

# **Bond Case Briefs**

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## **TAX - ILLINOIS**

### **Bank of Camden v. Village of West Dundee**

**United States District Court, N.D. Illinois, Eastern Division - November 21, 2014 - Not Reported in F.Supp.3d - 2014 WL 6655892**

In 2008, Village set up a Tax Increment Financing (TIF) District in order to provide Springhill Shopping Center with \$4 million in initial funding for renovations at the Shopping Center. By 2009, the Shopping Center was facing economic problems with the renovations. Springhill then asked the Village to establish some other mechanism to provide additional funding for renovations.

This time, the Village decided to establish a “special service area” pursuant to the SSA Act. The SSA Act generally allows a municipality to levy additional property taxes in a specific geographic area for the purpose of providing special services not otherwise available to the entire municipality. On December 7, 2009, the Village adopted Ordinance 09-27 proposing the establishment of a special service area (SSA #6) and the issuance of SSA bonds in an amount not to exceed \$2.95 million (later reduced to \$1.5 million). The SSA bonds for SSA #6 were to be repaid through a levy of property taxes for the properties in the SSA.

The Shopping Center contains approximately 180,000 square feet of retail space. F.A.S.T. owns approximately 60,000 square feet of that space (the “East Property”). The remaining 120,000 square feet of the center lies west of the East Property (the “West Property”).

Notwithstanding the \$1.5 million bond amount in the ordinance, the taxes assessed upon the East Property were based on the original amount of \$2.95 million. So far, \$866,423 of the \$1.5 million in proceeds from the bonds has been spent. Of that \$866,423, only \$16,255 benefitted the East Property. The Bank or any subsequent owner of the East Property must continue paying its share of the additional property taxes through 2029.

In 2013, the East Property, which takes up 33% of the total square footage of SSA #6, was responsible for 44% of the SSA tax burden and did not receive any SSA distributions. The East Property was also encumbered with a tax rate increase associated with the SSA #6 bonds within the TIF which devalued the East Property by \$500,000.

Foreclosed Assets Sales and Transfer Partnership (F.A.S.T.) and its “authorized agent” – Bank of Camden – filed suit against the Village and Springhill alleging that the Village was disproportionately distributing funds from the SSA in violation of the SSA Act and the local ordinance enacted thereunder. Plaintiffs also alleged that the Village improperly enacted a moratorium and ordinance preventing the issuance of a business license to one of their potential tenants. Additionally, plaintiffs alleged that the Village was improperly paying legal fees related to this litigation out of SSA funds.

The District Court held that:

- Bank of Camden lacked standing;
- Although it had not paid any of the property taxes associated with the East Property, including the

SSA or TIF taxes, F.A.S.T. had standing due to the alleged injury with respect to the resale value of the East Property;

- The SSA Act does not mandate that taxpayers within a SSA receive equal amounts of the SSA proceeds or amounts equal to the SSA taxes they paid, and thus plaintiff's allegations that SSA #6 disproportionately benefitted the owner of the West Property to the detriment of the East Property failed to state a claim;
- Plaintiffs were not entitled to a mandamus for the court to order the Village Clerk to issue a business license to the Salvation Army to occupy and lease space in the East Property;
- Ambiguity existed within the documents regarding whether the Village was entitled to pay its attorneys' fees from the SSA #6 improvement fund, precluding summary judgment on this issue.