

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2009-000084

06/17/2009

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

BROWN FAMILY COMMUNITIES AN
ARIZONA LIMITED PARTNERSHIP

DONALD P ROELKE

v.

MARICOPA COUNTY

DOMINGOS R SANTOS

UNDER ADVISEMENT RULING

(Defendant's Motion To Dismiss and Plaintiff's Motion To Consolidate)

Plaintiff filed two actions challenging the 2009 assessment for the same property. On December 15, 2008, Plaintiff filed an action in TX2008-000969 contesting the 2009 tax year valuation. On January 23, 2009, Plaintiff filed an action in TX2009-000084 contesting the classification of the subject property. Plaintiff's argument that the statement by the tax court in its minute entry in *Courtland Homes, Inc. v. Maricopa County*, Tax Court Case No. TX2008-000166, at page 2, that "[T]he rule is that only one appeal is allowed per parcel per tax year," is incorrect because this rule has been changed by the legislature's 1997 amendment and recodification of the consolidation statutory provision presently in A.R.S. § 42-16212(A) is not embraced by the Court. A.R.S. § 42-16212 (a) applies to the situation presented in this case. It states: "If two or more actions have been filed under this article for the same taxable year with respect to the same property, the actions shall be consolidated for the purpose of the hearing." The starting point in the analysis of the statute is *Berge Ford, Inc. v. Maricopa County*, 172 Ariz. 483 (Tax 1992), which is the case addressing the situation here, quotes then-A.R.S. § 42-178(I): "If two or more actions have been filed pursuant to this title for the same taxable year with respect to the same property, such actions shall be consolidated for the purpose of trial." (The Court notes that, with the substitution of "article" for "title," the language then existing is substantially identical to that of the current statute.) It then states, "A reading of this subsection might suggest that the legislature did in fact contemplate that separate claims could be filed to

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challenge classification and valuation. The Court is of a contrary opinion.” *Id.* at 485. The Court’s analysis focused, not on the codification of classification and valuation appeals in the same title, but on the unitary nature of the assessor’s role in classification and valuation. “An appeal of classification necessarily is also an appeal of valuation.... Valuation and classification are but two elements used to determine a single result, the base upon which the tax will be measured.” *Id.* at 489. It concluded, “[t]here is nothing in the language of this statute that would indicate that the legislature contemplated that there might be two appeals from the assessor’s discretionary decision. The short time provided in the statute in which to appeal to the assessor reinforces the conclusion that the legislature did not intend to authorize separate appeals for classification and valuation.” *Id.* at 486. The provision for consolidation was included to permit a constitutional challenge as well as an appeal to classification and/or valuation was filed, as *Dept. of Property Valuation v. Salt River Project*, 27 Ariz.App. 110, 115 (1976), *rev’d on other grounds*, 113 Ariz. 472 (1976), suggested to be necessary. *Id.* at 487. As the Tax Court did not base its opinion on the physical location of the classification appeal and valuation appeal statutes in the same title of the Arizona Revised Statutes, there is no ground to conclude that the legislature, having done no more than change “title” to “article,” now intends to allow separate appeals of classification and valuation.

Therefore, IT IS ORDERED:

1. Defendant’s Motion To Dismiss is granted.
2. Plaintiff’s Motion To Consolidate This Action With TX2008-000969 is denied.
3. Approving the Order of Dismissal signed by the Court on June 17, 2009.