

Bond Case Briefs

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CONTRACTS - INDIANA

Peoples State Bank v. Benton Tp. of Monroe County

Court of Appeals of Indiana - March 25, 2015 - N.E.3d - 2015 WL 1361228

In 2011, Benton Township Trustee Heather Cohee secured a loan from Peoples State Bank to purchase a fire truck. She acted without a prior appropriation of funds by Benton Township or compliance with statutory procedures allowing taxpayers an opportunity to remonstrate.

Benton Township did not pay the promissory note installments as they came due. Cohee resigned amidst allegations of financial improprieties unrelated to the fire truck acquisition. On January 28, 2012, the Indiana State Board of Accounts issued its Independent Accountant's Report based upon a review of Benton Township records. The report contained the conclusion that the fire truck purchase was made "with proceeds of a loan that was not properly approved by the Township Board." (App.307.) The report further indicated that neither the Trustee nor the Township Board had signed the promissory note.

The Bank seized Benton Township checking account funds and applied those funds in setoff to sums due under the promissory note. On December 21, 2012, the Bank and Benton Township entered into a Partial Settlement & Dispute Resolution Agreement. Pursuant to the terms of the agreement, Benton Township surrendered the fire truck, and the Bank sold it for \$212,866.00 and applied the funds to the outstanding loan. The Bank restored the funds it had previously taken as an offset, except for \$30,000, which was by agreement applied to the loan. Benton Township also made a \$37,529.48 payment .

After the sale proceeds and payments were applied, the Bank sought \$102,273.90 in principal and interest, plus attorney's fees and costs of \$45,757.65. On May 8, 2013, the Bank filed a complaint against Benton Township. Benton Township answered the complaint, denying that the Bank was entitled to any additional recovery.

The Court of Appeals held that the promissory note at issue was not a proper basis for a grant of equitable relief.

First, the matter involved the unauthorized expenditure of taxpayer funds. Second, the circumstances were such that the Bank was obliged to seek out information of public record and failed to do so. Indeed, the Bank prepared a promissory note for execution by a part-time township employee rather than the Benton Township Trustee. Finally, Benton Township did not retain property for which it refused to pay, and the parties essentially addressed the equities surrounding the surrender by entering into a partial settlement. Although the loan was invalid, the township nevertheless mitigated the Bank's damages by surrendering the fire truck and paying cash of \$67,529.48. This was not a situation involving "extreme unfairness" such that equity should step in against a governmental entity. Therefore, equitable remedies are not available to permit the Bank's collection in full upon its faulty promissory note.

