ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

Saban Rent-A-Car, LLC v. Arizona Department of Revenue
CV-18-0080-PR

PARTIES:

Petitioner: Saban Rent-A-Car, LLC

Respondents: Arizona Department of Revenue
Arizona Tourism & Sports Authority

FACTS:

In 2000, the legislature created the Arizona Tourism and Sports Authority ("AZSTA") to build and operate a football stadium and events center. *See* A.R.S. §§ 5-801, 5-802. The AZSTA may charge for the use of its facilities, but it cannot levy taxes or assessments. A.R.S. § 5-802(C). Instead, the AZSTA enabling legislation allowed Maricopa County residents to approve separate taxes to fund construction of the proposed facilities. One of those taxes was a surcharge on the gross proceeds of car rental businesses (the "surcharge"). *See* A.R.S. § 5-839.

In November 2000, voters approved the surcharge. The surcharge

> applies to the business of leasing or renting for less than one year motor vehicles for hire without a driver, that are designed to operate on the streets and highways of this state and that are primarily intended to carry not more than fourteen passengers, regardless of whether the vehicle is registered or licensed in this state.

A.R.S. § 5-839(C). The surcharge is the greater of 3.25% "of the gross proceeds or gross income from the business" or $2.50 per car rental; for a customer who "leases or rents the motor vehicle as a temporary replacement motor vehicle," the statute limits the surcharge to $2.50 "on each lease or rental." § 5-839(B)(2).

In August 2009, Saban Rent-A-Car, LLC ("Saban") sought a refund of the surcharge amounts it had paid under § 5-839, claiming that the surcharge violated Article 9, § 14 of the Arizona Constitution, and the Dormant Commerce Clause, which derives from Article I, Section 8, Clause 3 of the United States Constitution. After the Arizona Department of Revenue ("ADOR") denied a refund, Saban filed a challenge in the tax court seeking a refund on behalf of a class of all similarly-situated car rental companies. The tax court certified a class and supervised significant discovery.

The tax court ultimately ruled that it was "plain" that the surcharge "relates to the use of vehicles on the public highways or streets," and thus the surcharge violates Article 9, § 14 of the Arizona Constitution. That section requires taxes "relating to registration, operation, or use of vehicles on the public highways or streets" to be spent only on "highway and street purposes."

As for the Dormant Commerce Clause, the tax court noted that the U.S. Supreme Court has held that the Commerce Clause prohibits states from enacting certain kinds of taxes, even when Congress has not legislated on the subject. Here, the tax court found that the surcharge statute, A.R.S. § 5-839, permitted car rental companies to charge a flat $2.50 fee to customers renting a car as a "temporary replacement" for their own vehicle. However, it also found that in reality, rental car companies were charging the same rate to all customers regardless of their reason for renting; this was because the paperwork ADOR required made it prohibitively expensive for the companies to charge any customer the $2.50 flat fee. The court found these facts unusual because they presented "the reverse of the typical commerce clause challenge: instead of a facially neutral tax being discriminatory as applied, the tax here is, at least arguably, facially non-neutral but applied in a nondiscriminatory manner." The court concluded that the surcharge was not "protectionist in nature," and that because the surcharge was being applied even-handedly between in-state residents and out-of-state visitors, there was no commerce clause violation.

Because the tax court found that the surcharge violated Article 9, § 14 of the Arizona Constitution, it ordered ADOR to issue a refund to all car rental businesses. Both parties appealed.

The court of appeals reversed the tax court's holding regarding Article 9, § 14 of the Arizona Constitution. The court of appeals instead held that the surcharge does not fall under that section because it is a tax on the business of renting cars, rather than a tax on the use of cars. The court held that the only taxes that are subject to Article 9, § 14 are those "that must be paid in order to legally drive on public roads—motor carrier taxes, vehicle registration and in lieu fees and driver's license fees." *Saban Rent-A-Car LLC v. Ariz. Dep't of Revenue*, 244 Ariz. 293, 299 ¶ 15 (App. 2018). The court of appeals analyzed the history of Section 14 and held that it was enacted to ensure that Arizona received federal highway funds; and, at the time Section 14 was adopted, Arizona's car-rental tax was not made subject to Section 14, indicating that the surcharge is a tax on the business of renting cars and is not subject to Section 14. Further, the court found persuasive three decisions from the Ohio appeals courts that held that similar language in the Ohio Constitution only covered fees and taxes generally imposed on all drivers, rather than to the business of renting cars. Because the surcharge did not have any "nexus to operation or use of a vehicle," the court held that it was not subject to Article 9, § 14.

As for the Dormant Commerce Clause, the court of appeals agreed with the tax court that the surcharge did not impermissibly discriminate against interstate commerce. The court of appeals held that the surcharge was not facially discriminatory and that it had no discriminatory effect because the surcharge is imposed on all car-rental business revenues regardless of where the customer resides. The court of appeals also held that prior cases from the U.S. Supreme Court had rejected the notion that discriminatory intent alone can cause a tax to violate the Dormant Commerce Clause. *See id.* at 301-03 ¶¶ 37–45 (discussing *Amerada Hess Corp. v. Director Div. of Taxation*, 490 U.S. 66 (1989), *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984), and *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981)). Thus, the court of appeals affirmed the trial court's Dormant Commerce Clause ruling.

Ultimately, the court of appeals vacated the tax court's order requiring a refund and remanded for further proceedings. Saban then sought review before the Arizona Supreme Court.

ISSUES:

1. Does the rental car surcharge in A.R.S. § 5-839 violate the Dormant Commerce Clause of the U.S. Constitution by intentionally targeting out-of-state visitors to pay for an NFL stadium and sports activities?

2. Does the rental car surcharge in A.R.S. § 5-839 violate the Anti-Diversion Clause of the Arizona Constitution by diverting road-user taxes to pay for an NFL stadium and sports activities?

CONSTITUTIONAL LANGUAGE:

Arizona Constitution Article 9, § 14 states, in relevant part: "No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets . . . shall be expended for other than highway and street purposes . . . ."

The Commerce Clause of the United States Constitution in Article I, Section 8, Clause 3, provides: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."