ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

CASE SUMMARY

AILEEN H. CHAR LIFE INTEREST et. al. v. MARICOPA COUNTY
CV-03-0348-PR

Parties and Counsel:

Petitioners : Paul Mooney and Jim Wright of Fennemore Craig represent the taxpayers. The numerous taxpayer individuals and entities in the first case are: Aileen H. Char Life Interest, 629 Investments, A Hawaii Partnership, Remainder Interest; Aimco Properties LP; AIMCO/Blossomtree Apts. LP; AL-Said Anna FT; Alta Place Property Inc; Arcadia Villa APTS, LLC; Arizona Granopalms LTD: Camino APTS; Cinnamon Properties, Inc; Con Am Realty Investors; Cook Inlet Region of Arizona, Inc.; Delcastello Irene Trust; EQR Villa Manana Vista Inc.; EQU-Watson GP; Equity Residential Properties; ERP Operating LP; Evans Withycombe Finance PSHP, Suite A200; Evans Withycombe Finance Partnership LP; Evans Withycombe Residential; Evans Withycombe Residential LP; Forest Park LLC; G & E Holdings Inc; Greenway Phoenix Association LTD Partnership; Heatherwood Investors LTD Partnership; Laurels Saddle Club LP; Magellan Northwood Inc; Mariposa Joint Venture; Moraru, Peter & Elizabeth; Mountain View Casitas LP; NHP Summer LP; Orchard Mesa Associates Ltd. Partnership; OTC Apartments LP; Parkside: Parkside Partnership: Paso Robles LLC; Pine Springs LLC; Professional Property Inv. Ltd; Scottsdale Palms Ltd. Partnership; Smith Melvin W. Jr. & Marjorie L. Tr; Sunset Shadows Inc; Sunshine Land Associates LP; The Phoenix Apts LLC; The S Development Company; Thomson Thomas J. Tpoc Ltd. Liability Co; Verde Investment Inc.; W.L. Properties LLC; Wellsford Residential Trust; YF Partners Green LP.

Respondents: Maricopa County is represented by Roberta Livesay of Helm & Kyle. In the Court of Appeals, Frank Boucek and John Thurau, Assistant Attorneys General, appeared for the Arizona Department of Revenue.

Facts: Taxpayers claim the County has unconstitutionally discriminated against them concerning the imposition of valuation and tax on their multi-family apartment parcels. This action arises out of property tax appeals for the 1997 tax year. The tax court consolidated three cases with multiple taxpayers, who filed complaints and notices of property tax appeals against the County and the Department, challenging the County's assessment of their property for *ad valorem* tax purposes.

The Taxpayers contend that the Maricopa County Assessor valued their sixty-two apartment properties in a discriminatory manner, in violation of the Arizona Constitution, Article 9, Section 1, ("Uniformity Clause") and the U.S. Constitution, Amendment XIV, Section 1. Specifically, they claim that the Assessor prepared the 1997 tax roll by deliberately and selectively "rolling-over" the values of more than half of all apartment parcels in the County, while at the same time increasing the value of the Taxpayers' properties by an average of more than 37% from 1996 to 1997.

The Assessor used the Department's "cost model" to set the full cash values of the Taxpayers' properties under A.R.S. § 42-201 (now numbered § 42-11001). At the same time, the County kept constant the values of half of all the apartment parcels on the 1997 tax roll, based on its determination that the roll-over statute applied. *See* A.R.S. § 42-247, now § 42-16003.

The County filed a motion for summary judgment. In response, the Taxpayers successfully moved for additional discovery under Rule 56 (f), Arizona Rules of Civil Procedure. After completing discovery, the Taxpayers indicated to the tax court that they were ready for trial. The County then renewed its motion for summary judgment, arguing that the Taxpayers continually failed to provide evidence of inequality under the full cash value standard. The Taxpayers then also moved for summary judgment. The tax court denied the motions.

The case proceeded to trial. At trial, the evidence showed that the majority of the apartment parcels should not have been rolled over because they were not eligible for such treatment under § 42-247. The record establishes that the Assessor has abandoned this rollover practice, apparently agreeing that his interpretation of the statute was wrong.

The tax court held that the County's multi-family residential classification is a class of similarly situated property and therefore is a valid classification as to which an unlawful tax discrimination analysis can be applied for purposes of determining whether the Taxpayers' property was discriminated against in violation of the Uniformity Clause. The court noted that under § 42-247, "[i]n the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal." The property's valuation will be "rolled over" on the tax roll, regardless of the result of the appeal.

However, the tax court noted, the statute only authorizes a roll over of a property's valuation for the year subsequent to a property valuation appeal.[1] The tax court held that there was no statutory authority to roll over 7,560 multi-family residential properties on the 1997 tax roll because they were not subject to a valuation appeal in 1996. The court therefore concluded that the County violated § 42-247 by improperly rolling over those property valuations within the multi-family residential classification.

The Taxpayers' properties were not rolled over on the 1997 tax roll because the properties were not the subject of a valuation appeal in 1996. Further, their property had never been the subject of a valuation appeal. Consequently, their property was revalued

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[1]The County rolled over 8,543 property valuations within the multi-family residential classification from the 1996 tax roll to the 1997 tax roll. Of those 8,543 properties, only 983 were the subject of a valuation appeal in 1996. The remaining 7,560 properties were not the subject of a valuation appeal in 1996, and, thus were ineligible for a roll over of valuation under § 42-247**.** The County rolled over 2,570 of the properties because the properties had been the subject of an appeal in 1993, 1994, or 1995.

under the cost model in 1997, which increased the properties' value by an average of 37.6%. Other similarly situated property, property that had not been the subject of a valuation appeal in 1996, was improperly rolled over on the 1997 tax roll. Therefore, those similarly situated properties were not revalued under the cost model and realized no increase in property values. However, had those properties been revalued under the cost model, their property values most likely would have increased proportionally. Therefore, the tax court concluded that the improper roll over of valuations for properties similarly situated to the Taxpayers' properties resulted in disproportional valuation of the Taxpayers' properties.

The tax court next addressed the requisite element of intentional and systemic conduct needed to establish an actionable disproportional valuation. The court noted that discriminatory, systemic conduct involves a plan or practice adopted by the taxing authority. The tax court noted that such a plan or practice can be established by the single act of a policy maker. Further, the mere fact that the assessing officials believed their conduct was valid does not render it less vulnerable to attack as discriminatory.

The tax court held that the decision to "roll over" property values for more than one year was the result of a deliberate decision by the County Assessor to program the County's computers to continuously roll over property valuations for all properties that were ever the subject of a valuation appeal. County employees testified that the decision to continuously roll over values after an appeal was based upon (uncorroborated) oral advice from an unnamed deputy county attorney.

The tax court held that reliance on an incorrect interpretation of a statute does not negate the discriminatory valuations created by such reliance. The court held that the decision to roll over property values for more than one year after an appeal was intentional. Accordingly, the court concluded that the resulting disproportional property valuations came from intentional and systemic conduct by the County, and they violated the Uniformity Clause.

The tax court then addressed the appropriate remedy, noting that a taxpayer that has been discriminated against is entitled to that remedy which places him on par with the favored taxpayers. The tax court therefore ordered the County to refund the taxpayers the difference between the 1996 property valuations and the 1997 increased property valuations of their properties.

Issues:

"1. Did the court of appeals improperly ignore the tax court's findings of fact?

"2. Did the court of appeals improperly ignore this Court's prior decisions in tax discrimination cases and require proof that no Arizona decision has ever required?"

Issue not decided by the court of appeals
"Are Petitioners entitled to recover more than $30,000 in attorneys' fees pursuant to A.R.S. § 12-348(B) because there were multiple plaintiffs?"

Definitions:

discovery: practice of providing the other party with information about a case, prior to trial.

roll-over: keeping the same property valuation from one tax year to the next.

motion for summary judgment: a request to the trial court to end the case in one's favor, claiming there are no factual disputes that require a trial, but that the case may be decided on legal arguments, plus the documents and affidavits presented to the court before trial.