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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000057 12/05/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

C N L HOTELS AND RESORTS INC, et al. BRIAN W LACORTE

v.

ARIZONA STATE DEPARTMENT OF REVENUE, et al. KENNETH J LOVE

ROBERTA S LIVESAY
BRUNN W ROYSDEN III

UNDER ADVISEMENT RULING

The Court took Defendant's Motion for Summary Judgment under advisement following oral argument on October 7, 2013. Upon further consideration, the Court finds as follows.

The Court begins, as usual, by examining the language of the statute, what is now A.R.S. § 42-12009(A)(6).[1] Class nine applies to "Improvements that are located on federal, state, county or municipal property and owned by the lessee of the property if: (a) The improvements become the property of the federal, state, county or municipal owner of the property on termination of the leasehold interest in the property [and] (b) Both the improvements and the property are used primarily for convention activities." There are several undefined terms in this brief text. Most of them have been clarified in *CNL Hotels & Resorts, Inc. v. Maricopa County*, 230 Ariz. 21 (2012), and *Scottsdale Princess Partnership v. Maricopa County*, 230 Ariz. 425 (App. 2012). One remains to vex: property.

[1] At the time the taxes were assessed, the relevant language was at A.R.S. § 42-12009(A)(1), which additionally included property and improvements used primarily for athletic, recreational, entertainment, artistic, or cultural activities. In 2012, the legislature amended the statute. Now, to qualify for class nine, property and improvements in the latter categories must be used exclusively for such facilities (not activities). The language applying to convention facilities, however, was left unchanged and was assigned its own subsection. For ease of future reference, the Court will refer to the current numbering.

To dispose of the easier issue first, the Faldo golf course is ineligible for class nine. A.R.S. § 42-12001(9) and A.R.S. § 42-12002(1)(d) and (2)(d) make specific provision for the classification of golf courses in classes one and two respectively. There is no indication that the legislature intended to exclude from this otherwise all-encompassing scheme golf courses located on leased government land.

The Court acknowledges the oddity of requiring that both the property (which in this context the Court takes to mean the land) and the improvements be used primarily for convention activities. It is difficult to conceive how land with an improvement on it can be used differently from the improvement. However, the Court does not believe this language compels or even suggests the Department's position that the entirety of the property leased from the government owner must be used primarily for convention activities, in other words, that it is indivisible. To take a hypothetical example, suppose that CNL erected a hotel on one-third of the leased land, leaving the remainder unimproved, and that this hotel is demonstrably used one hundred percent for convention activities. Under the Department's interpretation, the hotel would not be eligible for class nine because convention activities account for only one-third of the use of the entire parcel. Should CNL cancel the lease on the remaining two-thirds, though, the hotel would qualify for class nine. (The hypothetical could just as easily be reversed: if the hotel occupied two-thirds of the parcel, the entire parcel would qualify for class nine, regardless of the use to which the other one-third is put.) The Court is not persuaded by the comparison to Section 12009(A)(5), which contains very specific requirements for charter schools to qualify for class nine and provides for mixed assessment if only part of the property is so used. This language was added in 2009, as part of a broader statutory revision to deal with property leased to non-profit charter schools by for-profit entities. Laws 2009, ch. 87 (H.B. 2346). It is easy to imagine that the legislature might have been concerned about private lessors evading taxes on their property by leasing part of it to a charter school and determined to foreclose the possibility – precisely the opposite of the situation here, where it is only the private development that makes the property taxable. As this was the only change made by the 2009 amendment, the Court does not believe it indicates anything about the remaining provisions, or that the enigmatic "compare" used by the Court of Appeals in *Scottsdale Princess*, *supra* at 428 ¶ 13, provides guidance on this point.

The Court foresees future litigation with respect to the recent amendment of A.R.S. § 42-15010. However, that discussion is premature, as the amendment does not take effect until tax year 2015. Be that as it may, the Court is not at this point indicating that a mixed assessment ratio is appropriate, only that it is not foreclosed by the statute.

Accordingly,

IT IS ORDERED denying Defendant Maricopa County's Motion for Summary Judgment filed June 6, 2013.