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MUNICIPAL FINANCE - VERMONT

Citibank N.A. v. City of Burlington

United States District Court, D. Vermont - September 13, 2013 - Not Reported in F.Supp.2d - 2013 WL 4958645

The City of Burlington entered into a Master State and Municipal Lease/Purchase Agreement (the "MLA") under which it secured funds for the lease-to-purchase of telecom equipment and for the construction and operation of a city-wide fiber optic network. The City has used the network to provide voice, data, and cable television services through an entity known as Burlington Telecom ("BT"). After Burlington stopped appropriating funds to make payments under the MLA, Citibank N.A. filed a fifteen-count complaint raising a variety of claims against Burlington and McNeil, Leddy & Sheahan, P.C. ("McNeil"), which served as counsel to the City.

Burlington alleges that prior to entering the MLA, the City expressed concern that the MLA might prevent it from seeking financing from other lenders in the event that it required additional funds for BT's expansion within the City and to surrounding areas. According to Burlington, it was provided assurances that CitiCapital would provide such financing in the event it was required. According to Burlington, CitiCapital in effect promised to proceed in good faith and work together with Burlington when the additional financing became necessary.

In February 2008, Burlington sought additional funding from CitiCapital. At around the same time, though, Citibank entered negotiations to sell CitiCapital's municipal leasing portfolio. In advance of the prospective sale, CitiCapital instituted a moratorium on new business and, according to Burlington, simply refused to negotiate new financing terms. Burlington did not obtain additional funds from CitiCapital, and after the credit market collapsed in the fall of 2008, no other financing options materialized. Thereafter, Burlington stopped making payments under the MLA and this lawsuit ensued.

At the motions stage of the proceeds, the court analyzed whether a promise to negotiate in good faith is illusory or enforceable. The court ultimately concluded that such promises may in theory be enforceable, but not under these circumstances due to the absence of anything other than the vaguest of assurances.

The court did indicate, however, that Burlington might succeed under a theory of promissory estoppel.

The court also ruled on a number of additional motions to dismiss and affirmative defenses and remanded for further proceedings.