

Bond Case Briefs

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BONDS - MINNESOTA

Matter of Trusteeship under Indenture of Trust, dated as of September 1, 1996.

Court of Appeals of Minnesota - April 19, 2021 - Not Reported in N.W. Rptr. - 2021 WL 1522479

City Industrial Development Agency (the IDA) is the fee owner of a property (the Facility). The IDA issued industrial development revenue bonds (the Bonds) in the amount of \$5.7 million to finance the Gemma Development Company's acquisition and renovation of the Facility. The Bonds were payable from, and secured by, funds generated by the Facility. The Bonds had a maturity date of March 20, 2018.

The IDA created a trust (the Trust) via an indenture of trust (the Indenture) dated September 1, 1996, for the purpose of receiving funds and paying the Bonds. Wells Fargo Bank, National Association (Trustee), is the successor trustee of the Trust. In a concurrent lease agreement (the Lease) dated September 1, 1996, the IDA leased the Facility to Gemma. The Lease required Gemma to "pay or cause to be paid basic rent for the Facility on or before each monthly Bond Payment Date directly to the Trustee, in an amount equal to the Debt Service Payment becoming due and payable on the Bond on such Bond Payment Date." Gemma then sublet the Facility to the County via a sublease agreement (the Sublease). Pursuant to an assignment of rents, rent under the Sublease was payable "directly from Sublessee [Orange County] to the Trustee."

In 2006, Gemma received a loan from respondent M&T Bank Corporation in exchange for a mortgage on the Facility and an assignment of rents and leases. Gemma defaulted on loan payments, and in 2008, M&T initiated foreclosure proceedings. In 2010, Gemma abandoned the Facility, but Orange County continued making monthly rent payments directly to the Trustee.

The Bonds matured and the Lease terminated by its terms on March 20, 2018. The Trustee paid the Bondholders. On April 30, 2019, the Trustee filed a petition in district court pursuant to what is now Minn. Stat. § 501C.0202(24) (2020) seeking an order directing the Trustee's distribution of \$351,507.37 in remaining funds.

On September 30, 2019, the Trustee filed an amended petition regarding the disposition of the reduced net remaining balance of \$325,935.19. The IDA and M&T filed separate objections and claimed the right to disbursement of the net remaining balance. M&T claimed it was entitled to the funds based on its mortgage and assignment of rents with Gemma. The IDA meanwhile argued that, because the net remaining balance was generated by Orange County's rent payments, the IDA was entitled to the funds.

On April 24, 2020, the district court issued its order for the distribution of the net remaining balance. The district court concluded that the Trustee was entitled to its fees and expenses and that neither M&T nor the IDA were entitled to the net remaining balance.

The IDA argued that it was Gemma's successor because Gemma abandoned the property without

consummating the purchase of the Facility, thereby surrendering its rights under the Lease and any interest in the net remaining balance to the IDA.

The district court denied the IDA's motion. It explained that "[t]he terms successors and assigns are commonly used in the context of corporate mergers and acquisitions transactions or transactions involving the sale of the assets of an entity." It reasoned that, in the context of the Bond Documents, the phrase referred "to the circumstances of a transaction involving the sale of Gemma or the sale of Gemma's assets [T]he parties agree Gemma is a corporation that has not been dissolved and Gemma's assets have not been sold. Thus, the IDA is not Gemma's successor or assign." The district court likewise concluded that the IDA was not Gemma's successor in interest. It explained that the term meant "[s]omeone who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." The district court concluded that, because Gemma's right to the net remaining balance was not premised on its ownership of the Facility, the IDA's fee-theory asserted a different right.

An appeal followed.

The Court of Appeals began its analysis by stating that, "The district court concluded that Gemma was entitled to the net remaining balance pursuant to the clear language of the Indenture and Lease and because the IDA was not Gemma's successor. The IDA acknowledges that the Indenture and Lease identify 'Gemma ... and its successors and assigns' as the 'Company' entitled to the net remaining balance. But the IDA argues that it became Gemma's successor upon either Gemma's abandonment of the Facility in 2010 or upon the expiration of the Lease in 2018."

"Additionally, neither the Indenture nor the Lease conditioned Gemma's entitlement to the net remaining balance on either: (1) the nonexistence of any event of default, or (2) Gemma's ongoing occupancy of the Facility. Instead, the only preconditions to the disbursement of the net remaining balance were the payments of the Bonds, fees, charges, and expenses."

"Because we conclude that the district court properly read the relevant provisions of the documents, and because the district court's decision was consistent with its reading of those documents, we discern no abuse of discretion by the district court and affirm the order instructing the Trustee regarding the distribution of the net remaining balance."