

Bond Case Briefs

Municipal Finance Law Since 1971

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - February 7, 2019 - F.Supp.3d - 2019 WL 539709

In the debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), proceeding was held pursuant to section of COFINA's confirmed plan of adjustment requiring court to determine whether and to what extent monies had to be withheld from plan distribution to COFINA bondholder to cover legal fees and expenses that indenture trustee for COFINA bonds might incur in connection with bondholder's litigation against trustee for its alleged gross negligence, willful misconduct, and/or intentional fraud in connection with alleged events of default affecting COFINA bonds.

Hearing was held at which the court, inter alia, sustained trustee's objection to bondholder's effort to cross-examine declarants whose evidentiary declarations had been submitted in support of trustee's position. Bondholder filed motion for reconsideration of the court's ruling precluding cross-examination.

The District Court held that:

- Further cross-examination would not be allowed;
- COFINA had obligation to indemnify indenture trustee for its litigation fees and expenses, which could be held back from distributions to bondholder;
- Indenture trustee would be authorized to withhold \$20 million, to be withdrawn from the funds otherwise payable under the plan of adjustment to bondholder; and
- Trustee was entitled to be reimbursed for fees and expenses on a current basis during the life of bondholder's actions.

District court appropriately precluded party from cross-examining declarants whose evidentiary declarations had been submitted in support of opposing party's position where the court's procedural orders required party to notify the court and other parties of its intention to cross-examine and to identify the subject matter and exhibits it intended to use in cross-examination, and, contrary to the court's procedural orders, party had not, in fact, made the required disclosures.

In proceeding arising within the Puerto Rico Sales Tax Financing Corporation's (COFINA) debt adjustment case under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to section of COFINA's confirmed plan of adjustment requiring court to determine if monies had to be withheld from distribution to COFINA bondholder to cover legal fees and expenses that indenture trustee for COFINA bonds might incur in bondholder's litigation against it, the court declined to allow further cross-examination of declarants whose declarations had been submitted in support of trustee; bondholder had submitted declarants' depositions which presumably indicated the cross-examination that it would have pursued at hearing, any cross-

examination clearly would focus on proper amount of holdback, and, absent a showing that any facts not now before the court would be elicited, further cross-examination would delay proceedings for no purpose and harm plan beneficiaries.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, COFINA was required to indemnify trustee for fees and expenses incurred in connection with bondholder's litigation against it, unless it was found to have engaged in gross negligence or willful misconduct, and such fees and expenses could be held back from any distributions to bondholder; under Resolution, COFINA had obligation to indemnify trustee for its litigation fees and expenses, trustee had charging lien on COFINA funds to protect its right to payment, and trustee's lien was prior to that of bondholders or other plan beneficiaries, and plan mandated holdback before any distributions to bondholder.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, trustee would be authorized to withhold \$20 million from funds otherwise payable under plan of adjustment to bondholder, in order to satisfy potential litigation fees and expenses that might be incurred by trustee in connection with litigation by bondholder concerning trustee's performance of its duties; such holdback was reasonably necessary to cover trustee's reasonably anticipated litigation expenses, but was not so high as to ensure coverage of every conceivable litigation expense.

In debt adjustment case of the Puerto Rico Sales Tax Financing Corporation (COFINA) under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), where, pursuant to COFINA's confirmed plan of adjustment and the Amended and Restated Sales Tax Revenue Bond Resolution which defined relationship between COFINA bondholder and indenture trustee for COFINA bonds, trustee would be authorized to withhold \$20 million from funds otherwise payable under plan of adjustment to bondholder, in order to satisfy potential litigation fees and expenses incurred in connection with litigation by bondholder concerning trustee's performance of its duties, trustee was entitled to current payment of its reasonable fees and expenses, and did not have to await a final judgment on the merits; Resolution provided that trustee had right to payment "from time to time," and that trustee would not be required to expend any of its own funds in the execution of its duties.