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CHRISTOPHER D. RICH, Clerk
By JANINE KORSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT

Case No. CV-OT-2014-23695

ORDER DENYING PETITION FOR
JUDICIAL CONFIRMATION

The Greater Boise Auditorium District's Petition for Judicial Review (filed Dec. 19, 2014) came before the Court for hearing on February 25, 2015. Pursuant to Idaho Code § 7-1308, the Court finds facts and law as identified below.

Appearances:

Donald Knickrehm and Adam Christenson for Petitioner Greater Boise Auditorium District

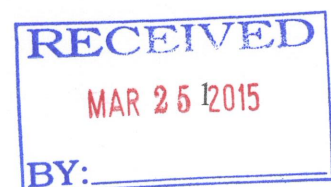
John Runft for Objector David Frazier, resident and property owner in Boise

FINDINGS OF FACT

The Greater Boise Auditorium District (the "District") is a governmental entity organized under Idaho Code § 67-4901, et seq. Because it is a governmental subdivision, it is subject to Article VIII, § 3 of the Idaho Constitution, which reads in part,

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty

ORDER DENYING PETITION FOR JUDICIAL CONFIRMATION



years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

Idaho Const. Art. VIII, § 3.

The District currently operates the Boise Centre, an 85,000 square foot convention center and public event facility located in downtown Boise. The District seeks to expand its facilities at the Boise Centre, and so seeks to enter into a “lease agreement to finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment.”¹ The anticipated cost of this expansion is \$19,091,084.00 for, “soft costs and equipment,” plus an additional \$2,145,316.00 in reserves and financing costs, for a total of \$21,236,400.²

To accomplish this expansion, the District has engaged in a complex contract and financing scheme. K.C. Gardner Company, L.C. (“Gardner”), a Utah limited liability company, acquired title to land located to the south and to the west of the U.S. Bank building, in close proximity to the Boise Centre. Gardner is constructing buildings on those parcels. On Nov. 20, 2014, the District entered a contract entitled, “Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.”³ (hereinafter “MDA”). The MDA does not set forth all the terms of the agreement between the parties for the construction and purchase of the expanded facilities, and instead contains general precatory language about what the parties desire to accomplish, and how it will be accomplished. However, there is mandatory language contained in the MDA. For example, the MDA states

2.2 Purchase and Sale Agreement. Gardner and the District shall execute and enter into a Purchase and Sale Agreement (the “PSA”) for the Centre Facilities provided that Gardner shall sell to the District and the District shall purchase from Gardner the Centre Facilities. The PSA shall be substantially in the form attached hereto as Exhibit “D”. The PSA shall include the right of the District to assign it and the right to purchase therein provided to the Capital City Development Corporation.⁴

¹ Id., ¶ 8.

² Id., ¶29.

³ Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015, Ex. 1.

⁴ Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015, Ex. 1, p. 3 (§ 2.2).

This language essentially requires the District and Gardner to enter the PSA, which, as indicated, has been substantially drafted and negotiated.

On Dec. 19, 2014, the District entered an Amended and Restated Development Agreement (“RDA”) with the Urban Renewal Agency of Boise City, Idaho, a/k/a/ Capital City Development Corporation (the “Agency”). The Agency is an urban renewal agency organized and operating under Idaho Code Title 50, chps. 20 and 29. The Agency is not a governmental subdivision or entity, and therefore is not subject to the requirements of Article VIII, § 3 of the Idaho Constitution. The RDA, “amends and restates the Development Agreement entered into between the District and Agency dated June 9, 2014.”⁵ It further makes clear the purchase of the facilities from Gardner is part of a larger project which includes improvements to the Grove Plaza between the Boise Centre and the new facilities, as well renovation to the Boise Centre itself, for a total anticipated cost of approximately \$38,000,000.00.

Between the RDA, the MDA, the PSA, and related documents, a fair picture can be obtained as to how the District, the Agency, and Gardner plan to accomplish the purchase and construction of the new facilities. This plan may be summarized as follows: The District and Gardner will enter the PSA for the construction and sale of the new facilities. The District will immediately (or very shortly) thereafter, assign all of its interest in the new facilities to the Agency, who has power to obtain financing through Wells Fargo, a commercial lender, and issue a promissory note and deed of trust to secure financing. Once the new facilities are completed, the Agency will then lease the new facilities back to the District, utilizing the annual lease payments to pay the principal and interest due on the promissory note. The lease, by its terms will last only one year, and will be renewable for a total of 24 one-year terms, in the discretion of the District. The District is also given the right to purchase the new facilities from the Agency at any time during the lease period or after the promissory note has been paid off under certain terms.

On Dec. 19, 2014, the District submitted a Petition for Judicial Confirmation to the Court, pursuant to Idaho Code § 7-1304. The petition does not seek judicial confirmation of the MDA, the RDA or the PSA, but instead seeks, “a judicial determination that the Lease Agreement, which obligates the Petitioner for an initial term ending on the District’s November

⁵ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. A (p. 1).

30 fiscal year-end, and is renewable each year thereafter through appropriation, budgeting, and affirmative notice of the intent to renew, is a valid obligation under Article VIII, § 3 of the Idaho Constitution.”⁶ This petition was accompanied by a memorandum and various affidavits.⁷ The District has stated that financing through Wells Fargo will not be obtained unless judicial confirmation of the proposed contract is also first obtained.

David Frazier, a resident and property owner in Boise, and within the District, filed an Answer as allowed by Idaho Code § 7-1307.⁸ Frazier also filed responsive briefing and affidavits, objecting to judicial confirmation.⁹

The Court notes that this is not the District’s first attempt to obtain judicial confirmation for the lease of the new facilities. Previously, the District filed a petition for judicial confirmation on Jun. 11, 2014, in Ada County Case No. CV-OT-2014-11320. On Aug. 28, 2014, Judge Moody issued an Order Denying Petition for Judicial Confirmation.¹⁰ In that case, the Court considered a very similar financing structure to what is at issue in this case. Judge Moody determined the proposed lease agreement violated Article VIII, § 3 of the Idaho Constitution because of the existence of liabilities that go beyond the one-year limitation.¹¹ After denying the Petition, the Court entered a Judgment.¹² The District then requested, and was granted, an enlargement of time in which to revise the financing and other agreements, provide the statutory notice required for a petition for judicial confirmation, and to file a Motion for Reconsideration

⁶ Id., ¶37.

⁷ See Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon, filed Jan. 26, 2015; Affidavit of Linda K. Armstrong, as a Representative of Wells Fargo Bank, N.A. Re: Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of John Brunelle in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of David Wali in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015.

⁸ Answer to Petition for Judicial Confirmation, filed Jan. 9, 2015.

⁹ Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015; Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015.

¹⁰ Order Denying Petition for Judicial Confirmation, filed Aug. 28, 2014 (Ada County Case No. CV-OT-2014-11320).

¹¹ Id., pp. 14 – 15.

¹² Judgment, filed Aug. 29, 2014 (Ada County Case No. CV-OT-2014-11320).

with the Court.¹³ However, no motion for reconsideration was ever filed. As stated above, the present action commenced on Dec. 19, 2014.

A hearing was held Feb. 25, 2014. The Court considered the arguments presented by both the District and the respondent, as well as the evidence presented through affidavits. No additional evidence was presented at the hearing, only arguments.

ANALYSIS AND CONCLUSIONS OF LAW

A. Judicial Notice of CV-OT-2014-11320 Case File

Because the issues in this case are almost identical to those previously decided by Judge Moody, the Court takes judicial notice, pursuant to I.R.E. 201 and Idaho Code § 9-101, of all documents contained in Ada County Case No. CV-OT-2014-11320. Further, the Court adopts the analysis presented by Judge Moody. However, as discussed below, the Court does not view this as merely a reconsideration of Judge Moody's prior decision, and therefore applies the analysis to the facts presented in this case.

B. Petition for Judicial Confirmation

The Idaho Legislature has determined, "An early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or obligations and execute any agreements or security instruments therefor promotes the health, safety and welfare of the people of the state." Idaho Code § 7-1302(1). To this end, the Legislature has created a method through which political subdivisions may petition the Court, "praying a judicial examination and determination of the validity of any bond or obligation or of any agreement or security instrument related thereto, of the political subdivision, whether or not such bond or obligation agreement has been validly exercised, or executed." Idaho Code § 7-1304(1). Such petition may be made in the discretion of the political subdivision, and is not required before entering any contract. *Id.* Prior to filing the petition, the political subdivision must hold a public hearing regarding adopting a resolution to file the petition, and is required to give notice prior to the hearing. Idaho Code § 7-1304(3).

There is no Idaho caselaw interpreting Idaho Code § 7-1304, and therefore the applicable legal standard has never been identified by an appellate court. However, statutory law states

¹³ Motion for Enlargement of Time for Filing Motion for Reconsideration and for Filing Motion for Leave to Amend Petition, filed Sep. 12, 2014 (Ada County Case No. CV-OT-2014-11320); Order Enlarging Time for Petition to File Motion for Reconsideration and Motion for Leave to Amend Petition, filed Sep. 18, 2014 (Ada County Case No. CV-OT-2014-11320).

upon filing of a valid petition, the Court, “shall examine into and determine all matters and things affecting each question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.” Idaho Code § 7-1308(1). Further, the judicial confirmation law tasks the Court with determining the validity of any agreement. Idaho Code § 7-1304(1). “An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy, and such a contract is illegal and unenforceable.” *Taylor v. AIA Servs. Corp.*, 151 Idaho 552, 564, 261 P.3d 829, 841 (2011). “Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case.” *Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002).

C. Notice Requirements

No objection has been presented by any party regarding the notice requirements of Idaho Code §§ 7-1304(3) and 7-1306. The Court is satisfied that sufficient notice was given as required by Idaho Code § 7-1306(3), and therefore the Court has jurisdiction to hear this matter.

D. The Lease Agreement

The Court is tasked with only one question in this case: is the proposed lease/purchase agreement between the District and Agency valid? The District and the respondent present arguments regarding the validity of the MDA, the RDA, and the PSA, but those contracts are not currently before the Court. For right or for wrong, the MDA and RDA have already been executed, and whether they are valid is a question that must be answered, if at all, through separate challenges. Idaho Code § 7-1304(1) only requires the Court to consider the issues put before it by the political subdivision.

That being said, the Court can consider the context surrounding the contract to help the Court determine whether the contract itself is valid. The Court has set forth, above, the structure through which the District seeks to accomplish its goal, and the lease agreement is simply the final link in the chain. In summary, the end goal of this mire of complexity is for the District to end up with title to the new facilities, having spent over \$20,000,000.00 over a period of twenty-five years without offering the qualified voters within the District the opportunity to vote on such issue. The District makes no qualms that its purpose is to avoid a vote on the issue.

Though *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643 (1912) specifically

addresses the common fund doctrine (and was later superseded through amendments to Article VIII, § 3 of the Idaho Constitution¹⁴), it still contains relevant language.

[T]he framers of our Constitution employed more sweeping and prohibitive language in framing section 3 of article 8, and pronounced a more positive prohibition against excessive indebtedness, than is to be found in any other Constitution to which our attention has been directed. It says: “No. * * * city * * * shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof,” etc. The Constitution not only prohibits incurring any indebtedness, but it also prohibits incurring any liability “in any manner or for any purpose,” exceeding the yearly income and revenue. In this connection, it should also be observed that it not merely prohibits incurring any indebtedness or liability exceeding the revenue of the current year, but it also prohibits incurring any indebtedness or liability exceeding the income and revenue provided for such year.

...

The framers of our Constitution were not content to say that no city shall incur any indebtedness “in any manner or for any purpose,” but they rather preferred to say that no city shall incur any indebtedness or liability in any manner, or for any purpose. It must be clear to the ordinary mind, on reading this language, that the framers of the Constitution meant to cover all kinds and character of debts and obligations for which a city may become bound, and to preclude circuitous and evasive methods of incurring debts and obligations to be met by the city or its inhabitants.

Feil, 23 Idaho 32, 129 P. at 649. The District argues the lease agreement does not create a debt or liability beyond one year because of the particular language which it demanded be included in the lease. Indeed, the language of the proposed lease does give the District some fairly unusual contractual rights. § 5.1(a) provides that the lease commences as soon as the new facilities are finished, and ends on the Nov. 30 following the commencement (regardless of how long that period is).¹⁵ Such period of time is the whole length of the lease. After that initial period, the District may, “in its sole discretion,” renew the lease for another period lasting from Dec. 1, to Nov. 30 of the following year.¹⁶ The District may renew up to twenty-four times.¹⁷ These provisions amount to a nonappropriation clause, allowing the District to back out of the contract at any time the District does not appropriate money for the lease for the upcoming year. While

¹⁴ *Asson v. City of Burley*, 105 Idaho 432, 439, 670 P.2d 839, 846 (1983).

¹⁵ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. B (§ 5.1(a)).

¹⁶ *Id.*, Ex. B (§ 5.1(b) and (d)).

¹⁷ *Id.*, Ex. B (§ 5.1(d)).

this could superficially be seen as a method to avoid any liability that lasts beyond a year, there are several problems with this argument.

The lease agreement does not address an issue which affects the liabilities of the District: namely, what happens if, for some reason, the entire financing structure fails and a lawsuit occurs? Contrary to the situation in the CV-OT-2014-11320 case, there is now a very identifiable third party who has an interest in the lease agreement: Wells Fargo. The proposed lease agreement tries to remedy this situation by stating

This Lease is made for the sole benefit of the District and Agency, and no other person or persons shall have rights or remedies hereunder except to the extent specifically provided herein and in the Note Purchase Agreement. The District and the Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Financed Project.¹⁸

This language shows intent by the District and Agency to limit duties and obligations owed under the lease to only the District and Agency. Further, there is no signature line on the lease agreement for Wells Fargo, nor do the notices sections of the agreement provide notice be sent to Wells Fargo.¹⁹ Thus, Wells Fargo cannot be argued to be a party to the lease agreement, and thus is not bound by any restrictions or limitations contained therein.

The District points to §8.12 of the lease agreement, which states, “\$100,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable fees, costs, expenses, losses and liabilities of the Bank relating specifically to the Financed Project.”²⁰ Similarly, the lease agreement limits Wells Fargo’s liabilities upon default, stating, “In no event shall the District be liable in an amount greater than the Rent payable for the remainder of the Initial Term or the Renewal Term then in effect.”²¹ But, since Wells Fargo is not a party to the lease agreement, these provisions are not binding on Wells Fargo. *See, e.g. Tolley v. THI Co.*, 140 Idaho 253, 262, 92 P.3d 503, 512 (2004).

It could be argued that Wells Fargo has agreed to these limitations separately, in that Wells Fargo has included fairly similar language in its Summary of Proposed Terms and Conditions.²² However, this language is also tempered by the facts that there is no proposed

¹⁸ Id., Ex. B (§ 8.8 (p. 15)).

¹⁹ Id., Ex. B, pp.

²⁰ Id., Ex. B (§ 8.12(b) (p. 16)).

²¹ Id., Ex. B (§ 10.2(1), (p. 19)).

²² Id., Ex. C (p. 6).

contract between Wells Fargo and the Agency currently before the Court, and thus no agreement. Even if there were, Wells Fargo has retained the right to modify, “the financing and the par amount,” in its discretion based on a number of events, including, “events occur resulting in a material disruption of the market.”²³ If there is an unexpected disruption in the market, Wells Fargo has the right to modify its financing. Therefore, the \$100,000 limitation against the District is not absolute.

The District also contends if there is a default on the lease,

[U]nder the facts of the proposed transaction, the Agency will assign all of its rights to Wells Fargo under a Deed of Trust. In that case, the Agency will cease to be the owner, in which event § 50-2905(8) [of the Idaho Code] is no longer applicable and the Agency will absolve itself of further obligation on the Note by letting Wells Fargo pursue its remedies, thereby satisfying the debt retirement clause of the Plan.²⁴

If the District defaults on the lease, and the Agency has no ability to pay the debt, Wells Fargo will be allowed to pursue its remedies. As discussed above, the District does not establish that Wells Fargo will be barred from pursuing remedies against the District. While the promissory note will be between the Agency and Wells Fargo, the Court is not convinced there is no theory of law or set of facts under which Wells Fargo could not recover against the District. Several potential causes of action could exist under such circumstances, including both legal and equitable claims. The District cannot argue no liabilities will be created when it is clear many potential liabilities exist.

Under Idaho law, liability means, “Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts, either express or implied, or in consequence of torts committed. The state of being bound or obliged in law or justice.” *Feil*, 23 Idaho 32, 129 P. at 649. The District provides numerous other Idaho District Court decisions confirming similarly structured transactions, and caselaw from other states approving of similarly structured transactions.²⁵ These cases and

²³ Id., Ex. C (p. 6).

²⁴ Reply Memorandum to Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 20, 2015, pp. 14 – 15.

²⁵ Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015, Exs. A – G and Appx. A.

decisions are non-binding.²⁶ Further, some of the District Court decisions were made without objection.²⁷ The District is required to, “make a clear statement of the legal authority for the proposed expenditure.” Idaho Code § 7-1304(2). However, there is no precedential Idaho law on point regarding these types of lease/purchase agreements. The only discussion of this sort of situation to which the Court has been directed is contained in a concurring opinion of Justice Jim Jones in *In re Univ. Place/Idaho Water Ctr. Project*, where Justice Jones stated

The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivisions of state government. It is a virtual impossibility to present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term. That does not necessarily mean that the government's contracts or leases are less worthy than those between private parties.

In re Univ. Place/Idaho Water Ctr. Project, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008). This language is not binding, nor does it specifically indicate that such nonappropriation clauses are legal. It merely discusses that such clauses are regularly included in governmental contracts. But the fact that a contract clause commonly occurs does not make the clause more or less legal.

Finally, the Court is not convinced the lease agreement is, as a matter of law, a true lease. There are many circumstances under which a lease will be deemed to be a disguised security interest in a sale.

The primary issue to be decided in determining whether a lease is intended as security is whether it is in effect a conditional sale in which the lessor retains an interest in the leased goods as security for the purchase price. While the inclusion of a purchase option in an agreement not terminable by a lessee does not, in and of itself, make the agreement one intended for security, the transaction is in substance a conditional sale where the lessee can become the owner of the leased property for only nominal consideration at the expiration of the lease.

²⁶ “If an opinion is not published, it may not be cited as authority or precedent in any court.” ID R S.C.T. OP. RULES Rule 15. Because District Court cases are not published, they are not precedent.

²⁷ See Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015, Exs. B, C, and D.

That a lessee has acquired equity in leased property is important in proving that a transaction is a disguised sale, rather than a true lease, since it suggests that the lessor did not expect the return of the leased goods.

68A Am. Jur. 2d Secured Transactions § 92. *See also* 67 Am. Jur. 2d Sales § 28 (“The substance of the transaction generally prevails over the form, and designing a sale to appear in form as a lease does not alter the true nature of the transaction.”). Idaho subscribes to this principal. *See Transp. Equip. Rentals, Inc. v. Ivie*, 96 Idaho 223, 225, 526 P.2d 828, 830 (1974) (Bakes, J., dissenting, stating, “The name which the parties attach to their financial transaction is not controlling in determining whether or not it is a true lease or a financing arrangement.”); *Excel Leasing Co. v. Christensen*, 115 Idaho 708, 710, 769 P.2d 585, 587 (Ct. App. 1989); *W.L. Scott, Inc. v. Madras Aerotech, Inc.*, 103 Idaho 736, 740, 653 P.2d 791, 795 (1982). Bankruptcy law also engages in similar analyses. 9C Am. Jur. 2d Bankruptcy § 2669. And it is relevant for tax law. *See* 67B Am. Jur. 2d Sales and Use Taxes § 85. The facts of this case strongly suggest the lease between the Agency and the District is not a true lease. The District has the right to purchase the new facilities from the Agency for the amount of the promissory note, various bank fees, and \$10.²⁸ If the note is already fully paid off, whether through the District utilizing all twenty-four yearly renewals or some other method, the District can purchase the new facilities by reimbursing the Agency for any unpaid fees and expenses, and by paying an additional \$10.²⁹ For property with a purchase price of approximately \$20,000,000.00, these amounts are clearly nominal. The Agency is retaining essentially no value in the property once the lease is completed.

This raises the question of whether the lease transaction is in fact an equitable mortgage to which the District is a party. Idaho has long recognized the principle of equitable mortgages. *See Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905, 908 (1933). Leases with options to purchase can act as equitable mortgages.³⁰ In this case, the financing structure requires the District to purchase the new facilities from Gardner, immediately transfer them to the Agency, and then lease them back from the Agency with the option to purchase for a nominal amount. This transaction ostensibly is a, “transfer of an interest in property . . . made only as a security for the

²⁸ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. B (§ 11.2 (p. 20)).

²⁹ *Id.*, Ex. B (§ 11.3 (pp. 20 – 21)).

³⁰ *See Tomika Investments, Inc. v. Macedonia True Vine Pentecostal Holiness Church of God, Inc.*, 136 N.C. App. 493, 497, 524 S.E.2d 591, 594 (2000); *Adrian v. McKinnie*, 2002 S.D. 10, ¶ 13, 639 N.W.2d 529, 534.


performance of another act,” and is therefore a mortgage. Idaho Code § 45-904. If the lease is later construed as an actual or equitable mortgage, there is a corresponding liability.

Based on the review of the applicable law and the facts of this case, the Court determines the lease agreement does not comport with the requirements of Article VIII, § 3 of the Idaho Constitution. The lease, as formulated, subjects the District to significant liabilities beyond the year in which the contract is incurred. The District argues that such liability is not beyond the income and revenue provided for it for a given year, because the District currently has sufficient funds and anticipated income to cover the entire expense of the new facilities and lease agreement. The District even has adopted a resolution committing available general funds for 2015 to cover the purchase price of the new facilities.³¹ However, this argument is fleeting: if the money is dedicated but not actually used in 2015, there is no guarantee that it will be available for the renewal of the lease in 2016, 2017, or beyond. The District may either use the funds to pay for the new facilities up front, or it may submit the long term liabilities to the qualified voters of the District. But the Court will not confirm the lease agreement as currently presented to the Court.

CONCLUSION

Based on the foregoing, the Petition for Judicial Confirmation (filed Dec. 19, 2014) is DENIED.

ORDERED this 21st day of March, 2015.



Lynn Norton
District Judge

³¹ Id., Ex. A.

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of March, 2015, I mailed (served) a true and correct copy of the within instrument to:

Donald E Knickrehm
Attorney at Law
601 W Bannock Street
Boise ID 83702

Nicholas G Miller
Attorney at Law
877 W Main Street Suite 1000
Boise ID 83702-5883

John L Runft
Attorney at Law
1020 W Main Street Suite 400
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CHRISTOPHER D. RICH
Clerk of the District Court

By: *Jeanine Hansen*
Deputy Court Clerk

CERTIFICATE OF MAILING