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INDENTURES - MINNESOTA

Matter of Trusteeship Under That Certain Indenture of Trust.....

Court of Appeals of Minnesota - April 3, 2017 - Not Reported in N.W.2d - 2017 WL 1210137

City financed construction project by issuing $26.8 million in municipal bonds. U.S. Bank was appointed trustee of an indenture trust, whose beneficiaries are the holders of the bonds issued by the city.

The city later defaulted on its obligations to bondholders. U.S. Bank commenced this action by filing a petition for instruction, which asked the district court to approve the sale of the property. After the district court approved the sale, U.S. Bank distributed approximately $9.5 million to bondholders.

Philip Lucas held bonds issued by the city *in the principal amount of $5,000*. Lucas requested an accounting of U.S. Bank's fees *and its expenses for outside counsel, which collectively totaled approximately $1 million.*

The district court issued an order in which it ordered U.S. Bank to prepare a properly detailed final accounting regarding Trustee and Trustee's Counsel's fees and expenses with enough information for Mr. Lucas to reasonably determine whether the fees and expenses were legitimate and proper expenditures.

The district court also ruled that any remedy resulting from Lucas's objection to U.S. Bank's forthcoming accounting would be "available only to Mr. Lucas" and would be "limited to the percentage of recovery attributable to his personal share of the total distributions."

The district court approved U.S. Bank's final accounting, found that U.S. Bank's trustee fees and its expenses for outside counsel are reasonable, and discharged U.S. Bank as trustee upon the final distribution of funds to bondholders. Lucas appealed.

The Court of Appeals held that:

- Lucas did not receive proper notice of the January 30, 2015 deadline for objections. Thus, Lucas was not precluded from objecting to fees and expenses incurred before December 31, 2014;
- That documentation provided by U.S. Bank in its final accounting contained enough information for the district court to make a determination concerning the reasonableness of U.S. Bank's trustee fees;
- As the invoices of outside counsel submitted by U.S. Bank submitted did not contain any descriptions of the services provided by outside counsel, it was impossible for a district court to determine whether the services of outside counsel were "reasonably made or incurred by the Trustee," as required by the indenture trust document; and
- The district court erred by ruling that Lucas's potential remedy was limited to his proportional share of the value of the trust.

"Lucas last argues that the district court erred by ruling that any relief granted on Lucas's objection

to U.S. Bank's petition for approval of its final accounting would be limited to Lucas's share of the value of the trust. Lucas contends that, if the trustee's expenses are found to be unreasonable, it would be appropriate for the district court to order a remedy that makes the trust whole."

"The indenture trust document is silent on this issue." [Emphasis added.]

This raises the possibility that current indentures should include a provision addressing this type of scenario.

In this case, as the indenture was silent as to the issue of proportional recovery, the court turned to the applicable Restatement and a newly enacted state statute and concluded that any potential recovery could not be proportionately limited.

Ed. Note: We can not and will not opine as to the enforceability of any such provision, but it might be advisable to take a closer look, as the consequences in this particular case were indeed quite consequential. I'm looking at you, NABL.

There's also the issue of ensuring that the trustee submits invoices for legal services sufficient to allow the court to ascertain if the fees incurred are reasonable. Outside counsel in this case is out $1 million while the courts sort this out.

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