

# **Bond Case Briefs**

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## **LOAN GUARANTY - KANSAS**

### **Farmers Bank & Trust v. Homestead Community Development**

**Court of Appeals of Kansas - October 2, 2020 - 476 P.3d 1**

Bank brought action against city for breach of guaranty, fraud, and negligent misrepresentation, based on city's failure to render payment to bank pursuant to their guaranty agreement after community development group defaulted on its loan.

The District Court granted summary judgment in favor of city. Bank appealed.

The Court of Appeals held that:

- Issue of whether city had undesignated funds in excess of the guaranty was irrelevant in determining whether the Cash-Basis Law and the Budget Law rendered the guaranty void;
- City finance director's deposition testimony did not warrant disregarding of her affidavit;
- City's payments to community development group did not ratify the guaranty;
- Fact that the guaranty was contingent on group's default was irrelevant in determining whether the guaranty was void;
- The guaranty was void on its face;
- Notice of bank's tort claims to city attorney did not constitute substantial compliance with statutory notice requirements; and
- Mayor, city clerk, and city attorney acted within scope of employment in executing guaranty.

Issue of whether city had undesignated funds on hand in excess of the amount of guaranty which bank executed with city was irrelevant in determining whether the Cash-Basis Law and the Budget Law precluded city from paying the guaranty, for purposes of bank's action for breach of guaranty, fraud, and negligent misrepresentation; the Cash-Basis Law precluded payment by city unless it had enough funds available in its treasury to do so and such funds had been designated to pay the guaranty, and the Budget Law, which had to be construed together with cash-basis statute, required city to appropriate funds for its expenditures.

City finance director's deposition testimony that she did not reach out to prior city employees regarding guaranty which city executed with bank and was not involved in investigations regarding bank's suit against city for payment did not warrant disregarding of director's summary judgment affidavit averring that city never budgeted or appropriated any funds to pay guaranty, as to preclude city from paying the guaranty under the Cash-Basis Law and the Budget Law.

City's payments to community development group did not ratify city's guaranty with bank, which was void due to city's failure to establish and maintain separate funds for payment of guaranty as required by the Cash-Basis Law and the Budget Law, and thus city was not obligated to pay the guaranty after group defaulted on its loan.

Bank, which contracted with city for a loan guaranty on behalf of community development group, was bound at its peril to check city's budget and accounts to verify that city had appropriated

necessary funds to pay the guaranty, and thus city's failure to allocate such funds precluded city from having to pay the guaranty pursuant to the Cash-Basis Law and the Budget Law; financial institutions transacting business with municipalities in the state typically asked for annual budgets and audits to verify that municipalities had appropriated necessary funds to pay debt obligations but bank never asked for such verifications.

Fact that guaranty which city executed with bank for loan to community development group was contingent on group's default was irrelevant in determining whether the guaranty was void pursuant to the Cash-Basis Law and the Budget Law, which together prohibited city from creating indebtedness without having funds on hand for that purpose.

City could not have amended its budget to appropriate funds each time it had to make a payment on guaranty executed with bank for a loan to community development group, and thus the guaranty was void on its face pursuant to the Cash-Basis Law and the Budget Law, which together prohibited city from creating an indebtedness without having funds on hand for that purpose; amendment would only have been allowed if guaranty had contained a stipulation that it was conditioned on future appropriations but guaranty had no such conditions.

Bank's notice to city attorney of its fraud and negligent misrepresentation claims against city for failure to pay a loan guaranty did not constitute substantial compliance with statutory notice requirements for tort claims against municipalities, and thus the statute precluded bank's claims; city did not designate city attorney to receive notice of tort claims, and, even if city had done so, it could not have waived statutory requirement of notice to the city clerk or city's governing body.

Issue of whether city clerk or city's governing body received all of the correspondence regarding city's loan guaranty with bank was irrelevant in determining whether bank substantially complied with statutory notice requirements for its fraud and negligent misrepresentation claims against city; statute required that notice of claims be served on city clerk or city's governing body but bank only served notice to city attorney.

No evidence supported bank's claim that mayor, city clerk, or city attorney were motivated by a personal purpose in executing guaranty between city and bank for a loan to community development group, and thus these officials acted foreseeably within scope of employment even though they lacked express authority to execute guaranty, thereby obligating bank to comply with statutory notice requirements for its fraud and negligent misrepresentation claims against city under the Tort Claims Act.

The Court of Appeals was not obligated to consider bank's argument that city employees could have been sued in their individual capacities under the Tort Claims Act for city's alleged breach of loan guaranty agreement, even if said employees were acting within the scope of employment, where bank abandoned its argument by failing to cite any supporting authority, on appeal from grant of summary judgment in favor of city.