

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000621

10/25/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ARROWHEAD & GATEWAY L L C, et al.

DONALD P ROELKE

v.

MARICOPA COUNTY

DERYCK R LAVELLE

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on October 7, 2011. The Court has considered Maricopa County's Motion to Dismiss and finds as follows.

The Court first notes that Plaintiffs' Supplemental Facts Supporting Its Response Opposing Defendant's Motion to Dismiss, despite its title, was actually a surrejoinder. Nowhere in the Response is it argued that it was difficult to determine the actual owner of the property; in fact, it is stated that the information came from the agent of Arrowhead & Gateway, which obviously would have known when it sold the property. The argument of difficulty is plainly in answer to the County's citation of *Toy v. Katz*, 192 Ariz. 73, 87-88 (App. 1997), from which it quoted that Rule 17(a) "was intended to prevent forfeiture when determination of [the] proper party to sue is difficult or when an understandable mistake has been made." The Court did not ask for further briefing on this issue or otherwise indicate that the standard rules of motion practice as set down in Rule 7.1(a) were not to apply. In addition, the Court is at a loss to understand why Wells Fargo, the owner of the property as of the date the appeal was filed, would not have known it was the owner and instead had to rely on the Assessor's records. Thus, even if Mr. Roelke's affidavit is considered, the Court finds that neither difficulty in determining the proper party nor an understandable mistake existed.

However, "by its terms, Rule 17(a) does not require a plaintiff to prove an understandable mistake or difficulty in identifying the proper party in order to avoid dismissal." *Preston v.*

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Kindred Hospitals West, L.L.C., 226 Ariz. 391 ¶ 9, 249 P.3d 771, 773 (2011). The State Bar Committee Note which the County indirectly (via *Toy*) quoted cannot alter the clear text of the rule itself. *Id.* The Court is not confronted here with the potential conflict between the rule and the jurisdictional tax statutes because this case comes to the Tax Court on appeal from the State Board of Equalization. While A.R.S. § 42-16201(A) and 42-16202(A) limit, respectively, direct appeals and appeals from the County Board of Equalization to a “property owner,” A.R.S. § 42-16203(A) provides that “[a]ny party, or the department” may appeal from a decision of the State Board of Equalization. Arrowhead & Gateway was a party to the State Board proceeding; the statute therefore gives the Tax Court jurisdiction to hear its appeal. Of course, once it sold the property it was no longer the real party in interest and lost its standing on that ground, but that is no longer jurisdictional and is subject to Rule 17(a).

Accordingly,

IT IS ORDERED denying Maricopa County’s Motion to Dismiss.

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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/>

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.