

Bond Case Briefs

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PUBLIC UTILITIES - NORTH CAROLINA

Daedalus, LLC v. City of Charlotte

Court of Appeals of North Carolina - April 5, 2022 - S.E.2d - 2022-NCCOA-203 - 2022 WL 1009836

Developer brought action against city, alleging that city's collection of sewage and water capacity fees as mandatory precondition of connecting developer's existing water and sewer infrastructure to city's water and sewer systems constituted an unlawful ultra vires action.

The Superior Court partially granted developer's summary judgment motion, ruling that city's collection of capacity fees were ultra vires, granted developer's motion to amend order to correct clerical error, and granted city's motion for certification of judgment by issuing a second amended order stating that the order was certified for appeal.

City appealed.

The Court of Appeals held that:

- Trial court did not properly certify interlocutory order for appeal;
- Interlocutory order did not compel immediate payment of a significant amount of money;
- Court of Appeals would exercise its discretion to grant city's petition for writ of certiorari to reach merits of city's appeal of interlocutory order; and
- City's collection of fees was ultra vires.

Sewage and water capacity fees charged to developer by city were charged for future discretionary spending and not for contemporaneous use of system or for services furnished, as required by version of statute in effect at time, and thus city's collection of fees was ultra vires, although city collected fees at time user requested service and not at time property owner sought building approval and fees were used to reserve specific capacity space; fees were charged to pay for capacity costs associated with serving new growth, fees were paid at time of application for new service, service connection fees consisted of tapping fee and capacity fee, and funds from collected fees were deposited into city's general water and sewer fund that carried over time to fund future operations.