

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-000221

04/16/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

SAFEWAY INC, et al.

PAUL J MOONEY

v.

MARICOPA COUNTY, et al.

ROBERTA S LIVESAY

MINUTE ENTRY

2:03 p.m. This is the time set for oral argument on Defendant Maricopa County's Motion To Dismiss Second Claim For Relief Of Plaintiff's Complaint and Motion For More Definite Statement Re: First And Third Claims of Relief Of Plaintiffs' Complaint. Plaintiffs are represented by counsel, Paul Mooney. Defendant Maricopa County is represented by counsel, Roberta Livesay.

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.

2:50 p.m. Matter concludes.

LATER:

SUPERIOR COURT OF ARIZONA
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UNDER ADVISEMENT RULING

(Defendant Maricopa County's Motion To Dismiss Second Claim For Relief Of Plaintiff's Complaint and Motion For More Definite Statement Re: First And Third Claims of Relief Of Plaintiffs' Complaint)

The Court finds that the Complaint is not impermissibly indefinite. Under Rule 12(e), A.R.C.P., relief is appropriate only when the Complaint is so equivocal and uncertain that the opposing party is unable to prepare a defense. *Shill v. Jones*, 21 Ariz. 465, 468 (1920). The County asserts that at least some of the parcels the Complaint alleges to be entitled to rolling over are not statutorily eligible. If that is the County's defense, it may easily admit with respect to any parcels entitled to rolling and deny with respect to the rest, or deny in full on distinct grounds with respect to individual parcels. That the necessity to aver separate defenses with respect to each parcel may make the Answer somewhat inelegant does not implicate Rule 12(e). The Rule requires only that the County be sufficiently apprised of the nature of the claim that it is able to prepare a defense. The County's Motion and Reply demonstrate that this requirement is met.

The Court is of the opinion that Plaintiff's request for mandamus relief is unusual, and as written potentially leads to an imprudent result. The Second Claim for Relief asks that the assessor be ordered to correct the 2007 tax roll by rolling over the 2006 values and that the treasurer refund all 2007 taxes "that have been or will be overpaid," with interest. The prospect that the relief might precede the injury – that the treasurer would be ordered to refund an unlawful tax not yet collected, in the expectation that he would later collect it appears to be chimerical. The Court does not see why the normal procedure prescribed by statute, namely appeal through the administrative review bodies and the courts, would provide Plaintiff with an inadequate remedy for a cognizable injury. Plaintiff is not injured by the mere apprehension of having to pay or appeal the allegedly excessive 2007 taxes. The statutory procedure provides relief once the tax has been collected or a final tax assessment fixed.

The Court understands why Mr. Russell and Mr. Schweikert were made parties: their presence, however nominal, is required for mandamus relief. Rule 2(a)(1), Rules of Procedure for Special Actions. With the mandamus claim removed, they need no longer be named as parties. However, as the County's suggestion that they be dismissed is raised only in the Reply, it would be procedurally impermissible to grant it at this point, especially as dismissal is not required by *Ellman Land Corp. v. State*, 169 Ariz. 13, 18 (Tax 1991); that case holds only that it is preferable not to name unnecessary officeholder defendants, not that naming them is improper.

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Therefore, IT IS ORDERED:

1. Denying Defendant's Motion For More Definite Statement Re: First and Third Claims For Relief Of Plaintiffs' Complaint.
2. Granting Defendant's Motion To Dismiss Second Claim For Relief Of Plaintiffs' Complaint.
3. Denying Defendant's Motion To Dismiss Mr. Russell and Mr. Schweikert.