



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**4501 Northpoint v. Maricopa County,
CV-05-0124-PR**

PARTIES AND COUNSEL:

Petitioner: 4501 Northpoint is represented by Paul Mooney, Jim Wright, and Paul Moore of Fennemore Craig.

Respondent: Maricopa County is represented by Richard Garnett, Deputy County Attorney.

FACTS:

This case arises out of a property tax valuation for the AMC theater complex and garages at the Phoenix Esplanade. The Board of Equalization set the property's full cash value at \$13,597,923 for the 2000 tax year.

Taxpayer 4501 Northpoint filed a complaint in Arizona Tax court asserting that the County's valuation was excessive. Seven weeks before trial, after the parties conducted quite a bit of discovery, the County offered to reduce the valuation to \$12 million, but the Taxpayer rejected the offer. The County then sent Taxpayer an offer of judgment pursuant to Rule 68 of the Arizona Rules of Civil Procedure. This time, the County offered to reduce the full cash value to \$12 million and to pay for the Taxpayer's costs. However, the County did not offer to pay for the Taxpayer's attorney's fees.

Taxpayer filed a notice of partial acceptance of offer of judgment under Rule 68(C)(3), accepting the value and costs award, but requesting attorney's fees in incurred after April 10, 2002 (the date of the County's first settlement overture) or, at a minimum, for attorneys' fees incurred in responding to Taxpayer's fee application.

The tax court initially ruled that Taxpayer could recover attorneys' fees. However, the tax court later reversed itself when the County filed a motion for reconsideration. The court ruled that the Rule 68 Judgment was not "an adjudication on the merits" entitling Taxpayer to attorneys' fees under A.R.S. §12-348.

The Taxpayer appealed. The court of appeals majority noted that this case turns on interpreting A.R.S. §12-348(B)(1)(a) which provides in relevant part that a court may award fees and other expenses to a party other than a governmental entity that prevails in an "adjudication on the merits" brought by that party against a city, town, or county challenging the assessment or collection of taxes, or in an action brought by this state or a city, town, or county against the party to enforce the assessment or collection of taxes.

The majority of the court's panel deciding the case held that the phrase "adjudication on the merits" implies that a court considered the substance of the claim. Therefore, the phrase should be construed to mean a judicial determination on the substantive cause of action. Under the majority's view, it is not enough to obtain judgment by a consent decree or settlement agreement. Otherwise, the statute would award fees simply for "prevailing" in the case. The majority therefore concluded that a taxpayer who obtains a reduction in valuation by accepting an offer of judgment is different than a "successful party" in a contract case for purposes of A.R.S. § 12-341.01(2003), which provides that a court may award reasonable attorneys' fees to the successful party in a case that arises out of contract. A successful party under §12-341.01 need not prevail by an adjudication on the merits to obtain attorneys' fees.

However, to be entitled to attorneys' fees under A.R.S. §12-348, a taxpayer must prevail by an adjudication on the merits – a taxpayer must not only obtain a reduction in valuation. The majority concluded that the act of accepting an offer of judgment does not go "the merits" of an action because there are several reasons why a party may accept an offer of judgment and some of those reasons do not necessarily include any resolution on the merits. Entering a Rule 68 judgment does not determine the substance of the issues but instead qualifies as a perfunctory act performed by a court pursuant to the parties' agreement. The court also determined that Rule 68(C) (3) of the Arizona Rules of Civil Procedure does not control a taxpayer's right to attorneys' fees. That rule states that if, while an offer of judgment remains effective, the adverse party serves written notice that the portion of the offer stating the monetary award to be made on the causes of action asserted is accepted, either party may file the offer, together with proof of acceptance thereof, and may apply to the court for a determination whether attorneys' fees should be awarded and, if so, the amount thereof.

The dissent, by Judge Lawrence Winthrop, noted that in enacting A.R.S. §12-348, the legislature stated that it intended "to reduce the economic deterrents individuals faced in contesting governmental actions, magnified by the disparity between the resources and expertise of government and individuals." Accordingly, this State's public policy favors the trial court having the discretion to award attorneys' fees to taxpayers or other individuals who successfully challenge government actions. Further, the dissent noted that the issue of valuation was litigated to the point where a formal judgment was entered in favor of the Taxpayer and the County Assessor was directed to change the tax rolls to reflect a more favorable valuation for the subject property for the tax year in issue. That judgment was intended to be and is binding on the parties. That was, in large part, the substantive relief that the Taxpayer sought in this lawsuit. Therefore, Judge Winthrop would remand this case to Tax Court for a determination of whether Taxpayer should recover its attorneys' fees, subject to the court's discretion and the statutory cap set forth in A.R.S. §12-348(E)(5).

ISSUES:

“1. Does the court of appeal’s majority opinion erroneously conclude that a judgment entered pursuant to Rule 68, Arizona Rules of Civil Procedure, is not an “adjudication on the merits” within the meaning of A.R.S. §12-348(B)?

2. Does the court of appeal’s majority opinion abrogate the provisions of Rule 68 in all tax cases and contravene the public policy of this State articulated in A.R.S. §12-348 as interpreted by this Court?”

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