

IN THE CIRCUIT COURT OF THE THIRTY-FIFTH JUDICIAL CIRCUIT OF MISSOURI, DUNKLIN COUNTY, MISSOURI

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) No.
DUNKLIN COUNTY REORGANIZED)
COMMON SEWER DISTRICT #1,)
Defendant.)

PETITION

NOW COMES the Plaintiff, UNITED STATES OF AMERICA, by and through its attorneys, Saylor A. Fleming, United States Attorney for the Eastern District of Missouri, and Anthony J. Debre, Assistant United States Attorney for said District, and for its cause of action states as follows:

- (1) This action is brought pursuant to Mo. Rev. Stat. § 250.170.
(2) On or about July 6, 2015, the Defendant, Dunklin County Reorganized Common Sewer District #1, executed and delivered to Plaintiff, acting through the Rural Utilities Service, United States Department of Agriculture, a duly executed Sewerage System Revenue Bond in the amount of \$250,000.
(3) The bond referred to in Paragraph 2 above was issued pursuant to the authority of Chapters 204 and 250 of the Revised Statutes of Missouri, and was issued to finance the acquisition, construction, improvement and extension of certain sewage works facilities.
(4) Plaintiff is the sole owner of any and all Sewerage System Revenue Bonds, Series 2015, issued by the Defendant.

(5) Pursuant to the terms of said Sewerage System Revenue Bond, the Defendant agreed to pay Plaintiff principal and interest in the amount of \$10,803.00 on an annual basis.

(6) Pursuant to section 801 of the Sewerage System Revenue Bond, Defendant pledged to “maintain its corporate identity and existence so long as any of the bonds remain outstanding.”

(7) Pursuant to section 810 of the Sewerage System Revenue Bond, Defendant pledged to “faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the system now or hereafter imposed upon the District by the Constitution and laws of the State of Missouri and by the provisions of this Resolution.”

(8) Upon information and belief, Defendant has not made the payment referred to in Paragraph (5) above.

(9) Upon information and belief, Defendant’s President has informed its counsel that he intends to resign effective February 26, 2021. This resignation will leave every position on Defendant’s Board of Trustees vacant.

(10) Under the terms of the Missouri Code, 250.170 (Mo. Rev. Stat. § 250.170)

The holder of any bond authorized pursuant to this chapter or of any coupon representing interest accrued thereon may, by a civil action either at law or in equity, by mandamus, injunction or otherwise, compel any city, town or village or sewer district, which may have authorized bonds under this chapter or the officials thereof to perform all duties imposed upon such city, town or village or sewer district or upon such officials by the provisions of the ordinance authorizing such bonds or otherwise imposed by law, including the continued operation of the sewerage system or of the combined waterworks and sewerage system, the fixing and collecting of sufficient rates and charges for the services thereof, the segregation and allocation and disposition of the revenues derived from such system, the payment of any bonds chargeable to the revenues of such system or the interest thereon and the performance of any valid and reasonable covenant set out in the ordinance authorizing any such bonds.

Such suit or action at law or in equity shall lie regardless of whether or not any bond or the interest thereon shall at the time of the filing of such suit be in default in the event that such city, town or village or sewer district or any official thereof shall have neglected or failed to perform any material duty imposed by law or by any valid and reasonable covenant set out in the ordinance authorizing any outstanding bonds pursuant to this chapter.

(11) Additionally, Section 1002 of the Sewerage System Revenue Bond gives bondholders the right to “by mandamus or other suit, actions, or proceedings at law or in equity, to enforce the rights of such registered owner or owners against the District and its officers, agents, and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the Constitution and laws of the State of Missouri;” and “to enjoin any acts or things which may be unlawful or in violation of the rights of the registered owners of the bonds.”

(12) Pursuant to Missouri Code 204.610 (Mo. Rev. Stat. § 204.610), trustees of a reorganized common sewer district may be elected or appointed, as provided for in the decree of the circuit court establishing the district. If trustees are to be appointed, they are appointed by the county commission. If trustees are elected, and a vacancy in the office of trustee occurs, the vacancy is to be filled by the remaining trustees. The statute has no provision providing for a situation when there are no remaining trustees to make said appointment. On information and belief, trustees for Defendant are elected.

(13) Given the lack of remaining trustees empowered to fill a vacancy, it would be appropriate for the honorable court to either enjoin the remaining Trustees from resigning from their post until new Trustees are appointed, order the county commission to appoint Trustees to fill said vacancies on Defendant’s Board of Trustees, and/or to amend the decree establishing the district to provide for the appointment of Trustees by the county commission.

(14) Plaintiff will be irreparably harmed by the failure of Defendant to operate a reorganized common sewer district pursuant to the Constitution and laws of the State of Missouri.

WHEREFORE, Plaintiff respectfully prays:

(1) for a declaratory judgment that Defendant is in default of its duties and obligations imposed under the Sewerage System Revenue Bond;

(2) for an order enjoining the remaining Trustees for resigning from service on Defendant's Board of Trustees until the vacancies on Defendant's Board of Trustees are filled; and/or

(3) for an order commanding the County Commission to fill the vacancies on Defendant's Board of Trustees; and/or

(4) for an order amending the decree establishing Defendant Reorganized Common Sewer District to provide for the appointment of Defendant's Board of Trustees; and

(5) for appointment of a receiver with the authority, in the absence of a fully constituted Board of Trustees, to operate sewage works facilities, to institute civil action as appropriate, and upon completion, to operate and administer said works and to charge and collect rates sufficient to provide for the payment of this bond and interest thereon;

(6) All other just and proper relief.

DATED: March 1, 2021

Respectfully submitted,

SAYLER A. FLEMING
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