

THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN THE ARIZONA TAX COURT

TX 2021-000095

01/02/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT  
J. Holguin  
Deputy

ANDY CRACCHIOLO

DOUGLAS S JOHN

v.

ARIZONA DEPARTMENT OF REVENUE

BENJAMIN H UPDIKE

JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on November 16, 2023, regarding Defendant Arizona Department of Revenue’s Motion for Summary Judgment, filed May 19, 2023 (the “Motion”), as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movant—hereby finds as follows regarding the Motion.

In its Motion, the Department identified six parcels purchased by AC Land Holdings, LLC (“AC Land”). (Defendant’s Statement of Facts, filed May 19, 2023 (“DSOF”), at ¶14; *see also* Resp. to DSOF, filed August 7, 2023, at ¶14.) AC Land sold the six properties between the period of December 1, 2014 through June 30, 2017. (DSOF ¶3, *disputed only as to whether the properties were improved real property.*)

<b>Parcel Number</b>	<b>Address</b>
172-21-016B*	4517 N. Royal Palm Cir.
172-21-016C*	4514 N. Royal Palm Cir.
172-21-016D*	4521 N. Royal Palm Cir.

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172-20-031	4716 N. Dromedary
172-43-053A	4123 N. 58 <sup>th</sup> St.
128-01-027	4813 E. Amelia

\*Purchased as 172-21-016A and subdivided

In February 2019, the Department issued a notice of proposed assessment of speculative builder tax. (*See* DSOF ¶22, *undisputed*.) The Department issued an Amended Assessment on November 22, 2019, for \$115,465.38 in tax, \$28,866.36 in penalties, and \$18,619.00 in interest as of December 31, 2019. (DSOF ¶25, *undisputed*.) The Department seeks summary judgment that AC Land is a speculative builder subject to tax on the properties at issue. (Mot., at 9.)

Summary judgment is appropriate if “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015). “In the tax field, we liberally construe statutes imposing taxes in favor of taxpayers and against the government, . . . but strictly construe tax exemptions because they violate the policy that all taxpayers should share the common burden of taxation.” *State ex rel. Ariz. Dep’t of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶10 (2004) (internal citations omitted).

At oral argument, the Parties acknowledged that Parcel No. 172-21-016C and 172-43-053A were no longer at issue. The Department also conceded at oral argument that there are factual issues remaining as to improvements on Parcel No. 172-21-016B and 172-21-016D. Therefore, summary judgment is not appropriate as to those properties.

The Court will now address the remaining parcels—Parcel No. 128-01-027 and 172-20-031. AC Land purchased Parcel No. 128-01-027 (the “Amelia Property”) in December 2015 for \$274,000. (Plaintiff’s Statement of Facts, filed August 7, 2023 (“PSOF”), at ¶40; PSOF at Exh. 15.) AC Land removed some improvements and reused portions of the existing property for reconstructing the residential structure on the Amelia Property. (DSOF ¶17; Resp. to DSOF ¶17; PSOF ¶¶31–33, 41.) AC Land sold the Amelia Property in February 2017 for \$825,000. (PSOF ¶42.)

AC Land purchased Parcel No. 172-20-031 (the “Dromedary Property”) on April 9, 2015, for \$1,100,000. (PSOF ¶25; PSOF at Exh. 9.) AC Land removed the surface improvements leaving the slab, foundation, utilities, and landscaping improvements on the Dromedary Property. (Resp. to DSOF ¶17; PSOF ¶¶26, 29.) AC Land sold the Dromedary Property in March 2016 for \$1,282,000. (PSOF ¶30; PSOF at Exh. 11.)

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The City of Phoenix imposes a privilege tax “equal to two and three-tenths percent (2.3%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.” Phoenix City Code (“City Code”) § 14-416(a). “[I]t shall be presumed that all gross income . . . is subject to the tax until the contrary is established by the taxpayer.” City Code §14-400(c). The Court looks to the definitions in the City Code relevant to the facts at issue here.

“Speculative Builder” is defined, for purposes of the Motions, as: “an owner-builder who sells or contracts to sell, at any time, improved real property (as provided in Section 14-416) consisting of . . . custom, model, or inventory homes, regardless of the stage of completion of such homes.” City Code § 14-100. “Improved Real Property” is defined, for purposes of the Motion, as: “any real property . . . upon which a new structure has been substantially completed” or “where improvements have been made to land containing no structure (such as paving or landscaping).” City Code § 14-416(a)(2)(A) and (B).

“The administration of this chapter is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the City Treasurer.” City Code § 14-500(a). The City Code defines “Tax Collector” as “the Finance Director or his designee or agent for all purposes under this Chapter.” City Code § 14-100. Although the speculative builder tax is a tax under the City Code, the Department is tasked with collecting and administering the tax pursuant to A.R.S. § 42-6001(A).

The Parties do not dispute that AC Land owned the Dromedary Property and Amelia Property. (DSOF ¶3, *disputed only as to whether the properties were improved real property*; DSOF ¶13, *undisputed*; PSOF ¶19) At issue is whether the reconstruction of the residence on the Amelia Property and removal of surface improvements on the Dromedary Property constitute ‘improvements to real property’ under the City Code.

“In construing a statute, [the Court] look[s] to the plain language of the statute, giving effect to every word and phrase, and assigning to each word its plain and common meaning.” *Ponderosa Fire Dist. v. Coconino Cty.*, 235 Ariz. 597, 602 ¶24 (App. 2014) (citations omitted).

The Department contends that the speculative builder tax applies to the Amelia Property pursuant to City Code § 14-416(a)(2)(A). (Reply, at 5–9.) The Department contends that AC Land demolished the residence. (DSOF ¶19.) AC Land disputes that the prior structure was demolished completely but acknowledges that it removed some of the existing surface improvements and constructed a new and larger residence. (Resp. to DSOF ¶19; PSOF ¶31.) The Department contends that the new residence constructed on the Amelia Property in its place is “improved real property.” (Mot., at 6–7; Reply, filed August 28, 2023, at 6–8.)

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Although AC Land left some of the existing improvements and even used a portion for constructing the residence on the Amelia Property, **THE COURT FINDS that** the newly constructed residence constitutes “improved real property” for purposes of the speculative builder tax. *See* City Code § 14-416(a)(2)(A).

AC Land contends that the property was subject to the speculative builder tax upon its first sale after it was substantially completed. (Resp., filed August 7, 2023, at 12.) Yet nothing in the code references taxing only the first sale of the property if the property is later improved or a new structure is built. (Reply, at 8–9.) In fact, the definition of Improved Real Property includes “*any* real property . . . upon which *a* new structure has been substantially completed.” City Code § 14-416(a)(2)(A) (emphasis added). Thus, it is not limited to real property sold for the first time after the first new structure was built on it. In addition, the Department does recognize a credit for taxes previously paid by a speculative builder under City Code § 14-416(c)(3)(C). (Reply, at 6.)

AC Land looks to the language of City Code § 14-416(a)(2): “For the purpose of paragraph (A), once a structure has been deemed ‘substantially complete’, subsequent improvements to the structure shall not be considered for the purpose of determining the date on which a sale transaction would be taxable under this Section.” (Resp., at 11–12.)

The Department contends that this paragraph relates to the timing of the date of the first sale and does not state that a future sale cannot be subject to the speculative builder tax if a new structure is constructed on the property. (Reply, at 8–9.) Here, one structure was demolished, and a new structure was constructed on the Amelia Property—the new structure was not a subsequent improvement on the original demolished structure. **THE COURT FINDS that** AC is a speculative builder subject to the speculative builder tax on the sale of the Amelia Property.

As to the Dromedary Property, the Department contends that the speculative builder tax applies pursuant to City Code § 14-416(a)(2)(B). (Reply, at 9–11.) AC Land removed the surface improvements on the Dromedary Property. (PSOF ¶¶24–26.) The Department also contends that AC Land began drainage and grading work by obtaining a permit for such work. (Reply, at 10; Defendant’s Supplemental Statement of Facts, filed August 28, 2023 (“DSSOF”), at ¶¶3–4.) AC Land contends that the Dromedary Property was not subject to the speculative builder tax because it only removed the surface improvements. (Resp., at 9–10; PSOF ¶26.)

**THE COURT FINDS that** disputed facts remain regarding the work conducted on the Dromedary Property. As a result, summary judgment is not appropriate as to whether the Dromedary Property is improved real property under the City Code. Therefore,

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**IT IS ORDERED granting in part** Defendant Arizona Department of Revenue's Motion for Summary Judgment, filed May 19, 2023, as to the applicability of the speculative builder tax to the Amelia Property. All other relief requested by the Motion is denied.

**IT IS FURTHER ORDERED** that the Parties file a new Joint Report and lodge with it a Word-format proposed Scheduling Order regarding remaining issues in the case no later than **January 12, 2024.**