CASE SUMMARY

Barratt American, Inc. v. City of Rancho Cucamonga
No. S117590

In 1999, the City of Rancho Cucamonga (hereafter the City) adopted a resolution establishing a schedule of fees for building, mechanical, plumbing, and electrical permits and for plan review. The permit fees range between $25 for work valued up to $1,000 and $555.50 for work valued at $100,000 or more. Plan review fees are set at a percentage of the permit fees. In June 2000, Barratt American, Inc. (hereafter Barratt), a developer of residential subdivisions, began construction on a 123-house project in the City.

In May 2002, Barratt filed a petition for writ of mandate and a complaint in the San Bernardino County Superior Court, challenging the building permit and plan review fees and seeking a refund of $143,000 for fees paid on the subdivision development. The City filed a demurrer (a pleading that asserted the City was entitled to judgment in its favor as a matter of law even if all of the facts properly pleaded by Barratt were true). The superior court agreed with the City, finding Barratt's pleading failed to state a legal claim upon which relief could be granted. Thus, the superior court dismissed the case.

Barrett sought appellate review by the California Court of Appeal. After the parties filed written papers setting forth their legal positions (called "briefs") and waived oral presentations to the court (called "oral argument"), the Fourth Appellate District of the Court of Appeal upheld ("affirmed") the trial court's judgment of dismissal.

Barratt then petitioned for review by the California Supreme Court, which agreed to decide the following issues:

1. Do Government Code sections 66020 and 66021 of the Fee Mitigation Act provide a fee payer with an individual refund remedy for excessive building permit fees?

Barratt claims the fees imposed by the City are excessive because they exceed the reasonable cost of service provided, and the aforesaid sections of the Fee Mitigation Act provide a means for Barratt to obtain a refund of the excessive fees it paid.

The City argues Barratt forfeited any right to a refund by accepting and using the permits and, in any event, Barratt's claim is barred by Government Code section 66022, which provides that a legal action challenging a local government's adoption of a new fee or service charge must be commenced within 120 days of the effective date on which the new fee or charge is adopted (called a "statute of limitations").

In the alternative, the City claims the statutes upon which Barrett relies do not apply to building permit and plan review fees; rather, they apply only to development fees and taxes and to assessments imposed on development activities (charges for the purpose of defraying all or part of the cost of public facilities related to the development project, as opposed to fees for processing an application for governmental approvals).

2. Can Barratt utilize Government Code section 66016, subdivision (a), to compel the City to use the fee surplus to reduce future fees?

Barratt seeks to require the City to comply with provisions of the aforesaid statute stating that if "the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess."

The City asserts it had discretion to decide when it should adopt a new fee schedule to adjust the fees to actual cost, and there has been no showing of an abuse of discretion entitling Barratt to invoke judicial intervention.

In any event, the City argues the legal claim is barred by the statute of limitations because Barrett did not raise it within 120 days of when the City adopted the fee schedule in June 1999.

Barratt counters that it would not be known if the fees were excessive until after a retrospective accounting that could occur only after expiration of the 120-day period.

In addition, Barrett argues the claim was timely because it was brought within 120 days after the City adopted a comprehensive fee ordinance in January 2002. This ordinance, in Barrett's view, was a new ordinance within the meaning of the statute of limitations even though the only change in the fees was a 50-cent reduction for work valued at $100,000 or more (reducing the fee from $550.50 to $550).

The City responds that the 50-cent reduction corrected a typographical error, and that in the absence of any modification or amendment of the fee schedule, the comprehensive fee ordinance adopted in January 2002 simply continued the former ordinance; therefore, the limitations period in this case ran from June 1999.

3. Has the City unlawfully collected "taxes" in the form of excessive fees, such that the City is subject to the penalty provisions of Government Code section 53728?

Barratt claims the excessive building permit and plan review fees constitute "unlawful taxes," and the City is subject to the dollar-for-dollar penalty imposed under section 53728 (a statutory provision enacted pursuant to passage of what is commonly referred to as Proposition 62).

The City argues the building permit and plan review fees must be construed to be regulatory fees, not taxes, because they are not imposed for general revenue purposes; therefore, prospective fee reduction (as set forth in Government Code section 66016) is the sole remedy if the City has charged excessive building permit and plan review fees.

4. Can the City be compelled to perform an annual audit of its building permit and plan review fees, and to adopt a fee reduction if the fees exceed the reasonable cost of providing those services?

Barratt claims Article XIIIB of the California Constitution, limiting government spending, requires the City to conduct an annual audit of the fees and to adjust the fees annually to correspond with the actual cost of providing the services.

The City responds that the constitutional provision addresses governmental expenditures, not taxes, services, or fees.