

Bond Case Briefs

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Vandercar, LLC v. Port of Greater Cincinnati Development Authority

Court of Appeals of Ohio, First District, Hamilton County - September 9, 2022 - N.E.3d - 2022 WL 4112705 - 2022-Ohio-3148

In 2019, Developer entered into a \$36 million purchase contract for the purchase of the Millennium Hotel in downtown Cincinnati in order to facilitate the redevelopment of the hotel. Developer later assigned its interest in the contract to the Port of Greater Cincinnati Development Authority under an Agreement Regarding Assignment ("the Agreement") in exchange for two potential fees totaling \$7.5 million.

Under the purchase and sale agreement, the Port was obligated to pay Developer a \$2.5 million "Developer Fee" upon the closing of the transaction. In the event that the Port issued the "Redevelopment Bonds" within one year of the closing of the sale, it was obligated to pay Developer an additional \$5 million.

On February 13, 2020, the Port issued revenue bonds in the amount of \$52 million. On February 14, 2020, the Port closed on its acquisition of the real property and paid Developer its \$2.5 million Development Fee.

Developer subsequently submitted an invoice for the remaining \$5 million, Developer asserted that the revenue bonds were issued for purposes other than simply property acquisition and were thus Redevelopment Bonds issued within one year of closing, which triggered the Port's obligation to pay the Redevelopment Fee. Developer claimed that the \$52 million of revenue bonds consisted of both Property Acquisition Bonds and Redevelopment Bonds.

The Port argued that the revenue bonds consisted only of Property Acquisition Bonds, and that it was not obligated to pay the Redevelopment Fee because it did not issue Redevelopment Bonds to construct a new hotel.

The Agreement did not define "acquisition" or "redevelopment," and defined "Property Acquisition Bonds" only as bonds issued to acquire the Real Property and "Redevelopment Bonds" as those issued for redevelopment of the Real Property.

The Court of Appeals held that:

- The \$52 million issuance of revenue bonds constituted both Property Acquisition Bonds and Redevelopment Bonds, triggering the Port's obligation to pay Developer's \$5 million Redevelopment Fee.
- Remand was necessary to determine if the Port acted in bad faith, as the basis for an award of attorneys' fees as costs.
- Developer was not entitled to the payment of prejudgment interest, as the Port was an arm or instrumentality of the state.

