Bond Case Briefs

Municipal Finance Law Since 1971

BONDS - NEW JERSEY

U.S. Bank National Association v. Podes

Superior Court of New Jersey, Appellate Division - December 20, 2016 - Not Reported in A.3d - 2016 WL 7369027

Following bankruptcy and default, holders of Multifamily Housing Revenue Bonds brought action against Property Manager. The Bondholders' complaint alleged that negligent management of the property and its breach of the requirements under the Forbearance Agreement led to a default, preventing Bondholders from receiving the full value of the bonds.

To support their complaint, the Bondholders submitted three expert reports. Two reports addressed liability, and the third addressed damages. Prior to trial, the Property Manager moved in limine to bar the testimony of Bondholders' damages expert. In his report, the damages expert stated the amount realized were the bonds held to maturity based on an interest rate of "24.56% of par, or $1,228.06 for each $5,000.00 face bond." He then calculated the difference between that sum and what was realized by selling the bonds prior to maturity, concluding the loss amounted to $2,862,000.

The Property Manager's argument challenged the expert opinion as an inadmissible net opinion principally because the bonds were a speculative investment when purchased and there was no support for an assumption the bonds would reach maturity entitling the Bondholders to full face value. Other deficiencies included: (1) the expert failed to account for present value of the monies received on redemption or interest realized on the reinvestment of the sums received on redemption; (2) there was an absence of explanations describing a bond or how market value is calculated; and (3) the report assumed the bonds would be held to maturity allowing recoupment of full face value. As a result, the Property Manager asserted that the expert's analysis amounted to a mere arithmetic calculation of the difference in two numbers.

The trial judge granted the Property Manager's in limine motion to strike, finding that the report constituted a net opinion. The lack of an expert precluded the Bondholders from proving damages; therefore, the judge in turn granted the Property Manager's motion for summary judgment and dismissed the complaint. Reconsideration was denied, and this appeal followed.

The Appeals Court reversed, ordered reinstatement of the expert opinion, and remanded.

The Court began with a blanket rebuke of the misuse of in limine motions filed on the eve of trial, and emphasized that such motion tactics shall not be utilized to secure summary judgment resulting in the dismissal of a plaintiff's case or the suppression of a defendant's defenses.

"Following our review, which is guided by these standards, we conclude the judge mistakenly barred Hawk's testimony as net opinion. First, there is no challenge to Hawk's qualifications; the depth of experience in municipal bond purchasing, selling and research, as well as his experience with numerous transactions similar to this matter, demonstrated his expertise."

"Second, Hawk's report contained the foundation for his opinion, stating it was based on the bond

documents establishing the price of the bonds, their maturity date, and interest rates. Further, he referenced the loan agreement, Indenture of Trust, and Forbearance Agreement to describe the transaction. The documents of record served as the foundation of Hawk's damage conclusion, from which he provided "the why and wherefore" of his calculations."

"The net opinion rule "does not mandate an expert organize or support an opinion in a particular manner, which opposing counsel deems preferable. Further, an expert's proposed testimony should not be excluded merely 'because it fails to account for some particular condition or fact which the adversary considers relevant.' " Townsend, supra, 221 N.J. at 54 (quoting Creanga, supra, 185 N.J. at 360). In this regard, it cannot be ignored that Hawk's opinion addressed damages, not liability. His assumption the Podeses would have held all bonds to maturity may be attacked and even shown to be flawed, but that premise does not erase the factual basis for his damage calculation."

"Simply because the opinion may be subject to attack on cross-examination for not including other meaningful considerations also does not make it a net opinion."

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com