

Bond Case Briefs

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BONDS - WEST VIRGINIA

Keyser House Bonds, LLC v. Keyserhouse Associates, LTD Partnership

Supreme Court of Appeals of West Virginia - February 14, 2014 - Not Reported in S.E.2d - 2014 WL 620480

Keyser House Bonds, LLC, ("Bondholder") moved to foreclose on housing project ("Keyserhouse" securing \$650,000 of municipal bonds it held that matured on April 24, 2012 and for which it had not received payment.

Keyserhouse Associates, LTD Partnership ("Partnership") and the City of Keyser ("City") obtained an order from the circuit court enjoining Bondholder from taking any action to collect its debt on the bonds, including foreclosing on the encumbered property, because of its finding that Bondholder failed to offer any evidence or proof that it complied with the pre-foreclosure notice and right to cure procedures contained in the trust indenture.

In addition, the circuit court ruled that (1) Partnership could enter into an agreement with their proposed management company to take over the day-to-day operation of Keyserhouse; (2) Partnership and City could immediately enter into negotiations to sell Keyserhouse to a prospective buyer; (3) it would not consider Bondholder's motion for an injunction to take over control and management of the Keyserhouse; and (4) Partnership was to pay Bondholder \$5,000 per month to be applied to the \$650,000 outstanding debt owed to Bondholder. Regarding the monthly payment, the circuit court stated that "I'm just going to pull a number out of the air that seems reasonable."

The court of appeals reversed, holding that the plain language of the trust indenture gave Bondholder the unconditional right to enforce payment once the bonds reached maturity, including the right to foreclose on the property if payment was not received. Although the indenture did contain various cure provisions, those were trumped by the provision that read:

"Nothing in the Indenture contained shall, however, affect or impair the right of the holders of the Bonds to enforce the payment of the principal of and interest on the Bonds at and after maturity thereof or the obligation of the Issuer to pay the principal of an interest of the Bonds to the holders thereof at the time, place, from the source and in the manner in the Bonds expressed."

The court concluded that, "Plaintiff Bondholder is entitled to seek payment on the bonds through [any] means, including foreclosure, set forth in the Indenture of Trust."