2020 IL App (1st) 192030-U

FIFTH DIVISION
December 24, 2020

No. 1-19-2030

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

1400 WOLF ROAD, LLC, *et al.*,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 09 COTO 6092
	)	
MARIA PAPPAS, in her official capacity as Cook County Treasurer and *ex officio* Cook County Collector,	)	
	)	
Defendant-Appellee	)	
	)	
and	)	
	)	
BOARD OF EDUCATION OF COMMUNITY CONSOLIDATED SCHOOL DISTRICT 54,	)	
	)	Honorable Sharon Sullivan,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court did not err in granting partial summary judgment in favor of a school district and rejecting taxpayers' claims that the district's property tax levy for a working cash bond fund was illegal.

¶ 2 INTRODUCTION

¶ 3 Property taxpayers[1] filed a complaint against defendant-appellee Maria Pappas, in her official capacities as Cook County Treasurer and *ex officio* Collector, alleging that the portion of the *ad valorem* property tax levy imposed by intervening defendant-appellee, Community Consolidated School District No. 54 (the District), for a working cash fund, was illegal. The circuit court granted partial summary judgment to the District and upheld the validity of the tax levy. We affirm.

¶ 4 BACKGROUND

¶ 5 The following factual recitation is taken from the pleadings, exhibits, affidavits, and depositions of record. We set forth only those facts necessary for understanding our holding in this appeal.

¶ 6 On August 16, 2007, the District's Board of Education ("Board") adopted a resolution declaring its intent to issue working cash fund bonds. The same day, it issued an order calling for a public hearing to be held on September 20, stating that the Board would receive public comment on the District's intent to sell working cash fund bonds, and directing that notice of the public hearing be published and posted. The published notice appeared in a local newspaper on August 21. It stated that the District intended to issue bonds to increase its working cash fund in accordance with Article 20 of the School Code (105 ILCS 5/20-1 *et seq.* (West 2006)). The notice contained standard back-door referendum language advising that District voters could file a petition to force referendum approval of the bonds within 30 days of the notice. No such petitions were filed.

[1] The underlying complaint was filed by hundreds of taxpayers against virtually every taxing body in Cook County. 1400 Wolf Rd., LLC, is the lead plaintiff. See Cir. Ct. Cook County IL R. 10.8 (3-20(c) (eff. June 28, 2002) (establishing a system to designate lead plaintiffs and counsel in tax rate objection cases).

¶ 7 Also on August 21, the Board published a notice of the public hearing in the form as required by the Bond Issue Notification Act ("BINA") (30 ILCS 352/1 *et seq.* (West 2006)), stating that the Board would hold a public hearing on September 20 to receive public comments on the issuance of working cash bonds in the amount of $15,000,000.

¶ 8 The minutes of the September 20 public hearing reflect that no member of the public desired to address the Board regarding the working cash fund bonds. On October 18, the Board adopted a resolution to issue $14,920,000 in working cash fund bonds. The bond resolution stated, in part, that the bond proceeds would be set aside in a working cash fund pursuant to Article 20 of the School Code, "at least until all of the Bonds have been retired, and shall not be used for any other purpose whatsoever, it being the present intention and reasonable expectation of the Board that all of said proceeds of the Bonds not needed to pay [the costs of issuance] will be used to improve the sites of, build and equip additions to and alter, repair and equip the existing school buildings of the District (the 'Project') after transfer of funds to the appropriate operating fund of the District in accordance with the applicable provisions of the Act."

¶ 9 On November 1, 2007, the bond proceeds of $14,920,000 were deposited into the District's working cash fund; $15,000,000 was then transferred from the working cash fund into the District's capital improvements fund.

¶ 10 Various taxpayers then filed a complaint objecting to the District's 2007 tax levy. Essentially, the taxpayers alleged that the District's resolutions and notices were deficient because they did not truthfully reveal that the District intended to deposit the bond proceeds into the working cash fund and then transfer those proceeds into the District's capital improvement fund to pay for improvements and alterations to existing school buildings.

¶ 11 In 2019, after the parties had engaged in extensive discovery, the District filed a motion for partial summary judgment on the working cash objection. The motion argued that the School Code authorized the District to issue the bonds for working cash purposes and that the District had complied with all statutory requirements. More specifically, the District argued that each of the bases relied on by the taxpayers to invalidate the tax levy was legally unsound because all of the District's actions were permitted by statute. The District's motion was also supported by affidavits.

¶ 12 On September 4, 2019, after briefing, the circuit court entered an order granting the District's motion for partial summary judgment. The court specifically found that the School Code and other laws authorized the District to issue the working cash fund bonds in the manner it did, and to transfer the proceeds of the bonds for general corporate purposes; that the District complied with all applicable notice and hearing requirements and with BINA; and that no referendum was required to authorize issuance of the bonds.

¶ 13 On September 6, the court entered a second order finding there was no just cause to delay appeal or enforcement of the partial summary judgment order pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). This appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, the taxpayers present a host of arguments attacking the legality of the working cash fund tax levy. In essence, they contend that the District's transfer of the working cash fund bonds into the general corporate fund violated several different statutes, including (1) Article 20 of the School Code; (2) section 15.01 of the Local Government Debt Reform Act (30 ILCS 350/1 *et seq.* (West 2006)); (3) BINA; (4) the Property Tax Extension Limitation Law ("PTELL") (35

ILCS 200/18-185 *et seq.* (West 2006))[2]; and (5) the notice and hearing requirements applicable to bond issuance. These arguments are, however, all grounded in variations on a single theme: the district could not levy a tax for working cash fund bonds and then transfer those funds to the capital improvement fund for school building improvements.

¶ 16 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2018). Summary judgment is a drastic measure and should only be granted when the moving party's right to judgment is "clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied. *Id.* We review a trial court's entry of summary judgment *de novo. Id.*

¶ 17 In *1001 Ogden Partners v. Henry*, 2017 IL App (2d) 160838, the court was presented with arguments virtually identical to those presented here. The court found in favor of the school district and against the taxpayers on every issue. Below, the circuit court relied strongly on *1001 Ogden Partners*, and that court was obligated to follow it as binding precedent. *People v. Harris*, 123 Ill. 2d 113, 128 (1988) (holding that it is "fundamental in Illinois that the decisions of an appellate court are binding precedent on all circuit courts regardless of locale"). But our supreme court has also explained: "one district of the State appellate court is not always bound to follow the decisions of other districts, although there may be compelling reasons to do so when dealing with similar

[2] PTELL is also commonly known by the name of its predecessor, the Tax Cap Act. See *Acme Markets, Inc. v. Callanan*, 378 Ill. App. 3d 676, 679 (2008).

facts and circumstances. [Citation.] Otherwise, such decisions have only persuasive value for the appellate court." *In re May 1991 Will County Grand Jury*, 152 Ill. 2d 381, 398 (1992).

¶ 18 Having independently analyzed the arguments presented here, we find that the *1001 Ogden Partners* court's analysis is well-taken and correct, and we adopt it as our own. In *1001 Ogden Partners*, sixteen school districts issued resolutions of intent and published notices that they would issue bonds to increase working cash funds, which in turn would enable them to have "at all time[s] sufficient money to meet demands thereon for ordinary and necessary expenditures for corporate purposes." *1001 Ogden Partners*, 2017 IL App (2d) 160838, ¶ 37. As here, the taxpayers in *1001 Ogden Partners* argued that the District's notices were fraudulent because they hid the true purpose of the working cash fund bond authorization. As explained in detail below, the *1001 Ogden Partners* rejected these arguments.

¶ 19 We consider each of the taxpayers' arguments presented in this case in turn, in each case referring to the parallel analysis in *1001 Ogden Partners.* We begin with the taxpayers' arguments that the District's notices and resolutions were insufficiently specific and misled taxpayers regarding the intended purpose of the working cash bond proceeds. The *1001 Ogden Partners* court rejected identical arguments, noting that the districts had complied with the applicable statutes and, in particular, were not required to specifically delineate each intended expenditure to be made from the working cash bond proceeds because to hold otherwise would require the court to impose new conditions into state law that the "legislature did not enact." *Id.* ¶ 38. The court held that there was no requirement that a district "delineate more specifically in their notices of intent the intended uses of the Article 20 bond proceeds." *Id*. The court further found that given the "very broad scope" of the term "corporate purposes" in the districts' resolutions and notices

encompassed improvements and alterations in school buildings. *Id.* ¶ 37. The court summarized its holding thusly:

> "Through the above statutes, the School Code created boards of education to maintain, operate, and develop schools within their districts' jurisdiction. To that end, the legislature specifically empowered boards to improve, furnish, equip, alter, and repair schools. It thus follows that improving, maintaining, equipping, altering, and repairing school buildings was germane to the objective for which a board was created, thereby constituting a 'corporate purpose.' Furthermore, a board was explicitly authorized to issue bonds for the purposes set forth in the School Code. Article 20 authorized the issuance of working-cash-fund bonds for the purpose of allowing a school district to have sufficient money in its treasury for 'corporate purposes.' Because improving, maintaining, equipping, altering, and repairing school buildings was a 'corporate purpose' germane to the objective of a board, a school district could issue bonds under article 20 for those purposes." *Id.* ¶ 23.

We find no reason to depart from the *1001 Ogden Partners* court's analysis on this issue. We further find support in *In re Application of Judgment for Delinquent Taxes for the Year 1981*, 190 Ill. App. 3d 908, 910 (1989), in which the court upheld the right of a school district to abolish its working cash fund, transfer its assets to the educational fund, and immediately re-create the working cash fund by issuing working cash bonds, holding that "The district acted within the statutory framework. Its action cannot, therefore, be considered illegal." Additionally, we note that

section 20-10 of the School Code (105 ILCS 5/20-10) (West 2006)) provides that any school district may "abate its working cash fund at any time" and "direct the transfer at any time of moneys in that fund to any fund or funds of the district most in need of the money ***." This objection is therefore without merit.

¶ 20 We next address the taxpayers' argument that the notices published pursuant to BINA were insufficiently specific because they did not reveal the ultimate use of the bond proceeds. Under that law, the District's BINA notice was required to state that the District would hold a public hearing on a proposal to sell bonds "for the purpose of ….. (state purpose)." 30 ILCS 352/15 (West 2006). Here, the reference in the BINA notice that the proceeds would be used for "corporate purposes" was sufficient to meet the requirements of the statute. *1001 Ogden Partners*, 2017 IL App (2d) 160838, ¶¶ 36-37; see also *Lussem v. Sanitary District of Chicago*, 192 Ill. 2d 404 (1901) (holding that "corporate purposes" was a sufficient description in a bond notice).

¶ 21 The taxpayers next contend that the BINA public hearing was improperly held on the last day of the petition filing window. But, as the District points out, there is no requirement that the hearing be held any particular number of days before the expiration of the filing period. The taxpayers' reliance on federal income tax regulations is inapposite because Illinois law, not federal regulations, govern the timing of the public hearing at issue here.

¶ 22 We next address the taxpayers' arguments that the District's actions violated PTELL, the tax cap law. The Cook County Clerk extended the levy for the working cash bonds over and above the limit established by PTELL. The levy associated with a working cash fund bond issuance is not limited by the tax caps established by PTELL. See 105 ILCS 5/20-2 (West 2006) (stating that the working cash fund taxing authority is "in addition to the maximum amount of all other taxes"); see also 35 ILCS 200/18-185 (West 2006) (a provision of PTELL that excludes "special purpose

extensions" for payment of principal and interest on limited bonds from the "aggregate extension" limits established by PTELL). The *1001 Ogden Partners* court rejected a similar argument, noting that working cash bonds are "limited bonds," which are excluded from the "aggregate extension" under PTELL. *1001 Ogden Partners*, 2017 IL App (2d) 160838, ¶ 39. Again, we find that court's analysis to be sound, and we thus reject this contention of error.

¶ 23 The taxpayers further argue, though, that the District's levy still violated PTELL because it does not envision that the "aggregate extension" limits would apply when limited bond proceeds are eventually used for general corporate purposes. Above, we have explained why the bond proceeds could be legally transferred from the working cash fund to the general corporate fund. The taxpayers cite to no specific language in PTELL supporting this argument, and we are not persuaded that the statutes cited by taxpayers contain any such limitation on the use of the bond proceeds.

¶ 24 We have considered all of the taxpayers' other arguments and find that they are simply variations on the same themes that we have rejected above. In sum, while we acknowledge the taxpayers' concerns that the District's pre-bond issuance notices were insufficiently specific, those concerns do not rise to the level of a statutory violation upon which we can grant relief. Accordingly, the circuit court did not err in granting partial summary judgment to the District.

¶ 25 Lastly, we address the District's motion to strike arguments in the taxpayers' reply brief, which we took under advisement with the case. The District contends that the reply brief contains arguments not raised in the taxpayers' opening brief, in violation of Illinois Supreme Court Rule 341(h)(7) and Rule 341(j), which states that an appellant's "reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee." Ill. Sup. Ct. R. 341(h)(7), (j) (eff. May 25, 2018, later amended eff. Oct. 1, 2020.) The District specifically points out that

the arguments in the reply brief relating to the taxpayers' due process rights and the District's alleged excess accumulation of funds were not presented in the taxpayers' opening brief. The District's point is not without some merit, although it can be argued that the opening brief at least touched on these points. Even so, because of the manner in which we have resolved the taxpayers' contentions of error, the additional arguments in the reply brief did not enter into our consideration of the issues presented. We therefore deny the District's motion to strike as moot.

¶ 26 CONCLUSION

¶ 27 Accordingly, we affirm the circuit court's order granting partial summary judgment to the school district, and we deny the District's motion to strike.

¶ 28 Affirmed; motion denied.