

# **Bond Case Briefs**

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## **BONDS - VIRGINIA**

### **UMB Bank, N.A. v. New Port Community Development Authority**

**United States District Court, E.D. Virginia, Norfolk Division - September 26, 2023 - Slip Copy - 2023 WL 9197749**

In August 2005, the City of Portsmouth ("City") created the New Port Community Development Authority ("Authority") and a special assessment district known as the "New Port Community Development Authority District" ("District").

In February, 2006, the City adopted an ordinance levying special assessments on real property in the District. The City, Authority, and the developer and owner of the lands within the development project, entered into the Special Assessment Agreement detailing the "(a) issuance of the Bonds, (b) development of the Project, and (c) the Special Assessments (including, the collection of delinquent Special Assessments.)."

Certain landowners in the District failed to pay the Special Assessments when due on the property, resulting in the City's inability to pay principal and interest on the Bonds to the Trustee. The Trustee did not receive from the City sufficient Special Assessment Revenues, resulting in default.

In January, 2023, UMB Bank, N.A., as Trustee ("Trustee"), a national banking association, in its capacity as Trustee for the Trust Estate, created by the Indenture of Trust for the New Port Community Development Authority Special Assessment Bonds, Series 2006 (the "Bonds"), filed a Complaint against the Authority, the City, and the City Treasurer (together, "Defendants").

Trustee accused Defendants of breaching their obligations under the Master Indenture Trust and Special Assessment Agreement, including to enforce collection of Delinquent Assessments and distribute proceeds from the tax sale auction of the Delinquent Property to the Trustee for purposes of paying debt service on the Bonds.

Defendants moved to dismiss, arguing that they had fulfilled their obligations under the Special Assessment Agreement as it had "timely billed and attempted to collect and enforce the collection of Special Assessment[s] in the same manner as regular property taxes."

The Court found that the elements of a direct breach of contract claim were sufficiently pleaded. "Trustee alleges it acts in the interest of the Trust Estate and the Master Indenture Trust, which conveys to the Trustee the right to enforce the Authority's rights and remedies under the Special Assessment Agreement and protect the Trustee's interest under the Master Indenture Trust. However, the Trustee has not received Delinquent Assessments and expended substantial fees to defend its interest regarding the Pledged Revenues." Based on the allegations in the Complaint, the Court found that the Trustee alleged sufficient facts to state a direct claim for breach of contract.

The City also argued that the Trustee failed to meet the first element for declaratory judgment, claiming that there was no actual controversy between the parties regarding the allocation of foreclosure proceeds because there had not been a sale of the Delinquent Property.

The Court disagreed, finding that Trustee met the first element. The Complaint alleged an actual controversy because if Trustee does not receive the foreclosure proceeds, it would represent a loss to the Trust Estate. The fact that the City had not sold the Delinquent Property did not make the action any less ripe for review.