

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

PLATTE COUNTY, MISSOURI,)
)
Plaintiff,)
)
v.)
)
UMB BANK, N.A., THE TRUSTEE OF)
THE TRANSPORTATION REFUNDING)
AND IMPROVEMENT BONDS)
(ZONA ROSA RETAIL PROJECT))
SERIES 2007,)
)
Defendant.)

Case No. 18AE-CC00379

FILED
MAY 30 2019
KIMBERLY K JOHNSON
Clerk of the Circuit Court Platte County, MO

ORDER AND JUDGMENT

Before the Court is the Motion for Summary Judgment filed by Plaintiff Platte County, Missouri, on its Petition for Declaratory Relief. At a duly-scheduled hearing, Platte County appeared through its counsel of record and Defendant UMB Bank, N.A., appeared through its counsel of record. There were no other appearances. After considering the parties' briefing and the arguments made by counsel at the hearing, the Court makes the following findings and conclusions.

1. In 2007, the Development Authority of Platte County, Missouri (the "Development Authority") issued bonds to finance the construction of garages within Zona Rosa (the "Zona Rosa Bonds"). The Development Authority is a distinct legal entity from Platte County. *State ex rel Jardon v. Industrial Dev. Auth. of Jasper Cnty*, 570 S.W.2d 666, 677 (Mo. banc 1978).

2. On October 1, 2007, the Development Authority entered into a Financing Agreement with two Transportation Districts to provide revenue for the Zona Rosa Bonds using a 1% sales tax in Zona Rosa. Platte County also entered into the Financing Agreement.

3. In its Petition, Platte County asks the Court to make certain declarations regarding the Financing Agreement. The Development Authority's interests in the Financing Agreement have been assigned to UMB Bank, which represents the holders of the Zona Rosa Bonds as Trustee.

4. The Court finds that the Financing Agreement is a fully integrated contract entered into between parties. It is to be construed in accordance with its express terms. RSMo. 432.070; *Gill Const, Inc. v. 18th & Vine Auth.*, 157 S.W.3d 669, 708 (Mo. App. 2004). The Court further finds that the declarations sought by Platte County involve legal issues that are appropriately resolved on summary judgment. *Webbe v. Keel*, 369 S.W.3d 755, 756 (Mo. App. 2012).

5. In Section 2.3 of the Financing Agreement, Platte County covenanted that, each year, the Platte County Auditor would include within its proposed budget a potential payment for the Zona Rosa Bonds. The Court finds that this is an express promise that is not illusory. *See Moschenross v. St. Louis Cnty*, 188 S.W.3d 13, 21 (Mo. App. 2006) (agreement was "to request annual appropriations for repayment of the bonds, subject to approval of the county council."). Accordingly, each year, the Auditor should include within its proposed budget a potential payment for the Zona Rosa Bonds.

6. There is no promise or requirement in the Financing Agreement that the County Commission must accept the Auditor's proposed budget and appropriate for a potential payment. To the contrary, Section 2.3 of the Financing Agreement recognizes that the County Commission may decide each year whether to appropriate or not to appropriate for a potential payment on the Zona Rosa Bonds. This is consistent with Missouri law. *Scroggs v. Kansas City*, 499 S.W.2d

500, 505 (Mo. 1973) (indicating that an agreement would be prohibited if “it requires continuing future appropriations . . .”).

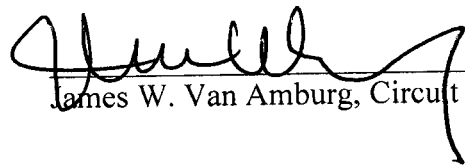
7. Similarly, there is no promise or requirement in the Financing Agreement for Platte County to make payment on the Zona Rosa Bonds. In fact, in Section 2.4, the Financing Agreement specifically states that it “shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the County . . . nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of County.” The Trustee has admitted that the bonds are not secured by the full faith and credit and taxing power of Platte County.

8. Because the Financing Agreement does not contain any promise by Platte County to appropriate or pay shortfalls for the Zona Rosa Bonds, voter approval for county indebtedness was not required under Article VI, Section 26(b) of the Missouri Constitution. *See Scroggs v. Kansas City*, 499 S.W.2d 500, 505 (Mo. 1973). For the same reason, there is no violation of RSMo. § 50.660 because there is no “contract . . . imposing any financial obligation” on Platte County. Lastly, there is no violation of RSMo. § 349.080 because, under the terms of the Financing Agreement, Platte County is not liable on the bonds issued by the Development Authority.

The Court makes the above declarations and orders summary judgment accordingly in favor of Platte County on its Petition.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED.

DATED May 30, 2019


James W. Van Amburg, Circuit Judge