

Bond Case Briefs

Municipal Finance Law Since 1971

BONDS - NEW JERSEY

The Bondholder Committee on Behalf of the Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A v. Sauk Valley Student Housing, LLC

United States District Court, D. New Jersey - October 9, 2020 - Slip Copy - 2020 WL 5995617

Plaintiff bondholders filed suit alleging that Indenture Trustee BOK Financial (BOKF) breached its contract with and fiduciary duties to bondholders by failing to take necessary actions to secure payment on the bonds and failing to obtain required financial disclosures from the legal entities controlling the underlying student housing project.

Bondholders also brought claims against BMOC, a company that both manages and provides residential life services to student housing facilities. Bondholders alleged that BMOC contributed to three misleading documents that were ultimately incorporated into the materials used to market the bonds.

BOKF moved to dismiss.

The District Court held that:

- Bondholders failed to state a Section 10(b) or Rule 10(b)-5 claim against BMOC for misstatements and omissions because they did not establish that BMOC was the “maker” of the allegedly fraudulent information contained in the Preliminary Statement and the final Official Statement upon which bondholders relied.
- Bondholders Section 10(b) and Rule 10(b)-5 claims failed because they did not adequately plead that BMOC had a duty to disclose material information to the bondholders.
- Because the Court dismissed plaintiffs’ Section 10(b) and Rule 10(b)-5 claim against BMOC, the Court declined supplemental jurisdiction over plaintiffs’ remaining non-federal law claims against BMOC, including those alleging breach of fiduciary duty, fraud, violation of the New Jersey Uniform Securities Act, breach of covenant of good faith and fair dealing, promise causing detrimental reliance, unjust enrichment, piercing the corporate veil, civil conspiracy, and the NJCFA claims.
- The New Jersey federal court did not have jurisdiction over BOKF – a national banking association with its principal place of business in Tulsa, Oklahoma. Although plaintiffs alleged that BOKF knowingly directed notices to bondholders in New Jersey through EMMA, the Court held that BOKF’s posting of information to EMMA — a free, publicly accessible website — would not, without more, provide the Court with personal jurisdiction.

