

Bond Case Briefs

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BONDS - TEXAS

National Public Finance Guarantee Corp. v. Harris County-Houston Sports Authority

Court of Appeals of Texas, Houston (1st Dist.) - April 15, 2014 - S.W.3d - 2014 WL 1464654

In 1997, Harris County and the City of Houston created the Sports Authority pursuant to Chapter 335 of the Local Government Code. Since its creation, the Sports Authority has issued several series of bonds pursuant to a written Indenture of Trust to finance the construction of sports venues in Harris County.

This dispute primarily concerned the Series 2001 bonds that were used to fund the construction of Reliant Stadium. The Convention Corporation is a local government entity created to serve as the landlord of Reliant Stadium.

On several occasions since the issuance of the bonds, the revenues raised by the Sports Authority were insufficient to make the minimum principal and interest payments due on the bonds. To cover these shortfalls, the Sports Authority made claims on the financial guaranty insurance policies issued by National Public Finance Guarantee Corporation and MBIA Insurance Corporation (collectively, "National") as provided for in the Reimbursement Agreements.

National contended that these claims impermissibly reduced the reserve fund provided for in the Indenture that is intended to secure the bond obligations. It also argued that, because the Sports Authority was authorized by statute to impose an admission tax up to 10% of ticket price and parking tax up to \$3 per vehicle, the Sports Authority was required by the Indenture to raise admission and parking taxes at Reliant Stadium to legislative maximums in order to cover the shortfalls. The Sports Authority refused to raise these taxes on the grounds that the Funding Agreement capped these taxes at \$2 per ticket and \$1 per car, that any additional revenue raised by these measures was required to be rebated to the Texans and the Rodeo under the terms of the Leases and the Funding Agreement and would therefore never be available to service bond obligations, and that it was not authorized to raise these taxes without voter approval.

On January 2013, National sued the Sports Authority, claiming that it had breached the Indenture by refusing to impose admissions and parking taxes at the legislative maximum. National also asserted other breaches by the Sports Authority and a claim for reimbursement. In addition, National requested a declaratory judgment against the Sports Authority, the Convention Corporation, the Texans, and the Rodeo, that the Indenture requires the Sports Authority to impose admissions taxes and parking taxes up to their legislative maximum, and that the provisions of the Leases and the Funding Agreement should be modified and interpreted to permit the incremental revenue generated by these increases to be paid to National.

The Authority and the Convention Corporation filed pleas to the jurisdiction, asserting that they were governmental entities and, accordingly, immune from suit. In response, National asserted that both the Sports Authority and the Convention Corporation had waived their immunity to suit by

entering into the agreements related to the bond issuance. The trial court granted the plea.

National contended that the trial court erred in granting the Sports Authority's plea to the jurisdiction because (1) the 2007 Act amending Government Code chapter 1371 waived the Sports Authority's immunity by ratifying the waiver of immunity in the Funding Agreement that was incorporated into the other deal documents, (2) [Texas Local Government Code section 271.152](#) waived the Sports Authority's immunity because all of the agreements that the Sports Authority entered into related to the bonds were contracts for services, and (3) the Sports Authority was not entitled to immunity because it issued the bonds in its proprietary, rather than governmental, capacity. In its fourth issue, National contended that the trial court erred in granting the Convention Corporation's plea because [Texas Local Government Code section 271.152](#) operates to waive the Convention Corporation's immunity in this case.

The Court of Appeals reversed the trial court's grant of the Sports Authority's plea, holding that the 2007 Act amending Chapter 1371 of the Government Code waived the Sport Authority's immunity.

The Court of Appeals affirmed the trial court's grant of the Convention Corporation's plea, holding that Texas Local Government Code section 271.152 did not waive the Convention Corporation's immunity because a section 271.152 waiver covers only breach of contract claims and National had asserted no breach of contract claims against the Convention Corporation.