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Emmet & Co., Inc. v. Catholic Health East

Supreme Court, New York County, New York - August 28, 2015 - N.Y.S.3d - 2015 WL 5122314 - 2015 N.Y. Slip Op. 25293

Holders of municipal bonds filed putative class action against issuer, claiming breach of contract and breach of duty of good faith and fair dealing based on issuer's coupling of tender offer with redemption of bonds that allegedly violated trust indenture governing bonds, after issuer defeased bonds so that issuer no longer had any payment obligations but bonds remained callable by compelling holders to sell their bonds to issuer at price set forth in indenture. Issuer moved to dismiss for failure to state claim, and holders moved for partial summary judgment on liability.

The Supreme Court, New York County, held that:

- Coupling of tender offer with redemption of bonds breached indenture;
- Issuer's synthetic total return swap with financial advisor breached indenture;
- Breach of covenant of good faith and fair dealing claim was duplicative; and
- Award of punitive damages was not warranted.

Issuer's coupling of tender offer with redemption of municipal bonds issued to refinance hospital's debt and subsequently defeased by issuer but remaining callable was impermissible under trust indenture provision, allowing issuer to redeem any percentage of outstanding bonds, but requiring issuer to randomly select which bonds to redeem if less than 100% of bonds were redeemed, where tender offer allowed bondholders to either tender their bonds at 101% or see them redeemed at 100% of bonds' principal amount, and issuer redeemed only 45% of non-tendered bonds after other 55% were tendered, so issuer effectuated non-random redemption of less than 100% of bonds by excluding its own tendered bonds from redemption.

Issuer's synthetic sale of municipal bonds to financial advisor through total return swap, after impermissible non-random redemption of bonds by coupling tender offer with redemption, was prohibited under trust indenture, providing that all bonds "paid, redeemed or purchased, either at or before maturity, when such payment, redemption or purchase is made, shall thereupon be cancelled by the Trustee and shall not be reissued but shall thereupon be destroyed by the Trustee," since bonds had to be cancelled and could not be resold once acquired by issuer.

Bondholders' claim for breach of implied duty of good faith and fair dealing by issuer of municipal bonds was duplicative, after holders prevailed on their express breach of contract claim against issuer regarding trust indenture that governed bonds, since breach of implied covenant was intrinsically tied to damages resulting from breach of indenture.

Issuer's coupling of tender offer with redemption of municipal bonds that resulted in non-random redemption and subsequent synthetic total return swap with financial advisor, in breach of trust indenture, did not justify award of punitive damages, since issuer's conduct was not intentional, deliberate, fraudulent, or conducted with evil motive, and even if intentional, controversy was between highly sophisticated financial professionals who disagreed about complex issues without

clear precedent to guide them.

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