

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2002-000132

02/14/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

SAFEWAY INC

JIM L WRIGHT

v.

MARICOPA COUNTY

JERRY A FRIES

MINUTE ENTRY

The Court has considered Plaintiff's Request For Ruling On The County's Motion For Reconsideration/Clarification and Entry of Judgment and Notice of Lodging of Judgment. Preliminarily, the Court notes that the misreporting error claim is no longer present, as the Court of Appeals, in its order of July 21, 2006, withdrew that portion of its decision. *Bashas' Inc. v. Maricopa County*, 1 CA-TX 04-0019 (App. 2005) (memorandum decision), *as amended* July 21, 2006 (striking ¶¶ 32-38).

In resolving the issues, the Court follows the factual findings of Judge Armstrong. The Court of Appeals expressly refrained from determining whether the walk-in coolers were included in the valuation of the Bashas' properties, because the record in that case did not demonstrate that the cost method was used at the Board of Equalization level to value the stores; it was conceded that, if the cost method was employed, the coolers were included (Maricopa County's Response and Cross-Motion for Summary Judgment, filed July 8, 2005 (tab 3), at 11:6-10). In this case, Judge Armstrong found that Safeway's *initial* valuation was based on the cost method, therefore including the coolers (which were also taxed as personal property). He made no such finding as to the *final* valuation by the Board of Equalization: "It is impossible to know what, if any, method of valuation, was used in the appellate process. It may simply have been a matter of compromise. We only know that the values were lowered." Plaintiff's conclusion that "the value of the walk-in coolers was not removed from the real property tax roll as a result of administrative valuation appeals" therefore goes beyond Judge Armstrong's finding. It is clear

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that nothing identified as the value of the walk-in coolers was consciously removed by the Board of Equalization: neither Safeway nor, in the earlier case, Bashas' specifically asked the Board to do so, and the County deemed removal of the coolers' value impossible.

The Court of Appeals held that double taxation existed if and only if the cost method was the basis for the final tax bill; the issue in *Bashas'* thus became whether the cost method or the income driven approach was the basis for the Board's judgment. *Id.* at ¶34. Here as in *Bashas'*, Safeway has shown that the cost method was initially used by the County. In *Bashas'*, the Court of Appeals found that the County had presented evidence showing that the income driven approach was employed after the cost method assessment, but before review by the Board, thereby creating a fact issue. As a result of the use of an acceptable method to reach the assessment presented to the Board, "[e]ven if one considers the original use of the cost method to be *evidence* of double taxation, there [was] certainly not *undisputed* evidence of double taxation." *Id.* (emphasis in original). But in this case, unlike in *Bashas'*, there is no evidence that the income driven approach or any other method excluding the value of the coolers was employed at all. There is therefore no evidence in the record from which the Court can conclude that the Board of Equalization based its calculations on anything but the cost method assessment presented to it.

IT IS ORDERED

1. Granting Plaintiff's Request for Ruling on County's Motion for Reconsideration/Clarification.
2. Reconsideration on the County's Motion for Reconsideration/Clarification having been previously granted by Judge Armstrong, the denial of Defendant's Motion for Summary Judgment is affirmed.
3. Summary Judgment for Plaintiff is affirmed.
4. Approving Plaintiff's proposed form of Judgment signed by the Court February 14, 2007 and entered (filed) by the clerk February 14, 2007.