

Bond Case Briefs

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City of New Orleans v. AMBAC Assurance Corp.

United States District Court, E.D. Louisiana - December 12, 2014 - Slip Copy - 2014 WL 7140056

In 2000, the City of New Orleans issued \$170 million of variable rate municipal bonds the principal amount of \$170,660,000 to fund the City's firefighter pension fund.

Defendants (PaineWebber, Inc., later UBS, as successor-in-interest) served as underwriter for the bonds. To manage the variable interest rate risk associated with the bonds, the City entered into an interest rate swap agreement (the "Swap") with Defendants, whereby the City agreed to pay Defendants a fixed rate of interest, and Defendants paid the weekly variable rate. Unbeknownst to the City, Defendants then entered into a reciprocal swap ("Reciprocal Swap") with an AMBAC affiliate, AMBAC Financial Services, LLC ("AFS"), whereby Defendants agreed to pay AFS a fixed rate, and AFS assumed the risk of the variable rate. In the financial crisis of 2008, the bonds became unmarketable causing AMBAC to exercise its rights under the Reciprocal Swap, thereby triggering a provision of the Swap between Defendants and the City. As a result, the City was forced to refinance the bonds and terminate the Swap.

The City brought suit against AMBAC, AFS, and Defendants. All claims against AMBAC and AFS were subsequently dismissed. In October of 2011, the parties administratively closed the case pending potential settlement negotiations. After such talks proved ineffective, the City moved to reopen the case in November of 2013, and the Court granted the motion. The Court issued an updated scheduling order indicating that the time to amend pleadings, cross-claims, and counter-claims had passed.

During the additional discovery period, the City served on Defendants answers to interrogatories which included the following new allegations of misrepresentations: (1) UBS provided false information to the City, which allowed UBS to price the Swap at a considerably higher rate; (2) UBS provided false information regarding the savings that the synthetic fixed rate bonds would achieve; (3) UBS assured the City that its 10.7% rate of return was reasonable; and (4) UBS told the City that it was not entering into a novel deal, but the same kind of deal other municipalities had previously conducted.

Defendants moved for a Rule 16 Conference to define the scope of the Second Amended Complaint as it pertained to the "new allegations" of misrepresentation. During that conference, this Court directed the parties to file motions in limine to address the issues raised in their Rule 16 Motion. Specifically, the Court directed the City to indicate why these "new allegations" were being raised at such a late date when evidence of these assertions was available to the parties back in 2008.

The Court granted Defendants' motion requesting that the Court to limit the City's claims to the existing causes of action left in the original complaint (fraud in the inducement, negligent misrepresentation, and breach of the Swap agreement) and to prohibit introduction of evidence relating to these four alleged misrepresentation at trial.

The Court rejected City's argument that it had no intention of raising the misrepresentations as substantive claims, instead, that the City intended to rely on the misrepresentations as evidence "that goes toward the fraud and breach of contract claims already pled."

"Even if the Court were inclined to disregard the reasons stated above, the Court finds that the misrepresentations are not relevant of materiality to the City's existing fraud and breach of contract claims under Rule 401 of the Federal Rules of Evidence, nor are they probative of intent under Rules 403 and 404 such that the Court should allow evidence of these assertions at trial. In particular, the misrepresentations are distinct acts that do no pertain to omissions regarding the structure and risks associated with the structure of the transaction or any alleged conflict of interest, and, thus, they are not relevant to proving any of the elements necessary to the City's existing claims."