

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2009-000409

09/02/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
D. Harding
Deputy

M T GERMANN AND ELLIS L L C

STEPHEN C NEWMARK

v.

CITY OF CHANDLER

MARY P WADE

MINUTE ENTRY

Courtroom OCH-202

9:02 a.m. This is the time set for Oral Argument regarding Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment. Plaintiff is represented by counsel, Stephen C. Newmark. Defendant 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.

9:28 a.m. Matter concludes.

LATER:

As the parties quote differently the material language of the ordinance, the Court must refer to the original text of the Chandler Municipal Code. Section 62-100 defines a speculative builder as, relevantly, "An owner-builder who sells or contracts to sell improved real property ... (A) Prior to completion, or (B) Before the expiration of twenty-four (24) months after the

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improvements of the real property sold are substantially complete.” There is no ambiguity in this language. It looks to the “real property sold,” that is, the real property transferred in the sale transaction, and to whether “the improvements” of it were “substantially complete” within 24 months of the sale or contract to sell. The ordinance employs the definite article, “the improvements,” not the indefinite “some improvements” or the ambiguous “improvements.” By the use of the definite article, the ordinance treats the improvements as an entirety which would be substantially completed at a single discrete time. This is confirmed by Section 62-416(a)(1), which defines the taxable gross income of a speculative builder as “the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.” Any apportionment of income based on the completion dates of individual improvements would violate the instruction that the tax be based on the “total selling price” of the property at the time of the single act of closing escrow or transferring title.

Here, the parties agree that some improvements were completed within 24 months of the sale and that other improvements were completed before that time. The date of completion of “the improvements” was therefore within 24 months of the sale.

Plaintiff emphasized both in its reply and at oral argument that the City Council had not anticipated a transaction like this one. Supposing this to be true, the Court must apply the law as it is written, not as it might have been written had the lawmakers possessed greater foresight.

As the motions for summary judgment have been resolved by statutory interpretation as applied to a single fact acknowledged by both parties, whether “new” facts were included in Plaintiff’s statement of facts is of no consequence.

Accordingly,

IT IS ORDERED denying City of Chandler’s Motion to Strike Plaintiff’s Statement of Facts.

IT IS FURTHER ORDERED granting City of Chandler’s Motion for Summary Judgment.

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

IT IS FURTHER ORDERED directing the City of Chandler to file any Statement of Taxable Costs and to lodge a form of judgment for the Court’s signature **no later than September 23, 2011.**