

Bond Case Briefs

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BOND INSURANCE - MISSISSIPPI

Assured Guaranty Corporation v. Madison County, Mississippi

United States Court of Appeals, Fifth Circuit - May 31, 2017 - 693 Fed.Appx. 287

Insurer of bonds issued by special purpose government entity brought action against county, which had entered into a contribution agreement with entity, seeking declaratory judgment that contribution agreement was valid and required county to continue advancing funds to entity for bond payments, even though entity failed to reimburse county within two years.

The United States District Court for the Southern District of Mississippi granted insurer's motion for partial summary judgment, concluding county was obligated to advance payments as long as bonds were outstanding. County appealed.

The Court of Appeals held that:

- Entity's obligation to reimburse county within two years was a condition precedent to county's obligation to advance bond payments;
- Amortization approval certificate, when read together with contribution agreement, conditioned county's obligation to make advance payments on entity's performance of covenants; and
- County was not estopped from arguing that entity's performance was unsatisfactory.

Under Mississippi law, contribution agreement between county and special purpose government entity, which required county to advance payments on bonds issued in order to fund entity if entity was unable to make payments on its own through special assessments, required entity to reimburse county within two years as a condition precedent to county's obligation to advance payments; agreement explicitly required entity to reimburse county within two years, and there was no tension between a requirement that county advance bond payments when entity was unable to make them if entity satisfied its obligations under agreement, and that entity was required to reimburse county for advances within two years of when they were made.

Under Mississippi law, amortization approval certificate, signed by county at closing on issuance of bonds to fund special purpose government entity, when read together with contribution agreement requiring county to advance bond payments to entity if entity was unable to make payments, conditioned county's obligation on entity's performance of covenants under contribution agreement, including its promise to reimburse county; while certificate referred to conditions that had to be performed to county's satisfaction prior to closing, contribution agreement also referred to conditions that were to be completed after closing, including condition precedent requiring entity to pay reimbursement within two years.

County was not estopped under Mississippi law from arguing that special purpose government entity's performance under amortization approval certificate, which was signed upon issuance of bonds to fund entity, was unsatisfactory, in bond insurer's declaratory judgment action against county; while quasi-estoppel theory precluded a litigant from asserting rights inconsistent with a

position it had previously taken, this theory would only have applied if county signed certificate intending to agree that it was satisfied with entity's performance of all of its obligations under agreement, including those that could not possibly have been performed before closing at which certificate was signed.