

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000133

08/01/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

SUN HEALTH PROPERTIES LEASING, ET AL, GARY W HEIMBACH
et al.

v.

MARICOPA COUNTY

JEFFREY L SMITH

MINUTE ENTRY

8:33 a.m. This is the time set for oral argument on Defendant's Motion For Partial Summary Judgment. Plaintiffs are represented by counsel, Gary Heimbach. Defendant is represented by counsel, Jeffrey Smith.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Defendant's Motion is argued to the Court.

IT IS ORDERED taking this matter under advisement.

9:05 a.m.

LATER:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000133

08/01/2007

UNDER ADVISEMENT RULING

(Defendant's Motion For Summary Judgment)

This appears to be an issue of first impression. A.R.S. § 42-11004 reads in full:

A person on whom a tax has been imposed or levied under any law relating to taxation may not test the validity or amount of tax, either as plaintiff or defendant, if any of the taxes:

1. Levied and assessed in previous years against the person's property have not been paid;
2. That are the subject of the action are not paid before becoming delinquent; and
3. Coming due on the property during the pendency of the action are not paid before becoming delinquent.

The Court is of the opinion that the County's interpretation elevates form over substance. Had Plaintiff filed four separate complaints, one to contest the assessment of each parcel, it is clear from the County's analysis (in particular, its concession that the challenges to the 2005 and 2006 assessments, which stem from separate complaints, are not barred by the statute) that only the challenge to parcel 912Y would be barred. There is no evident reason why the legislature should have allowed or disallowed relief depending solely on whether the protestor filed multiple complaints or only one. Nor does the County suggest how it is consistent with the mandate to avoid multiplicity of suits and thereby promote judicial economy to compel a protestor to file a separate complaint for each parcel for fear of losing all of his claims if any one is found defective under the statute. It appears to the Court that the common-sense interpretation, which is consistent with subsection 3 (where "the property" must refer to the specific parcel at issue and not to other properties whose tax is challenged at the same time), is that "the action" here refers to the challenge to the tax on one parcel, and not to other tax challenges that are brought before the Court at the same time.

Therefore, IT IS ORDERED Maricopa County's Motion for Partial Summary Judgment is granted with respect to parcel 200-80-912Y for the 2004 tax year, and denied in all other respects.