

Bond Case Briefs

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BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - March 22, 2023 - B.R. - 2023 WL 2589708

Financial Oversight and Management Board for Puerto Rico brought adversary proceeding to disallow bondholders' proofs of claim for amounts due pursuant to trust agreement with Puerto Rico Electric Power Authority (PREPA). Bondholders counterclaimed for declaratory judgment. Numerous entities were allowed to intervene. Parties moved for summary judgment.

The District Court held that:

- Adversary proceeding was ripe for adjudication;
- Resolutions for bonds issued by PREPA gave bondholders security interests under trust agreement only in moneys actually received and deposited into fund created by trust agreement and subjected to lien and charge for payment on bonds (sinking fund) and funds explicitly made subject to liens by terms of trust agreement, subject to perfection of those liens, limiting bondholders' recovery under proofs of claim for amounts due;
- PREPA did not use authority to grant security interest in future revenues when it issued bonds, and therefore bondholders did not have security interest in future revenues not yet received for energy not yet generated;
- PREPA bondholders had perfected liens in sinking fund to extent that deposit accounts comprising funds were in control of trustee for bondholders;
- Factual issue as to whether bondholders had perfected liens on construction fund or capital improvement fund precluded summary judgment on issue of whether Oversight Board could avoid for benefit of PREPA any unperfected security interests of PREPA's bondholders;
- PREPA bond claim had to be disallowed to extent it asserted security interest, perfected or otherwise, in moneys beyond those actually deposited into sinking fund as of time of discharge, if and when PREPA plan of adjustment was confirmed; and
- PREPA bondholders had unsecured net revenue claim arising from covenants of trust agreement to pay bond principal and interest from pledged net revenues of system, which was partially secured by moneys in sinking fund, and otherwise was unsecured, and remedies provisions of trust agreement provided bondholders with ability to obtain relief against PREPA.