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Barrett Law Bonds-Prepaid Assessments

RECENT CASE NOTES

BARRETT LAW BONDS—PREPAID ASSESSMENTS.—Action was instituted to enjoin the payment of Barrett Law Bonds as contemplated by the Treasurer of South Bend. The City Treasurer filed a cross-complaint for the determination of the rights, duties, and liabilities of the persons interested. Many property owners had prepaid their instalments in order to free their property from the assessment liens. This appeal involved the question of the city's relation to the bondholders and property owners and liabilities for the funds so collected but no longer available. Held: the city was not strictly a trustee for either the bondholders or the property owners; and although not primarily liable for the bonds originally, it was primarily liable for the full amount of the assessments actually paid in. *Read v. Beczkiewicz* (Ind. 1939), 18 N. E. (2d) 789, opinion modified on rehearing 19 N. E. (2d) 465.

The relationship created by the Barrett Law between the city, bondholders, and property owners has been seldom analyzed. In the few cases where this relationship has been considered, the question was either (1) whether the bonds created liability of the city within the meaning of constitutional debt limitations, or (2) whether the city would be liable to the bondholders if the assessments were not collected after they had been levied. On the first question, it has been held that the liability is not a primary liability of the city, and so without the debt limitation.[1] On the second question, it has been held that since the bondholders have been given the power to bring an action in their own names to foreclose the liens on the property and collect the money, the city is not liable if the money is not collected even where by the negligence of the city there are defenses available to the property owner due to the statute of limitations and the like.[2] In most of these cases as well as in the statute there is language which could be construed as holding the city a trustee of the fund for payment of the bonds but in none is there a direct holding on this point.[3]

However, there are cases in which, through the absconding of the agents of the city with the funds, liability has been placed upon the city.[4] The real

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1 Quill v. City of Indianapolis (1890), 124 Ind. 292, 23 N. E. 788; Porter v. City of Tipton (1895), 141 Ind. 347, 40 N. E. 802; Wilson v. City of Aberdeen (1898), 19 Wash. 89, 52 P. 524; Robinson v. City of Valparaiso (1894), 136 Ind. 616, 36 N. E. 644; Dowell v. The Talbot Paving Co. (1894), 138 Ind. 675, 38 N. E. 389; The City of Huntington v. Force (1898), 152 Ind. 368, 53 N. E. 443; Spidell v. Johnson (1890), 128 Ind. 235, 25 N. E. 889.

2 Northwestern Lumber Co. v. City of Aberdeen (1900), 22 Wash. 404, 60 P. 1115; Porter v. City of Tipton (1895), 141 Ind. 347, 40 N. E. 802; Wayne County Savings Bank v. The Gas City Land Co. (1901), 156 Ind. 662, 59 N. E. 1048.

3 Vickrey v. City of Sioux City (1900), 104 F. 164; Farson v. City of Sioux City (1901), 106 F. 278.

4 City of Bloomington v. Citizens National Bank (1914), 56 Ind. App. 446, 105 N. E. 575; Indiana Bond Co. v. Bruce (1895), 13 Ind. App. 550, 41 N. E.

question under consideration is thus the relationship of the city towards both parties. The assessment, like any tax, is made against the property owner and creates a liability in favor of the city and a lien against the property. The property owner in seeking to use the deferred payment plan waives all defects in the method and procedure in the assessment and promises to pay the assessment to the city, thus becoming personally liable for the money.[5] There is no agreement to pay the bondholders by the property owner and there is thus created a relationship of debtor-creditor between the city and the property owner. Hence the payment of the assessment to the city does not create any agency or trust in the city but merely discharges the debt of the property owner. Thus after payment of the assessment to the city according to the provisions of the statute the property owner can no longer be liable.[6]

In considering the relationship of the city to the bondholder both the statute and the face of the bond are helpful. On the face of the bond the city promises to pay a specific amount of money out of funds actually received by the city from assessments on the property owners for the improvement for which the bond was issued. This has not been held to be a primary liability for debt limitation purposes since it is payable out of money to be collected, and if none is collected the city is not liable.[7] However, the problem in the present case is the relationship after the money has actually been collected. If the statute and bond are to be interpreted as making the city a trustee for the collection and payment, then it is logical to say that the city has only to use due care in collecting and investing the money, and any loss without fault on the part of the city must fall on the bondholders. However, the converse would follow that the bondholders would be entitled to any profit made on the investment of the funds; and the bondholders would be entitled to all income from the investments. Neither of these results is consistent with the nature of the obligation. On the face of the bond, the city promises to pay a specific amount at specific interest. Thus, the bondholder cannot claim anything additional or be satisfied with anything less than the specific amount promised to him; and this right is contingent only on the amount being collected by the city. Once this contingency occurs, the liability of the city must change from secondary to primary, and from that point the relationship between city and bondholder is that of debtor and creditor. While the statute gives the right to a bondholder to force the city to assess, collect, or foreclose the lien in the name of the bondholders themselves, these rights can be regarded only as security rights, and not as transferring the debt to the bondholders by making the city agent or trustee for the bondholders.

958; City of Huntington v. Force (1898), 152 Ind. 368, 53 N. E. 443; Porter v. City of Tipton (1895), 141 Ind. 347, 40 N. E. 802.

[5] Wayne County Savings Bank v. The Gas City Land Co. (1901), 156 Ind. 662, 59 N. E. 1048; Quill v. City of Indianapolis (1890), 124 Ind. 292, 23 N. E. 788.

[6] Voris v. Anderson (1917), 30 Idaho 15, 166 P. 213; City of Bloomington v. Citizens National Bank (1914), 56 Ind. App. 446, 105 N. E. 575.

[7] Northwestern Lumber Co. v. City of Aberdeen (1900), 22 Wash. 404, 60 P. 1115; Porter v. City of Tipton (1895), 141 Ind. 347, 40 N. E. 802.

[8] Commissioner of Internal Revenue v. Carey Reed Co. (1939), 101 F. (2d) 602; Barber Asphalt Paving Co. v. City of Harrisburg (1894), 64 F. 283, 29 L. R. A. 401.

Furthermore, it has been held by the Federal courts that for purposes of taxation, the bonds of a city similar to this are actually obligations of the city, and interest payments are not to be taxed by the United States. It may be seen, therefore, that for purposes other than debt limitations, the bonds may be considered obligations of the city.

Thus the words in the statute implying in some way that the city is trustee for the bondholders are merely for the purpose of denying the city the right to use these funds for other than payment of the bonds for which they are collected and for segregation purposes in the city's duties, rather than in changing the relationship between the city, bondholders, and property owners. The court was clearly right in holding the city liable to the bondholders for all the money collected in by prepayments which the city had lost by poor investments and bank failures as well as the funds misappropriated to pay other bondholders.

W. E. B.