

Bond Case Briefs

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BONDS - ARKANSAS

Williams v. Bank of Ozarks as Trustee for Registered Owners of \$4,400,000 Benton County Property Owners' Improvement District No. 7 Special Assessment Bonds

Court of Appeals of Arkansas, Division II - May 22, 2019 - 2019 Ark. App. 281 - 577 S.W.3d 434

Bank, as trustee for holders of special-assessment bonds issued to fund the construction of infrastructure improvements for residential subdivision, brought suit for breach of contract against guarantors of the bonds, alleging that guarantors had breached their guaranty agreements.

The Circuit Court granted bank's motion for summary judgment and denied guarantors' counter-motion for summary judgment. Guarantors appealed.

The Court of Appeals held that:

- Parol evidence rule prohibited consideration of extrinsic evidence of tax order and pledge-and-mortgage agreement;
- Bank's failure to collect special assessment tax did not constitute a material alteration that relieved guarantors of liability under guaranty agreements; and
- Guarantors waived any defense based on impairment of collateral.

Guaranty agreements under which guarantors guaranteed the principal and interest due on special-assessment bonds issued by property owners' improvement district to fund construction of infrastructure improvements for residential subdivision unambiguously imposed an absolute and unconditional obligation on guarantors, and thus parol evidence rule prohibited court from considering extrinsic evidence of district's tax order and district's pledge-and-mortgage agreement with bank as trustee for bondholders, when considering whether bank's alleged failure to collect special tax after the bonds had matured was a material alteration and impairment of collateral that released guarantors from liability.

Alleged failure of bank, as trustee for bondholders, to collect special-assessment taxes, after the special-assessment bonds issued by property owners' improvement district to fund infrastructure improvements for residential subdivision had matured, did not constitute a material alteration that relieved guarantors from liability under guaranty agreements, under which guarantors had guaranteed payment of the principal and interest due on the bonds; the guaranty agreements were absolute and unconditional, such that liability of guarantors became fixed upon default, and under the guaranty agreements, bank did not assume any responsibility for collection of the special tax.

Guarantors of delinquent bonds issued to fund the construction of infrastructure improvements for residential subdivision failed to preserve for appellate review their claim that, pursuant to choice-of-law provisions in the guaranty agreements, bank was obligated under state law to pay special-assessment tax associated with the underlying properties, although guarantors raised argument based on state's law in response to bank's motion for summary judgment in bank's action for breach

of guaranty agreements, where trial court relied on other grounds in entering summary judgment, and guarantors did not obtain ruling on their state-law argument.

Guarantors of delinquent special-assessment bonds waived any defense based on impairment of collateral arising from bank's alleged failure to collect the special-assessment tax collateral securing the debt obligation they guaranteed, in a breach-of-contract action brought by bank, as trustee for bondholders, to enforce guaranty agreements; guaranty agreements contained a term providing any omission by bank did not affect liability of guarantors, guarantors' obligations were absolute and unconditional, and guaranty agreements stated that bank "assumed no responsibility whatsoever" for collecting "any of the special tax."