

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2013-000407

05/19/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

ARIZORNIA DEVELOPMENT INC

BARRY C BECKER

v.

MOHAVE COUNTY ARIZONA DEPARTMENT OF REVENUE, et al.    DOLORES H MILKIE

MINUTE ENTRY

Courtroom 202 – Old Courthouse

9:40 a.m. This is the time set for an Oral Argument on Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment. Plaintiff is represented by counsel, Barry Becker. Defendant, Mohave County is telephonically represented by counsel, Dolores Milkie.

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.

10:08 a.m. Matter concludes.

**LATER:**

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Plaintiff's argument is based on a fundamental misconception of the meaning of "value" under Arizona law. "The property tax ... is levied upon the land itself and not the *interests* in the land or its profitability." *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 288 (1989) (*italics in original*). The Aria litigation in no way affected the land, but rather the marketability of the land. A purchaser would have had to weigh the likelihood that a judgment in favor of the federal government would render his investment worthless; but that is true of any land subject to a *lis pendens*. Even had the litigation rendered the property completely unsaleable, the property nonetheless had a cash value which had to be taxed. *Id.* (citing *Graham County v. Graham County Elec. Coop., Inc.*, 109 Ariz. 468 (1973)). And of course the litigation did not render the property completely unsaleable, as evidenced by the fact that Plaintiff itself acquired it while the case was ongoing.

H.B. 2178 retroactively exempted the property it covers from taxation for tax years 1987 through 2009, by requiring a refund of the entirety of property taxes paid and forgiving all unpaid taxes.<sup>1</sup> No constitutional basis for the exemption is cited, and Plaintiff argues for none. It therefore on its face violates Article IX, § 1 of the Arizona Constitution. *Id.* at 284; *Kunes v. Samaritan Health Service*, 121 Ariz. 413, 415 (1979). In addition, it violates the constitutional ban on special laws. "If a statute is plainly intended for a particular case and looks to no broader application in the future, it is a special law." *Arizona Downs v. Arizona Horsemen's Foundation*, 130 Ariz. 550, 558 (1981). H.B. 2178 applies only to the defendants (or, as Plaintiff argues, their successors in interest) in the Aria litigation; as written, it cannot apply to anyone else, however similar his situation, and, because the Aria litigation was concluded at the time of enactment, the class it benefits was and is closed. H.B. 2178 also violates the gift clause. The Arizona courts have not considered the gift clause as applied to non-contractual public expenditures such as this. *See Turken v. Gordon*, 223 Ariz. 342, 348 n.4 (2010). However, there is no conceivable legitimate public purpose in taking money from the public treasury to refund taxes properly assessed according to the law simply because, years after the fact, it was deemed unfair to have assessed them. Finally, Plaintiff is not a "qualified property owner" as defined by subsection (C)(2), as it was never made a defendant in the Aria litigation. The rule that the property, not the owner, owes the property tax is statutory in nature; *see Pothast v. Maricopa County*, 43 Ariz. 302, 304 (1934) ("The owner of property is not personally liable for taxes under our laws."). Thus, the legislature was free to override it by statute. Whether its doing so contravened the equal protection clause need not be addressed, given that Plaintiff is in any event not entitled to the relief it seeks.

Accordingly,

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<sup>1</sup> That the bill forgave all taxes on the properties makes it an exemption instead of a classification. *See Cutter Aviation, Inc. v. Arizona Dept. of Revenue*, 191 Ariz. 485, 498 (App. 1997) (1% assessment rate distinguished from exemption).

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**IT IS ORDERED** granting Mohave County's Motion for Summary Judgment.

**IT IS FURTHER ORDERED** denying Plaintiff's Cross-Motion for Summary Judgment.

**IT IS FURTHER ORDERED** directing Mohave County to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs by June 17, 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.