

ARIZONA TAX COURT

TX 2004-000161

06/19/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED: _____

PRAEDIUM IV CENTURY PLAZA LLC

JIM L WRIGHT

v.

MARICOPA COUNTY

KATHLEEN A PATTERSON

DERYCK R LAVELLE
PAUL J MOONEY
JERRY A FRIES

UNDER ADVISEMENT RULING

This matter was taken under advisement after oral argument on Defendant's Motion to Dismiss All Claims for 2005 Tax Year, held May 22, 2006. The Court has considered the papers and arguments of counsel.

I. THE ISSUE

The Court must address two issues raised by the motion. First, whether the Court has jurisdiction over Praedium's and Windsor's claim regarding the property valuation appeal. If jurisdiction is found, whether Windsor can step into Praedium's shoes as the owner of the property in question and follow the property valuation appeal deadline date contained in A.R.S. § 42-16201(B), or whether Windsor had to file its appeal by the December 15 date provided in A.R.S. § 42-16201(A).

II. FACTUAL BACKGROUND

This consolidated action involves the property valuation of a commercial office building located at 3225 North Central Avenue in Phoenix, Arizona, which is identified as parcel number 118-34-091B ("Subject Property"). In March 2004, the Maricopa County Assessor, pursuant to A.R.S. § 42-15101, issued an "Annual Notice of Full Cash Value," informing Praedium of Defendant's determination of the full cash value of the Subject Property for the 2005 tax year. After failing to obtain a reduction, Praedium filed an appeal pursuant to A.R.S. § 42-16157(A)

with the State Board of Equalization (“State Board”). On October 8, 2004, the State Board denied Plaintiffs request for a reduction. On December 6, 2004, Praedium filed a property tax appeal for the 2005 tax year pursuant to A.R.S. § 42-16051.

On December 10, 2004, four days after Praedium filed its Complaint, Praedium sold the Subject Property to Windsor Century Plaza LLC, (“Windsor”), pursuant to a contract dated in or about July 2004. The terms of the contract allowed the property taxes to be prorated for the tax year 2004.

In January 2005, before Defendant filed its Answer, Praedium amended its Complaint adding Windsor as a party plaintiff to the 2005 valuation appeal pursuant to Ariz. R. Civ. Proc. 15(a).

Taxes for the 2005 tax year were actually paid by Windsor after sale of the Subject Property.

III. DEFENDANT’S ARGUMENTS

A. Property tax appeals are statutory remedies.

Arizona case law provides that “the right to appeal from a property classification or valuation exists only by force of statute and is limited by the terms of that statute.” *Maricopa County v. Superior Court In and for County of Maricopa*, 170 Ariz. 248, 252, 823 P.2d 696, 700 (Ariz. App. 1991). Therefore, taxpayers must “scrupulously follow statutory procedures when seeking a refund.” *Univar Corp. v. City of Phoenix*, 122 Ariz. 220, 223, 594 P.2d 86, 89 (1979). In order for the statute at issue to be satisfied in this case, a taxpayer must file its tax appeal on or before December 15, 2004. A.R.S. § 42-16201.

B. The Court lost jurisdiction over Praedium’s appeal when Praedium sold the Subject Property.

Seafirst v. Arizona Department of Revenue, 172 Ariz. 54, 58, 833 P.2d 725, 729 (1992) provides, in pertinent part, that “failure of the Taxpayer to pay its . . . taxes for the tax year under review, on the property under review, deprives the Court of jurisdiction to continue to entertain the Taxpayer’s appeal.”

In the case at bar, Defendant contends that Praedium, because it was the initial owner of the Subject Property at the commencement of this lawsuit, had standing to file the tax appeal for the 2005 tax year. But, when Praedium sold the Subject Property to Windsor, it no longer had standing to obtain a reduction of the 2005 full cash value and tax refund.

In other words, because Praedium is not an owner/taxpayer of the Subject Property, it no longer needs to pursue trying to recover excess taxes paid for 2005. The Court of Appeals in *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402, 406-407, 18 P.3d 713, 717-718, ¶11-13 (2001), applied Article 9, Section 2(6) of the Arizona Constitution to define taxpayer. “Taxpayer” is “the person or entity that owns or controls the property and either pays the tax or forfeits its property interest.” *Id.* at ¶13. Because Praedium is no longer a taxpayer and owner of

the Subject Property, Defendant believes that Praedium has no standing to pursue the 2005 tax appeal.

Arizona case law provides criteria to establish whether a party has standing to bring a lawsuit. In *Bennett v. Napolitano*, 206 Ariz. 520, 524, 81 P.3d 311, 315 (2003), the Court found that in order for a party to have standing, the party must “plead and prove palpable injury personal to themselves.” Similarly in *Tucson Community Development and Design Center, Inc. v. City of Tucson*, 131 Ariz. 454, 456, 641 P.2d 1298, 1300 (Ariz. App. 1981), the Court of Appeals held that although a “non-profit Arizona corporation . . . owns property within the city, . . . there is no evidence showing that it . . . paid any taxes.” Therefore, the Court found that the non-profit corporation lacked standing to challenge the City’s actions.

Regarding the injury sustained that gives rise to standing, many tax cases have held that the person who paid the taxes is the person who has standing to seek a refund. See *Scanlon v. United States*, 330 F.Supp 269, 270 (E.D. Mich. 1971); *Washington Plaza Associates v. State Board of Assessment Appeals*, 44 Colo. App. 559, 620 P.2d 52 (Colo. App. 1980).

In the case at bar, Defendant asserts that Praedium sold the property to Windsor four days after it commenced this lawsuit and without paying the 2005 property taxes. Since Praedium did not pay taxes, it did not suffer any harm; therefore Defendant contends that because Praedium has no standing to pursue the tax appeal, this Court has no jurisdiction over Praedium’s tax appeal claim.

C. The Court has no jurisdiction over Windsor’s claim because Windsor failed to file a timely claim on or before December 15, 2004.

By amended complaint filed by Praedium, Windsor filed an appeal for the 2005 tax year on January 6, 2005, as a party plaintiff to this lawsuit. By purchasing the Subject Property, Windsor acquired standing to file the tax appeal to pursue a refund of the 2005 taxes. Although Windsor has standing, Windsor failed to comply with A.R.S. § 42-16201(A), which requires filing of the tax appeal on or before December 15, 2004.

For a court to have jurisdiction over a case, the party must timely file the tax appeal by the statutory deadline. In *Frederikson v. Maricopa County*, 197 Ariz. 104, 108 3 P.3d 1024, 1028 (1999), the taxpayers purchased the Subject Property in September and because they were unaware of the tax appeal date, the taxpayers did not file their appeal until December 15 of the following year. The court held that “a person who acquires property at a time when an opportunity for a valuation or classification appeal still exists but fails to take advantage of it due to ignorance has not been denied statutory appeal rights and will not be relieved of the consequences of his or her own inaction.” The court continued its reasoning by relying on *Forum Development L.C. v. Arizona Department of Revenue*, 192 Ariz. 90, 92, 99 n. 4, 961 P.2d 1038, 1040, 1047 (Ariz. App. 1997), which found that:

ignorance of an unexpired statutory deadline for a valuation or classification appeal will not excuse recent purchasers' failures to meet it, and it is the responsibility of the purchasers to determine from the statutes and the public record whether they wish to appeal

a valuation or classification decision and how long they have to do so.

Defendant asserts that like the taxpayers in *Frederikson* and *Forum Development*, Windsor became the owner of the Subject Property before the December 15, 2004, statutory deadline, but failed to file its own tax appeal by that date. Therefore, Defendant claims that this Court lacks jurisdiction over Windsor's appeal.

With regard to amending the Complaint to include Windsor as a party plaintiff, Defendant contends that Windsor's addition to this lawsuit does not help it defeat its failure to timely file its appeal. In *Pima County v. Superior Court*, 113 Ariz. 221, 223, 550 P.2d 92, 94 (1976), the Supreme Court had to determine whether Rule 15(C) encompassed added plaintiffs to a lawsuit. The Court found that Rule 15(C) "is limited to amendments changing the party against whom a complaint was served. It does not apply to additional parties." *Id.* (Citation omitted.) Therefore, Defendant believes that this Court lacks jurisdiction over Windsor's claim because Windsor did not timely file its own appeal in accordance with the statute.

IV. PLAINTIFFS' ARGUMENTS

A. **The Court continues to have jurisdiction despite the sale of the Subject Property.**

Defendant contends that since Praedium sold the Subject Property to Windsor, Praedium lost its title as taxpayer. Plaintiffs counter that just because the Subject Property was sold by Praedium to Windsor, Praedium is still eligible to obtain a refund of the taxes paid for 2005 because Praedium was an owner of the Subject Property. Plaintiffs also rely on *Maricopa County v. Superior Court*, which held that *only a record owner* may bring a valuation appeal. *Id.* at 252, 700. (Emphasis added.)

A.R.S. § 42-16051(A), which addresses an Assessor's review of improper valuation, provides that "[a]n *owner of property* which in the owner's opinion has been valued too high or otherwise improperly valued or listed on the roll may file a petition with the assessor on a written form prescribed by the department." (Emphasis added.)

Additionally, when a party appeals the assessor's decision, A.R.S. § 42-16157(A) allows "the petitioner [to] appeal the assessor's decision to the state board of equalization by filing with the state board, within twenty-five days after the date that the assessor's decision was mailed to the petitioner." Plaintiffs assert that petitioner in this statute means property owner. A.R.S. § 42-16157(C) continues that "[a] *property owner* who receives a notice of valuation . . . may appeal the valuation to the state board. . . within twenty-five days after the date of the assessor's notice." (Emphasis added.)

Plaintiffs claim that Praedium owned the Subject Property on the valuation date (January 1, 2004), owned the Subject Property when the Assessor denied the tax reduction, owned the Subject Property when the State Board denied its valuation appeal regarding a reduction (October 8, 2004), and owned the Subject Property when it appealed the State Board's decision within 60 days and filed suit with the Tax Court on December 6, 2004. Therefore, Plaintiffs

contend that because Praedium was owner of the Subject Property, it was the only party that could file the appeal.

Regarding the claimed loss of jurisdiction over Praedium's appeal upon sale of the Subject Property, Plaintiffs rebut Defendant's argument by claiming that Praedium fully complied with all of the statutory requirements regarding property tax appeals. In addition, Plaintiffs assert that any appeal filed after December 6, 2004, the date that it filed its appeal, would have been untimely. Therefore, Plaintiffs claim that Praedium not only timely filed its appeal, but was the sole owner of the Subject Property when it filed the appeal. Based on the foregoing, Plaintiffs contends that this Court does have jurisdiction over Praedium's appeal.

B. The Court has jurisdiction over Windsor because the December 15, 2004, deadline is not applicable to Praedium's appeal.

Defendant contends that this Court has no jurisdiction over Windsor's appeal because Windsor failed to comply with A.R.S. § 42-16201(A), which required filing of a tax appeal on or before December 15, 2004. Plaintiffs argue that this statute applies only to those cases that have not previously been administratively appealed. Therefore, Plaintiffs contend that *Frederikson* and *Forum Development* are irrelevant to the case at bar since an administrative appeal was filed prior to the sale of the Subject Property.

When determining the deadline for filing a tax appeal, Plaintiffs rely on A.R.S. § 42-16201(B) which states that “[a] person who files a petition with the county assessor pursuant to A.R.S. § 42-16051 may file an appeal with the court *within sixty days after the date of mailing the most recent administrative decision relating to the petition* or subsequent administrative appeal.” (Emphasis added.) Applying the language contained in this subsection of the statute, Plaintiffs assert that the deadline to file the tax appeal was December 6, 2004, sixty days from the mailing date of the State Board's decision. Plaintiffs further claim that Praedium, not Windsor, was the only party allowed to file the tax appeal. Therefore, Plaintiffs conclude that the December 15, 2004, statutory deadline is inapplicable to the case at bar.

Arizona law does not allow subsequent property owners to file separate property valuation appeals on the same property for the same tax year. In *F.D.I.C. v. Maricopa County*, 175 Ariz. 128, 854, P.2d 161 (Tax Court, 1993), Plaintiff owned the property in question and sold it to an individual. *Id.* at 130, 163. Both parties filed separate property valuation appeals. *Id.* The issue the Court had to address was whether “successive owners are entitled . . . to file and maintain separate actions that challenge the Assessor's valuation of the same property for the same tax year.” The Court found that successive owners cannot file independent property valuation appeals on the same property for the same tax year. *Id.*

Defendant contends that *F.D.I.C.* does not support Plaintiffs position for the following reasons: (1) consolidation of tax appeals is now controlled by A.R.S. § 42-16212 (which states “if two or more actions have been filed under this article for the same taxable year with respect to the same property, the actions shall be consolidated for the purpose of the hearing”); and (2) the *F.D.I.C.* facts are different than the facts involved in the case at bar. In *F.D.I.C.* both taxpayers had paid taxes for the same tax year. However in the case at bar, Praedium and

Windsor did not pay taxes for the same tax year. In addition, Defendant claims that Windsor filed its taxes past the statutory deadline.

Plaintiffs, on the other hand, contend that A.R.S. § 42-16205(B) only applies when property is acquired by the new owner after December 15 of the valuation year and where the “valuation was not appealed by the former owner.” Plaintiffs contend that this did not happen.

Plaintiffs assert that since Windsor purchased the Subject Property after the December 6, 2004 deadline, Windsor acted correctly by entering this lawsuit as a party plaintiff in order to protect its interest in the outcome of the valuation appeal. Therefore, Plaintiffs reason that the December 15, 2004, deadline that Defendant relies on is irrelevant to the issue of whether the Court has jurisdiction over Windsor’s appeal.

Defendant counters that A.R.S. § 42-16201(A) did allow Windsor to file a timely appeal “regardless of whether [Windsor] has exhausted the administrative remedies under this chapter.” Therefore, nothing in these two statutes precludes a successive owner from timely filing an appeal to the Court.

Regarding the relation back argument by Defendant, Plaintiffs believe that Rule 15(C) is irrelevant to this lawsuit. Plaintiffs believe that because Praedium owned the Subject Property on December 6, 2004, the date that the appeal had to be filed, adding Windsor as a party plaintiff occurred only to allow Windsor to obtain a property tax refund.

C. Policy reasons explain why the Motion to Dismiss should be denied.

Arizona Courts “prefer to determine cases on their merits rather than on points of procedure.” *Rodriquez v. Williams*, 104 Ariz. 280, 283, 452 P.2d 609, 612 (1969). Additionally, the Court’s “primary goal when interpreting a statute is to discern and give effect to legislative intent. *People’s Choice TV Corporation, Inc. v. City of Tucson*, 202 Ariz. 401, 403, 46 P.3d 412, 414 (2002). Therefore, the Court should “construe the statute as a whole, and consider its context, language, subject matter, historical background, effects and consequences, and its spirit and purpose.” *Id.* Further, when interpreting tax statutes, we resolve ambiguities in favor of the taxpayer. *Id.* Based on the aforementioned policy reasons, Plaintiffs believe that the Court should deny Defendant’s Motion to Dismiss.

V. ANALYSIS

In March 2004, Praedium received a property valuation from the County Assessor, which determined Praedium’s Subject Property’s full cash value for the 2005 tax year. Praedium, pursuant to A.R.S. § 42-16051, timely appealed the property valuation to the County Assessor. After losing at the assessor level, Praedium timely appealed to the State Board of Equalization pursuant to A.R.S. § 42-16157(A). After the State Board denied the appeal, Praedium, pursuant to A.R.S. § 42-16201(B), timely appealed the State Board’s decision and filed its complaint with this Court on December 6, 2004.

Four days after Praedium filed suit, it sold the Subject Property to Windsor who ultimately paid the 2005 taxes. In addition, Praedium amended its complaint in January 2005 including Windsor as a party plaintiff to the lawsuit.

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Defendant argues that this Court lacks jurisdiction over Praedium's property valuation claim because Praedium sold the Subject Property and did not pay the 2005 taxes. Defendant similarly claims that this Court lacks jurisdiction over Windsor's claim because it filed its complaint after the December 15, 2004, statutory deadline.

Plaintiffs, on the other hand, rely on A.R.S. § 42-16201 to determine the deadline for filing an appeal. Subsection B of A.R.S. § 42-16201 states that "[a] person who files a petition with the county assessor pursuant to A.R.S. § 42-16051 may file an appeal with the court within sixty days after the date of mailing the most recent administrative decision relating to the petition or subsequent administrative appeal." Therefore, Plaintiffs believe that the deadline to file their appeal was December 6, 2004, sixty days after the date that Plaintiffs received the State Board's decision. Plaintiffs contend that since they filed their appeal in a timely manner, this Court has jurisdiction over its claim.

Defendant relies heavily in its position on *Frederikson v. Maricopa County*, 197 Ariz. 104, 105, 3 P.3d 1024, 1025 (Ariz. App. 1999). The issue before the court in *Frederikson* was determining what the legislature had intended by the term "new owner" in A.R.S. § 42-16205(B). *Id.* at 107, 1027. A.R.S. § 42-16205(B) provides: "A new owner of property that was valued by the assessor and whose valuation was not appealed by the former owner of the property may appeal the valuation to court on or before December 15 of the year in which the taxes are levied." The court found that this statute encompassed a variety of key principles:

- Only the record owner of property may appeal its valuation or classification for ad valorem taxation purposes (citation omitted);
- A person who purchases property after the opportunity to appeal has expired is bound by the action or inaction of his vendor and has no due process right to an extension of the appeal time (citation omitted);
- A person who acquires property at a time when an opportunity for a valuation or classification appeal still exists but fails to take advantage of it due to ignorance has not been denied statutory appeal rights and will not be relieved of the consequences of his or her own inaction. (citation omitted). *Id.*

Based on the court's findings, it held that the property valuation appeal deadline contained in subsection B "benefit[s] only taxpayers who would otherwise have no recourse at all from the valuation or classification determined by the assessor. This taxpayer group includes only those who buy property after December 15 of the valuation year but on or before December 15 of the tax year." *Id.* at 108, 1028.

However, *Frederikson* is distinguishable from the case at bar because no preexisting appeal was filed by the original property owner in *Frederikson*. Therefore, A.R.S. § 42-16205(B) is inapplicable when trying to determine the deadline date for filing the valuation appeal on the Subject Property.

Although A.R.S. § 42-16205(B) is inapplicable to the case at bar, A.R.S. § 42-16201 addresses the deadline date to appeal a property valuation. Relying on A.R.S. § 42-16201(A), Defendant believes that Windsor had to file its appeal by December 15, 2004, and because it did not, it is not able to recover a refund of the property tax. While A.R.S. § 42-16201(A) does provide a deadline date of December 15 to appeal a property valuation, it is expressly subject to the language contained in subsection B.

Subsection B provides that the taxpayer may appeal the assessor's property valuation sixty days "after the date of mailing the most recent administrative decision relating to the petition or subsequent administrative appeal." A.R.S. § 42-16201(B). Following the language contained in A.R.S. § 42-16201(B), Praedium complied with the statute by filing its complaint on December 6, 2004. In addition, because the complaint was timely filed, Windsor, as the new owner of the Subject Property, was able to step into Praedium's shoes and pursue this *in rem* property valuation appeal. ("[A] 'successor' is one who not only takes another's place, but also maintains the character of the place taken. It contemplates an assumption of both rights and obligations or 'stepping into the shoes' of another." *Miller v. Hehlen*, 209 Ariz. 462, 470, 104 P.3d 193, 201 (Ariz. App. 2005) citing *Augusta Court Co-Owners' Ass'n v. Levin, Roth & Kasner*, 971 S.W.2d 119, 126 (Tex.App.1998)).

Finally, although there may be some ambiguity in the statutes in a case such as this where one property owner sells property to another before the December 15 deadline provided for in A.R.S. § 42-16201(A), such ambiguity should be construed in favor of the taxpayer, particularly where there is no prejudice to the taxing authority. In this case, there is no prejudice to the taxing authority because the original owner perfected every level of appeal in a timely manner.

VI. CONCLUSION

Based on the above analysis,

IT IS THEREFORE ORDERED denying Defendant's Motion to Dismiss all Claims for the 2005 Tax Year.

Solely to avoid any future issue of duplicate refunds,

IT IS ORDERED dismissing Praedium as a Plaintiff thereby allowing Windsor to proceed alone in this valuation appeal. Since Windsor alone actually paid the 2005 taxes, only it would be entitled to any refund of same.

IT IS FURTHER ORDERED denying Plaintiffs' Request for Attorneys Fees under A.R.S. § 12-349. The issue simply was not as clear as Plaintiffs would have the Court believe.