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TD BANK, NATIONAL ASSOCIATION,
 MANUFACTURERS AND TRADERS TRUST
 COMPANY, and ASSURED GUARANTY
 MUNICIPAL CORP.,

Plaintiffs

v.

THE HARRISBURG AUTHORITY, THE CITY OF
 HARRISBURG, PENNSYLVANIA, and PAUL P.
 WAMBACH, TREASURER OF THE CITY OF
 HARRISBURG.,

Defendants

v.

THE BANK OF NEW YORK MELLON TRUST
 COMPANY, NATIONAL ASSOCIATION,
 Intervenor Plaintiff

IN THE COURT OF COMMON PLEAS
 DAUPHIN COUNTY, PENNSYLVANIA

NO. 2010 CV 11737 CV

CIVIL ACTION

JURY TRIAL DEMANDED

DAUPHIN COUNTY
 PENNSA

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**DEFENDANT, THE HARRISBURG AUTHORITY'S
 MOTION FOR PARTIAL SUMMARY JUDGMENT
 REGARDING APPOINTMENT OF A RECEIVER**

Defendant, The Harrisburg Authority (the "Authority"), by and through its counsel, Goldberg Katzman, P.C., files this Motion for Partial Summary Judgment Seeking Dismissal of Plaintiffs' Demand for the Appointment of a Receiver.

1. On or about September 13, 2010, Plaintiffs filed a Complaint, which, in part, sought the appointment of a receiver to manage the Harrisburg Resource Recovery Facility (RRF) pursuant to bond indentures and under the Municipal Authorities Act (MAA).

2. On or about February 4, 2011, the Bank of New York Mellon Trust Company (BNY) was permitted to intervene in this action and also seeks appointment of a receiver.

Hereinafter, "BNY" will be included when referring to "Plaintiffs."

{00574606;v1}

3. The pleadings are closed at this point.
4. On or about November 10, 2010, Plaintiffs moved for the appointment of a receiver. (BNY has not moved for the appointment of a receiver).
5. The Court scheduled a hearing for October 17, 2011 to determine whether a receiver should be appointed.
6. The Court did not hold the hearing on the date originally scheduled due to the City of Harrisburg's bankruptcy filing, which was subsequently dismissed on November 23, 2011.
7. In the meantime, on or about October 18, 2011, the Pennsylvania Legislature, through Senate Bill 1151 (the "Act"), amended Public Law 246 (commonly known as "Act 47"), to allow a Third Class City, such as Harrisburg, to be declared to be in a state of "fiscal emergency." The Governor signed the Act into law on October 20, 2011. The Act as passed by the Legislature, is attached hereto as Exhibit A. The Act, without printer's marks is available at 53 P. S. §11701.101 et seq.¹ The Act starts a process whereby Harrisburg, on its own, can develop a plan to provide long-term financial stability to a distressed city, or, failing that, permits the appointment of a receiver over Harrisburg who creates and implements a recovery plan.
8. On or about October 24, 2011, pursuant to Section 602(b) of the Act, Governor Corbett declared Harrisburg to be in a state of fiscal emergency, as defined in the Act at Section 601.
9. Under the Act, at Section 605, the Legislature clearly, and without exception, states:

¹ Where there is a reference to a "Section" of the Act, this correlates to the number after the period in the statutory section. For example, Section 602(b) of the Act is found at 53 P.S. §11701.602(b).

During a fiscal emergency, the authorities and appointed and elected officials of a distressed city shall continue to carry out the duties of their respective offices, except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor under Section 604. (Emphasis Supplied).

10. "Authorities" is defined by the Act as:

A municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed city or to which a distressed city has a power of appointment. The term shall not include a joint municipal authority.

(Act at §601)

11. The definition of "authority" applies to the Harrisburg Authority, one of the defendants in the above-captioned matter.

12. The Act requires that the Authority "shall continue to carry out the duties of [its] respective offices, during the state of fiscal emergency."

13. The legislation does not include in its definition of "authority" a court-appointed receiver, such as that demanded by Plaintiffs in this action.

14. A fiscal emergency ends upon certification by the Secretary [Department of Community Affairs] that the city is no longer financially distressed. (Act at §608(a)).

15. No such certification by the Secretary has occurred as of this writing and is not expected to be declared in the foreseeable future.

16. Since the City of Harrisburg was unable to agree to its own plan, on November 18, 2011, the Governor named David Unkovic as the receiver for the City of Harrisburg.

17. Confirmation of Mr. Unkovic as the Harrisburg receiver by the Commonwealth Court is pending after a hearing on his appointment was convened on December 1, 2011.

18. Once approved by the Court, the receiver will develop a recovery plan within 30 days and file the recovery plan with the Commonwealth Court (Act at §703(a)). The Commonwealth Court holds a hearing and approves the plan within 60 days of filing (Act at §703(d)).

19. The plan includes, among other things, “payment of the lawful financial obligations of the distressed city and authorities” and includes “debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations.” (Act at §703(b)(1)(ii)).

20. The recovery plan may also include:

(1) The sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority;

(2) The approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed city or authorities, except to the extent prohibited by the constitutions of the United States and Pennsylvania;

(3) The execution of new contracts or agreements; and

(4) Other information the receiver deems appropriate. (Act at §703(b)(2)).

21. The Authority is obligated to comply with the recovery plan, and the receiver will be permitted, pursuant to Section 706:

(1) to require the distressed city or authority to take actions necessary to implement the recovery plan under Section 703;

(2) to modify the recovery plan as necessary to achieve financial stability of the distressed city and authorities in accordance with Section 703;

(3) to require the distressed city or authority to negotiate inter-governmental cooperation agreements between the distressed city and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services;

* * *

(5) to require the distressed city or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed city's or authority's assets in accordance with Section 707 of the Law;

(6) to approve, disapprove, modify, reject, terminate or renegotiate contracts or agreements with the distressed city or authority, except to the extent prohibited by the Constitutions of the United States or Pennsylvania;

(7) to direct a distressed city or authority to take any other action to implement the recovery plan;

(8) to attend executive sessions of the governing body of the distressed city or authority and make reports to the public on implementation of the recovery plan....

22. Thus, in the enforcement of its recovery plan, the receiver will have substantial powers over the Authority with the singular purpose of restoring the City of Harrisburg and its authorities to financial stability.

23. The Act is clear and does not allow anyone but the Authority, as defined in the Act, to carry out the duties needed to implement the Recovery Plan.

24. Indeed, considering the substantial, if not complete, control the receiver has over the financial affairs of the City of Harrisburg and its authorities in the implementation of the recovery plan, it is difficult to envision a legislative intent whereby a receiver appointed under the Act would direct a receiver appointed under the MAA or trust indentures.

25. In fact, it would make no sense, either logically or financially, for the cash-strapped City or Authority to expend funds on a receiver appointed under the MAA or trust indentures when the potentially appointed receiver must follow the provisions of the recovery plan, just as the Authority must do.

26. If the Authority fails to comply with any provision of the recovery plan, the Authority is subject to judicial action, including a mandamus action to force the Authority to comply with the recovery plan. (Act at §§708 and 709).

27. Furthermore, the debt obligations of the Authority which concern Plaintiffs so much in this action and which have led Plaintiffs to seek the appointment of a receiver, are specific items that must be addressed in the recovery plan.

28. Finally, since the sale of assets, including the Authority's assets, are, potentially, an integral part of the recovery plan under the Act, and since Plaintiffs have admitted in this case that its sought-after receiver will have no ability to sell Authority assets, having a receiver supplant the Authority will only invite confusion and difficulty in effectuating the recovery plan.

29. The Act is clear. In light of the "state of fiscal emergency" and the fact that the Legislature has specifically stated that the Authority is to continue to operate during a period of fiscal emergency, Plaintiffs' request for receiver should be dismissed.

30. There are no factual issues over this pure matter of law which is based on the words of the newly-enacted law which was not in place prior to October 18, 2011. Thus, summary judgment is appropriate pursuant to Pa. R.C.P. 1035.1 et seq.

WHEREFORE, it is respectfully requested that the Court grant this Motion for Partial Summary Judgment and enter an order dismissing all claims for receiver contained in the Plaintiffs' Complaints, and denying Plaintiffs' Motion for a Receiver.

Respectfully submitted,

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Date: December 2, 2011

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TD BANK, NATIONAL ASSOCIATION, : IN THE COURT OF COMMON PLEAS
MANUFACTURERS AND TRADERS : DAUPHIN COUNTY, PENNSYLVANIA
TRUST COMPANY, and ASSURED :
GUARANTY MUNICIPAL CORP. : NO. 2010 CV 11737 CV

Plaintiffs, : CIVIL ACTION

v.

THE HARRISBURG AUTHORITY,
THE CITY OF HARRISBURG,
PENNSYLVANIA, and PAUL
WAMBACH, TREASURER OF THE
CITY OF HARRISBURG

Defendants

THE BANK OF NEW YORK MELLON :
TRUST COMPANY, NATIONAL :
ASSOCIATION, :

Intervenor Plaintiff

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ORDER

AND NOW, this 7th day of December, 2011, it is hereby **ORDERED** that:

Plaintiffs shall, within *ten days* of the date of this ORDER, file an Answer to The Harrisburg Authority's Motion for Partial Summary Judgment Regarding Appointment of a Receiver.

BY THE COURT: *Todd Hoover,*

TODD A. HOOVER
PRESIDENT JUDGE

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