

Bond Case Briefs

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INDENTURE TRUSTEES - INDIANA

Lake Ridge New Tech Schools v. Bank of New York Mellon, Trust Company, N.A.

United States District Court, N.D. Indiana - November 13, 2018 - F.Supp.3d - 2018 WL 5982136

Corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust brought Indiana state court action against indenture trustee, alleging breach of contract, negligence, and gross negligence after indenture trustee allegedly processed fraudulent pay affidavit.

Following removal, trustee moved to dismiss for failure to state a claim.

The District Court held that:

- Corporation failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim based on alleged breach of such conduct;
- Corporation failed to state claim for breach of agreement provision prohibiting misconduct and gross negligence;
- Corporation failed to adequately allege that exculpatory clause in agreement was contrary to public policy;
- Corporation failed to adequately allege duty of indenture trustee independent of agreement, and thus failed to state negligence and gross negligence claims; and
- Corporation failed to adequately allege that economic loss doctrine did not bar negligence and gross negligence claims.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim against indenture trustee based on its alleged breach of such conduct; corporation alleged that indenture trustee, in processing what allegedly turned out to be fraudulent pay affidavit, had breached protocol which had developed following agreement, but protocol was consistent with agreement, which provided minimum framework for processing pay affidavits, and none of protocol evinced bargained-for-exchange between corporation and indenture trustee for something of value.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege misconduct or gross negligence by indenture trustee, and thus failed to state breach of contract claim against indenture trustee based on agreement provision prohibiting misconduct and gross negligence; corporation alleged that pay affidavit sent from e-mail account of authorized officer and processed by indenture trustee had actually been fraudulent, but trust indenture agreement provided that indenture trustee would conclusively presume that directions

purporting to have been sent by authorized officer had been so sent by such officer.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to allege imbalance in bargaining power sufficient to render against public policy exculpatory clause in agreement which absolved indenture trustee of liability for processing fraudulent pay affidavit submitted through e-mail, and thus corporation failed to state breach of contract claim based on alleged processing of such affidavit; corporation did not allege that it had only been able to negotiate with indenture trustee, and no other party, for administration of trust, or that any supposed weaker bargaining position had prevented it from negotiating away exculpatory clause.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege separate duty of indenture trustee independent of indenture trust agreement, and thus failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; corporation alleged that indenture trustee was liable for failing to select agents and employees in manner which would have prevented alleged unauthorized payment from trust account, and because its agents and employees had acted in grossly negligent manner in processing alleged fraudulent pay affidavit.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege injury distinct from injury resulting from indenture trustee's alleged breach of agreement, and thus, under economic loss doctrine, corporation failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; only injury alleged by corporation was that resulting from alleged processing of fraudulent pay affidavit, a process governed by trust indenture agreement.

Under Indiana law, the economic loss doctrine does not include the relationship involving an indenture trustee as one that falls outside the scope of the economic loss doctrine.