

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2013-000522

02/06/2015

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT  
A. Quintana  
Deputy

SOUTH POINT ENERGY CENTER L L C

PATRICK DERDENGER

v.

ARIZONA DEPARTMENT OF REVENUE, et al. KENNETH J LOVE

UNDER ADVISEMENT RULING

The Court has considered, for cause number TX2013-000522, Defendants' Motion to Dismiss (With Prejudice) filed August 15, 2014, Plaintiff's Response, filed October 15, 2014, and Defendants' Reply, filed November 21, 2014, and for cause number TX2014-000451, the identically titled motions filed August 6, 2014, October 15, 2014, and November 21, 2014 respectively. The two sets of motions are essentially identical, and address the applicability of *Calpine Construction Finance Co. v. Arizona Dept. of Revenue*, 221 Ariz. 244 (App. 2009). Specifically, Defendants seek dismissal on the ground that Plaintiff, as successor in interest to Calpine, is bound by that opinion based on collateral estoppel.

Although couched as motions to dismiss, because both parties rely heavily on material extrinsic to the pleadings and because the only issue is one of law, the Court treats the motions as motions for summary judgment, pursuant to Rule 12(b).

Relief under the error correction statute is not available for the simple reason that, in the present state of the law, there was no error. *Calpine* is the law in Arizona. Plaintiffs argue that it was wrongly decided, but it remains good law unless and until it is overruled by a competent tribunal. Plaintiffs do not allege that Mohave County did anything that was not according to the law as interpreted in *Calpine*.

Turning to the prospective appeal, the Court will address collateral estoppel. "Collateral estoppel or issue preclusion is applicable when the issue or fact to be litigated was actually

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litigated in a previous suit, a final judgment was entered, and the party against whom the doctrine is to be invoked had a full opportunity to litigate the matter and actually did litigate it, provided such issue or fact was essential to the prior judgment.” *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 572 (1986). All four of these tests are met. Plaintiff is the successor in interest to Calpine, as recognized in *Arizona Dept. of Revenue v. South Point Energy Center, L.L.P.*, 228 Ariz. 436, 437 ¶ 2 (App. 2011). It is therefore bound by the acts and omissions of Calpine. The issue in *Calpine* was the taxability of the improvements. Potential pre-emption by federal law was an argument that might have been made in opposition to the claim of taxability; Calpine had a full and fair opportunity to raise it, but for whatever reason did not. A final judgment was entered, and the issue of taxability was obviously essential to that judgment.

The motions to dismiss with prejudice, recouched as motions for summary judgment, are granted.

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.