

Bond Case Briefs

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In re Atrium of Racine, Inc.

Court of Appeals of Wisconsin - July 30, 2021 - Slip Copy - 2021 WL 3235321 (Table) - 2021 WI App 63

When the Atrium, a seventy-six-unit senior housing facility, went into receivership in May 2017, it owed its residents \$7,487,000 for entrance fees, deposit fees and trust funds that the residents had paid at the inception of their residency at the Atrium (the Residents). It also owed \$6,097,000 to some 800 individual bondholders who had invested in the Atrium by purchasing bonds (the Bondholders).

The circuit court concluded that the Bondholders had priority over the rights of the Residents to the remaining assets of the Atrium.

Residents appealed.

The Court of Appeals reversed and remanded, holding that the Residents' entrance fees and security deposits had priority over the interests of the Bondholders.

The Bondholders were advised via the Prospectus and Project Contract that the entrance fees were "refundable resident deposits" that qualified as "Permitted Liens." The definition of entrance fees was contained in both the Project Contract and the Prospectus, which defined them as: "The fees, other than monthly service charges, paid by residents of a Facility to the [Obligor/Corporation] for the purpose of obtaining the right to reside in a Facility, including any refundable resident deposits described in any lease or similar residency agreements"

"We need not create a constructive trust in this action as neither party has been unjustly enriched. The sole question before us is whether the Residents or the Bondholders have the superior right to the assets being held in the receivership. We conclude the entrance fees and security deposits paid by the Residents in this case are superior in priority to the Bondholders' claims. The Bondholders were aware from the Prospectus and Project Contract that the entrance fees constituted permitted liens and had priority over their claims when they purchased their bonds. It would be disingenuous to now assert that these provisions indicating that the entrance fees were permitted liens are meaningless. Thus, the rights of the Residents to their entrance fees and security deposits are superior to the Bondholders' rights to the Atrium's assets, and as such, the circuit court erred as a matter of law in its order that the Bondholders have priority over the entrance fees and security deposits owned by the Residents."

"We hold that (1) the Residents and the Atrium contracted as landlord and tenant, (2) their contracts were rental agreements within the meaning of the law, (3) the entrance fees (and security deposits) were security deposits within the meaning of the law, and (4) the circuit court erred in giving the Bondholders a priority security interest over the Residents' entrance fees and security deposits."

