

Bond Case Briefs

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BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - January 30, 2018 - F.Supp.3d - 2018 WL 1475392

In the debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), beneficial owners of general obligation bonds that were either issued or guaranteed by the Commonwealth, and that allegedly constituted “Constitutional Debt” entitled to unique protections under the Puerto Rico Constitution, commenced adversary proceeding against the Commonwealth and the Financial Oversight and Management Board for Puerto Rico, seeking declaratory and injunctive relief regarding the Commonwealth’s use of certain “Special Property Tax Revenues” and “Clawback Revenues.”

Defendants filed motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted.

The District Court held that:

- The court lacked subject matter jurisdiction over plaintiffs’ request for a declaration that the subject revenues were “restricted”;
- The court lacked subject matter jurisdiction over plaintiffs’ requests for declarations regarding the parties’ respective relationships to the subject revenues;
- The court lacked subject matter jurisdiction over plaintiffs’ request for a declaratory judgment that the Clawback Revenues were special revenues that had to be applied in accordance with specified sections of the Bankruptcy Code;
- Plaintiffs’ Takings Clause claim was not ripe for adjudication;
- The court had subject matter jurisdiction over plaintiffs’ requests for declaratory and injunctive relief relating to the handling of the subject revenues; but
- PROMESA precluded the court from granting the relief sought in those counts of the complaint seeking declarations or an injunction that would directly restrict the Commonwealth’s use of its revenues and its exercise of political and governmental powers.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court lacked subject matter jurisdiction over bondholders’ request for a declaration that certain “Special Property Tax Revenues” and “Clawback Revenues” were “restricted”; request was, standing alone, vague and inconclusive and insufficient to frame a case or controversy.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court had subject matter jurisdiction over bondholders’ request for a declaration that certain “Special Property Tax Revenues” and “Clawback Revenues” could only be collected and used to

satisfy the Commonwealth's payment obligations with respect to Constitutional Debt; request was directed and addressed to a specific immediate dispute and would, if granted, speak directly to the Commonwealth's ability to deal with revenues that, according to the complaint, were currently being collected and applied.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court lacked subject matter jurisdiction over bondholders' requests for declarations that the Commonwealth was a mere conduit for certain "Special Property Tax Revenues" and "Clawback Revenues"; relief requested amounted to abstract declarations of the parties' respective relationships to the subject revenues, without application of the relief to resolve any current concrete dispute, such as a claim objection proceeding, request for adequate protection or relief from stay, or confirmation-related proceeding, and so bondholders sought advisory opinions and did not frame justiciable controversies.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court lacked subject matter jurisdiction over bondholders' requests for declarations that Constitutional Debt was secured by statutory liens on certain "Special Property Tax Revenues" and "Clawback Revenues"; requests lacked a dispositive connection with a current controversy, and so sought merely advisory opinions.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court lacked subject matter jurisdiction over bondholders' request for a declaratory judgment that certain "Clawback Revenues" were special revenues that had to be applied in accordance with specified sections of the Bankruptcy Code; notwithstanding its specific references to Code provisions that had been incorporated into PROMESA, claim was devoid of the requisite conclusive element, proffering no content with respect to bondholders' position as to the practical impact of an obligation to apply revenues in accordance with the cited statutory provisions, and so did not frame a justiciable controversy.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), bondholders' Takings Clause claim, that is, their request for a declaration that the Commonwealth's use of certain "Special Property Tax Revenues" and "Clawback Revenues" would constitute an unlawful taking of property under the Takings Clause, was not ripe for adjudication and, thus, had to be dismissed for lack of subject matter jurisdiction; at this early stage of these Title III cases, in which even the content of the relevant fiscal plan was in flux following a devastating hurricane, such that there had been no final decision as to treatment of the subject revenues, bondholders could not allege that the Commonwealth "ha[d] arrived at a definitive position" regarding any disbursement of funds that might inflict an "actual, concrete injury" upon them for Takings Clause purposes.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the court had subject matter jurisdiction over bondholders' requests for declaratory and injunctive relief relating to the handling of certain "Special Property Tax Revenues" and "Clawback Revenues"; requests, which asked that the revenues be segregated and deposited into a designated account, not commingled with other funds of the Commonwealth, and used only to repay bondholders for their "Constitutional Debt," demanded sufficiently specific and immediate conclusive relief to frame justiciable controversies.

In debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), PROMESA precluded the court from granting the relief sought in those counts of bondholders' complaint seeking declarations or an injunction that, inter alia, would directly restrict Commonwealth's use of certain "Special Property Tax Revenues" and "Clawback Revenues"; PROMESA barred the court from interfering with the enumerated governmental powers, revenues, and property "by any stay, order, or decree, in the case or otherwise," a prohibition that was of sufficient breadth to encompass all forms of relief, the statutory prohibition was not limited to remedies that were directly coercive, and a decree that territorial government or its instrumentality had to conduct its affairs in a manner different from the one it had chosen was necessarily one that would "interfere" within meaning of statute.