

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-000429

10/25/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SHR SCOTTSDALE X LLC

MARK HYATT TYNAN

v.

MARICOPA COUNTY

ROBERTA S LIVESAY

RAUSHANAH DANIELS

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on October 3, 2011. The Court has considered Plaintiff's Motion for New Trial Pursuant to Rule 59(a) and finds as follows.

Judge Schafer's January 15, 1993 minute entry expressly found that the Scottsdale Princess "did 'own' the improvements on the leased land" and therefore "the improvements are not possessory interests under A.R.S. § 42-681 (those interests are things held by someone other than the owner of the improvements)." (In fact, SHR Scottsdale in its motion acknowledges that Article XXIII vests ownership of the improvements in the lessee for the duration of the lease, explaining that this was done so that the lessee could claim federal tax depreciation. It does not say whether prior federal returns claiming such depreciation would be affected by reconsideration, or whether it believes it can have its cake and eat it.) That ruling, which was not contested by the taxpayer and is consequently unaffected by the Court of Appeals opinion reversing the Tax Court in part, has long been final. *Scottsdale Princess Partnership v. Maricopa County*, 185 Ariz. 368, 372 n.4 (App. 1995). At least as among the parties and their privies (what is now SHR Scottsdale, Maricopa County, and the Arizona Department of Revenue) it establishes the status of the property. Only those parties are parties here; the City of Scottsdale, even if it wished to (and had standing to) quiet title in itself, has not done so in this action.

Neither *Cutter Aviation v. Dept. of Revenue*, 191 Ariz. 485 (App. 1997), nor any case deriving from it, nor A.R.S. § 42-6291 et seq. changes the ownership of the Princess

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improvements. The statute affects the tax treatment of property under certain forms of ownership, but does not purport to determine whether those forms of ownership exist in any particular case and certainly does not reopen prior findings of ownership. As for *Cutter* and its progeny, SHR Scottsdale acknowledges, as it acknowledged before Judge Dunevant, that Judge Schafer's 1993 ruling was correct under the case law then controlling, *Novasic*, and was not appealed for precisely that reason. "Our courts have often recognized the importance of according finality to judgments, particularly in the area of civil judgments ... [such that] even erroneous final judgments must be honored in order to continue the well-ordered functioning of the judicial process." *Panzino v. City of Phoenix*, 196 Ariz. 442, 448 ¶ 18 (2000). Still more must a judgment concededly correct at the time it was handed down be honored. The illustration from the Restatement (Second) of Judgments § 28 is distinguishable. Unlike the recurring charitable contribution in the illustration, which can readily be corrected in future years without challenging the original ruling, the finding of property ownership under the lease here is once for all and can only be changed by an explicit finding that Judge Schafer and later Judge Dunevant were wrong.

For better or worse, SHR Scottsdale owns the Princess improvements. If that makes it ineligible for the GPLET, then it is.

Accordingly, and for the reasons set forth in the briefs and argument of the Defendant,

IT IS ORDERED denying Plaintiff/Appellant's Motion for New Trial Pursuant to Rule 59(a), Arizona Rules of Civil Procedure, filed March 23, 2011.

Consistent with Rule 9(b), ARCAP, counsel for the Defendant shall lodge an appropriate form of order for the Court's signature no later than November 14, 2011.

Arizona Tax Court - ATTENTION: eFiling Notice

Beginning September 29, 2011, the Clerk of the Superior Court will be accepting post-initiation electronic filings in the tax (TX) case type. eFiling will be available only to TX cases at this time and is optional. The current paper filing method remains available. All ST cases must continue to be filed on paper. Tax cases must be initiated using the traditional paper filing method. Once the case has been initiated and assigned a TX case number, subsequent filings can be submitted electronically through the Clerk's eFiling Online website at <http://www.clerkofcourt.maricopa.gov/>

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NOTE: Counsel who choose eFiling are strongly encouraged to upload and e-file all proposed orders in Word format to allow for possible modifications by the Court. Orders submitted in .pdf format cannot be easily modified and may result in a delay in ruling.