Bond Case Briefs

Municipal Finance Law Since 1971

BONDS - ILLINOIS

Land of Lincoln Goodwill Industries, Inc. v. PNC Financial Services Group

United States District Court, C.D. Illinois - June 5, 2013 - Not Reported in F.Supp.2d - 2013 WL 2446375

Under the terms of a Loan Agreement, County issued $2 million in tax exempt economic development revenue bonds and loaned the proceeds to Goodwill to finance a development project for Goodwill. The loan was evidenced by a promissory note executed by Goodwill.

PNC (as a successor entity) funded the transaction by purchasing the Bonds and accepting the assignment of the County's rights under the Loan Agreement and Note.

Goodwill notified PNC that it intended to prepay the indebtedness in full. PNC notified Goodwill that it would have to pay a prepayment charge in excess of $300,000.00 if it chose to prepay the indebtedness.

Goodwill filed an action to seek a declaratory judgment that the prepayment charge provision of the Loan Agreement – § 9.1(b) – did not apply. Goodwill argued that, pursuant to § 9.1(b), the prepayment penalty can only be assessed only against a note that bears interest at a fixed rate, while this was an adjustable rate loan.

For the first ten years of this loan, the principal was to bear interest at the Initial Rate of 4.79% per annum, and for the last ten years, the principal was to bear interest at the Adjusted Rate determined on October 5, 2017. During each of these ten year periods, the principal bears interest at a fixed rate. The court thus concluded that this was indeed a fixed-rate loan.

In addition, the plain meaning of the documents, viewed as a whole, manifested a general intent that Goodwill could prepay at any time subject to a Prepayment Charge.

The court was also not persuaded by the reference to the "Variable" rate on the Form 8038. According to IRS definitions, a variable yield bond issue is any bond issue that is not a fixed yield issue. A fixed yield bond issue is a bond issue whose yield is fixed and determinable on the issue date. This Bond issue did not have a fixed and determinable yield on the issue date because the parties intended that the rate would be subject to change to a percentage to be determined on October 5, 2017, ten years after the issue date. The County, thus, properly indicated on Form 8038 that the yield was variable. The fact that the yield on the Bond issue was variable for IRS purposes, however, did not affect the applicability of § 9.1(b). The "fixed rate" language in § 9.1(b) did not relate to the overall yield of the Bond issue.