

# **Bond Case Briefs**

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## **BONDS - OHIO**

### **Cheatham I.R.A. v. Huntington National Bank**

**Supreme Court of Ohio - August 22, 2019 - N.E.3d - 2019 WL 3948892 - 2019 -Ohio- 3342**

Municipal bond holder, which had purchased bonds from prior holder, brought putative class action against trustee for bondholders, asserting claims for breach of trust indenture that accrued prior to bondholder's purchase of bonds.

The Court of Common Pleas denied bondholder's motion to certify class. Bondholder appealed. The Court of Appeals reversed and remanded. The Supreme Court accepted jurisdiction over bondholder's appeal.

The Supreme Court held that:

- As a matter of first impression, previously-accrued breach of contract claim did not automatically transfer to bondholder pursuant to statute upon purchase of bonds, and
- Trust indenture did not automatically transfer breach of contract claim to bondholder upon purchaser of bonds.

Absent a valid assignment of a right to bring a cause of action, the sale of a municipal bond does not automatically vest in the purchaser all causes of action the seller had the right to bring relating to the bond by operation of the statute codifying the Uniform Commercial Code (UCC) provision stating that a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

Claim for breach of contract against trustee of trust indenture that accrued before bondholder owned municipal bonds did not automatically transfer to bondholder as subsequent purchaser of bonds, under statute codifying the Uniform Commercial Code (UCC) provision stating that a purchaser of security acquired all rights in the security that the transferor had or had power to transfer, but rather claim was chose in action that was personal-property right transferable only by express assignment; while language of statute might superficially support automatic transfer, it did not assign rights to a purchaser upon transfer of title, but rather only set forth shelter rule that a purchaser took all rights that seller had power to give, and such result was consistent with federal law.

As an expression of the shelter rule, the Uniform Commercial Code (UCC) provision stating that a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer does not define "rights in the security" as any right associated with the security that the transferor "had or had power to transfer"; instead, the phrase "had or had power to transfer" stands for the proposition that people cannot transfer rights that they do not own or control.

Cause of action under the federal Trust Indenture Act, providing that any person who makes misleading statements or omissions in any document filed with the Securities and Exchange Commission (SEC) shall be liable to persons who purchased such securities in reliance upon the

statements or omissions, is personal to those persons who relied, and it does not follow the security to remote purchasers who had no basis for reliance.

Provision of Ohio's version of Uniform Commercial Code (UCC), stating that a purchaser or a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer, does not operate to allow the automatic assignment of rights upon a transfer of title; it sets forth only the shelter rule of securities—the transferee takes all rights in the thing transferred that the transferor had the power to give.

Trust indenture, which stated that indenture was for the benefit, security, and protection of all present and future municipal bond holders, and that actual ownership of bond was condition precedent to maintenance of cause of action arising under trust indenture, did not automatically transfer to bondholder, upon its purchase of bonds, a chose in action for breach of contract against trustee that accrued before purchase; indenture language did not expressly provide for automatic transfer of chose in action, but rather merely stated that trustee was bound by terms of trust indenture no matter when bonds were purchased and limited rights of third-party beneficiaries, and indenture further stated that any rights not specifically mentioned were not implied.