

Bond Case Briefs

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BANKRUPTCY - PENNSYLVANIA

In re City of Chester

United States Bankruptcy Court, E.D. Pennsylvania - November 3, 2023 - B.R. - 2023 WL 7274750

Chapter 9 debtor-city brought adversary proceeding against creditors, holders of city-issued bonds, and indenture trustee, seeking turnover of revenues received by indenture trustee and to avoid security interests in revenues due to city.

Parties cross-moved for summary judgment.

The Bankruptcy Court held that:

- Trust indenture plainly required indenture trustee to turn over prepetition excess funds to debtor-city;
- Debtor-city's claim seeking turnover of prepetition excess funds accrued at earliest when amount held in sinking fund accounts exceeded amount due;
- Revenues payable to or to be received by debtor-city and pledged as collateral constituted payment intangible or account for purposes of perfection;
- Creditors' security interests in revenues pledged as collateral, as part of trust indenture, were properly perfected;
- Ordinance authorizing debtor-city to incur debt to issue bonds and grant security interest in certain revenues did not create statutory lien;
- Pledged revenues as part of trust indenture were collateral, and not "proceeds"; and
- Revenues payable to debtor-city from horse racing facility as a slot machine license operation fee were not "taxes."

Under Pennsylvania law, trust indenture plainly required the indenture trustee to turn over prepetition excess funds to Chapter 9 debtor-city, regardless that city did not initiate a request for the excess funds prior to petition date pursuant to course of performance whereby indenture trustee would typically contact city when excess funds were available and ask city to provide a direction letter specifying the account where the excess funds should be sent; indenture trust did not make the city's entitlement to the excess funds dependent upon the city following a certain procedure for obtaining the funds.

Chapter 9 debtor-city's claim against indenture trustee seeking turnover of prepetition excess funds accrued, for purposes of applicable four-year statute of limitations under Pennsylvania law for breach of contract claims, at the earliest when amount held in sinking fund accounts established by indenture trustee exceeded the amount due to pay principal and interest for bonds issued by city.

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, revenues payable to or to be received by Chapter 9 debtor-city pledged as collateral as part of trust indenture executed in connection with bonds issued by city constituted a "payment intangible" or "account" for purposes of perfection, as the trust indenture gave the bond parties a security interest in a right to payment of a monetary obligation through certain date, and if the drafters of the trust indenture

only meant to capture money actually received, they would have eliminated “to be” and simply defined the pledged revenues as amounts “received.”

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, revenues paid or payable to Chapter 9 debtor-city in connection with entity’s operation of harness racing and casino facility, pledged as collateral as part of prepetition contribution agreement with county to assist city with financing the construction of a soccer stadium, constituted a “payment intangible” or “account” for purposes of perfection; nowhere did the contribution agreement limit county’s security interest to solely revenues received, but rather, financing statement specifically described county’s collateral as all of city’s right, title and interest in and to host community payments under Pennsylvania Race Horse and Development Gaming Act.

Creditors’ security interests in revenues pledged as collateral, as part of trust indenture executed in connection with bonds issued by Chapter 9 debtor-city, were properly perfected under Pennsylvania’s Local Government Unit Debt Act, where financing statements provided name of the debtor, name of the secured party, and a description of the collateral.

Under Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, filing of financing statements was sufficient to perfect creditors’ security interests in revenues payable to Chapter 9 debtor-city pledged as collateral as part of trust indenture executed in connection with bonds issued by city.

Ordinance authorizing Chapter 9 debtor-city to incur debt to issue bonds and grant security interest in certain revenues payable to city for benefit of indenture trustee did not create “statutory lien” within meaning of Bankruptcy Code, but rather, created “consensual lien”; although the ordinance governed aspects of the lien, it was entirely reliant on the underlying trust indenture and would have no operative force without it, and liens held by bond parties did not arise solely under the ordinance.

County, as creditor by virtue of prepetition contribution agreement to assist Chapter 9 debtor-city with financing the construction of a soccer stadium, held “consensual lien,” and not “statutory lien” within meaning of Bankruptcy Code, in horse racing facility’s revenues payable to city, even though ordinance specifically provided that city agreed to make contribution to county, because the ordinance indicated that it was built upon the contribution agreement, which was voluntary and consensual in nature and inherently contrary to the form of statutory liens.

Under exception to general rule that property which bankruptcy estate acquires postpetition is not subject to liens resulting from prepetition security agreements, if security agreement entered before commencement of bankruptcy case extends to proceeds, product, offspring or profits of original collateral, then security interest continues to apply to proceeds and so on, even when they are acquired by debtor or estate after bankruptcy case begins.

Revenues payable to Chapter 9 debtor-city and pledged as part of trust indenture executed in connection with bonds issued by city were collateral, and not “proceeds” within meaning of Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, and thus, statutory “proceeds” exception to general rule against the continued postpetition effect of prepetition security interests did not apply to the pledged revenues.

Even if revenues payable to Chapter 9 debtor-city and pledged as part of trust indenture executed in connection with bonds issued by city were considered “proceeds,” within meaning of Article 9 of the Uniform Commercial Code (UCC), as adopted in Pennsylvania, those proceeds would be generated by postpetition acts of a third party and thus constitute proceeds of postpetition property, rather than prepetition property, making statutory “proceeds” exception to general rule against the

continued postpetition effect of prepetition security interests inapplicable to the pledged revenues.

Revenues payable to Chapter 9 debtor-city from horse racing facility pursuant to Pennsylvania Gaming Act as a slot machine license operation fee were not “taxes” exempt from general rule against the continued postpetition effect of prepetition security interests; gaming entity’s license was conditioned on payment of the fee, suggesting that the slot machine license operation fee was payment in exchange for a privilege not shared by others.

Table game revenues from Pennsylvania local share assessment payable or to be received by Chapter 9 debtor-city from horse racing facility were fees, and not “taxes” exempt from general rule against the continued postpetition effect of prepetition security interests; payment of local share assessment ultimately related to individual privilege only applicable to certain individual entities of holding a certificate to operate table games, and Pennsylvania distinguished local share assessment from table game taxes.

Revenues payable to or to be received by Chapter 9 debtor-city from horse racing facility pursuant to additional consideration agreement, pledged as collateral as part of trust indenture executed in connection with bonds issued by city, were payments due under a contract, i.e., debts, and not “taxes” exempt from general rule against the continued postpetition effect of prepetition security interests.