

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **UTILITIES - NORTH CAROLINA**

### **Point South Properties, LLC v. Cape Fear Public Utility Authority**

**Court of Appeals of North Carolina - October 20, 2015 - S.E.2d - 2015 WL 6142998**

Developers who paid water and sewer impact fees brought actions against water and sewer authority and county, seeking refunds. The Superior Court entered summary judgment in favor of developers. County and authority appealed. Appeals were consolidated.

The Court of Appeals held that:

- Claims were not subject to statute of limitations for claims based upon a liability created by statute;
- Statute of limitations for action against a local unit of government upon a contract did not apply;
- Catch-all statute of limitations applied;
- Doctrine of laches did not apply; and
- Fees were not “to be furnished” to developer’s properties as would have authorized the fees.

Developers’ claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that authority and county lacked authority to impose the fees were not based on authority’s and county’s breach of a duty or liability established by statute that granted authority and county the power to levy fees for water and sewer services furnished or to be furnished and, thus, were not subject to three-year statute of limitations for claims based upon a liability created by statute.

Two-year statute of limitations for action against a local unit of government upon a contract, obligation, or liability arising out of a contract did not apply to developers’ claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees, where developers, who retained private utility company to provide water and sewer service, did not assert that authority and county were obligated to immediately provide them with sewer services.

Ten-year catch-all statute of limitations applied to developers’ claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees.

Doctrine of laches did not apply to developers’ claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees. Claims were legal, rather than equitable, and water and sewer authority and county failed to show that they were prejudiced by delay in bringing claims.

Water and sewer impact fees that were imposed by county and water and sewer district were not for service “to be furnished” to developers’ properties, for purposes of statute permitting county water and sewer districts to collect fees for use of services to be furnished, although county and authority expressed a goal of extending service to areas including the properties, where county and authority

had not decided or planned for service to be furnished to the properties, agency plans going three years ahead did not include any specific commitment to extend service to any of the properties, and a private utility company had continuously provided water and sewer service for the properties.