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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2009-000073 07/11/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SHAMROCK FOODS COMPANY, et al. JIM L WRIGHT

v.

MARICOPA COUNTY CRAIG A MCCARTHY

BART WILHOIT
TIMOTHY WATSON

MINUTE ENTRY

The Court took this matter under advisement following oral argument on June 29, 2011. The Court has considered Defendant's Motion for Partial Summary Judgment Re Property Classification and Plaintiff's Cross-Motion for Partial Summary Judgment and finds as follows.

A.R.S. § 42-12151(4) (which will become subsection 5 when the 2011 amendment takes effect) defines agricultural real property as, inter alia, "[l]and and improvements devoted to high density use for producing commodities." Sadly, the legislature did not see fit to define what it meant by the word "commodities" or to refer to the definition given to it by some other entity. The Court must therefore write on a clean slate. The parties appear to agree that, given that the statute is concerned solely with agricultural real property, "commodities" must be taken to mean agricultural commodities, not products like crude oil traded on commodities markets, much less any item "movable in trade." The County would limit the term to what may be called first-level commodities: crops as harvested from the earth and, here, milk as taken from the cow. Shamrock Foods urges that it extend to the second-level commodities such as cheese and cream made at its plant. It strikes the Court that Shamrock Foods' definition could stretch even farther, to a third level or even higher. There is nothing in the statute specifically denying agricultural status to makers of foods like the frozen enchilada it used as a hypothetical at oral argument, as long as the enchilada is made entirely from agricultural products (cheese, beans, wheat for the tortilla). If the manufactured nature of the enchilada is a bar, as Shamrock Foods suggested in response, then what basis is there to distinguish cheese and cream, which are also manufactured (see the

discussion of subsection 9 below)? The practical difficulty of creating some standard of a product's "agriculturalness" to qualify its manufacture under subsection 4 weighs against such an interpretation.

The statutory language indicates that a commodity is something which is "produced." Subsections 5 through 7 of this section use the term "processing" to describe the action by which, respectively, cotton, wine grapes, and citrus, all plainly first-level commodities, are transformed into some second-level commodity. They do not explicitly state what these first-level commodities may be processed into, and so do not explicitly exclude that the second-level commodity may be something non-agricultural in nature and so not falling under subsection 4 even under Shamrock Foods' interpretation, but the specificity of "wine grapes" in subsection 6 clearly implies that the grapes are to be "processed" into wine and nothing else. Wine from grapes would appear to be analogous to cheese and cream from cow's milk, both remaining agricultural in character: if the wine is "processed," then so must be the cheese and cream. It thus appears that the legislature used "producing" to refer to the creation of a first-level commodity and "processing" to refer to the transformation of a first-level commodity into a second-level commodity. Since only a "produced" commodity qualifies under subsection 4, it must mean that only first-level commodities are included within its scope.

This interpretation is further supported by subsection 9, added to the statute in 1999. That subsection allows agricultural status to "[l]and and improvements owned by a dairy cooperative devoted to high density use in producing, transporting, receiving, processing, storing, marketing and selling milk and manufactured milk products without the presence of any animal units on the land." It will first be noted that subsection 9 avoids the vexed word "commodity," instead defining its scope unambiguously as "milk and manufactured milk products" (thereby recognizing a distinction between the two). It also covers, among other things, both "producing" and "processing." The Court is required to give the statutory language a meaning that avoids rendering any part of its language mere surplusage, redundant or superfluous. *City of Phoenix v. Phoenix Employment Relations Bd.*, 207 Ariz. 337, 340-41 ¶ 11 (App. 2004). If the activities enumerated in subsection 9, which qualify land and improvements for agricultural status if owned by a dairy cooperative, were already covered in subsection 4, which applies to everyone including dairy cooperatives, the subsection, or at least that part of it dealing with "producing … manufactured milk products," would be made redundant. (There is an inescapable redundancy in that subsection 9 deals with "producing … milk": milk as a "produced" first-level commodity is plainly covered in subsection 4. The Court must nonetheless minimize the redundancy.)

The Plaintiffs' challenge to A.R.S. § 42-12151(9) (which will become subsection 10) is a facial challenge, not an as applied challenge. The subsection applies only to dairy cooperatives, and there is no dispute that the County is so applying it. Shamrock Foods does not purport to be a dairy cooperative, nor does it assert any reason that it ought to be treated as one. It argues instead

that limiting the provision to dairy cooperatives violates the uniformity clause and that it should therefore be extended to all dairies. Shamrock Foods has apparently not complied with A.R.S. § 12-1841, requiring notice to the attorney general when the facial constitutionality of a statute is contested. In light of the Court's analysis, this non-compliance is a moot point.

To begin with, the conclusion does not necessarily follow from the premise. The Court must assume that the legislature knew what it was doing when it wrote the statute, and that it had some reason for limiting subsection 9 to dairy cooperatives. There is no reason to conclude that, if it had been told it must grant the favorable treatment to all instead of none, it would have chosen the former, or that the Court should do likewise.

The validity of tax classifications based on the non-profit nature of the owner of the property is cloudy. There is language in *In re America West Airlines*, 179 Ariz. 528, 535 (1994), stating that property cannot be classified differently simply because of the "size, wealth, or location" of its owner, limiting language used in prior cases such as *Apache County v. Atchison, Topeka & Santa Fe R. Co.*, 106 Ariz. 356, 359 (1970), to the effect that "class" for uniformity clause purposes includes the grouping of persons possessing common attributes. But *Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, 292 ¶ 15 (App. 2004), a post-*America West* case, reaffirmed the "grouping of persons" language from *Apache County*. *Hibbs v. Calcot, Ltd.*, 166 Ariz. 210 (App. 1990), was based solely on the language of the relevant statute, under which the use of the property placed it under the classification for commercial use notwithstanding the nonprofit status of its owner; it did not address the uniformity clause in that context (though Calcot unsuccessfully argued that the commercial classification of its land denied *it* uniformity with other nonprofits). Here, the statutory language is clear: property used for the specified purpose and owned by a dairy cooperative qualifies for agricultural status. In light of *Aileen H. Char*, and noting that *America West*'s list of proscribed bases for classification does not include nonprofit status, the Court does not find a violation of the uniformity clause.

Accordingly,

IT IS ORDERED granting Defendant's Motion for Partial Summary Judgment Re: Property Classification.

IT IS FURTHER ORDERED denying Plaintiffs' Cross-Motion for Partial Summary Judgment.