SUPREME COURT OF NEW JERSEY

BTD-1996 NPC 1 L.L.C. v. 350 Warren L.P., 170 N.J. 90

784 A.2d 1214 (2001) · Decided November 14, 2001

SUMMARY

The Supreme Court of New Jersey considered whether a sheriff's fee assessed under N.J.S.A. 22A:4-8 after a foreclosure settlement was an unconstitutional tax rather than a regulatory or compensatory fee. The Court held that the record was inadequate to establish that the fee statute was primarily intended to raise revenue, and it reversed the lower courts' judgments invalidating the charge as applied to the plaintiff.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Stein, J.; Chief Justice Poritz; Justice Stein; Justice Coleman; Justice Long; Justice Verniero; Justice LaVecchia; Justice Zazzali
JURISDICTION	New Jersey
DECIDED	November 14, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Hudson County Sheriff appealed from the Appellate Division's affirmance as modified of a Chancery Division judgment dismissing the Sheriff's application to compel payment of a foreclosure-related fee and holding the fee statute unconstitutional as applied.
STANDARD OF REVIEW	The Supreme Court reviewed the legal validity and constitutional application of N.J.S.A. 22A:4-8. A party challenging a regulatory fee bears the burden of presenting competent proof that the fee is unreasonable or primarily intended to raise revenue; a fee schedule is presumptively reasonable.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Jersey
PARTIES	Hudson County Sheriff v. BTD-1996 NPC 1 L.L.C.

TOPICS

foreclosure · mortgages · tax · statutory interpretation · constitutional law

PRACTICE AREAS

real estate foreclosure tax constitutional law municipal law

QUESTIONS PRESENTED

1. Whether the record supported holding that the Sheriff's statutory foreclosure fee was primarily a revenue-raising tax rather than a regulatory or compensatory fee.
2. Whether the statutory fee could be enforced absent proof of a specific legislative intent to impose a tax on users of Sheriff's services.
3. Whether the alleged disproportion between the Sheriff's direct costs in this particular transaction and the statutory fee was sufficient to invalidate N.J.S.A. 22A:4-8 as applied.

HOLDINGS

1. The record was inadequate to support the conclusion that N.J.S.A. 22A:4-8 was intended primarily to raise revenue rather than compensate the government for providing Sheriff's services. The statutory fee therefore could not be invalidated on the evidence presented.
2. Even assuming the charge were legally classified as a tax, the statute was not unenforceable merely because the Legislature had not expressly stated an intent to tax users of Sheriff's services.

KEY QUOTATIONS

> *"Accordingly, because BTD has not offered "competent proof ... to overcome the presumption [of reasonableness]," Automatic Merchandising Council, supra, 102 N.J. at 130, 506 A.2d 352, we are compelled to reverse the Appellate Division's judgment invalidating the fee imposed by the Hudson County Sheriff."* (1224)

> *"The longstanding history of the Sheriffs' authorization to collect fees for services in connection with foreclosure sales persuasively suggests that the Legislature would intend that the fees continue to be collected, whether it was denominated a fee or a tax."* (1224)

FACTUAL BACKGROUND

BTD filed a foreclosure action against 350 Warren and obtained a judgment of foreclosure for $3,830,913.23, after which the Hudson County Sheriff scheduled a foreclosure sale. BTD paid a $1,000 deposit, and the Sheriff's office incurred stipulated direct costs of approximately $974.14 while preparing for the sale. Before the sale, 350 Warren paid $2,400,000 to settle the matter, and the Sheriff assessed BTD a statutory fee of $30,408.64 based on the settlement amount.

PROCEDURAL HISTORY

BTD obtained a foreclosure judgment against 350 Warren and requested that the Hudson County Sheriff schedule a foreclosure sale. Before the sale occurred, the parties settled, and the Sheriff assessed BTD a statutory fee of $30,408.64. The Chancery Division dismissed the Sheriff's enforcement application, concluding that the charge was an unconstitutional tax as applied; the Appellate Division affirmed in a divided opinion, and the Supreme Court of New Jersey reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the Chancery Division for further proceedings consistent with the Supreme Court's opinion.

CASES CITED

- BTD-1996 NPC 1, L.L.C. v. 350 Warren, L.P., 333 N.J. Super. 476, 755 A.2d 1236 (App. Div. 2000)
- Resolution Trust Corp. v. Lanzaro, 140 N.J. 244, 658 A.2d 282 (1995)
- Sinnickson v. Gale, 16 N.J.L. 21 (Sup. Ct. 1837)
- Sturges v. Lackawanna & Western Railroad, 27 N.J.L. 424 (Sup. Ct. 1859)
- Bellington v. East Windsor Township, 17 N.J. 558, 112 A.2d 268 (1955)
- Automatic Merchandising Council v. Township of Edison, 102 N.J. 125, 506 A.2d 352 (1986)
- Gilbert v. Town of Irvington, 20 N.J. 432, 120 A.2d 114 (1956)
- Weiner v. Borough of Stratford, 15 N.J. 295, 104 A.2d 659 (1954)
- Daniels v. Borough of Point Pleasant, 23 N.J. 357, 129 A.2d 265 (1957)
- Public Service Electric & Gas Co. v. New Jersey Department of Environmental Protection, 101 N.J. 95, 501 A.2d 125 (1985)
- General Public Loan Corp. v. Director of Division of Taxation, 13 N.J. 393, 99 A.2d 796 (1953)
- Kingsley v. Hawthorne Fabrics, Inc., 41 N.J. 521, 197 A.2d 673 (1964)
- Fedders Financial Corp. v. Director, Division of Taxation, 96 N.J. 376, 476 A.2d 741 (1984)
- Solomon v. Jersey City, 12 N.J. 379, 97 A.2d 405 (1953)