

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2013-000471

11/21/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

STRAWBERRY RIDGE ESTATES L L C, et al.

MICHAEL J HARPER

v.

GILA COUNTY

BRYAN B CHAMBERS

**UNDER ADVISEMENT RULING**

The Court took Gila County's Motion to Dismiss under advisement following oral argument on November 18, 2013. Upon further consideration, the Court finds as follows.

The issue raised in the motion to dismiss is purely one of law. The few relevant facts do not appear to be contested. As this motion challenges the Court's jurisdiction, it is allowed by Rule 12(b) to consider facts relevant to that determination. *Moulton v. Napolitano*, 205 Ariz. 506, 510 ¶ 8 (App. 2003). Thus, the Court sees no need to recharacterize the motion as one for summary judgment.

Plaintiff's interpretation of A.R.S. § 42-18352(E) is plausible. Its difficulty is that it completely destroys A.R.S. § 42-11004 and § 42-16210(A), which require timely payment of taxes as a condition of appeal: all a delinquent taxpayer has to do is wait until a tax lien is placed on the property – indeed, he can in theory postpone payment until the very day of the lien sale – and his capacity to contest the tax is revived.<sup>1</sup> Both statutes were enacted in 1997 as part of the rewriting of Title 42, so there is no priority of later enactment on which to fall back. The Court

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<sup>1</sup> Plaintiff proposes that Section 18352(E) is limited by A.R.S. § 42-18351(1), which provides for relief from “an error or omission resulting in an improper imposition of a property tax.” Even if “error or omission” is taken to mean an objectively verifiable error as the term is used in the error correction statute, A.R.S. § 42-16251 et seq. (which is not necessarily the case, as that definition is limited to its use in Article 6), that leaves relief under § 18352(E) coextensive with relief under the error correction statute, without the limitations imposed by it or by Section 11004.

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must therefore decide whether the statutory scheme carves out, for those so extremely delinquent that the government has been forced to the drastic remedy of placing a lien on the property to collect the unpaid taxes, an exception to the general rule. The Court simply cannot believe that the legislature would have chosen to reward such disrespect for the law, while depriving less egregious offenders of relief. It therefore reconciles the statutes thus: A.R.S. § 42-11004 and § 42-16210(A) prevail. For “a tax ... imposed or levied under any law relating to taxation” to be appealed as to its validity or amount by the property owner liable for that tax, it must be paid prior to delinquency (or within one of the safe harbors provided by § 42-16210(B)). The relief offered by A.R.S. § 42-18352(E) is available only to one whose right of appeal has not been forfeited under the general statutes.

Therefore, as taxes on the subject parcels were concededly not paid in a timely manner, this Court lacks jurisdiction.

**IT IS ORDERED** granting Gila County’s Motion to Dismiss.

**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 20, 2013.