B bonds and alleging violations of the Arkansas Securities Act, attorney malpractice, and other causes of action arising from a failure to disclose in the bond offering that the purchase mortgage was superior to the lien created by the Capital Improvement Use Fees obligation.

At issue in this lawsuit were causes of action alleged to arise from representations, lack of representations, or misrepresentations made at the time of the negotiation and purchase of unrated municipal-improvement bonds. The purchasers allege that the law firm had a duty to inform them of the mortgage on the real property and that it failed to inform them. Purchasers further allege that had they been informed of a mortgage on the real property to which improvements were to be made with bond proceeds, and that the Series B bonds were not secured by a first lien on the real property, they would not have purchased the bonds.

The Supreme Court of Arkansas held that:

- There exists no liability under the Arkansas Securities Act because "an attorney acting as the attorney for the issuer of securities is not liable to the ultimate purchasers and does not act as a seller, a control person, an agent, or anyone who materially aids in the sale of the securities;"
- There exists a question of material fact as to whether liability could flow to the law firm under the fraud exception to privity set out under the attorney-malpractice statute; and

- There was no relationship giving rise to a duty under contract, negligence, or breach of a fiduciary duty.

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com