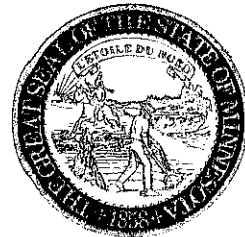


STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT



TERESA R. WARNER
JUDGE
RAMSEY COUNTY COURTHOUSE
SAINT PAUL, MN 55102

Monday, September 24, 2007

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Paul C. Thissen, Esq.
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Keith J. Broady, Esq., and
Phillip A. Cole, Esq.
Lommen, Abdo, Cole, King and Stageberg, P.A.
2000 IDS Center, 80 South 8th Street
Minneapolis, MN 55402

Re: **In re: Petition of the Port Authority of the City of St. Paul**
Court File No. C5-06-200031

Dear Mr. Knudson, Mr. Thissen, Mr. Garvey, Mr. Broady, and Mr. Cole:

Please find enclosed a copy of an Order in the above-referenced matter as a result of a hearing on September 14, 2007, before the Honorable Teresa R. Warner.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Serr".

Nathan Serr
Law Clerk to the
Honorable Teresa R. Warner

Enclosure

cc: Court file

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

In re a Petition for Instructions to
Construe Basic Resolution 876 of
The Port Authority of the City of
St. Paul.

Court File No.: C5-06-200031

ORDER

The above-entitled matter came on for hearing on September 14, 2007 before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 W. Kellogg Blvd., St. Paul, Minnesota, 55102, on Port Authority's Petition seeking approval of form of proposal to liquidate the 876 Fund; Port Authority's Motion for a Bond; and the Objecting Bondholders' Motion to Enforce Stay.

Scott G. Knudson, Esq. and Paul C. Thissen, Esq., Briggs and Morgan, P.A., 332 Minnesota Street, Suite 2200, St. Paul, MN 55101, and Terrence J. Garvey, Esq., Assistant City Attorney, 1900 Landmark Tower, 345 St. Peter Street, St. Paul, MN 55102 appeared on behalf of the Port Authority of the City of St. Paul.

Keith J. Broady, Esq., and Phillip A. Cole, Esq., Lommen, Abdo, Cole, King and Stageberg, P.A., 2000 IDS Center, 80 South 8th Street, Minneapolis, MN 55402, appeared on behalf of the Objecting Bondholders.

Based on the entire trial, record, exhibits, witness testimony and submissions of counsel,

IT IS HEREBY ORDERED THAT:

1. The Objecting Bondholders' Motion to Enforce Stay is **GRANTED**;

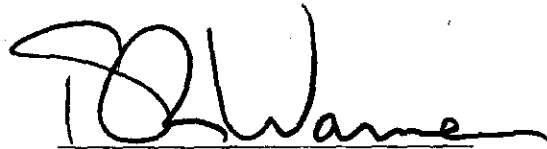
2. The Port Authority's Motion for a Bond is **DENIED**;
3. A determination on the Port Authority's Petition for Instructions is stayed pending resolution of the Objecting Bondholders' appeal of this Court's May 16, 2007 Order;
4. The attached Memorandum is incorporated herein and made part of this Order.

It is so Ordered.

By the Court:

Date:

September 24, 2007



Teresa R. Warner
Ramsey County District Court Judge

MEMORANDUM

The Port Authority of the City of St. Paul (“Port Authority”) is an economic development agency authorized by state law to undertake economic development activities in the City of St. Paul and the East Metro area. On February 14, 1974, the Port Authority adopted Basic Resolution No. 876, created a Common Revenue Bond Fund, and issued series of revenue bonds (“876 bonds”). On August 18, 2006, Port Authority filed an amended verified petition for instructions, wherein they sought to liquidate the 876 bond fund. A number of 876 bondholders objected to the Port Authority’s petition on various grounds, including lack of jurisdiction. For purposes of this Order, these bondholders are referred to as the “Objecting Bondholders.”

In a May 16, 2007 Order, this Court found that it had jurisdiction and granted the Port Authority’s petition. This Court also confirmed the Port Authority’s administration of the fund and ordered the Port Authority to return at a later date so this Court could review the form of the proposal the Port Authority intends to market to investors in liquidating the 876 bond fund.

On August 7, 2007, the Objecting Bondholders filed with the Minnesota Court of Appeals, a Notice of Appeal of the May 16, 2007 Order. This matter is presently before this Court on the Port Authority’s Petition seeking approval of form of proposal to liquidate the 876 Fund, Port Authority’s Motion for a Bond, and the Objecting Bondholders’ Motion to Enforce Stay. This Court will consider the Motion to Enforce Stay first as it necessarily affects the Port Authority’s Petition.

Motion to Enforce Stay

The Objecting Bondholders have appealed this Court's May 16, 2007 Order and have filed a \$500 bond as required by Minn.R.Civ.App.P. 107.01. The Objecting Bondholders object to this Court considering the Port Authority's Petition seeking approval of form of proposal to liquidate the 876 Fund, and argue that this matter is stayed under Minn.R.Civ.App.P. 108.01, titled Supersedeas Bond, which states in relevant part:

Subdivision 1. Effect of Appeal; Stay. ...the filing of a proper and timely appeal suspends that authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.

Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceedings in the trial court, but the appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve, in the cases provided in this rule, or as otherwise provided by rule or statute.

The following subdivisions of Rule 108.01 are relevant here:

Subd. 2. If the appeal is from an order, the condition of the bond shall be the payment of the costs of the appeal, the damages sustained by the respondent in consequence of the appeal, and the obedience to and satisfaction of the order or judgment which the appellate court may give if the order or any part of it is affirmed or if the appeal is dismissed.

Subd. 7. In cases not specified in subdivisions 2 to 6, filing the bond specified in Rule 107 shall stay proceedings in the trial court.

The Objecting Bondholders argue that Subd. 2 does not apply, therefore Subd. 7 applies and the \$500 bond executed in accordance with Rule 107.01 is sufficient to stay proceedings in this Court. In the alternative, the Objecting Bondholders argue that even

if this Court finds that Rule 108.01, subd. 2 is the appropriate provision for a stay, the Court should find the \$500 cost bond sufficient under Subd. 2 to stay the proceedings.

The Port Authority argues that the Objecting Bondholders' appeal falls under Rule 108.01, subd. 2, and that a supersedeas bond in the amount of \$19,500,000 is necessary to insure against a possible loss caused by the delay of the appeal.

The Objecting Bondholders have taken their appeal from this Court's May 16, 2007 Order, therefore Rule 108.01, Subd. 2 applies. A bond under Subd. 2, shall be for the payment of the costs of the appeal and the damages sustained by the respondent in consequence of the appeal.

It is undisputed that the appeal will delay the Port Authority's ability to proceed with the liquidation of the 876 fund. The Port Authority asserts that if its liquidation plan is delayed, the current market conditions could change and cause the proposed liquidation plan to fail, which could result in a loss of up to \$19,567,302.

The purpose of a supersedeas bond is to assure that, pending a resolution on appeal, the party that prevailed in the district court does not bear the economic risk of the appeal. *County of Blue Earth v. Wingen*, 684, N.W.2d 919, 923 (Minn.App.2004). It is unreasonable to require the Objecting Bondholders to post a supersedeas bond to protect against a possible loss of up to \$19,567,302. Any change to the current market conditions, and any resulting affect on the Port Authority's liquidation plan, is speculative. The Objecting Bondholders have a right to appeal. If they are unsuccessful, the Port Authority may then pursue a claim for damages, if any are sustained. The proper time for determining the damages sustained by the Port Authority as a result of a change

in the market conditions is after the appeal has been resolved, and any change in market conditions becomes known.

The Objecting Bondholders have posted a \$500 cost bond pursuant to Rule 107.01. This bond is sufficient to cover the payment of the costs of the appeal, and constitutes a supersedeas bond sufficient to stay this Court's May 16, 2007 Order and any enforcement proceedings.

Motion for a Bond

The Port Authority seeks an order requiring the Objecting Bondholders to post a surety bond under Minn. Stat. §469.044 or Minn. Stat. §562.02, which state in relevant part:

469.044 BOND PENDING LITIGATION. When any action...is commenced, drawing in question the right, power, or authority of a public corporation created and operating under sections 469.001 to 469.047 to do any act or to make or perform any contract or agreement or to undertake or enter upon the discharge of any obligations or commitments under those statutes, the corporation may...move the court in which the litigation is pending to require the party who instituted the suit to give a surety bond as provided in sections 469.045 to 469.047.

562.02 CIVIL ACTIONS AFFECTING A PUBLIC BODY; SURETY BOND REQUIRED OF PLAINTIFF. Whenever any action...is brought in any court in this state questioning...the validity of any action taken or proposed to be taken, by any public body or its officers or agents in the course of the authorization or sale, issuance or delivery of bonds [or] the making of a contract for public improvement...such public body may move the court for an order requiring the party, or parties, bringing such an action to file a surety bond as hereinafter set forth...If such surety bond is not filed within a reasonable time allowed therefor by the court, the action shall be dismissed with prejudice...

When an action is commenced that draws into question the right, power, or authority of a public corporation, Minn. Stat. §469.044 allows the public corporation to move the court in which litigation is pending for an order requiring a surety bond. The

only action commenced that arguably draws into question the right, power, or authority of a public corporation is the appeal. The appeal is not pending before this Court and this Court does not have jurisdiction to issue a surety bond under Minn. Stat. §469.044.

When an action is commenced that questions the validity of any action taken by a public body in the course of the authorization or sale, issuance or delivery of bonds or the making of a contract for public improvement, Minn. Stat. §562.02 allows the public body to move the court for an order requiring a surety bond. The only action commenced that arguably questions the validity of an action taken by a public body is the appeal. The appeal is not pending before this Court and this Court does not have jurisdiction to issue a surety bond under Minn. Stat. §562.02.

To the extent this Court has jurisdiction to issue a surety bond, it is declining to do so for the same reasons it declined to require an additional supersedeas bond under Minn.R.Civ.App.P. 108.

Port Authority's Petition seeking approval of form of proposal to liquidate the 876 Fund

The Port Authority's Petition is presently before this Court because, in the May 16, 2007 Order, this Court ordered the Port Authority to return at a later date so this Court could review the form of the proposal the Port Authority intends to market to investors in liquidating the 876 bond fund. The Objecting Bondholders have posted a \$500 bond that this Court has held sufficient to stay the May 16, 2007 Order. Because the Order requiring the Port Authority to bring its present Petition before this Court has been stayed, consideration of the Petition itself should also be stayed. Port Authority's Petition seeking approval of form of proposal to liquidate the 876 Fund is stayed pending resolution of the Objecting Bondholders' appeal of this Court's May 16, 2007 Order.

Recent Correspondence

This Court has recently received a number a letters from counsel in this matter regarding the Rexam/National Can building, and whether it has been properly classified and included in the Port Authority's liquidation proposal. This Court has stayed the Port Authority's Petition seeking approval of form of proposal to liquidate the 876 Fund pending resolution of the Objecting Bondholders' appeal of this Court's May 16, 2007 Order. Because the Petition has been stayed, this Court will not address the issues raised in counsel's letters. If issues regarding the Rexam/National Can building remain following the resolution of the Objecting Bondholders' appeal, this Court will address the issues at that time, provided a proper notice of motion and motion are filed.

TRW