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Coves of Highland Community Development Dist. v. SCB Diversified Mun. Portfolio

United States District Court, E.D. Louisiana - November 10, 2015 - Slip Copy - 2015 WL 7016965

The Coves of the Highland Community Development District ("District") was formed under Louisiana law in 2006 for the purpose of financing and managing the infrastructure of a planned residential community called The Coves of the Highland (the "Project"). MGD Partners, LLC, (MGD) purchased approximately 324 acres at the site of the Project in March 2006. Thereafter, the District entered into a development agreement with MGD. On November 16, 2006, The District authorized and issued \$7,695,000 in bonds, primarily to finance infrastructure improvements for the Project. These bonds were purchased by SCB Diversified Municipal Portfolio (SCB).

The Project was ultimately unsuccessful. After much of the infrastructure was in place, the Army Corps of Engineers issued a report dated December 12, 2008, stating that from 1942 to 1945 the United States Government leased the land upon which the Project was situated for use as a practice bombing range. Because of the gunnery, rocket, and bombing practice that had taken place on the property, the Corps discussed the potential of unexploded ordnance and munitions on the property. Because of this report, Tangipahoa Parish refused to issue further permits for the Project. Ultimately, though the streets and other infrastructure were in place, no lots were sold and Plaintiff was unable to meet its financial obligations under the bond agreements.

The District requested a declaratory judgment that \$7,695,000 worth of bonds issued by the District and purchased by SCB have prescribed due to alleged lack of payment or acknowledgement of the debt by the District for a period exceeding five years.

Under Louisiana law, municipal bonds prescribe in five years. This prescription is interrupted by acknowledgement of the debt or by the filing of suit within the relevant prescriptive period. The jurisprudence holds that partial payment by a third party constitutes acknowledgement of a debt which interrupts prescription only if such payment has been made with the authority of the debtor. Acknowledgement of a debt may be express or tacit and need not take any particular form.

The District argued that summary judgment is warranted because no revenue stream was ever established, and it made no payments on the bonds. It avers that because it has been in default for more than five years, the debt has prescribed.

SCB, however, disputed the District's assertion that the debt has not been acknowledged. They point to certain payments made by the Trustee from the Debt Services Reserve Account as an acknowledgement of the debt. These payments were made pursuant to the contractual scheme governing this transaction. They argue that the Trustee was, per the terms of the bond agreements, acting as the District's agent when making payments from the Debt Services Reserve Account. The District denied that the Trustee was its agent for the purpose of these transactions.

The District Court hold that the resolution of this matter necessarily involved factual findings regarding the Trustee's authority to acknowledge on behalf of the District. As discovery was warranted, the motion for summary judgment was denied.