

Bond Case Briefs

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Hyde Park Circle, L.L.C. v. Cincinnati

Court of Appeals of Ohio, First District, Hamilton County - May 25, 2016 - N.E.3d - 2016 WL 3003413 - 2016 -Ohio- 3130

Developer brought action against city alleging that city breached development agreement and illegally used tax-increment-financing (TIF) funds. City filed counterclaim for breach of agreement.

The Court of Common Pleas enjoined city from loaning itself TIF-account funds to pay general-fund obligations, ordered city to return \$4 million to TIF accounts, awarded developer \$177,124.65 in attorney fees and costs, determined that developer could not be reimbursed for actions it took prior to entering agreement, that city was not liable for handling of city improvements, but that developer should have been reimbursed in amount of \$247,500, and found that developer had materially breached agreement, but that city suffered no damages. Both parties appealed.

The Court of Appeals held that:

- Developer was entitled to \$89,448.77, as opposed to \$247,500 on its breach of contract claim, and
- Developer had standing to bring its statutory-taxpayer action.

Developer was entitled to \$89,448.77, as opposed to \$247,500, on its breach of contract claim against city for failure to reimburse developer for work performed by subcontractor. While there was no dispute that services provided by subcontractor were proper subject for tax-increment-financing (TIF) reimbursement, and, thus, developer was not barred from seeking to recover money from city for reimbursement under development agreement between developer and city, agreement was clear that project was capped at \$4 million in TIF funds, and evidence showed that city had spent \$49,000 in TIF funds to complete work that should have been performed by developer and that only \$138,448.77 remained of funds.

Developer had standing to bring its statutory-taxpayer action against city alleging that city illegally used tax-increment-financing (TIF) funds. Taxpayer action did not only benefit developer, as, in determining that city had illegally used TIF funds to cover budget shortfall with city public schools, court found that city had treated TIF accounts as if they were mini-general fund from which it could randomly make loans to itself that could be delayed or forgiven, taxpayer action sought relief in form of injunction to keep city from engaging in illegal loaning practice in future and judgment requiring city to return \$4 million to all of neighborhood TIF accounts, and, TIF laws were established to encourage economic development, which benefited public at large, not just developer.