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SPECIAL DISTRICTS - COLORADO

Landmark Towers Association, Inc. v. UMB Bank, N.A.

Colorado Court of Appeals, Div. III - April 21, 2016 - P.3d - 2016 WL 1594047 - 2016 COA 61

Homeowners association, representing condominium purchasers whose properties were included in special district, brought action against district and investors to invalidate approval of bonds and taxes and to recover taxes paid to district.

Following a bench trial, the District Court granted association part of the requested relief, ordered partial refund, and enjoined district from continuing to collect taxes. District and investors appealed and association cross-appealed.

The Court of Appeals held that:

- The District Court did not abuse its discretion in determining that investors were not entitled to costs;
- Association's challenge to bond and tax election was not barred by issue preclusion;
- Association's claim that ineligible electors voted in election was not subject to statutory time bar;
- Equitable tolling allowed association's claim, even if it was subject to statutory time bar;
- Voters in election were not eligible electors; and
- Purchasers qualified as eligible electors.

Special district and its investors waived for appeal their argument that 30-day time limit in Supplemental Public Securities Act barred homeowners association's challenges to validity of district's taxes. Even though district and investors cited time limit in their answer and in trial management order, they did not cite to time limit statute at any point during trial or argue at trial that association's claims were barred by that statute.

Special district and its investors' contention that Federal Deposit Insurance Corporation (FDIC) was indispensable party to homeowners association's action against district and investors to invalidate approval of bonds and taxes and to recover taxes paid to district was self-serving and untimely, and therefore trial court did not err in adjudicating association's claims in FDIC's absence; district and investors raised issue for first time in post-trial motion for reconsideration, and they had known about FDIC's interests in action since it was filed.

Trial court did not abuse its discretion in determining that investors were not prevailing parties, and thus were not entitled to costs, in homeowners association's action against special district and investors to invalidate approval of bonds and taxes. Even though two of association's claims against investors were unsuccessful, investors worked extensively with district to present united position against association, investors had as much interest in defeating association's claims as did district, and association prevailed on most significant issues at trial and recovered substantial monetary judgment.

Homeowners association's challenge to bond and tax election under Taxpayer's Bill of Rights

(TABOR) was not previously litigated with special district, and therefore association was not barred by issue preclusion from raising challenge. Previous litigation involved association's attack on formation of special district and resulted in holding that association was statutorily barred from challenging district's validity, and association's subsequent claims did not challenge creation of district, but instead alleged that district did not comply with notice requirements for valid TABOR election, which were addressed by different laws than those pertaining to creation of special districts.

Homeowners association's claims that ineligible electors voted in special district bond and tax election under Taxpayer's Bill of Rights (TABOR), and that eligible electors did not receive constitutionally required notice of election, were substantive, and therefore claims were not subject to statutory time bar. If claims were correct, special district would not have had constitutional authority to issue bonds or levy taxes.

Equitable tolling allowed homeowners association's claim that eligible electors did not receive constitutionally required notice of special district bond and tax election under Taxpayer's Bill of Rights (TABOR) to proceed, even if ten-day statute of limitations applied to such claim. Special district prevented purchasers of condominiums in association's building from finding out about creation of district and TABOR election in order to pass heavy tax levies to fund separate development, purchasers did not know about TABOR election or taxes it approved, and purchasers relied on district's omissions in closing their purchase contracts.

Organizers' option contracts for purchase of undivided 1/20 interest in 100-square-foot parcel within proposed special district were sham contracts, and therefore organizers were not eligible electors for purposes of special district bond and tax election under Taxpayer's Bill of Rights (TABOR). Size of parcels were too small to permit any beneficial use, obligation to pay property taxes under contract was illusory, and no organizer paid $10 down payment required by contracts, paid any property taxes, or exercised options to purchase.

Condominium purchasers, who were parties to contracts obligating them to close as soon as purchased units were completed and obligating them to pay pro-rated property taxes from date of closing to end of year, qualified as eligible electors in special district under Taxpayer's Bill of Rights (TABOR). Purchasers were not obligated to pay taxes before closing in order to be eligible electors, and purchasers' obligation to begin paying property taxes on their units at time of closing existed at time of TABOR election.

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