

Bond Case Briefs

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SPECIAL IMPROVEMENT DISTRICTS - ALABAMA

Aliant Bank, a Division of USAmeribank v. Four Star Investments, Inc.

Supreme Court of Alabama - May 5, 2017 - So.3d - 2017 WL 1787935

Judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of special improvement district that comprised land that was subject to the defaulted mortgage, brought action against judgment debtor, district's board members, district, and other entities and persons involved in the development of a subdivision on district's land for allegedly wrongful acts that rendered judgment creditor's security interest worthless.

The Circuit Court dismissed and entered summary judgment for judgment debtor, district's board members, district, and other entities and persons. Judgment creditor appealed.

The Supreme Court of Alabama held that:

- Genuine issue of material fact precluded summary judgment on claims against members of special improvement district's board for negligence and breach of fiduciary duty;
- Collateral estoppel and res judicata did not preclude judgment creditor's action;
- District's management company owed no duty to judgment creditor so as to support creditor's claims for breach of fiduciary duty and negligence;
- Judgment creditor did not rely on representations of construction company that did work on subdivision so as to sustain a cause of action for fraud against company;
- District was immune from judgment creditor's claims of fraud, conspiracy, and wantonness;
- Judgment debtor's president had a duty to make a full disclosure to judgment creditor regarding expenditures from proceeds from district's bond issue;
- Judgment creditor put forth substantial evidence so as to preclude summary judgment on its conspiracy claim against certain parties; and
- Judgment creditor was not a third-party beneficiary of either the completion agreement between subdivision developer and district or the management agreement between district and management company.

Members of board of special improvement district that encompassed a planned subdivision owed a duty of care and a duty of loyalty to judgment creditor, which was a mortgagee that had obtained a default judgment against the mortgagor that owned district's land, as required as an element of judgment creditor's claims against the board members for negligence and breach of fiduciary duty for allegedly wrongful acts that rendered judgment creditor's security interest in the subdivision worthless. Alabama was a "title theory" state, and the district existed primarily to benefit those owning property within its boundaries.

Genuine issue of material fact precluded summary judgment in action against members of board of special improvement district for negligence and breach of fiduciary duty regarding allegedly wrongful acts that rendered worthless the security interest in district's land of judgment creditor, which was a mortgagee that had obtained a default judgment regarding mortgage of judgment

debtor that owned district's land.

Provision in statute on immunity of officers of special improvements districts that indicates that no claim can be pursued against a director of an improvement district "for or on account of the negligence of a district or director or its or his or her agents, servants, or employees" operates only to bar a negligence claim from being asserted against a director based upon the negligence of some other party, not the director's own negligence.

Judgment creditor's default judgment against judgment debtor and judgment debtor's president for failure to repay a mortgage that judgment debtor's president had personally guaranteed regarding land planned for a subdivision did not preclude on grounds of collateral estoppel judgment creditor's action for negligence, fraud, and other claims against entities involved with the subdivision and against members of board of special improvement district that comprised the land. The necessary factual issues regarding the claims against the board members and entities were not litigated in the action that produced the default judgment and were not relevant to the default judgment.

Judgment creditor's default judgment against judgment debtor and judgment debtor's president for failure to repay a mortgage that judgment debtor's president had personally guaranteed regarding land planned for a subdivision did not operate as *res judicata* so as to preclude judgment creditor's action for negligence, fraud, and other claims against entities involved with the subdivision and against members of board of special improvement district that comprised the land. The prior case was based on evidence that was not needed to establish judgment creditor's claims in the new action.

Summary judgment that the two-year statute of limitations had run was precluded by factual dispute as to when judgment creditor reasonably should have discovered the basis for its negligence and breach-of-fiduciary duty claims regarding its allegation that board members of special improvement district, which comprised land that was subject to judgment debtor's unpaid mortgage, committed wrongful acts that rendered judgment creditor's security interest in the district's land worthless. Trial court could not properly decide as a matter of law when a reasonable person should have discovered that claims had been fraudulently concealed unless the evidence was undisputed.

No relationship existed between special improvement district's management company and judgment creditor, which had obtained a default judgment against judgment debtor for an unpaid mortgage on district's land, so as to create a fiduciary duty or duty to responsibly manage the district, and thus judgment creditor's claim against company for breach of fiduciary duty failed. Judgment creditor and management company did not deal with each other at all.

Special improvement district's management company owed no duty to judgment creditor, which had obtained a default judgment against judgment debtor for an unpaid mortgage on district's land, with regard to company's management of the district, and thus judgment creditor's negligence claim against company failed. Judgment creditor was not a party to the contract between company and district, and company was never in a position of control over judgment creditor.

Two-year limitations period for negligence and breach-of-fiduciary-duty claims by judgment creditor, a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, against engineering company that did work on subdivision began to run when creditor came into possession of documents that indicated that company had to approve reimbursement requests from district's funds from its bond issue, and thus creditor's action against company was untimely, where creditor filed action more than two years after coming into possession of the documents.

Judgment creditor, a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, did not rely on allegedly false invoices from construction company that did work on the subdivision, and thus judgment creditor could not sustain a cause of action for fraud against construction company, where judgment creditor had no knowledge of the allegedly false invoices until the bond proceeds had been disbursed.

Special improvement district was immune from claims of fraud, conspiracy, and wantonness by judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on district's land and that had agreed to subordinate its interest in the judgment to district's bonds, that stemmed from acts that allegedly rendered worthless creditor's security interest in district's land, even though district's board members individually were not immune from creditor's claims. Immunity statute regarding special improvement districts absolved a district from liability for the intentional torts of its agents.

Factual issue as to when judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, should have known about alleged acts by district's management company's partner that purportedly gave rise to creditor's fraud and conspiracy claims against partner precluded summary judgment for partner based on the two-year statute of limitations.

Affidavit by officer of judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, in which officer described alleged misrepresentations made by judgment debtor's president and creditor's reliance on them established a prima facie case for fraudulent misrepresentation so as to preclude summary judgment for judgment debtor's president, company developing a subdivision on district's land, district's management company, and partner in management company, where affidavit alleged that creditor agreed to subordinate its security interest to district's bonds by relying on representations regarding expenditures from district's bond issue.

Allegation by judgment creditor, a mortgagee that had obtained a default judgment regarding a mortgage on special improvement district's land and that had agreed to subordinate its interest in the judgment to district's bonds, that judgment debtor's president made fraudulent misrepresentations to creditor as part of a conspiracy involving judgment debtor, debtor's president's brother, and a real estate broker could not support a claim of fraudulent misrepresentation against the three parties. If the finder of fact thought that debtor's president made fraudulent misrepresentations and that there was a conspiracy, then the three parties were liable for conspiracy, not fraudulent misrepresentation.

No relationship existed between judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of a special improvement district that comprised land that was subject to the defaulted mortgage, and district's management company so as to create a duty on the part of management company to disclose that judgment debtor's president was going to use the bulk of the proceeds from district's bond issue to reimburse himself and his companies for work done before the bonds were issued, and thus judgment creditor's claim for fraudulent suppression against management company failed. Judgment creditor and management company had no relationship other than one telephone call whose substance was unknown.

Judgment debtor's president had a duty to make a full disclosure to judgment creditor, which had obtained a default judgment regarding judgment debtor's mortgage on special improvement

district's land, as to how proceeds from district's bond issue would be used before creditor agreed to sign a mortgagee-special-assessment acknowledgment subordinating its security interest from the default judgment to district's bonds, thus precluding summary judgment on creditor's fraudulent-suppression claim, where debtor's president represented to creditor that bond proceeds would be used to develop 270 additional lots in district while allegedly knowing that his companies would actually receive the majority of the bond proceeds for work that had already been performed on the first 80 lots.

Judgment creditor, which was a mortgagee that had agreed to subordinate its interest in a defaulted mortgage to the bonds of special improvement district that comprised land that was subject to the defaulted mortgage and was for a planned subdivision, put forth substantial evidence regarding fraudulent misrepresentation and fraudulent suppression so as to preclude summary judgment on its conspiracy claims against certain entities and persons involved with the district for alleged acts that rendered creditor's security interest worthless, despite argument that the parties could not be liable for conspiracy if they were not liable for the underlying fraud. It was not necessary that each alleged conspirator be the subject of the underlying cause of action.

Judgment creditor, which was a mortgagee that had obtained a default judgment concerning mortgage on special improvement district's land that was planned for use as a subdivision, was not a "third-party beneficiary" of either the completion agreement between subdivision developer and district or the management agreement between district and management company such that creditor could sustain an action against developer and district for breach of contract. Although creditor would receive an incidental benefit from the contracts inasmuch as the property securing creditor's loan would increase in value and creditor's risk of loss in the event of default would decrease, that was far from a direct intended benefit that would support a third-party-beneficiary breach-of-contract claim.