

Bond Case Briefs

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BANKRUPTCY - COLORADO

In re Ravenna Metropolitan District

United States Bankruptcy Court, D. Colorado - December 15, 2014 - B.R. - 2014 WL 7494935

In connection with its development of a residential community, Developer organized the Ravenna Metropolitan District in 2004 under the Colorado Special District Act to provide public infrastructure and services. The District issued \$10 million in bonds. The District pledged the revenues from its annual ad valorem mill levy imposed on all taxable property within the District. Colorado BondShares ("CBS") owns the bonds.

The District entered into a series of agreements with United Water and Sanitation District, a larger and more experienced special district to develop water facilities for both districts. In 2007, the District and an enterprise formed by the District (the "District Enterprise") entered into a Lease with the United. Under the Lease, the District Enterprise agreed to lease the water system from the United.

Around the same time, United issued \$5.8 million in special revenue bonds that were intended to fund the construction of the water system. Pursuant to the Lease, the District Enterprise was required to make semi-annual lease payments to be used to pay United's bonds. Upon redemption of the United bonds, United would convey the water system to the District. The District Enterprise agreed to fund the semi-annual payments, in part, through the imposition of a fee on District property owners called the Facilities Acquisition Fee ("FA Fee"). The Lease also imposed a "moral obligation" on the District to use its mill levy to cover the Lease payments if the collected FA Fees were insufficient to fund Lease payments.

After years of fluctuating financial fortunes and negotiations amongst the parties, the District filed a chapter 9 bankruptcy petition on April 2, 2014. Both CBS and United filed objections to the District's petition, arguing it did not meet the eligibility requirements set forth in 11 U.S.C. § 109(c) and that the petition was not filed in good faith and should be dismissed under § 921(c).

The Bankruptcy Court held that the District had not met its burden of showing that it was insolvent under the current-state-of-affairs test.

That ruling resulted from the following:

1. The Bonds were not "due." The Court relied on *Hamilton Creek Metro. Dist. v. Bondholders Colo. BondShares* (In re Hamilton Creek Metro. Dist.), 143 F.3d 1381, 1384 (10th Cir. 1998) in its analysis, finding that the District's only obligation under the bond agreement was to impose the mill levy and apply the proceeds to the bonds. The failure to make a full interest payment was not an event of default under the bond agreement, partial payments were contemplated, and thus the bonds were not "due," as the debt was not "presently enforceable."
2. There existed a bona fide dispute as to whether the District could be held liable for the District Enterprise's payment obligations under the Lease.
3. The District had sufficient ability to fund its existing operational and maintenance costs.

The Court also held that the District had failed to meet the second test of insolvency, known as the forward-looking test and defined in the statute as “unable to pay its debts as they become due.”

The Court then held that the District had failed to demonstrate either that negotiations were impracticable or that it negotiated in good faith, or that it fully explored other alternatives prior to filing to bankruptcy.

And finally, the Court held that the petition had not been filed in good faith due, as it had been done primarily to obtain leverage in its negotiations with its creditors.