

Bond Case Briefs

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BOND DOCUMENTS - ILLINOIS

UIRC-GSA Holdings, LLC v. William Blair & Company, L.L.C.

United States Court of Appeals, Seventh Circuit - January 12, 2024 - F.4th - 2024 WL 139270

Issuer of revenue bonds that retained investment bank as adviser for bond transactions brought claim for copyright infringement against another client of investment bank, relating to bond documents used in bond offerings by entity formed by other client.

After issuer and other client settled, issuer filed amended complaint asserting claims against investment bank for copyright infringement and professional negligence. Investment bank brought third-party claims against other client and its bond-issuing entity for indemnification and contribution.

The United States District Court for the Northern District of Illinois granted summary judgment for investment bank and its motion for attorney fees. Issuer appealed.

The Court of Appeals held that:

Issuer's trivial variation to copied indenture trust was not copyrightable;

- Mixture of fragmented phrases, facts, and language dictated solely by functional considerations lacked creative expression required for copyright protection;
- Re-sequencing paragraphs from copied indenture of trust, and thereby creating different order that mattered, was not creative expression; and
- District court did not abuse its discretion in awarding attorney fees to investment bank.

Nine substitutions of "Project" for "Properties" from copied indenture of trust, change from "Borrower" to "Issuer," and new clause reading "and initial funding of reserves for the Bonds" were trivial variation by issuer of revenue bonds that were not copyrightable, for purpose of infringement claim against investment bank.

Facts, fragmented phrases, and language dictated solely by functional considerations that were added by issuer of revenue bonds to copied indenture of trust lacked creative expression required for copyright protection, for purpose of infringement claim against investment bank.

Replacing language in copied indenture of trust with "Mortgage," "Assignment of Lease," and "Collateral Assignment of Rents" in list of legal documents, and adding phrase "the Loan Agreement obligates the Borrower to (and the Issuer shall cause the Borrower to)" by issuer of revenue bonds lacked creative expression required for copyright protection, for purpose of infringement claim against investment bank.

Re-sequencing paragraphs from copied indenture of trust, though material change, was not creative expression by issuer of revenue bonds, for purpose of copyright infringement claim against investment bank; even if issuer chose its language carefully, its choices were driven by convenience

and function, not creativity, because issuer did not include any expressive elaborations, but instead chose to present its idea to potential investors with formal technicality common to bond documents, which were, at their foundation, bare bones descriptions of offering and terms and conditions.

District court did not abuse its discretion in awarding attorney fees to defendant investment bank under Copyright Act, after entering summary judgment in its favor in infringement action brought by issuer of revenue bonds; although court assumed that issuer brought action with proper motive, court held that issuer failed to rebut presumption in favor of bank on frivolousness, court sided with bank on objective unreasonableness of claim on basis that issuer's decision to not be forthcoming about copied documents, either earlier in litigation or before Copyright Office, was problematic, and award would advance considerations of compensation and deterrence because of issuer's failure to disclose.