

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000048

08/16/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

RONALD A YUNIS, et al.

DAVID ALEXANDER BAKER

v.

MARICOPA COUNTY

JEAN WEAVER RICE

MINUTE ENTRY

The Court took this matter under advisement following oral argument on August 10, 2011. The Court has considered Defendant's Motion to Dismiss and finds as follows.

This matter is resolved by A.R.S. § 42-11005(D): "Any taxpayer who is dissatisfied with the valuation or classification of the taxpayer's property may appeal to court only in the time and manner prescribed in chapter 16 of this title [A.R.S. § 42-16001 et seq]." That this clause, enacted in 1979, overturned the holding of *Maricopa County v. Chatwin*, 17 Ariz.App. 576 (1972), as well as *Dept. of Property Valuation v. Salt River Project*, 113 Ariz. 472 (1976), was noted by this Court twenty years ago. *RCJ Corp. v. Arizona Dept. of Revenue*, 168 Ariz. 328, 332 (Tax 1991).¹

The Yunises attempt to distinguish between an appeal and a suit to recover an illegal tax. This was discussed in *RCJ*: "§ 42-[11005] is different in scope than § 42-[16201]. Section 42-[11005] contemplates claims for relief from any inappropriate property taxation. It addresses applications for injunctive relief, and authorizes a refund for taxes illegally collected. Not only is its compass not limited to issues of valuation and classification, but § 42-[11005(D)] removes

¹ The Court searched the Response in vain for any mention of *RCJ*; it is exactly the kind of directly adverse authority that ER 3.3(a)(2) requires to be disclosed to the tribunal. Westlaw prominently red-flags *Chatwin* as "superseded by statute" and provides a hyperlink to *RCJ*. The Court can only assume that plaintiffs' counsel is using a database with inferior shepardizing capabilities.

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such issues from its purview.” Id. at 331 (current statute numbers inserted, emphasis added). “The 1979 amendments to A.R.S. § 42-[11005] clearly separated the scope of the two statutes.” *Id.* at 332 (current statute number inserted). Thus, an action for relief from an erroneous valuation or classification may no longer be brought as an action for relief from an illegal tax.

Although the First Amended Complaint is couched in terms of collection of an illegal tax, the only illegality alleged is that the tax was too high based on an excessive valuation. This plainly falls within the scope of A.R.S. § 42-11005(D). Therefore, whatever the legal theory, the claim is untimely and barred.

IT IS ORDERED the County’s Motion to Dismiss is granted.

IT IS FURTHER ORDERED dismissing this matter with prejudice.

The Court signs this minute entry as its final, appealable order.

/s/ HON. M. Dean Fink

JUDICIAL OFFICER OF THE SUPERIOR COURT