

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2008-000580

07/29/2009

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

SURPRISE CENTER DEVELOPMENT  
COMPANY L L C, et al.

STEPHANIE L SAMUELSON

v.

MARICOPA COUNTY

LOUIS F COMUS III

**UNDER ADVISEMENT RULING**

(Plaintiff's Motion For Leave To Amend Complaint)

In this case, a timely Complaint was filed appealing the State Board of Equalization's valuation of ten parcels. Eight of these parcels are owned by Surprise Center Development Company, LLC; one is owned by SCDC/WEM-SUR, LLC. There is no dispute that these appeals are proper. The tenth parcel, 501-17-955A, is owned by West Surprise, LLC, which is apparently owned by the same individuals as the other two LLCs. However, West Surprise was omitted from the original Complaint; the valuation of parcel 955A was named as one of those being appealed, but ownership was erroneously ascribed to Surprise Center Development and/or SCDC/WEM-SUR. Having discovered the omission, Plaintiffs seek to amend the Complaint to name West Surprise, and to have the amendment relate back to the date the original Complaint was filed.

The original Complaint was brought, as was believed, in the names of the owners of the named parcels, including 955A; *see* (original) Complaint at ¶ 7 ("Plaintiffs are the owners of the parcels"). *Maricopa County v. Superior Court*, 170 Ariz. 248 (App. 1991), is not on point. In that case, the Court of Appeals held that the Tax Court has subject matter jurisdiction only over a claim filed on behalf of the owner; as the appellant there was merely a lienholder, it had no standing to appeal where the owner did not. The issue here is not whether anyone other than the owner of 955A has the right to appeal its valuation, but whether the Complaint timely filed on

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behalf of the owner but mistakenly identifying the wrong owner preserves West Surprise's right to identify itself in the caption as the owner.

“Rule 15 permits amendments in order to give parties an opportunity to adjudicate the merits of a claim. The relation back doctrine under Rule 15(c) balances a plaintiff's right to a hearing on the merits of a claim despite procedural or technical difficulties with a defendant's right to be protected from stale claims and the attendant uncertainty they cause.” *Pargman v. Vickers*, 208 Ariz. 573, 578 ¶ 23 (App. 2004) (internal citation omitted). Under Rule 2, Arizona Tax Court Rules of Practice, the Rules of Civil Procedure govern this proceeding. The Court does not find in the jurisdictional statutes, A.R.S. § 42-16201 *et seq.*, any indication that Rule 15(c) is not to apply; unlike the situation in *Maricopa County, supra*, the obstacle here is a technical one, the inadvertent omission of a party from the caption. The appeal by the proper owner is an “occurrence ... attempted to be set forth in the original pleading.” Neither is staleness an issue; the County was aware in a timely fashion that the valuation of 955A was being appealed by its owner.

The identification of West Surprise, LLC, relates back to the filing of the original Complaint. As the amendment is therefore not futile, the broad policy of allowing amendments prevails.

Therefore, IT IS ORDERED Plaintiff's Motion For Leave To Amend Complaint is granted.