

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000928

04/07/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

JOHN OPILOWSKY

JOHN OPILOWSKY
13052 S 35TH ST
PHOENIX AZ 85044

v.

CITY OF CHANDLER, et al.

SANDRA K MCGEE

MINUTE ENTRY

Courtroom 202 – Old Courthouse

9:34 a.m. This is the time set for an Oral Argument on Defendant's Motion for Summary Judgment. Plaintiff is present on his own behalf. Defendant, City of Chandler is represented by counsel, Sandra McGee.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is presented to the Court.

IT IS ORDERED taking this matter under advisement.

9:54 a.m. Matter concludes.

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LATER:

Upon further consideration of the arguments presented, the Court finds as follows.

The Court decides this appeal from the decision of the hearing officer de novo. A.R.S. § 12-168.

It is not sufficient for a party merely to assert that evidence to be presented at trial will support its position. It is necessary to provide in some form proof by admissible evidence to establish a genuine dispute as to a material fact. *State ex rel. Corbin v. Sabel*, 138 Ariz. 253, 256 (App. 1983). Where the Opilowskys bear the burden of proof, then, summary judgment must be granted to the City. *Orme School v. Reeves*, 166 Ariz. 301, 310 (1990). Pursuant to Chandler City Code § 62-675(E), the City bears the burden of proof on any factual issue relevant to ascertaining the taxpayer's liability.

Chandler City Code § 62-416(a) imposes the speculative builder tax on the taxpayer's gross income, which is defined in the following subsection as "the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title." The Code goes on to define "improved real property" as, inter alia, "any real property upon which a structure has been completed." The Court cannot find in the record any answer by the Opilowskys to paragraph 3 of the City's counterclaim, in which it is alleged that they were speculative builders; accordingly, that is deemed to be admitted. Rule 8(d). At any rate, both of the affidavits of property value signed by Mr. Opilowsky and the respective buyers identify the type of property as a single family residence, with no indication that either was not suitable for that purpose, so the Opilowskys' legal argument lacks merit. As for the selling price, the City has presented evidence in the form of the affidavits of property value that the selling price of the Sparrow Drive property was \$1,027,500 and that the selling price of the Cedar Place property was \$1,100,000. These documents are credible evidence that, if undisputed, would compel any reasonable juror to find in the City's favor. *See Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293 ¶ 20 (App. 2010). The Opilowskys have presented no evidence that the selling price of either property was anything different.

The City of Chandler's Motion for Summary Judgment is granted.

IT IS ORDERED directing Defendant to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs by May 6, 2014.

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Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.

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.