Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2022-000430 05/11/2023

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

SIETE SOLAR L L C

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

ARIZONA DEPARTMENT OF REVENUE
NO ADDRESS ON RECORD

MARICOPA COUNTY
NO ADDRESS ON RECORD
JUDGE AGNE

RULING

The Court has received and reviewed Defendants Arizona Department of Revenue and Maricopa County's Motion to Dismiss filed January 30, 2023 ("Motion"), as well as subsequent filings related thereto. The Motion was fully briefed on March 14, 2023. The Court can decide the issues raised without oral argument, and so declines the Parties' requests for the same. *See* L.R. Prac. Superior Ct.—Civ., Maricopa County, 3.2(d).

Arizona law disfavors motions to dismiss for failure to state a claim upon which relief can be granted. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). Moreover, such motions are not to be used as a vehicle to resolve disputes about the facts or merits of the case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶46 (2012). Instead, the narrow question presented by the Motion to Dismiss pursuant to Rule 12(b)(6), Ariz. R. Civ. P., is whether the facts alleged by Plaintiff Siete Solar, LLC, are sufficient "to warrant allowing [it] to attempt to prove [its] case." *See id.*

Siete Solar, LLC ("Taxpayer") owns renewable energy equipment ("the Property"). (Compl., filed December 14, 2022, at I.) Taxpayer filed a Complaint and Notice of Property Tax Valuation Appeal for Tax Year 2023 against the Arizona Department of Review (the

"Department") and Maricopa County asserting that the full cash value determined by the Department for the Property is excessive. (*See generally* Compl.) Taxpayer contends that the Department valued the Property using the historical construction costs reported to the Department by the Property's former owner rather than the acquisition costs reported by Taxpayer. (Compl., at VII.)

The Motion to Dismiss is predicated on the arguments that the Department valued the Property by properly applying the statutory formula in A.R.S. § 42-14155 and that the Complaint does not identify a change in ownership of the Property. (*See generally* Motion and Reply.)

A.R.S. § 42-14155 governs the valuation of renewable energy equipment:

> The full cash value of renewable energy and storage equipment is twenty percent of the depreciated cost of the equipment. Depreciated cost shall be determined by deducting depreciation from taxable original cost. Depreciation shall not exceed ninety percent of the adjusted original cost.

A.R.S. § 42-14155(B). The Department contends that it properly valued the Property by using the "original cost," that of first putting the Property in service. (Mot., at 6.)

The Department relies on *SFPP, L.P. v. Ariz. Dept. of Revenue*, 210 Ariz. 151 (App. 2005). (Mot., at 3–4.) In *SFPP*, the court analyzed "original cost" in the context of the pipeline valuation statute (A.R.S. § 42-14204). 210 Ariz. at 152, ¶1. The court upheld the Tax Court determination that "original cost" meant the original cost of placing the assets in service. *Id*.

Yet, *SFPP* is distinguishable. First, *SFPP* involved a different valuation statute, A.R.S. § 42-14204, rather than A.R.S. § 42-14155 at issue here. 210 Ariz. at 152, ¶1. Second, "original cost" was not defined in the statute at issue in *SFPP*. *Id*. at 154, ¶13. In contrast, "original cost" and "taxable original cost" are both defined in A.R.S. § 42-14155.

In 2014, the Legislature amended A.R.S. § 42-14155 and defined "original cost." 2014 Ariz. Sess. Laws, Ch. 264, § 2. A.R.S. § 42-14155(D)(4) defines "original cost" as "the actual cost, without trending, of acquiring or constructing property, including additions, retirements, adjustments and transfers." Here, the Legislature specifically defined the term at issue to include the cost of "acquiring or constructing property." A.R.S. § 42-14155(D)(4). Therefore, the Court need not reach the analysis used in *SFPP*.

As to the Department's argument that there has not been a change in ownership, the Court must take the allegations in the Complaint as true. *See Cullen v. Auto-Owners Ins. Co.*,

218 Ariz. 417, 419, ¶7 (2008) (In ruling on a motion to dismiss, the court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom."). The Complaint references the change in ownership by identifying Rev Renewables as the new owner and PSEG as the former owner of the Property. (Compl., at VII.)

In addition, Arizona is a notice pleading jurisdiction, and so perfection in pleading is not required. *See Rosenberg v. Rosenberg*, 123 Ariz. 589, 592–93 (1979). In any event, Defendants appear to be well on their way to formulating a pleading that fairly responds to the substance of Plaintiff's allegations. Ariz. R. Civ. P. 8(c)(2).

Therefore, the preferred way of addressing the issues the Motion to Dismiss raises is via the mandatory disclosure process in Arizona, which should already be ongoing in this case. *See, e.g.*, *State ex rel. Corbin*, 136 Ariz. at 594. If that process fails to establish proof sufficient to meet Plaintiff's *prima facie* burdens on its claims, then a motion for summary judgment would be warranted. *See, e.g.*, *Orme School v. Reeves*, 166 Ariz. 301, 310 (1990); *see also Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (recognizing that the notice pleading standard [adopted in Arizona] relies on liberal disclosure and ensuing summary judgment motions to define disputed factual issues and dispose of unmeritorious claims where necessary). Therefore, good cause appearing, given the foregoing discussion,

IT IS ORDERED denying Defendants' Motion to Dismiss.

IT IS FURTHER ORDERED that Defendants comply with Rule 12(a)(2)(A), Ariz. R. Civ. P., within the timeframe set by that Rule.

IT IS FURTHER ORDERED that the Parties comply with Rules 16(b) and (c), Ariz. R. Civ. P., within the timeframes set by those rules.