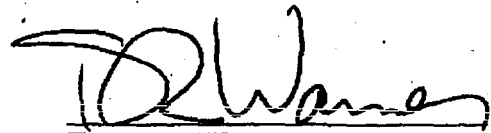


2. The October 22, 2004 order in file number 62-CX-04-200070 is VACATED;
3. The attached memorandum is incorporated herein and made part of this order;

**THERE IS NO JUST REASON FOR DELAY,
LET JUDGMENT BE ENTERED ACCORDINGLY.**

By the Court:

Date: 6-18-10



Teresa R. Warner
Ramsey County District Court Judge

MEMORANDUM

The Port Authority of the City of St. Paul ("Port Authority") issued a series of revenue bonds under Basic Resolution 876. In 2002 and 2004 the Port Authority filed petitions for instructions regarding Basic Resolution 876. The District Court issued orders granting the petitions and allowing the Port Authority to take certain actions, including recovering expenses from prepaid net revenues and special funds, conducting a Dutch auction, and adjusting the payment dates for principal and interest. In 2006, the Port Authority filed a petition seeking permission to liquidate the 876 bonds. A group of bondholders objected to the 2006 petition and also sought to vacate the 2002 and 2004 orders. This Court found that it had jurisdiction over the Port Authority's petitions and issued an order granting the 2006 petition. This Court denied the Objecting Bondholders' Motion to Vacate the 2002 and 2004 orders on the grounds that jurisdiction was proper. The Objecting Bondholders appealed. On September 10, 2009, the Minnesota Supreme Court held that the district court did not have in rem jurisdiction over the 876 bonds. The Supreme Court reversed and vacated this Court's Order granting the 2006 petition, and held that the 2002 and 2004 orders were void, but declined to vacate them, stating:

although we recognize that the district court never had and still does not have in rem jurisdiction over the 876 Bonds, we believe that the question of whether appellant's motion to vacate was made within a reasonable time is better addressed by the district court because this record is not sufficient for us to properly determine all attendant circumstances. *In re A Petition for Instructions to Construe Basic Resolution 876 of the Port Authority of the City of St. Paul*, 772 N.W.2d 488, 496 (Minn.2009) (rehearing denied Nov. 6, 2009).

The Supreme Court remanded the matter to the district court for a determination on whether, considering all attendant circumstances, the Objecting Bondholders' Motion to Vacate the 2002 and 2004 orders was brought within a reasonable time. To ensure the existence of a sufficient record, this Court allowed the parties to present additional evidence at

a February 24, 2010 hearing regarding the circumstances attendant to the motion to vacate. The Objecting Bondholders submitted exhibits and presented the testimony of Patrick Dean. The Port Authority submitted exhibits and presented the testimony of Laurie Hansen and Dr. Gary Gibbons. The Court received the Affidavit of Dan Sheff pursuant to a stipulation by the parties. The Objecting Bondholders also filed a Motion for a Temporary Restraining Order, but a record was made at the February 24, 2010 hearing that the TRO motion was subsumed by the Motion to Vacate and the TRO motion was not argued on the record.

Minnesota Rule of Civil Procedure 60.02 permits a party to move to set aside a final judgment if that judgment is void. Minn.R.Civ.P. 60.02(d). The rule also requires that the motion be made within a reasonable time. Minn.R.Civ.P. 60.02. The Supreme Court addressed the vacation of void orders in *Bode v. Minnesota DNR*, 612 N.W.2 862, 870 (Minn.2000). Prior to *Bode*, courts did not apply the reasonableness requirement to motions to vacate a judgment for lack of subject matter jurisdiction. *Bode* at 869. The general rule was that motions to vacate judgments for lack of subject matter jurisdiction could be brought at any time. *Id.* The *Bode* Court read the timeliness requirement into the rule and concluded that direct attacks on a judgment based on lack of subject matter jurisdiction must be brought within a reasonable time. *Id.* at 870. The *Bode* Court defined reasonable time, stating: "what is a reasonable time must be determined by considering all attendant circumstances such as: intervening rights, loss of proof by or prejudice to the adverse party, the commanding equities of the case, the general desirability that judgments be final and other relevant factors." *Id.* (internal quotations omitted).

The Objecting Bondholders initially filed their Motion to Vacate 2002 and 2004 Orders on October 20, 2006. The Objecting Bondholders argue that the void 2002 and 2004 orders should be vacated because the motions to vacate were only filed 2 and 4 years after the

filing of the orders and because there are no extraordinary circumstances under *Bode* that would justify a departure from the general rule that void orders are vacated.

The Port Authority agrees that *Bode* is applicable, but also asserts that a party seeking relief under Minn.R.Civ.P. 60.02 has the burden to establish (1) a reasonable case on the merits; (2) a reasonable excuse for the failure to act; (3) action with due diligence after entry of judgment; and (4) lack of prejudice to the opposing party, pursuant to *Finden v. Klaas*, 268 Minn.268, 271 (1964). The Port Authority argues that the Opposing Bondholders have not met their burden on the *Finden* factors and requests that this Court deny the motion to vacate the 2002 and 2004 orders.

This Court disagrees with Port Authority's assertion that an analysis of the *Finden* factors is necessary. *Bode* is clear that in considering whether a void order should be vacated, the analysis is whether, considering all attendant circumstances, the motion to vacate was brought within a reasonable time. *Id.* at 870. The Supreme Court's remand language was consistent with *Bode*. The *Finden* factors are appropriate when considering whether a party is entitled to relief from a judgment. The Supreme Court has already held the 2002 and 2004 judgments void. There is no reason for this Court to consider whether the Opposing Bondholders have a reasonable case on the merits. The *Finden* factors are only relevant in so far as they are attendant circumstances to the motion to vacate, and are therefore covered by a *Bode* analysis. This conclusion is further supported by the decision in *Fallon v. Hogenson*, 2009 WL 2498699 (Minn.App.2009), where the Court of Appeals addresses both *Bode* and *Finden*. The Court of Appeals conducts a *Bode* analysis in addressing appellant's argument that the judgment is void for lack of subject matter jurisdiction under Minn.R.Civ.P. 60.02(d). After finding that jurisdiction was proper, the Court later conducts a separate *Finden* analysis

in addressing appellant's argument that he was entitled to relief from judgment on the basis of excusable neglect under Minn.R.Civ.P. 60.02(a).

In considering all attendant circumstances, this Court finds that the Objecting Bondholders' Motion to Vacate the 2002 and 2004 Orders was brought within a reasonable time. The 2002 Order was issued October 8, 2002 and a notice of entry of order was filed the next day. The 2004 Order was filed on October 22, 2004. No notice of entry of order was filed. The Objecting Bondholders' Motion to Vacate the 2002 and 2004 orders was filed on October 20, 2006. The Objecting Bondholders raised the issue of subject matter jurisdiction 4 years after the 2002 order was issued, and 2 years after the 2004 order was issued. In *Bode*, the appellants did not contest the issue of subject matter jurisdiction until 18 years after initiation of the litigation at issue and 12 years after the final entry of judgment. Here, delays of 4 years and 2 years are not so long that they violate the general desirability that judgments be final.

In *Bode*, the DNR took substantial measures in reliance on the judgment, restoring the land in question to wetlands status. There are no such substantial measures in this case. The Port Authority has not established any substantial prejudice or intervening rights that would cause this Court to allow the void orders to stand. The Port Authority asserts that it would be impossible to undo the Dutch auctions and the realignment of payment dates for interest on bonds. The Bondholders, however, are not seeking the rescission of the Dutch auctions or rescission of the payment dates. The Supreme Court held that this Court had no in rem jurisdiction to approve the Dutch auctions or the payment dates. As such, this Court also has no jurisdiction to order the rescission or undoing of past actions taken by the Port Authority. By vacating the 2002 and 2004 orders, this Court is only rescinding the previous court

approval of the Port Authority's petitions as there was no jurisdiction for the court to consider the petitions.

In considering all of the circumstances attendant to the Objecting Bondholders' October 20, 2006 Motion to Vacate the 2002 and 2004 Orders, this Court finds that the Motion to Vacate was brought within a reasonable time. In accordance with this finding and the Minnesota Supreme Court's holding in *In re A Petition for Instructions to Construe Basic Resolution 876 of the Port Authority of the City of St. Paul*, 772 N.W.2d 488, 496 (Minn.2009) (rehearing denied Nov. 6, 2009), that the 2002 and 2004 orders were void for lack of subject matter jurisdiction, the 2002 and 2004 orders are vacated.

TRW