

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2004-000424

08/21/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

BASHAS' INC., et al.

JIM L WRIGHT

v.

MARICOPA COUNTY, et al.

ROBERTA S LIVESAY

MINUTE ENTRY

1:28 p.m. This is the time set for oral argument on Defendant Maricopa County's Motion for Summary Judgment. Plaintiff is represented by counsel, Paul Moore. Defendants are represented by counsel, Lisa Bowey and Roberta Livesay.

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

Said Motion is argued to the Court.

IT IS ORDERED taking this matter under advisement.

1:52 p.m. Matter concludes.

**LATER:**

UNDER ADVISEMENT RULING

Defendant Maricopa County's Motion for Summary Judgment has been under advisement. The Court finds and rules as follows.

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The County, in its Motion, denies that there was any error cognizable under the specific provisions of A.R.S. § 42-16251(3) in its valuation of Plaintiff's grocery store property, and that there was no discrimination because all similarly situated properties under PUC 1410 were valued by the same model. As noted below, the latter assertion is modified slightly in the Reply, but the County still contends that no material difference in the valuation of PUC 1410 properties existed. Bashas' Response, not addressing the statutory definition of "error," contends that different valuation methods were used to value PUC 1410 properties, and that the differences in valuation were material.

Analysis

Plaintiff's Complaint can be construed to have used "error" as a polite way of saying "unlawful discrimination," giving the Assessor the benefit of the doubt. Alternatively, if any difference in assessment methods is assumed to be the result of oversight rather than design, the use of the Segregated Cost Method on Plaintiff's properties could qualify as an objectively verifiable error that does not require the exercise of discretion, opinion or judgment under A.R.S. § 42-16251(e)(v). While the foundation provided by Plaintiff for its use of GDS data might require augmentation at trial, the Court will refrain from dismissing the case on an evidentiary technicality, especially when the County itself examined the data and was able to prepare its Reply.

In the final two pages of the County's Reply, it admits that several of the shopping centers cited by Plaintiff were indeed assessed using the Square Foot Method rather than the Segregated Cost System used to assess Plaintiff's property. (This conflicts with the blanket assertion in the Motion that no grocery store properties (PUC 1410) were valued differently from Plaintiff's property.) The County goes on to state that the discrepancy was corrected by manually converting the assessment of these properties to the Square Foot Method. This is a factual assertion raised for the first time in the reply, and thus affords the opposing party no opportunity to rebut. While the choice of one method or the other, applied across the board, does not constitute discrimination, the use of one method for some properties and the other for the rest is sufficient to create a genuine issue of material fact on Plaintiff's claim, which cannot be ruled out without a full hearing.

Therefore, IT IS ORDERED denying Defendant Maricopa County's Motion for Summary Judgment.