ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

NORTHWEST FIRE DISTRICT v. U.S. HOME OF ARIZONA CONSTRUCTION CO., et al.; 2 CA-CV 06-0061-PR (Opinion); CV-06-0377-PR

PARTIES AND COUNSEL:

Petitioner: U.S. Home is represented by Jeffrey Gross, Gallagher & Kennedy.

Respondents: Northwest Fire District is represented by Thomas Benavidez and Christopher Wencker of Benavidez Law Group.

FACTS:

The District, a fire district organized under A.R.S. §48-801 to -822 (2006) and Ariz. Const. art. XIII, § 7, is a political subdivision and its board of directors consists of elected officials. A.R.S. §§48-802 -803 (2006). The District is required to provide emergency medical, fire, and rescue services within its jurisdiction. To meet those obligations, the District needs to have facilities, equipment, and personnel capable of meeting the fire services national standards of care. The District generates general revenue by collecting taxes on property within its boundaries. Taxes are not collected on new homes for up to eighteen months after they have been completed.

The District's governing board adopted a resolution (Resolution 2004-048) to impose a "facilities benefit assessment" on homes that are not yet constructed but for which a landowner has obtained a building permit. The assessment was due upon the builder being issued a building permit by the appropriate permitting authority.

In adopting the resolution, the District determined that as new building construction begins within the District, it places a burden upon the District to provide emergency medical, fire, and rescue services and to develop facilities to provide those services. The Resolution provided that all plans for new construction for which a County permit was issued had to be submitted to the District for review and approval. The review was to insure compliance with applicable fire codes. Associated with that review and approval, the District charges not simply for plan review and approval, but a one-time "assessment" to "provide funding for the purchase of land and the construction of new facilities needed in the District," expenses that the District's bonding ability is specifically intended to address and for which, if properly authorized, the District could assess taxes.

The assessment notices sent to U.S. Homes and others stated that the assessments of $387 per structure under construction approximately equaled the "amount the property owner would be required to pay if the property under construction were included in the tax roll," and therefore the assessments "enable the District to recoup property taxes not collected due to delay in placing the property improvements . . . on the property tax rolls."

Contending that the District had no authority to do so, U.S. Home refused to pay the assessments on homes it was building. The District brought an action in Maricopa County Superior Court to force U.S. Home to pay the assessment. After a hearing on cross-motions for summary judgment, the trial court entered judgment in favor of U.S. Home.

Northwest appealed, arguing that: (1) the facilities benefit assessment is presumed to be valid and constitutional; (2) U.S. Home failed to meet its burden of proving that the assessment was unconstitutional beyond a reasonable doubt; (3) the District has the power to collect the assessment under §48-805(B)(13); (4) the trial court's interpretation renders the phase "facilities benefit assessment" superfluous and unnecessary, thus contravening established statutory construction principles, (5) the assessment is not discriminatory and is rationally related to its purpose; and (6) the District's voluntary compliance with the notice requirements for development impact fees does not alter the nature of the assessment.

The court of appeals, Division Two, Judges Eckerstrom, Brammer, and Espinosa, ruled that the statute allowed the District to impose such assessments on homes not yet constructed, but for which a landowner had obtained a building permit. The court determined that the assessments were a fee, not a tax. Further, even if such assessments were similar in nature to development fees, which municipalities are statutorily authorized to impose, the District was authorized to impose the assessments.

ISSUES PRESENTED FOR REVIEW:

"1. Does A.R.S. § 48-805(B) (14) [*renumbered as* §48-805 (B)(13)(2006)] enable the District to adopt a "facilities benefit assessment" as an unrestricted, unregulated funding mechanism to pay for new facilities and equipment, rather than authorize a charge for use of facilities as one element of a fee schedule for fire or emergency services actually rendered?

2. Was the District's charge a tax, rather than a fee?

3. Was the District's charge invalid because no relationship exists between the amount and purpose of the charge?

4. Was the so-called "facilities benefit assessment" really a development impact fee that the District had no authority to charge?"