[Bond Case Briefs]

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BONDS - NEW YORK

[Oppenheimer AMT-Free Municipals v. ACA Financial Guar. Corp.]

Supreme Court, Appellate Division, First Department, New York - September 3, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 05768

A public benefit corporation (Issuer) issued and sold $200,177,680 in municipal bonds to finance the extension of a toll road in Greenville, South Carolina (original bonds). Under the trust agreement if the issuer files a voluntary petition in bankruptcy, it is an event of default which entitles a bond holder to pursue all its legal remedies.

Defendant, a financial guaranty insurance company, issued a number of secondary market insurance policies to guaranty the issuer's timely payment of obligations under certain of the original bonds. The individual policies were evidenced by certificates of bond insurance (CBIs) which "wrapped" the particular bond defendant was insuring.

The CBIs were "noncancellable except in the event the holder or the Owner surrenders its interest in the Certificate of Bond Insurance or in the position … and waives its rights to receive payment from the Insurer under this policy pursuant to Sections 3.03(f)1 and 4.06(b) of the Custody Agreement."

The toll revenues received by the issuer were substantially less than projected and, on January 1, 2010, the issuer defaulted in making payments on certain of the outstanding original bonds, none of which were owned by plaintiffs. On June 24, 2010, however, the issuer filed for Chapter 9 bankruptcy protection, which allows insolvent municipalities to reorganize their debts. Defendant was listed in the petition as one of the creditors holding twenty (20) of the largest unsecured debts. It was a "special notice" party and filed a proof of claim on its own behalf.

The bankruptcy filing had the effect of accelerating the claims on the original bonds. The CBIs, however, had no parallel acceleration requirement, except at the sole option of defendant, which it did not exercise.

As part of the bankruptcy, the issuer's bond offering was restructured. The restructuring plan called for a mandatory exchange of the original bonds for new bonds and the consequent cancellation of the original bonds.

Defendant acknowledged that it would have been contractually obligated to pay for any loss suffered by plaintiffs under the original bonds when they matured, in the event of the issuer's bankruptcy, but it claims that as a result of the restructuring plan that was adopted, the original bonds were cancelled, completely relieving it of any obligation to pay under the CBIs.

Bond holders brought action against insurer, seeking declaration that insurer was still obligated to pay in the event that issuer defaulted. The appeals court agreed, finding insurer's position inconsistent with the terms of the policies and contrary to law.