



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CNL HOTELS AND RESORTS; MARRIOTT DESERT RIDGE RESORT v.
MARICOPA COUNTY
CV-11-0072-PR**

PARTIES:

Petitioner: Maricopa County (“the County”)

Respondents: CNL Hotels and Resorts and Marriott Desert Ridge Resort (“Marriott”)

Amicus Curiae: The Arizona Association of School Business Officials; Paradise Valley Unified School District; and Twelve County Assessors

FACTS:

This is a property tax case concerning the classification of improvements (a resort and two golf courses) owned by Marriott, located on leased state trust land. The County taxed Marriott on the improvements based on a Class 1 status, resulting in a tax rate of 25% of assessed cash value for tax years 2003 through 2005, and a rate of 24.5% for tax year 2006.

Marriott filed a complaint in the tax court, arguing the improvements qualified for the more favorable Class 9 status. It sought declaratory relief and a tax refund. The tax court granted the County’s motion for summary judgment, concluding the improvements were properly classified. It entered judgment in favor of the County.

The court of appeals reversed the trial court’s judgment and remanded with instructions to enter summary judgment in Marriott’s favor. It held, as a matter of first impression, that the improvements at issue qualify for Class 9 status based on A.R.S. § 42-12009(A)(1), which provides that improvements located on government property that are owned by the party leasing the government-owned property are Class 9 property if the improvements become the property of the government on termination of the lease. The County’s argument that Marriott might remove or destroy improvements during its lease, such that they would not revert to the State, does not require a different result. The appellate court reasoned that, despite the absence of any guarantee that the improvements would remain in existence and revert to the State at the end of the lease, the State had a demonstrable reversionary interest in the golf courses and resort improvements during the tax years at issue, qualifying them for the more favorable Class 9 status.

The court noted Marriott was contractually obligated at lease termination or expiration to “surrender peaceable possession of the Premises” and to quitclaim “any right title or interest” to the

State. Further, other contractual provisions substantially limited Marriott's ability to affect the improvements: 1) the lease prohibited waste; 2) the parcel was subject to the Desert Ridge community's specific plan requiring Marriott to obtain approval for any changes to the property; and 3) statutes regarding leased property additionally constrain a taxpayer's ability to remove or destroy improvements in such leases (for example, A.R.S. § 37-322.03 prohibits a lessee of state land from removing "any improvement without the written authorization from the [State Land] Department"). Finally, Arizona law implies a good faith and fair dealing covenant in every contract that prevents a party from acting to impair the right of the other to receive benefits flowing from the agreement.

Given the statutory framework, the court found no merit to the County's position that the improvements should be taxed at the highest possible level of taxation (Class 1), rather than at the lowest property tax bracket (Class 9). The County's proposed disposition leads to an absurd result: Class 9 would be rendered meaningless because no taxpayer could establish both the requisite ownership interest and the necessary governmental reversionary interest. Further, the County's interpretation does not harmonize with legislative history, which reflects an intent to encourage certain types of private development on public land, including convention-related facilities. The court held the challenge fell squarely under the error correction statute, which defines an error as including "an incorrect designation or description of the use of property or its classification." A.R.S. § 42-16251(3)(b).

The County seeks review of the court of appeals' opinion.

ISSUES:

1. Did the court of appeals err by ignoring plain language in the statute and focusing on a reversionary interest in the present, when the statute requires a reversionary interest at termination of the lease?
2. Did the court of appeals err in ordering the golf courses place in class nine when the legislature specifically included golf courses in class one, subparagraph nine?
3. Did the court of appeals err in ordering summary judgment to CNL ("Marriott"), a non-moving party, on a fact question that was not litigated and on which the County had no opportunity to present evidence?
4. Did the court of appeals err in finding CNL entitled to retroactive refunds?

STATUTORY PROVISION:

A.R.S. § 42-12009(A)(1) provides, in part:

A. For purposes of taxation, class nine is established consisting of:

1. Improvements that are located on federal, state, county or municipal property and owned by the lessee of the property if:

(a) The improvements become the property of the federal, state, county or municipal owner of the property on termination of the leasehold interest in the property.

(b) Both the improvements and the property are used primarily for athletic, recreational, entertainment, artistic, cultural or convention activities.

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