STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: January 15, 2015]

OPPENHEIMER ROCHESTER HIGH YIELD MUNICIPAL FUND, A SERIES OF OPPENHEIMER MULTI-STATE MUNICIPAL TRUST, AND OPPENHEIMER ROCHESTER AMT-FREE MUNICIPAL FUND	:	
VS.	:	**C.A. No. PB-14-3857**
TOBACCO SETTLEMENT FINANCING CORPORATION, THE STATE OF RHODE ISLAND, AND DOES 1 THROUGH 100	:	

DECISION

SILVERSTEIN, J. Before the Court for decision are dispositive motions filed by named Defendants herein. Defendant, Tobacco Settlement Financing Corporation (hereinafter Corporation), seeks summary judgment pursuant to the provisions of R.C.P. 56(b) while the State of Rhode Island (hereinafter State) seeks dismissal under R.C.P. 12(b)(6) as to it for failure by Plaintiffs to state a claim against it upon which relief can be granted. The State further invokes the provisions of R.C.P. 12(f) "to strike any reference to 'Doe' Defendants in Plaintiffs' first amended complaint . . . ." Finally, the State further filed a motion joining in the Corporation's Motion for Summary Judgment.

Facts

The parties or putative parties in this case are Plaintiffs, Oppenheimer Rochester High Yield Municipal Fund, a series of Oppenheimer Multi-State Municipal Trust, and Oppenheimer Rochester AMT-Free Municipal Fund (jointly, hereinafter Oppenheimer), owners of certain

bonds, described generally infra. Defendant, Corporation, is a public corporation organized pursuant to the provisions of G.L. 1956 § 42-133-4, as amended, which was authorized to sell bonds backed by revenue derived from the 1998 settlement among the State of Rhode Island (a Defendant herein, hereinafter State), 45 other states, and a number of tobacco product manufacturers. The settlement was memorialized by a Master Settlement Agreement (the MSA) which provided for payments to the settling States to begin in 1998 and essentially to continue in perpetuity. The Corporation was authorized to acquire from the State payments due to it pursuant to the MSA and in 2002 purchased from the State certain payments to be made to the State. In order to fund the purchase, the Corporation issued 2002 Series A and Series B bonds. Oppenheimer is the holder of a substantial portion of the outstanding 2002 Series bonds, which bonds were collateralized by the Tobacco Settlement Revenue (TSR) generated by the MSA. The 2002 Series A and Series B bonds are subject to a bond indenture between the Corporation and Wells Fargo Bank, N.A., as trustee. As part of the sale by the State to the Corporation in 2002, the State retained a so-called residual certificate representing its remaining interest in the TSR following the sale to the Corporation. In 2007, the State sold to the Corporation its residual certificate. The Corporation, in order to fund the purchase, again issued bonds, the 2007 Series A, 2007 Series B and the 2007 Series C bonds, again pursuant to a trust indenture, the 2007 Trust Indenture. The State obtained a remainder certificate representing its then remaining interest in future TSRs.

In 2007, 2007 Series C bonds were subordinated in payment to the 2007 Series B bonds which were subordinated in payment to the 2007 Series A bonds, which were, in turn, subordinated in payment to the 2002 Series B bonds which had been subordinated in payment to the 2002 Series A bonds. The 2007 bonds are so-called zero coupon bonds, and at maturity their

full face value in 2052 will be: A bonds, $2,520,285,000; B bonds, $260,695,000; and C bonds, $53,200,000. The 2007 Series B bonds and the 2007 Series C bonds are held by Oppenheimer, which is the largest holder of bonds incident to the MSA.

The instant litigation results from the Corporation taking steps to issue $593,655,000 of new series 2014 bonds. The proceeds of this bond sale will be used to: (a) refund all existing 2002 bonds totaling $547,000,815 resulting in an anticipated savings to the Corporation because of a substantially reduced interest rate; (b) acquire $700,000,000 of face value of 2007 Series A bonds from Claren Road, the present holder of 2007 Series A bonds, representing only a portion of Claren Road's holdings of such bonds; (c) pay $20,000,000 to the State—also pursuant to the contemplated transactions—the State will receive when as and if available 30% of disputed TSRs presently held in escrow and 30% of excess TSRs over the amount needed to maintain "minimum turbo" reduction schedule for the 2014 bonds. Claren Road, which will receive 70% of the disputed TSRs and 70% of the excess TSRs over the amount necessary to maintain the minimum turbo reduction, has offered to purchase from Oppenheimer at what Oppenheimer deems a "grossly disproportionate price" the 2007 Series B and Series C bonds held by it. While Claren Road has been offered 80% of the accreted value of the Series A bonds to be purchased from it, it has offered a significantly lesser percentage for the Series B and Series C bonds held by Oppenheimer.

Oppenheimer, in its capacity as a holder of 2007 Series B and 2007 Series C bonds in its first amended complaint, complains that the contemplated transaction wrongfully creates an amendment of the 2007 Indenture contrary to the provisions therein contained with respect to amendment of the Indenture. Its complaint seeks declaratory relief (Count I); asserts that the transaction would constitute an actual fraudulent transfer (Count II); claims that the Does 1

through 100 putative Defendants tortuously interfere with the contract between the bondholders and the Corporation as set forth in the Indenture (Count III); and, seek to impose a constructive trust with respect to the funds derived from the proposed transactions, the issuance and sale of the 2014 bonds (Count IV).

Summary Judgment

Here, the Corporation asks this Court pursuant to the provisions of R.C.P. 56(c) to grant summary judgment with respect to two issues which the Court believes if granted would be dispositive of the claims asserted by Plaintiff not only as to the Corporation, but also effectively as to Defendant State and as to Does 1 through 100, the unidentified putative purchasers of the Series 2014 bonds contemplated to be issued by the Corporation. This Court well recognizes that summary judgment is to be cautiously granted because it constitutes what has been termed "draconian relief" in that it permits judgment with respect to a case or portions of a case without benefit of trial—however, where there are no genuine issues of material fact in dispute and where the moving party is entitled as a matter of law to judgment, Rule 56(c) provides for such relief.

Here, the Corporation has so moved—upon direction of the Court the issues to be determined on summary judgment were narrowed—discovery was limited by Court order to the narrowed issues, although the Court notes from having reviewed deposition testimony and from argument of counsel (both written and oral) that both Oppenheimer and the Corporation strayed beyond the narrowed confines contemplated by the Court's direction. Be that as it may, the Court will confine its discussion to the issues properly before it on the Rule 56 motion as narrowed:

(1) Is unanimous consent of all bondholders of the 2007 bonds Series A, Series B and Series C required because preferences in the form of:

(i) a higher percentage of value is being tendered for Series A bonds than is being tendered to Series B and Series C bondholders; and

(ii) the payment, when, as, and if made, of 70% of disputed payment TSRs and Excess Turbo TSRs to 2007 Series A bondholders and the remaining 30% of each to the State.

(2) Does the proposed amendment to the weighted average life provision of the 2007 indenture require unanimous consent pursuant to § 5.07(F) and § 10.01(a)(iii)(D) of the 2007 Indenture.

(3) Assuming unanimity is not required, has the Corporation obtained consent of a majority in interest as contemplated by the provisions of Indenture § 10.01(a)(iii) so as to authorize amendment of the Indenture.

Discussion

The primary thrust of Oppenheimer's articulated complaint is that the 2007 Indenture is being amended directly or indirectly without the Corporation obtaining the consent and approval required by the provisions of § 10.01 of the 2007 Indenture. Those provisions set forth the circumstances necessary with respect to various types of amendments to the 2007 Indenture. For example, pursuant to § 10.01(a)(ii), provisions that are not materially adverse to bondholders may be amended by the Corporation and the Trustee with the consent of the holder of the 2007 remainder certificate.[1] Such amendments do not in any way require the consent or approval of bondholders.

[1] It should be noted that the Corporation in connection with this case has taken the position that the contemplated transaction does fit within the provisions of this section because, not only is there no material adverse effect on the 2007 Series B and Series C bondholders, but, in fact, there

Here, Oppenheimer asserts that by reason of the nature of the contemplated transaction, the Indenture, § 10.01(a)(iii)(D), requires unanimous bondholder consent. That section, in material part, reads as follows:

> "(a) This Indenture may be: (iii) amended . . . : provided, however, this Indenture shall not be amended so as to . . . (D) create a preference or priority of any bond over any other bond of the same class . . . unless the bonds affected thereby have consented thereto in writing."

Oppenheimer states as the basis for its claim that pursuant to § 10.01(a)(iii)(D) its consent as a Class B and as a Class C bondholder is required (it argues that unanimous consent of all of the affected bondholders is required). Its assertion that the disproportionately higher tender to the 2007 A bonds over the 2007 B and 2007 C bonds constitutes a preference among holders of the same class of bonds. Oppenheimer also claims that the payment to the A Series of 70% of disputed TSRs and 70% of excess turbo TSRs (with the remaining 30% of each going to the State) also constitutes a preference to certain bondholders as opposed to other bondholders of the same class. (Note the reference in these arguments to "class of all A's, B's and C's rather than arguing the A's, B's and C's as separate series as referred to in the provisions of the Indenture). With respect to the weighted average life issue, the contemplated transactions result in substantially equivalent percentage reduction in the weighted average life for all three 2007 Series bond series but a much greater number of years reduction for the Series B and for the Series C bonds than for the Series A bonds. Thus there is no preference or priority which can be objected to by the holders of the 2007 B's and/or the C's, to wit, Oppenheimer. Further, changes

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is as to them a material benefit. Heretofore, in this Decision, the Court noted that it has narrowed the scope of Corporation's Motion for Summary Judgment. It was to defer what might have been a fact-intensive inquiry into the issue of material adverse effect or material benefit that the scope of the summary judgment motion was narrowed as aforesaid.

to the weighted average life were not created by any amendment to the Indenture but result from a reduction in the sale of tobacco products beyond expectations when the bonds were issued.

The Court notes that the determinative factor with respect to whether the tender offer constitutes a preference is found in the language of § 10.01(a)(iii)(D) itself. First, it is clear that the tender offer itself does not constitute an amendment to the Indenture; thus, it is not an amendment which creates a preference or a priority for any class or even for any series of bonds issued pursuant to the 2007 Indenture. While there is no question but that there is a disparity between the price to be paid for the $700 million worth at accreted value of the Series A bonds and the price offered for the Series B and Series C bonds, there also is no question but that the Series A bonds have an existing payment priority which must be satisfied before the Series B and Series C bonds are paid anything (indeed, this may account for some or all of the disparity in price)—the cause of the disparity and its magnitude is of no consequence to the Court's analysis because the tender offer is not caused by any amendment to the Indenture; thus, it (the tender offer/and the disparity) does not implicate the provisions of § 10.01(a)(iii).

Applying the same analysis to the payments of the disputed and Excess Turbo TSRs to the 2007 Series A bonds and to the State leads to the same conclusion as to the applicability of § 10.01(a)(iii)(D). Again, it is clear as to the A bonds, they indeed have not only a priority as to payment with respect to the B and C 2007 bonds but indeed that priority is such that until the A bonds have been paid, no payment is to be made to the B and C bonds or their holders. As to the payment to be made to the State, those payments, when, as and if made, will not constitute preferences between bondholders of the same class because the State is not a bondholder. It is the holder of the 2007 remainder certificate, not of any of the 2007 bonds. Because it is not a

bondholder that will be receiving such payments as may be made, the provisions of § 10.01(a)(iii)(D) again are not implicated.

The Court now will address the issue as to whether the majority in interest required as set forth in § 10.03(a)(iii) of the Indenture is satisfied by the consent of Claren Road—the holder of in excess of 86% of the total value of the 2007 bonds. The record discloses that Claren Road holds almost all of the Series A bonds and as stated above in excess of 86% of the face and accreted value of the entire 2007 bond issue. Claren Road apparently does not hold Series B or Series C 2007 bonds. Oppenheimer urges upon the Court a reading of the Indenture which would require ". . . written consent from a majority in interest of the outstanding Subordinate Bonds and Senior Bonds (acting as separate classes) effected thereby." Oppenheimer reads this clause to mean that the three Series of 2007 bonds, the A Series, the B Series and the C Series, each must approve of the proposed amendments through the written consent of the majority in interest of each series. Of course, Oppenheimer which holds all or almost all of the B Series and C Series notes that it has not consented and argues to the Court that as a matter of law the requisite consent has not been obtained. To support its position, after agreeing that there are no Subordinate Bonds as defined in the Indenture, Oppenheimer invokes what it tells the Court is a rule of law and a rule of grammar, the so-called "last antecedent rule."

The Court notes that our Supreme Court has had occasion to discuss this rule most recently in an opinion in 2013. The case State v. Hazard, 68 A.3d 479, 487 indeed did speak to that rule. The Supreme Court indicated that its analysis of the matter was such that the Court could not ". . . stop at [a] simple invocation of the last antecedent rule." Rather, the Court felt it necessary as does this Court to analyze the surrounding circumstances under the doctrine in order to determine whether to resort to a rule of grammar or whether to be guided by the plain meaning

of the term in question in the context in which it is found. Here in context the various Series 2007 bonds heretofore have not been referred to as classes but rather as indicated (supra) 2007 Series A, Series B and Series C. Here the draftsman and the parties to the Indenture—the Corporation and the trustee, Wells Fargo Bank, N.A.—contemplated the possibility of Subordinate Bonds and Senior Bonds. This Court holds that the plain meaning of the parenthetical phrase (acting as separate classes) was to indicate that (a) the written consent of the majority in interest of the Subordinated Bonds (if any) and (b) the written consent of the majority in interest of the Senior Bonds was required. There being no Subordinate Bonds and Claren Road, holder of a majority interest of the Senior Bonds having given its written consent to the contemplated transaction and to the proposed amendments, this Court finds that that specific provision of § 10.01(a)(iii) has been satisfied.

Further, the Court notes that as to the payment to the State of $20,000,000 from the proceeds of the 2014 bond issue (a) a further bond issue is contemplated by the 2007 Indenture, see § 5.07(f) and (b) the proceeds of a bond issue do not constitute collateral proceeds pursuant to the provisions of the Indenture.

Predicated upon the foregoing, the Court concludes that (1) unanimous consent either to the contemplated transactions or to the amendments to the Indenture pursuant to § 10.01(a)(iii)(D) of the Indenture is not necessary and (2) the consent of the majority interest holder dated July 24, 2014 executed and delivered by the Claren Road entities (Claren Road Credit Master Fund, Ltd. and Claren Road Credit Opportunities Master Fund, Ltd.) to the amendment to the 2007 Indenture constitutes the consent of a majority in interest contemplated by § 10.01(a)(iii).

Having determined that the requisite consent has been obtained pursuant to the provisions of the 2007 Indenture and that the issues complained of by Oppenheimer are permitted with the requisite consent, the Court is constrained further to find the Corporation is entitled to its requested summary judgment. So long as the consent was obtained within the framework of the Indenture provisions, the Court holds that the Corporation has complied with the provisions of the Tobacco Settlement Financing Corporation Act, §§ 42-133-1 et seq., as amended. Having so found, the Court further finds the State, accordingly, is entitled to relief here and as a result of its joinder in the request of Corporation for summary judgment, is entitled to summary judgment in its favor. Having so ruled, the Court holds that the State's Motion to Dismiss Pursuant to Rule 12(b)(6) has been mooted. Consistent with the foregoing, Oppenheimer is not entitled to relief as against Does 1-100.

Predicated upon the foregoing, the Court grants summary judgment in favor of the Corporation and the State and specifically holds as follows:

First, the 2007 Indenture may be amended, under Section 10.01(a)(iii), with the consent of a Majority in Interest of the Outstanding Senior Bonds. It is undisputed that the holders of more than 87% of the Outstanding Senior Bonds consented to the proposed amendments to the 2007 Indenture.

Second, the 2007 Indenture is not being "amended" to "create" the market offers for the Series 2007A Bonds, the Series 2007B Bonds, and the Series 2007C Bonds. It is undisputed that: (a) the Indenture is not being *amended* to *create* these offers, and (b) the offers for the Series 2007B Bonds and the Series 2007C Bonds are being made by Claren Road, a third party whose offer is completely outside the scope of the 2007 Indenture.

Third, payments to the State (including the payment of not less than $20 million and the payment of 30% of Disputed Payment TSRs and Excess Turbo TSRs) are not "preferences" under Section 10.01(a)(iii)(D), because such payments do not prefer "any Bond over any other Bond of the same class." The State does not own any Bonds and therefore it cannot be "preferred" under Section 10.01(a)(iii)(D).

Fourth, the payment of 70% of Disputed Payments TSRs and Excess Turbo TSRs to the Series 2007A Bonds are not "preferences" under Section 10.01(a)(iii)(D). Under the status quo, the Series 2007 Bonds are entitled to 0% of these TSRs. If and when these TSRs are to be paid to the Series 2007 Bonds, 100% of them must be paid to the Series 2007A Bonds until those Bonds are paid in full. Because the 2007 Indenture mandates that the Series 2007A Bonds be paid before the Series 2007B Bonds and the Series 2007C Bonds, paying 70% of TSRs to the Series 2007A Bonds cannot "prefer" them.

Fifth, the proposed amendment to Section 5.07(f) of the 2007 Indenture cannot be a "preference" under Section 10.01(a)(iii)(D) because the changes to the weighted average life of the Series 2007A Bonds, the Series 2007B Bonds, and the Series 2007C Bonds were due to the changing conditions of the U.S. cigarette market—so any such changes were not "created" by an "amendment" to the 2007 Indenture.

Counsel for the Corporation shall prepare and present an order and judgment consistent with the foregoing. Such order and judgment shall be settled upon due notice to all parties in interest.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Oppenheimer Rochester High Yield Municipal Fund, et al. v. Tobacco Settlement Financing Corporation, et al.
CASE NO:	PB 14-3857
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 15, 2015
JUSTICE/MAGISTRATE:	Silverstein, J.
ATTORNEYS:	
For Plaintiff:	*SEE ATTACHED LIST
For Defendant:	*SEE ATTACHED LIST

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C.A. No. PB 14-3857

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