

# **Bond Case Briefs**

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## **BONDS - ALABAMA**

### **U.S. Bank Nat. Ass'n v. Wright**

**United States District Court, M.D. Alabama, Southern Division - July 24, 2013 - Slip Copy - 2013 WL 3866771**

The Houston County Commission entered into a development agreement with Ronnie Gilley Properties in February 2008 to develop an entertainment facility known as Country Crossing. This development was to include, among other things, electronic bingo.

The Houston County Commission created a Cooperative District and Improvement District of Houston County—Country Crossing Project. The Cooperative District issued Series 2009 bonds to finance public improvements to 375 acres of land which comprised the Country Crossing Development. The Series 2009 Bonds were issued pursuant to Indentures. U.S. Bank acted as the Indenture Trustee of the Cooperative District.

The payment sources of the Series 2009 Bonds were assessments and fees at Country Crossing. Some of the proceeds from the sale of the Series 2009 Bonds were required to be held in a fund by the Indenture Trustee to ensure sufficient funds to make interest payment installments under the Trust Indenture. The Trust Indenture also authorized the Cooperative District to provide U.S. Bank with a Letter of Credit to serve as additional security for repayment of the revenue bonds.

As a condition of its purchase of the Series 2009 bonds, the holders required additional repayment security in the form of an Irrevocable Standby Letter of Credit naming the Indenture Trustee as beneficiary. Defendant Dr. Robert Wright, Jr. – the CEO of one of the owners of the Development – sent a Side Letter to U.S. Bank in which he stated that Wells Fargo would issue a \$5 million Irrevocable Standby Letter of Credit. U.S. Bank alleged that consistent with the Side Letter, the Letter of Credit allowed U.S. Bank to draw on the Letter of Credit if given notice of non-extension of the Letter of Credit.

The electronic bingo planned for Country Crossing was determined to be illegal under Alabama law, and Country Crossing closed its doors. U.S. Bank alleged in the Complaint that collected revenues were insufficient to pay debt service on the bonds. The Cooperative District went into default.

After receiving a Notice of Non-Extension from Wells Fargo, U.S. Bank withdrew the entire \$5 million under the Letter of Credit.

An attorney representing Russell Wright wrote to U.S. Bank and stated that Russell Wright had a legal interest in the Letter of Credit. In that letter, Russell Wright threatened to commence litigation and demanded the return of the \$5 million.

U.S. Bank sought declaratory relief as to the validity of the Letter of Credit, the Side Letter, and the Amended Side Letter; U.S. Bank's right to draw on the Letter of Credit; the rights of the Wrights with respect to the Letter of Credit; whether Russell Wright has the legal right and standing to challenge the validity of the obligations owed; the effect of the bond validation judgment; and sought a declaration that Russell Wright is judicially estopped from asserting any positions that are

inconsistent with positions he took in the Resorts Development Group II, LLC bankruptcy.

The Wrights argued that the court lacked subject matter jurisdiction over the Complaint for declaratory judgment because U.S. Bank failed to seek a declaration of its rights with respect to the Letter of Credit before drawing down the funds to zero. The Wrights said that this action sought an after-the-fact validation of the draw-down, and a legitimization of U.S. Bank's defenses to a theoretical future lawsuit by the Wrights. The Wrights argued that because U.S. Bank presented, and Wells Fargo honored, the Letter of Credit with no interference by the Wrights, U.S. Bank's harm, if any, is conjectural and not actual or imminent. In response to a brief by U.S. Bank, counsel for the Wrights further represented to the court that they have been instructed to inform the court and parties "in no uncertain terms, that they are not going to file a lawsuit against U.S. Bank regarding its drawn down of the \$5,000,000 letter of credit."

Thus, there were two issues presented before the court; namely, whether the court had subject matter jurisdiction at the time the Complaint was filed, see *Household Bank v. JFS Group*, 320 F.3d 1249, 1259 (11th Cir.2003) (stating, in a case in which declaratory judgment defendants had informed the district court that they did not intend to file a suit, that the court must look to the facts as they existed at the time the action was filed), and, if so, whether the court now lacks jurisdiction because the case has become moot.

The court concluded that, before ruling on the mootness issue, the court would give the Wrights additional time in which to formally state their intentions. If the parties could come to an agreement and file a joint document, the court would consider it in ruling on mootness. If the parties cannot come to an agreement, the court will consider their positions and rule on mootness, and decide whether the court should abstain from exercising jurisdiction.