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River Creek Development Corporation and City of Hutto, Texas v. Preston Hollow Capital, LLC

Court of Appeals of Texas, Austin - August 22, 2024 - Not Reported in S.W. Rptr. - 2024 WL 3892448

River Creek Development Corporation (River Creek) and the City of Hutto, Texas (the City), appealed from the trial court's final judgment rendered in favor of Preston Hollow Capital, LLC; 79 HCD Development, LLC; Public Finance Authority; and U.S. Bank National Association. The judgment granted the parties' respective summary-judgment motions and awarded each of them attorney's fees and costs.

In June 2018, the City passed a resolution authorizing creation of a Public Improvement District (the PID) to undertake and finance public improvements for the benefit of property within the PID. The PID's 2018 Service and Assessment Plan identified the initial improvements at a cost of $17.4 million.

In September 2018, the City passed a resolution authorizing the creation of River Creek, a local government corporation, to "assist with the financing" of the PID development pursuant to Tex. Transp. Code § 431.101.

In December 2018, the City, River Creek, and other parties executed a series of agreements to secure the development and financing of the PID. Among the parties in some of those agreements is appellee Public Finance Authority (PFA), a Wisconsin-based governmental entity. Rather than issue the bonds themselves, the City and River Creek chose to structure the transaction using PFA as a conduit issuer of the bonds to avoid potential liability and reduce financial risk.

Following a series of internal governmental disruptions, River Creek and the City brought this action for declaratory relief.

They sought the following declarations:

1. An "installment sales contract" described by the interlocal agreement provides "insufficient legal authority for all stated installment payments due under such a contract to be authorized costs of improvements under the PID Act";
2. The bonds were not issued in strict compliance with the PID Act and applicable state law;
3. Transportation Code Section 431.006 limits the applicability of the general authority of Chapter 22, Business Organizations Code, because of the express statutory requirement in Section 431.071 that "notes" be submitted to the attorney general or the express statutory statement in Section 431.108 that the operations of a local government corporation are governmental; and
4. Government Code Section requires all promissory notes issued by a Chapter 431 corporation or a local government corporation be submitted to the attorney general for examination.

Preston Hollow answered and filed a counterclaim seeking a declaratory judgment that:

1. The loan agreement and promissory note are valid and enforceable,
2. The bonds did not need to be submitted to the AG for review and approval, and
3. The City and River Creek lawfully entered the interlocal agreement.

The Court of Appeals held that:

1. The loan agreement was valid and enforceable;
2. The promissory note is valid and enforceable;
3. The bonds issued by PFA did not need to be submitted to the AG for approval; and
4. The City and River Creek lawfully entered into the interlocal agreement, including its provisions requiring the City to make payments from its levied assessments to River Creek to secure River Creek's issuance of indebtedness to finance the improvements.

"We conclude that the legislature's silence on the consequences of failure to obtain AG approval, its failure to expressly condition the validity and enforceability of a Section 431.070 bond or note on AG approval, and its express requirement that a corporation merely "submit" the subject instrument "for examination" (as opposed to, e.g., "obtain AG approval") are dispositive and support the trial court's challenged first and second declarations."

"The 'indebtedness' that River Creek issued to PFA via the promissory note and loan agreement—including any 'costs of issuance,' such as transaction-financing costs or bond-issuance fees, that River Creek undertook as part of that indebtedness—falls under Section 372.026(f), and River Creek is entitled to recoupment of such costs through the interlocal agreement."

"We hold that Section 372.026 expressly authorizes the interlocal agreement to require the City to make payments from its assessments to River Creek to secure its costs of issuing debt to PFA and thus that the interlocal agreement is not void as appellants contend."

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