

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAYBROOK TAX EXEMPT INVESTORS, LLC
and LDF ACQUISITION, LLC,

Plaintiffs,

v.

OPINION AND ORDER

12-cv-255-wmc

LAKE OF THE TORCHES ECONOMIC
DEVELOPMENT CORPORATION; STIFEL
NICOLAUS & COMPANY, INC.; STIFEL
FINANCIAL CORP.; and GODFREY & KAHN,
S.C.,

Defendants.

On March 20, 2013, defendant Lake of the Torches Economic Development Corporation filed a motion for reconsideration of the court's March 11, 2013, Opinion and Order (dkt. #53)("jurisdictional order"). Defendant asked the court to: "(1) strike the Order from the docket; and (2) issue an amended Opinion and Order that removes all references to Lake of the Torches having conceded the validity of the Bonds and all references to the Court's interpretation of the Seventh Circuit's decision regarding this still-pending issue." (Dkt. #54 at 1.) The motion was somewhat half-heartedly opposed by plaintiff Saybrook Tax Exempt Investors, LLC, which argued that the court's "conclusion that the Bonds are valid . . . was not a manifest error of law and should not be disturbed." (Dkt. #68, at 2.) Over this opposition, the court granted defendant's motion, but did not issue an amended opinion. (Dkt. #71.) Both sides have requested clarification.

The import of the court's April 1, 2012, text order is expressly clarified by order below. The court's March 11 Opinion and Order is not otherwise changed; no new opinion will issue; and the court's decision on jurisdiction remains the same.

In granting defendant's motion for reconsideration without explanation, the court was mindful that the issue it was being asked to reconsider would not affect the jurisdictional question -- ultimately the *only* issue this court had decided and indeed could decide. In other words, even assuming that the bonds *might* be invalidated under IGRA along with the associated offering documents, the court would have reached the same conclusion with respect to the lack of federal question jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005). The federal issues implicated in plaintiffs' state law claims still fail to rise to level of substantiality that would satisfy *Grable*. "The substantiality inquiry under *Grable* looks . . . to the importance of the issue to the federal system as a whole." *Gunn v. Minton*, 568 U.S. ___, 2013 WL 610193, at *7 (2013). Deciding the applicability of IGRA to both the bonds and other associated offering documents makes no more difference to the "federal system as a whole" than just deciding the applicability of IGRA to the offering documents. The issues of federal law remain "fact-bound" and "situation-specific."

In light of this analysis, the impact of *Wells Fargo Bank, Nat. Ass'n v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684 (7th Cir. 2011), on the validity of the bonds was a question that ultimately did not need to be answered in order to determine this court's jurisdiction. Without opining one way or the other on defendant's reading of *Wells Fargo*, therefore, the court granted the motion for reconsideration because -- lacking

jurisdiction -- it perforce lacks the authority to decide *any* issue unnecessary to its jurisdictional holding. *Illinois v. City of Chicago*, 137 F.3d 474, 478 (7th Cir.1998) (only issues unrelated to merits of case should be decided before jurisdictional issues). The court's original opinion should be ignored to the extent that it weighed in on how to interpret *Wells Fargo*, and the parties are, therefore, left to dispute the preclusive impact (if any) of the Seventh Circuit's decision in *Wells Fargo* on the merits of their claims in state court to the extent *that* court deems fit.

ORDER

Accordingly, IT IS ORDERED that:

- (1) plaintiff's motion for clarification (dkt. #73) is GRANTED as follows: all references to Lake of the Torches having conceded the validity of the Bonds and all references to the Court's interpretation of the Seventh Circuit's decision regarding this still-pending issue should be considered struck from the court's March 11, 2013, Opinion and Order; and
- (2) defendant's request for additional briefing (dkt. #74) is DENIED AS MOOT.

Entered this 29th day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge