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Matter of Trusteeship Created by Port Authority of City of St. Paul Relating to Issuance of Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-1 & 2000-7

Court of Appeals of Minnesota - October 28, 2019 - Not Reported in N.W. Rptr. - 2019 WL 5543957

Wells Fargo Bank serves as Trustee for a Trust Indenture relating to the issuance of tax-exempt senior lien parking ramp revenue bonds and taxable subordinate lien parking ramp revenue bonds.

LLCs holds taxable subordinated cash flow notes issued by the Port Authority in connection with the ramp. The subordinated cash flow notes include an acceleration provision or an assumption obligation in the event the ramp is sold to a third party. The Port Authority also entered into an Option to Purchase and First Refusal Agreement with LLCs, granting LLCs an option to purchase the ramp and a right of first refusal in the event that the Port Authority receives an offer to purchase the ramp that the Port Authority intends to accept or does accept.

Due to the parking ramp's lack of profitability, both the senior and subordinate bonds were in default. Rather than foreclose the mortgage and dispose of the facility in a sheriff's sale, the Trustee proposed transferring ownership of the ramp by structuring the transaction as a deed in lieu of foreclosure (deed in lieu) on the senior mortgage.

The Trustee filed a petition for preliminary approval to proceed with the disposition of the parking ramp. LLCs filed a notice of objection to the petition, asserting that the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement constituted a "sale" of the ramp and triggered certain rights and obligations under the parties' respective agreements with the Port Authority. The Port Authority disputed this assertion.

Although this case was remanded on other grounds, the moral of this story appears to be the need to explicitly stipulate in the applicable documents whether or not this type of transaction constitutes a sale.

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