

# Bond Case Briefs

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## **BONDS - VIRGINIA**

### **ACA Financial Guaranty Corporation v. City of Buena Vista, Virginia**

**United States Court of Appeals, Fourth Circuit - February 21, 2019 - F.3d - 2019 WL 758292**

After public recreational facilities authority, which had taken out loan to finance construction of municipal golf course for city and later had refinanced loan by issuing bonds, failed to repay bonds because city, which had leased golf course from authority, failed to appropriate funds for rent payments on golf course lease, bank and bond insurer brought action against city and authority, seeking payment of monies allegedly owed under loan arrangement.

Defendants moved to dismiss complaint for failure to state a claim. The United States District Court for the Western District of Virginia granted motion, and plaintiffs appealed.

The Court of Appeals held that:

- Under Virginia law, city did not have an enforceable obligation to make the rent payments that were to be used to repay the bonds;
- Authority did not breach trust agreement with bank by failing to make bond payments;
- Neither city nor authority breached deeds of trust;
- Neither city nor authority breached forbearance agreement;
- Even if pleaded properly, defendants' use of "subject to appropriation" language in the various financing agreements did not amount to breach of the implied covenant of good faith and fair dealing;
- Plaintiffs did not adequately plead a claim for constructive fraudulent inducement; and
- Even if plaintiffs' "requests" to amend constituted a motion to amend, the district court did not abuse its discretion by denying it.

Under Virginia law, city, which had leased municipal golf course from public recreational facilities authority, which, in turn, was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, did not have an enforceable obligation to make rent payments to authority; although lease agreement between city and authority stated that city was to pay the rent to lender on behalf of authority, lease made that requirement "subject to and dependent upon" city appropriating the funds for such payments, such that if city did not appropriate funds, city had no obligation to make rent payments, and lease further provided that city's failure to make rent payments when no appropriations were made did not constitute an event of default.

Under Virginia law, public recreational facilities authority, which had taken out loan to finance construction of municipal golf course for city and later had refinanced loan by issuing bonds, did not breach trust agreement with bank by failing to make bond payments; pursuant to language of trust agreement, authority's obligation to make bond payments was dependent on city's payment of rent, city ceased paying rent after voting not to appropriate funds for rent payments, and aside from rent payments from city, authority had no independent contractual obligation to make bond payments.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached deeds of trust executed in connection with bond transaction by failing to make bond payments in the manner provided by the trust agreement; while deeds of trust at issue, namely, deed of trust issued to bank wherein city pledged its city hall building and police station as security and deed of trust issued to bank wherein authority pledged golf course as security, required city and authority to adhere to trust agreement, they did not alter express terms of trust agreement under which authority's obligation to make bond payments was limited to rent paid by city, whose obligation, in turn, was subject to its decision to appropriate rent money.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached forbearance agreement executed with bond insurer after city failed to appropriate enough money to fully pay rent due on golf course lease, resulting in authority's inability to repay the bonds; under forbearance agreement, city's and authority's duty to make rent payments was subject to annual appropriations by city.

Complaint, which alleged that plaintiffs had been damaged as a result of defendants' breaches of contractual obligations contained in forbearance agreement, but did not contain any allegations about defendants' alleged misrepresentations, was not pled with enough specificity to plausibly state a claim for breach of forbearance agreement through the making of misrepresentations; although plaintiffs argued that making a misrepresentation constituted a breach of defendants' obligations under the forbearance agreement, their conclusory allegations neither specified what contractual obligation was breached nor referred to any underlying facts to support the purported breach.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached the implied covenant of good faith and fair dealing by using "subject to appropriation" language in their various financing agreements; language at issue was not ambiguous but, rather, under the express language of the agreements, city's duty to make rent payments, as well as authority's duty to make bond payments, was subject to annual appropriations by city, plaintiffs, a bank and a bond insurer, were sophisticated commercial entities engaged in a multi-million dollar municipal finance transaction, and the court declined to, in essence, impose new terms to save plaintiffs from the express terms of their agreements.

Even if plaintiffs' five "requests" to amend, contained in their response in opposition to defendants' motion to dismiss, constituted a motion to amend, the district court did not abuse its discretion by denying it; plaintiffs never indicated what amendments they were seeking, never identified any facts they sought to include in an amendment, and never identified any cause of action they sought to add in an amendment, and without that information, there was no way for the district court to evaluate whether the proposed amendments were futile.