

# **Bond Case Briefs**

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## **TAX INCREMENT FINANCING - ALABAMA**

### **Pate Flagship, LLC v. Cypress Equities Southeast, LLC**

**United States District Court, N.D. Alabama, Western Division - February 26, 2015 - F.Supp.3d - 2015 WL 816547**

Pate Flagship, LLC entered into a Purchase Agreement with Cypress Equities Southeast, LLC for 35 acres of real property in Tuscaloosa, Alabama.

The Purchase Agreement included the following provision:

*(e) Enhancement Interest.* As additional part of the purchase price[,][Cypress Equities] agrees to pay [Pate Flagship] a sum equivalent to one-half of the Enhancement Interest created on the Property as and when received by [Cypress Equities]. For all purposes of this Agreement, "Enhancement Interest" shall be all TIFF money or any other funds received by [Cypress Equities] from any governmental entity or agency for, or TIFF money or any other funds spent by any governmental entity or agency (in lieu of the receipt by [Cypress Equities] of TIFF money or any such other funds from any governmental entity or agency), directly or indirectly on, the proposed development, or the construction of any infrastructure, landscaping or improvements of any kind whatsoever, during the proposed development of the Property.

Pate sued Cypress for anticipatory breach of contract after Cypress took the position that the interest savings from the authorization of GO Zone Bonds, as well as certain cash payments or services in kind from the City of Tuscaloosa, were not Enhancement Interests as defined by the Purchase Agreement.

The District Court held that:

- Any interest savings from GO Zone Bonds were not Enhancement Interests under the terms of the Purchase Agreement; and
- Pate's mere conclusory allegations that certain benefits received from the City were Enhancement Interests were not sufficient to state a claim of for breach of contract regarding the same.