

# **Bond Case Briefs**

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## **BONDS - WISCONSIN**

### **In re Atrium of Racine, Inc.**

**Supreme Court of Wisconsin - March 16, 2023 - N.W.2d - 2023 WL 2530355 - 2023 WI 19**

Residents of senior-living facility that had gone into receivership after defaulting on debt-service payments objected to receiver's motion to authorize sale of facility and also sought an order that would reiterate and state finality for purposes of appeal a prior order that declared that bondholders' mortgage lien was superior to residents' claim under their residency agreements that they were entitled to reimbursement of their entrance fees.

The Circuit Court entered order authorizing the sale while also granting residents' motion for a reiteration of the prior order. Residents appealed both the sale order and the order reiterating the prior order, and the appeals were consolidated. The Court of Appeals reversed and remanded. Bondholders and receiver petitioned for review.

The Supreme Court held that:

- Bond underwriter's "official statement" could not be a basis for finding that bondholders subordinated mortgage to residents' claims for entrance fees, and
- Finance documents concerning issuance of bonds and corresponding mortgage lien did not provide that bondholders subordinated mortgage to residents' claims for entrance fees.

Bond underwriter's "official statement" concerning issuance of bonds and corresponding mortgage lien on senior-living facility could not be basis for finding that bondholders subordinated mortgage to residents' claims to have entrance fees reimbursed pursuant to their residency agreements; although residents' claims to entrance fees were among liens permitted under "official statement," which stated that mortgage lien was subject to permitted liens, "official statement" was not agreement at all but rather government-required notice to investors about investment risks.

Financing documents concerning issuance of bonds and corresponding mortgage lien on senior-living facility did not provide that bondholders subordinated mortgage to residents' claims to have entrance fees reimbursed pursuant to their residency agreements; documents merely contemplated that mortgage could be subordinated to other liens, and entrance fees were nothing more than unsecured, contingent liabilities and were not liens.

Senior-living facility residents did not properly develop argument challenging court of appeals' decision holding that receiver, who had been appointed when facility defaulted on debt-service payments, did not violate his fiduciary duties to residents when he moved circuit court to issue order on priority concerning bondholders' mortgage lien and residents' claim to reimbursement of entrance fees, and thus supreme court would not address argument; residents did not engage in any detailed analysis to support argument and did not request any remedy.

"Under Wis. Stat. § 128.17, the bondholders' Mortgage lien has priority over the residents' entrance fee claims. No provision of the Financing Documents subordinates the bondholders' lien, and Episcopal Homes does not extend to the proceeds from the sale of real property with a properly

perfected mortgage lien. The bondholders are therefore entitled to first payment from the proceeds of the sale of the Atrium's assets."