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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000384 11/18/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

EDW C LEVY CO

STEPHEN J LENIHAN

v.

MARICOPA COUNTY

ROBERTA NEIL MILLER

JOHN W BICKERSTAFF

UNDER ADVISEMENT RULING

The Court took Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment under advisement following oral argument on November 15, 2013. Upon further consideration, the Court finds as follows.

The Court does not read *CNL Hotels & Resorts, Inc. v. Maricopa County*, 226 Ariz. 155, 163 ¶ 32-33 (App. 2010), *rev'd on other grounds*, 230 Ariz. 21 (2012), as broadly as Plaintiff urges. The legal issue governing classification in that case[1] was a complex one which the Tax Court resolved one way, the Court of Appeals another, and the Supreme Court yet another. It was not reasonable to expect the property owner in that case to have known law on which the courts themselves diverged. The Court of Appeals limited its finding to the record in that case, *id.* at ¶ 33. The Court does not interpret that limited finding as a broad rule that a property owner is not charged with knowledge of the classification statutes.[2] Here, there is none of the subtlety

[1] The issue was not whether the land was leased from the state, which was uncontested, but whether the lease satisfied the statutory requirement that improvements revert to the lessor at its termination. *See id.* at 158 ¶ 10.

[2] A very recent Court of Appeals opinion, although not precisely on point, may also provide guidance. *Church of the Isaiah 58 Project, Inc. v. La Paz County*, -- Ariz. --, 670 Ariz.Adv.Rep. 20 (App. Sep. 12, 2013), held that a property owner seeking exemption for taxation must file a timely application and affidavit, or the exemption is waived. *Id.* at ¶ 12. Although the property owner in that case was aware of the statutory requirement, it was not, for at least part of the application period, formally on notice that, because its application in the preceding year had been denied, it was obligated to submit a new application. *Id.* at ¶ 13. The Court of Appeals found this to be immaterial: the property owner was barred from appealing regardless. The present case of course arises under a completely different set of

of *CNL Hotels*. Either Plaintiff's land was used for commercial purposes, or it was vacant. That it was not being used for commercial purposes would surely have been evident upon a cursory glance or review of its records, especially as both parties accept the description of the property since 2008 as "a flooded pit that could not be further mined." A taxpayer must be charged with constructive knowledge of the glaringly obvious. Moreover, Plaintiff in 2007 hired a property tax consulting firm, which certainly should have understood the difference in classification, precisely for the purpose of discovering ways to reduce the tax on this and other properties. What Plaintiff's employee, within the course and scope of its employment, should have known is imputed to Plaintiff.

The Court also does not parse A.R.S. § 42-16255(B) as Plaintiff urges. That the Assessor reached an arguably incorrect conclusion about the proper classification does not mean that he failed to examine it. Under Plaintiff's interpretation, no error correction action could ever be constrained by the statute, because by definition the Assessor's allegedly erroneous determination would not count as something for the BOE or court to "review." As for "overall valuation or legal classification," the Court notes that the words "or legal classification" were added to this and several other statutes by amendment in 2009. This argues against the force of "overall" carrying over in this particular statute to "legal classification." Moreover, this interpretation would give an anomalous result: if a classification error affecting an entire parcel were alleged, it would be subject to the statutory restriction, but if the error was limited, whether in fact or by artful pleading, to something less than 100 percent of the parcel, the restriction would not apply. Finally, as noted above, Plaintiff should have known the error existed, so could have appealed.

The Court therefore finds that relief under the error correction statute, A.R.S. § 42-16255, is not available.

IT IS THEREFORE ORDERED granting Defendant's Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment.

IT IS FURTHER ORDERED directing Defendant to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs (if applicable) by December 16, 2013.

IT IS FURTHER ORDERED vacating the trial scheduling conference set October 22, 2014 in this division.

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laws. Yet there is a common element, in that the taxpayer is not excused from knowledge of the law applying to his specific situation.