

Bond Case Briefs

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BONDS - PUERTO RICO

Lex Claims, LLC v. Garcia-Padilla

United States District Court, D. Puerto Rico - February 17, 2017 - F.Supp.3d - 2017 WL 657432

Bondholders filed suit against governor of Puerto Rico, seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety.

Governor moved to stay. Various entities moved to intervene.

The District Court held that:

- Counts alleged were not “other action or proceeding against the Government of Puerto Rico that was or could have been commenced before” enactment of PROMESA, within meaning of PROMESA’s automatic stay provision;
- Counts were not seeking “to recover a Liability Claim against the Government of Puerto Rico that arose before” enactment of PROMESA, within meaning of automatic stay provision;
- Counts were not “any act to obtain possession of property of the Government of Puerto Rico or of property from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico,” within meaning of automatic stay provision;
- Counts were not “any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico,” within meaning of automatic stay provision;
- Counts could not be stayed in exercise of court’s inherent authority;
- PROMESA Oversight Board could intervene as of right;
- Insurer could intervene as of right; and
- Possibility existed that existing party to action would not adequately represent respective interests various owners of general obligation bonds in differing amounts, and thus those owners could intervene as of right.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation, were not “other action or proceeding against the Government of Puerto Rico that was or could have been commenced before” enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), within meaning of PROMESA’s automatic stay provision. Although those counts implicated lawfulness of Commonwealth’s assignment of revenues, asserted legal premise underlying those counts was that executive order and Moratorium Act were preempted by PROMESA, and those claims could not have been raised prior to enactment of PROMESA because they sought to enforce specific provision of PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which

empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not seeking “to recover a Liability Claim against the Government of Puerto Rico that arose before” enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), within meaning of PROMESA’s automatic stay provision, since “Liability Claim” was defined as right to payment or equitable remedy for breach of performance, and counts were not aimed at confiscating any property of, or obtaining any form of payment from, Commonwealth.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not “any act to obtain possession of property of the Government of Puerto Rico or of property from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico,” within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), since relief on those counts would only preclude Commonwealth from dissipating its assets in manner that violated PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not “any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico,” within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), since counts had effect of precluding Commonwealth from continuing to spend and transfer its assets in manner that violated PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, could not be stayed in exercise of court’s inherent authority, since Congress did not intend in enacting Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) to stay all claims against Commonwealth for particular period of time and those counts were not stayed by express provisions of PROMESA that had been enacted by Congress.

Oversight Board under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) could intervene as of right in action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated PROMESA and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety, since Congress specifically stated that Oversight Board “may intervene in any litigation filed against the territory”; although Oversight Board failed to attach pleading to its motion to intervene, bondholders were not prejudiced.

Insurer could intervene as of right, in action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined

their propriety, on basis that it insured over \$800 million of those bonds and would have to make payments to bondholders should Puerto Rico Sales Tax Financing Corporation default on its obligations. Although insurer was subrogated to rights of bondholders, there was reasonable likelihood that insurer would suffer direct economic harm if bondholders ultimately were successful.

Possibility existed that existing party to action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety would not adequately represent respective interests various owners of general obligation bonds in differing amounts, as required for owners to be able to intervene as of right, since indenture trustee that allegedly represented those owners had moved to dismiss itself as defendant.