

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2013-000006

06/23/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SUNDEVIL POWER HOLDINGS L L C

BRIAN M MCQUAID

v.

ARIZONA STATE DEPARTMENT OF
REVENUE

KENNETH J LOVE

DOMINGOS R SANTOS
KERRY L HOLMAN
MACAEN MAHONEY

MINUTE ENTRY

Courtroom 202 – Old Courthouse

10:03 a.m. This is the time set for Oral Argument on Plaintiff's Motion for Leave to Amend Complaint. Plaintiff is represented by counsel, Brian McQuaid, Kerry L Holman, and Domingos Santos. Defendant is represented by counsel, Kenneth Love and Macaen Mahoney.

A record of the proceeding is made by audio and/or video tape in lieu of a court reporter.

Argument is presented to the Court.

IT IS ORDERED taking this matter under advisement.

10:32 p.m. Matter concludes.

LATER:

Upon further consideration, the Court finds as follows.

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The Court reads *Pargman v. Vickers*, 208 Ariz. 573, 579-81 ¶ 29-42 (App. 2004), as setting forth two ways to establish notice sufficient for relation back under Rule 15(c). The first is by establishing an identity of interest, which normally will be sufficient without analysis of the specific facts. The other, which the Court of Appeals did not denominate (the term “unity of interest” cited by Plaintiff, as well as “community of interest,” were taken from case law of other jurisdictions, and thus may not be directly applicable to Arizona, so the Court refrains from using them), is highly fact-intensive. *See id.* at 581 ¶ 42 (case decided “on the facts before us”). Here, on the basis of the facts developed by Plaintiff, the Court concludes that there has been notice sufficient to satisfy Rule 15(c). The facts establish that, in tax litigation where both the Department and one or more counties are parties, the Department takes the lead, to the extent that the counties’ role in the litigation proceedings is minimal. This is not a sharing of attorneys, but does show a pattern of close cooperation between counsel such that notice to the Department can be treated as notice to the affected counties.

The Court sees no prejudice to the County in allowing relation back; it does not address whether any other formal defects may exist, as the County, now that it is a party, has standing to raise them. The only prejudice to the Department is that it will have to litigate an action in which it was properly named and served, which is no prejudice at all. The Court does of course urge counsel to make sure taxing jurisdictions are properly named in any action for a refund, notwithstanding the availability of relief under Rule 15(c).

Accordingly,

IT IS ORDERED granting Plaintiff’s Motion for Leave to Amend Complaint, filed June 28, 2013.

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/>

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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.