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SPECIAL ASSESSMENTS - COLORADO

Landmark Towers Association, Inc. by EWG-GV, LLC v. UMB Bank, N.A.

Colorado Court of Appeals, Division III - May 31, 2018 - P.3d - 2018 WL 2436817 - 2018 COA 100

Homeowners association, which represented condominium owners whose properties were included in special district, brought action against district and investors to invalidate district's creation, to invalidate approval of bonds and taxes, and to recover taxes paid to district.

Following a bench trial, the District Court ordered a partial refund of taxes paid and enjoined district from assessing future taxes on owners in order to pay its obligations under the bonds. All parties appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. District and investors sought certiorari review. The Supreme Court, 408 P.3d 836, reversed and remanded.

On remand, the Court of Appeals held that:

- The 30-day limitations period to challenge the authorization or issuance of securities by a public entity did not apply to action;
- Imposition on condominium of special district's levy, which was a special assessment and which specially benefits a planned development elsewhere in the district, violated homeowners association's due-process rights;
- Trial court did not abuse its discretion in balancing the equities when deciding to issue an injunction prohibiting special district from levying against condominium;
- Injunction prohibiting special district from levying against condominium did not violate state constitution's requirement for uniform property-tax levies;
- Special district could not impose a real-property levy of 59.5 mills;
- Special district's property owners were not entitled under the Taxpayer's Bill of Rights (TABOR) to refunds of district's allegedly misappropriated bond proceeds; and
- State constitution's prohibition on mingling public funds with private funds did not entitle special district's property owners to a refund of district's allegedly misappropriated bond proceeds.

The 30-day limitations period to challenge the authorization or issuance of securities by a public entity did not apply to homeowners association's challenge to special district's assessments, where association's challenge was a due-process challenge to district's creation to include the condominium associated with the homeowners association and the associated levies.

Special district's levy was a "special assessment," despite argument that it was imposed on real property according to a uniform mill rate, and thus imposing it on condominium in the district violated the due-process rights of condominium's homeowners association, where the levy funded purely local improvements directly and specially benefiting only a planned development in the district.

District court did not abuse its discretion in balancing the equities when deciding to issue an

injunction prohibiting special district from levying against condominium, which was a special assessment that violated due-process rights of condominium's homeowners association due to its lack of benefit from the assessment; although purchaser of special district's bonds argued that it did nothing wrong and would suffer millions of dollars in losses if the condominium could not be levied, owners of units in the condominium, who suffered violations of their due-process rights, would collectively lose millions of dollars, and bond purchaser was a sophisticated, institutional investor that had a full opportunity to evaluate district's service plan.

Purchaser of special district's bonds could not raise for the first time in its motion for reconsideration its argument that trial court's injunction prohibiting special district from levying against condominium, which was a special assessment that violated the due-process rights of owners of units in the condominium due to their lack of benefit from it, violated state constitution's requirement for uniform property-tax levies, where condominium's homeowners association sought injunctive relief from the beginning of its action challenging the levy, and association always sought a refund of amounts paid to the district.

Trial court's injunction prohibiting special district from levying against condominium, which was a special assessment that violated the due-process rights of owners of units in the condominium due to their lack of benefit from it, did not violate state constitution's requirement for uniform property-tax levies, even if purchaser of special district's bonds had timely raised the issue; constitutional requirement did not apply to special assessments, injunction did not require district to impose taxes on anyone or on any property, and the due-process violation entitled unit owners and association to the injunctive relief sought as a matter of law.

Special district could not impose a real-property levy of 59.5 mills, where the bond financing plan, which the district's service plan indicated was intended to have binding effect, called for a debt service mill levy of no more than 49.5 mills, and district did not obtain municipality's approval to impose the 59.5-mill levy.

Proceeds from special district's bond issue were not "revenue" within scope of provision state constitution's Taxpayer's Bill of Rights (TABOR) that provided for refunds of revenue collect, kept, or spent illegally, and thus district's property owners were not entitled under TABOR to refunds of allegedly misappropriated bond proceeds; bond proceeds were borrowed funds.

State constitution's prohibition on mingling public funds with private funds did not entitle special district's property owners to a refund of allegedly misappropriated proceeds from special district's bond sale; prohibition was limited in its application to state, counties, cities, townships, and school districts, but the special district was none of those, but rather a district that by law was a quasi-municipal corporation and political subdivision, solely responsible for its own debts.

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