

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-000117

06/07/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

RICHARD AND JOANN BARTON FAMILY
TRUST

PATRICK J DAVIS

v.

CITY OF SCOTTSDALE

SHERRY R SCOTT

MINUTE ENTRY

The Court has considered Defendant City of Scottsdale's Motion To Dismiss and the briefs.

The ruling appealed had not even been issued when the "appeal" of it was allegedly filed. The (First) Amended Complaint, by its terms, appeals from the determination of the Tax Audit Manager that Plaintiff's protest of assessment 0916319 was untimely. This complaint was filed August 31, 2006. The Second Amended Complaint removes mention of the Tax Audit Manager's decision (though it continues to pray for relief from that finding) and substitutes the ruling of the Municipal Tax Hearing Officer, which was rendered on November 4, 2006, more than two months after the first Amended Complaint was filed. Neither party states whether the matter was by August 31 under submission to the MTHO, or whether the appeal had even been brought. If the appeal had not yet been filed when the first Amended Complaint was filed, there is no relation back. Even in the former case, the claim in the Second Amended Complaint, that the MTHO erred in his ruling on timeliness, is distinct from that in the first Amended Complaint, that the *Tax Audit Manager* erred in *his* ruling. Plaintiff has no claim against Scottsdale for its interpretation of the time limit as a general matter; the application of that time limit against it is the "conduct, transaction or occurrence" that must be maintained. The two complaints assert two distinct occasions on which the time limit was imposed against Plaintiff. This case is distinguishable from *Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 179 ¶ 147

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(2004). In that case, it was not the judgment itself but the validity of a *Morris* agreement that was the true subject of the appeal; while the appeal antedating the entry of the judgment which the *Morris* agreement was to enforce was technically premature, that was a pure fortuity created by the timing of the entry of the final judgment, which presumably could have been entered at any time subsequent to the agreement. The situation here is entirely different. There is nothing analogous to the *Morris* agreement which is the true basis of the appeal. The appeal is from the final administrative determination, which was the decision of the MTHO. The first Amended Complaint did not preserve that issue.

Therefore, IT IS ORDERED Defendant's Motion to Dismiss is granted.