

Bond Case Briefs

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FINANCE - VIRGINIA

Aca Financial Guaranty Corporation and UMB Bank, N.A. v. City of Buena Vista, Virginia

United States District Court, W.D. Virginia - February 8, 2018 - F.Supp.3d - 2018 WL 786167

Bank and loan insurer brought action against city and recreational authority, seeking payment of monies allegedly owed under loan arrangement.

City and recreational authority moved to dismiss complaint for failure to state a claim.

The District Court held that:

- Deed of trust was not subject to constitutional requirement that three-fourths of city council approve sale of city's rights to public places;
- Bank and loan insurer could not assert claim for appointment of receiver;
- Lease agreement between city and recreational authority created third-party contract rights in bank and loan insurer;
- City was not under legally-enforceable contractual obligation to make loan payments;
- Recreational authority did not breach trust agreement by failing to ensure that city repay loan;
- Recreational authority did not breach trust agreement by failing to divest city of possession of golf course upon city's failure to make lease payments; and
- Bank and loan insurer failed to adequately plead claim that city breached implied covenant of good faith and fair dealing.

Deed of trust, securing bank's loan to city by putting up city hall, police department, and local courthouse as collateral, was not subject to Virginia's constitutional requirement that three-fourths of elected members of city council approve sale of city's rights in or to public places, since deed of trust did not constitute sale.

Deed of trust, securing bank's loan to city by putting up city hall, police department, and local courthouse as collateral, was not subject to Virginia's constitutional requirement that three-fourths of elected members of city council approve sale of city's rights in or to public places, since deed of trust did not constitute sale.

In action against city seeking repayment of loan, bank and loan insurer could not assert claim for appointment of receiver for city hall, police department, and golf course, since appointment of receiver, by law, could not stand as independent legal claim.

Lease agreement between city and recreational authority, giving city possession of golf course in exchange for rent payments, created third-party contract rights in bank and loan insurer; agreement expressly recognized loan insurer as third-party beneficiary and provided that recreational authority would, through trust agreement, assign its rights in rent payments to bank.

City was not under legally-enforceable contractual obligation to make payments to bank pursuant to

loan arrangement; although city entered into lease agreement and forbearance agreement promising to repay loan, both agreements expressly made payments subject to appropriations by city council.

Recreational authority did not breach trust agreement with bank by failing to make interest and principal payments on bonds; agreement expressly provided that recreational authority's payment obligations were limited insofar as they were payable solely from city's rent payments for golf course, and city failed to make such rent payments.

City's recreational authority did not breach trust agreement with bank by failing to ensure that city repay loan; although trust agreement provided that recreational authority would require city to perform its duties and obligations under lease agreement, city had no legally enforceable obligation to make payments.

City's recreational authority did not breach trust agreement with bank by failing to divest city of possession of golf course upon city's failure to make lease payments; although lease agreement permitted recreational authority to respond to city's nonpayment in this way, it did not require recreational authority to do so, and bank itself had power to evict city from golf course if it so wished.

Bank and loan insurer failed to adequately plead claim that city breached implied covenant of good faith and fair dealing under loan arrangement; although complaint alleged that city unfairly induced bank and insurer to defer exercise of their rights under forbearance agreements, complaint failed to identify which rights were deferred or what specific conduct by city was unfair.