

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000072

08/04/2014

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
A. Quintana
Deputy

VISTA VERDE HOMEOWNERS
ASSOCIATION, et al.

JENNIFER A PRENDIVILLE

v.

MARICOPA COUNTY

PETER MUTHIG

UNDER ADVISEMENT RULING

Defendant filed a Motion for Summary Judgment on October 30, 2013. Plaintiff filed a response and Cross-Motion for Summary Judgment on April 4, 2014. Those motions are now fully briefed. The Court benefited from oral argument on the motions on August 4, 2014.

As an initial procedural matter,

IT IS ORDERED denying Defendant's Motion to Strike portions of the Plaintiff's reply filed on May 19, 2014.

At issue here is whether the County incorrectly assessed the Plaintiff's property by failing to consider it to be "common area." That term is defined by statute. A.R.S. §42-13402(B). In order for property to be classified as "common area" property must be owned by a nonprofit homeowners' association, community association or corporation and must be deeded to that association or corporation. Statute further provides that the exclusive method for identifying and valuing common area, regardless of its actual use, is pursuant to A.R.S. §42-13402(B). A.R.S. §42-13401.

It is undisputed that the property which is the subject of this case was not deeded to a nonprofit homeowners' association, community association or corporation in 2009. The fact that

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000072

08/04/2014

other indicia suggest that the property was intended to be used as common property by the taxpayer, or that the property was subsequently deeded in a manner which resulted in its classification being switched to "common area," does not negate the fact that it was not so deeded in 2009.

Hormel v. Maricopa County, 224 Ariz. 454 (App. 2010), does not control. In *Hormel*, the county had actually agreed that an error existed for the tax year in question, and even completed the paperwork; the Court of Appeals held that, at that point, disbursing the refund was a purely ministerial act pursuant to A.R.S. § 42-16254(C), and granted mandamus on the ground of estoppel, per *Valencia Energy Co. v. Arizona Dept. of Revenue*, 191 Ariz. 565 (1998). Here, the county did not so agree.

As A.R.S. §42-13402(B) is the exclusive method for identifying and valuing common areas, and the property in question here did not comply with that statute, the Defendant did not err in not classifying the property as "community area" for 2009.

Accordingly,

IT IS ORDERED granting Defendant's Motion for Summary Judgment, filed October 10, 2013 and denying Plaintiff's Cross-Motion for Summary Judgment, filed April 4, 2014.

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/>

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.