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Rochester MSA Building Company v. UMB Bank, N.A.

United States District Court, D. Minnesota - January 12, 2022 - Slip Copy - 2022 WL 110295

Plaintiffs own and operate two public charter schools and were loaned more than \$15 million in bond proceeds by the City of Rochester, Minnesota, to finance the improvement and expansion of their facilities.

After Plaintiffs defaulted on promises to maintain minimum levels of cash on hand and income available for debt service, they entered a forbearance agreement with Defendant UMB Bank, the indenture trustee of the bonds. In that agreement, Plaintiffs took on new obligations, like more frequent financial reporting, implementing the recommendations of a business consultant, and retaining an independent business manager. Plaintiffs also agreed to pay certain fees and expenses UMB incurred.

Plaintiffs filed this lawsuit over the reasonableness of fees that UMB has tried to collect under the forbearance agreement.

UMB asserted counterclaims, alleging that Plaintiffs defaulted on their obligations under the forbearance agreement and underlying bond agreements. UMB moved to appoint a general receiver.

The District Court held that:

- Although the parties' inclusion of a receivership remedy in their agreements is a factor that will be afforded some weight, the equitable factors announced in *Aviation Supply Corp.* still apply, and the burden will remain with UMB to show its entitlement on balance of those factors;
- Plaintiffs did not consent to receivership outright. At most, they agreed to "not oppose, contest, or challenge" appointment "upon the occurrence of a Forbearance Termination Event;"
- The parties conditioned the availability of receivership on some event of default. Plaintiffs do not concede that a receivership-triggering default event occurred, and, at this early stage, there are legitimate disputes over each type of default event that UMB asserts;
- Against the weight given to the parties' contemplation of receivership as a contractual remedy, the remaining factors establish that UMB has not made the extraordinary showing required for appointment;
- For many of the reasons it has not shown an imminent danger of loss, UMB also has not shown that it lacks adequate legal remedies or the absence of a less drastic equitable remedy;
- The denial of the motion will be without prejudice to UMB filing a renewed motion for receivership on a more developed record or upon a material change in the schools' financial circumstances. UMB also has less-draastic forms of injunctive relief at its disposal, such as a financial accounting or limited receivership; and
- The balance of harms weighs against receivership. A receiver offers added expense and diminished returns to the schools, which continue paying for an interim business manager with "exclusive authority" over their financial operations. Receivership also risks a decrease in student enrollment for the schools—meaning reduced state funding—due to confusion or misconception in the community over the schools' financial well-being.

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