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Radian Asset Assurance Inc. v. Madison County, Miss.

United States District Court, S.D. Mississippi, Northern Division - April 20, 2015 - Slip Copy - 2015 WL 1780190

In 2002, Madison County created the Parkway East Public Improvement District. In 2005, the District issued bonds to finance improvements. The bonds were to be repaid by special assessments on the landowners within the District. Radian insured the bonds.

The County entered into a Contribution Agreement with the District, which provided that: 1) If the County was satisfied with the District's performance, it would step in and pay the District's bonds if the District experienced an assessment shortfall; 2) If the County made such a payment, the County could take the proceeds of tax sales to recoup the money it spent on bond payments; and 3) The District had two years to reimburse the County for the County's bond payments.

The subsequent collapse of the economy caused the District to fail. It was unable to attract the development necessary to make its bond payments. When the District failed, Madison County made the District's bond payments between October 2011 and September 2013. The County then stopped, arguing that the contribution agreement required it to cover bond payments for only two years.

Madison County contended that it was now Radian's duty as insurer to step forward and repay the bonds.
Radian filed suit seeking a declaration that Madison County remained responsible for bond payments.

The District Court held that the two-year limit in the Contribution Agreement does not constitute a two-year time limit on the County's obligation to make bond payments, but refers solely to the amount of time the District has to reimburse the County.

The Court was sympathetic to the County's contention that it could not be forced to make bond payments "ad infinitum," since the Contribution Agreement also recites that the bonds are not backed by the full faith and credit of the County. Radian conceded this, but argued that the County must make bond payments as long as it has "sufficient unrestricted funds in its General Fund." The Court noted that Radian's position may be contradicted by the plain language of the contract and may cut against the very purpose of purchasing bond insurance, but that that question was not at issue in this proceeding.

"Nor are other arguments raised by the parties, ranging from the County's acceptance of the Landspan Property to the adequacy of Radian's underwriting process, ripe for adjudication. It is enough at this juncture simply to say that the contribution agreement does not state how long Madison County agreed to cover the District's bond shortfall. The County agreed to make the District's bond payments for some period of time, but whether the parties contemplated payments of one year, two years, five years, or something else is not contained within the four corners of the contract and cannot be inferred by the Court. Additional proceedings are necessary to answer that question, whether in the form of a trial (given the fact dispute suggested by the briefing, but not

before the Court today) or additional motion practice.”

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