

Bond Case Briefs

Municipal Finance Law Since 1971

BANKRUPTCY - CALIFORNIA

City of San Bernardino, Cal.

United States Bankruptcy Court, C.D. California, Riverside Division - October 16, 2013 - 499 B.R. 77670 Collier Bankr.Cas.2d 629 - 58 Bankr.Ct.Dec. 163

California Public Employee Retirement System (CalPERS) objected to city's eligibility for Chapter 9 relief and to its good faith in filing petition.

The Bankruptcy Court held that:

- City's conduct objectively demonstrated its desire to effect a plan, as mandated by Chapter 9 eligibility requirements;
- City acted in "good faith" when, in response to financial crisis precipitated by dramatic increase in mortgage foreclosures and diminished municipal revenues, it filed for Chapter 9 relief just before it ran out of funds to pay its employees; and
- Even assuming that municipality exhibited lack of good faith in filing for Chapter 9 Relief without engaging in any meaningful prepetition negotiation with its creditors or seriously considering other alternatives to alleviate its financial distress, court would exercise its discretion to refrain from dismissing case.

City's actions, when faced with inevitable default upon its obligations during time of decreased municipal revenues, in preparing and presenting budget report at public meeting of mayor and common council, preparing and presenting staff report to common council, conducting open public meeting discussions regarding its financial future, voting to declare a fiscal emergency and approving resolutions permitting it to file for Chapter 9 relief, preparing a cash flow analysis report, preparing fiscal emergency plan, which was presented to common council and approved prepetition, and preparing and discussing pre-pendency plan at common council meetings, objectively demonstrated its desire to effect a plan, as mandated by Chapter 9 eligibility requirements.

City acted in "good faith" when, in response to financial crisis precipitated by dramatic increase in mortgage foreclosures and diminished municipal revenues, it filed for Chapter 9 relief just before it ran out of funds to pay its employees without impairing its contracts, though city did not engage in meaningful prepetition negotiations with its creditors and did not seriously consider alternatives to filing for Chapter 9 relief.

Even assuming that municipality exhibited lack of good faith in filing for Chapter 9 relief without engaging in any meaningful prepetition negotiation with its creditors or seriously considering other alternatives to alleviate its financial distress, court would exercise its discretion to refrain from dismissing case, where only one creditor was objecting to municipality's Chapter 9 filing, municipality's cash deficit was real and unchallenged, and dismissal would leave city in financial quagmire without orderly court oversight.