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Kozel v. Andrews

Court of Appeals of Ohio, Fifth District, Tuscarawas County - September 5, 2013 - Slip Copy - 2013 -Ohio- 3887

Twin City Hospital is a small rural acute care hospital located in Dennison, Tuscarawas County, Ohio. Twin City has served the community for over one hundred years.

On October 13, 2010, Twin City filed Chapter 11 Bankruptcy. The creditors of Twin City duly elected Appellant as Trustee, replacing the originally appointed Trustee. The proceeding under Chapter 11 was subsequently converted to a Chapter 7 proceeding.

Appellant subsequently filed a complaint in the U.S. Bankruptcy Court against Appellees – former board members of Twin City. Appellant asserted Appellees acted improperly by issuing approximately $17.3 million in tax exempt revenue bonds to fund new construction and renovations to Twin City and to refinance the hospital's outstanding long term obligations while its finances were in poor condition.

The case was moved to the state court, which granted summary judgment in favor of Appellees. The trial court found Appellant had failed to establish by clear and convincing evidence any Appellee "was conscious that Board approval of the bond transaction would, in all probability, result in the failure of Twin City Hospital."

Appellant appealed, contending that the trial court incorrectly held him to a "willful" – rather than "reckless" – standard of care, thereby requiring a higher threshold showing to overcome summary judgment. The appeals court agreed, reversing and remanding.

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