

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2009-000914

11/09/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

S AND S COTTON L L C

MARC J VICTOR

v.

MARICOPA COUNTY

OTIS SMITH

VICKI A LOPEZ

**UNDER ADVISEMENT RULING**

The Court took this matter under advisement following oral argument on November 7, 2011. The Court has considered Plaintiff's Request for Jury Trial and finds as follows.

That the 2004 amendment to A.R.S. § 42-16212, H.B. 2258, affected the right of trial by jury in tax appeals would have come as a surprise to both the legislature and, apparently, the Supreme Court. The various House and Senate fact sheets say only (with unimportant variations among versions), "Arizona law requires an appeal of property valuation or classification to be heard within 270 days after it is docketed with the court. According to the Arizona Supreme Court, Administrative Office of the Courts, tax court practitioners routinely file for a stipulation to exceed this limit. H.B. 2258 eliminates the 270-day time limit." The House versions of the fact sheet add the comment, "It [H.B. 2258] is viewed by the Supreme Court Administrative Office as a technical change." No version of the fact sheet mentions jury trials at all. Assuming the authors of the fact sheets did not misquote the AOC, which surely would have been noticed and objected to, it along with the legislature must have concluded that abrogation of the right of trial by jury – hardly a "technical change" – was not envisioned by the new law.

This conclusion is reinforced by other statutes and court rules left unchanged. A.R.S. § 12-172(C) provides that cases in small claims tax court are to be heard by the judge or commissioner without a jury. This statute would not be necessary if no tax case is to be heard by a jury, implying that non-small claims cases are jury-eligible (and also illustrating that the legislature is capable of clearly denying jury trials where such is its intent). Neither would Rule

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13 of the Arizona Tax Court Rules of Practice be necessary; although this rule predates the 2004 amendment to A.R.S. § 42-16212, that the Supreme Court has in the intervening years not deleted it as no longer meaningful suggests that, should the issue come before it, it would find that a right to jury trial has survived.

The Court finally notes, for what it is worth, that, to the best of its institutional recollection, only one tax case in the past fifteen years has been tried to a jury, and the request in that case came from Maricopa County. The County's assertion at oral argument that, without objection, a case not eligible for jury trial may be tried to a jury is incorrect. *See* Rule 38(b): "Any person may demand a trial by jury *of any issue triable of right by jury*" (emphasis added). It is the nature of the issues that determines the right to trial by jury. *Preston v. Denkins*, 94 Ariz. 214, 221 (1963). If tax appeals are not triable of right by jury, then any such demand would be improper and the Court would be obligated to deny it even in the absence of objection.

The Court must hesitate before finding that a right to trial by jury, especially one of such long standing, has been abrogated by silence or inadvertence.

Therefore, **IT IS ORDERED** granting Plaintiff's Request for Jury Trial.