

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

TX 2018-000928

08/29/2025

HONORABLE ERIK THORSON

CLERK OF THE COURT
P. McKinley
Deputy

MESQUITE POWER L L C

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

KIMBERLY J CYGAN

CINDY SCHMIDT

UNDER ADVISEMENT RULING

The Court held oral argument on July 1, 2025, regarding Defendants' Motion for Leave to File Amended Answer, filed March 6, 2025, and Plaintiff's Motion for Leave to Amend its Complaint to Address the Supreme Court's Opinion Following Remand, filed June 4, 2025, 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 hereby finds as follows regarding the Motions.

Plaintiff Mesquite Power, LLC ("Mesquite") owns an electric generation facility in Maricopa County (the "Property"). *See Mesquite Power, LLC v. Ariz. Dep't of Revenue*, 258 Ariz. 1, 3 ¶1 (2024). The Arizona Department of Revenue (the "Department") valued the Property for tax year 2019 at \$196,870,000 using the formula set forth in A.R.S. § 42-14156. *Id.* at 5 ¶9. Mesquite appealed the valuation seeking to reduce it to \$105,000,000. *Id.* at 5 ¶14. After trial, the Tax Court set the full cash value at \$105,000,000, but the Arizona Supreme Court reversed the Tax Court's judgment and remanded for further proceedings. *Id.* at 11 ¶44.

Defendants, the Department and Maricopa County, seek leave to amend their answer to request an increase in the full cash value of the Property. (Def. Mot., at 2.) Defendants rely on A.R.S. § 42-16207(C) and § 42-16213. (Def. Mot., at 2–3.) Mesquite contends that Defendants' Motion is frivolous and seeks sanctions under A.R.S. § 12-349. (Resp. to Def. Mot., filed March

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25, 2025, at 1.) Mesquite contends that Defendant's Motion should be denied because it is futile. (Resp. to Def. Mot., at 2.)

Full cash value is defined as:

[T]he value determined as prescribed by statute. If a statutory method is not prescribed, full cash value is synonymous with market value, which means the estimate of value that is derived annually by using standard appraisal methods and techniques. Full cash value is the basis for assessing, fixing, determining and levying primary and secondary property taxes on property described in § 42-13304. Full cash value shall not be greater than market value regardless of the method prescribed to determine value for property tax purposes.

A.R.S. § 42-11001(6). Defendants assert that they may seek a higher value in their answer pursuant to A.R.S. § 42-16207(C): "If the department or the county requests an increase in full cash value, the response filed shall contain a statement of the reasons why the valuation or classification is insufficient or erroneous." (Def. Mot., at 3.)

Mesquite contends that the full cash value of the Property is the lesser of the statutory value or the market value based on the plain language of A.R.S. § 42-11001(6). (Resp. to Def. Mot., at 5.) The Court agrees. The full cash value of the Property is determined by A.R.S. § 42-14156, and the language of A.R.S. § 42-11001(6) caps full cash value at market value—so the full cash value of the Property is either the statutory value or market value, whichever is less.

Additionally, Mesquite contends that Defendants admitted that the maximum full cash value is the statutory valuation. (Resp. to Def. Mot., at 5–6.) In the Joint Pretrial Statement for the first trial of this case, ADOR stated, "ADOR and Maricopa County contend the market value of the Subject Property exceeds the statutory valuation and, therefore, the ADOR value should be used for the full cash value of the Subject Property." (*See* Resp. to Def. Mot., at 6; Resp. to Def. Mot., Exh. A at 2.)

The only contested issue listed was: "Whether the 'market value' of the Subject Property as of January 1, 2018, is less than the \$196,870,000 statutory full cash value determined by ADOR for tax year 2019, and if so, what is the market value of the Subject Property?" (Resp. to Def. Mot., at 6.) Mesquite contends these are binding admissions in these proceedings. (*See* Resp. to Def. Mot., at 6; Resp. to Def. Mot., Exh. A at 5–6.) Even were the statements in the Joint Pretrial Statement not binding, **THE COURT FINDS that** Defendants' proposed amendment is futile based on the plain language of A.R.S. § 42-11001(6).

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Defendants also cite A.R.S. § 42-16213(A) which states: “If the court finds that the valuation is excessive or insufficient, the court shall find the property’s full cash value.” However, this statute does not support Defendants’ motion for leave to amend. The Court may find that a valuation is excessive pursuant to A.R.S. § 42-16213(A), but this statute does not allow Defendants to seek a higher value than the valuation prescribed by statute, particularly when such value has been disclosed for years’ worth of prior litigation. (*See* Compl., filed December 14, 2018, and Answer, filed January 28, 2019; *see also* Joint Report, filed April 17, 2019.)

Ultimately, the Court may find the Property’s full cash value pursuant to A.R.S. § 42-16213(A). This is not dependent on Defendants seeking of a higher value in their pleading. In its determination of full cash value, the Court is bound by A.R.S. § 42-11001(6) as explained above, and the Court’s finding of full cash value will be limited to the lesser of the statutory value or the market value. As a result, Defendants’ proposed amendment is futile.

IT IS ORDERED denying Defendants’ Motion for Leave to File Amended Answer, filed March 6, 2025.

IT IS FURTHER ORDERED denying Mesquite’s request for sanctions included in its Response to Defendants’ Motion to Amend its Answer, and Request for Sanctions, filed March 25, 2025, as the Court does not find on this record a basis to grant it.

Mesquite seeks to amend its complaint to allege a statutory valuation claim that the full cash value determined by the Department is excessive. (Mesquite’s Mot., at 2.) Specifically, Mesquite asserts, “[U]pon information and belief, if ADOR had followed the provisions of A.R.S. §42-14156 and valued the Subject Property based on the reported cost, with adequate allowances for obsolescence, the statutory full cash value would have been significantly lower.” (Mesquite’s Mot., Exh. A at 3.) Mesquite contends that the amendment includes an alternative way to value the Property in view of the Supreme Court’s opinion. (Mesquite’s Mot., at 1.)

Defendants contend that the Court cannot deviate from the mandate’s instruction and that Mesquite cannot change the only issue raised previously to also challenge the statutory calculation. (Resp. to Mesquite’s Mot., filed June 10, 2025, at 5–6.)

The Arizona Supreme Court stated:

We therefore reverse the tax court’s judgment and remand to the tax court for further proceedings consistent with this opinion. On remand, the tax court must give Mesquite an opportunity to offer a new valuation under the income approach consistent with this

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opinion, and ADOR must be given the same opportunity. We vacate the court of appeals' opinion.

Mesquite, 258 Ariz. at 11 ¶44. Defendants contend that the proposed amendment has nothing to do with the determination of fair market value and the issue on remand. (Resp. to Mesquite's Mot., at 3.)

Defendants cite *Hall v. City of Los Angeles*, 697 F.3d 1059 (9th Cir. 2012). (Resp. to Mesquite's Mot., at 5.) "A district court is limited by our remand when the scope of the remand is clear. Violation of the rule of mandate is a jurisdictional error." *Hall*, 697 F.3d at 1067 (citations omitted).

However, in that same case the Ninth Circuit also stated, "the rule of mandate allows a lower court to decide anything not foreclosed by the mandate." *Id.* (citations omitted). "Moreover, when a court is confronted with issues that the remanding court never considered, the 'mandate[] require[s] respect for what the higher court decided, not for what it did not decide.'" *Id.* (quoting *United States v. Kellington*, 217 F.3d 1084, 1093 (9th Cir. 2000)).

Here, the proposed amendment was not at issue in the prior appeal. The Arizona Supreme Court acknowledged that "Mesquite did not argue that ADOR incorrectly applied the statutory formula when determining the value of the Mesquite Power Plant under § 42-14156." *Mesquite*, 258 Ariz. at 5 ¶11. **THE COURT FURTHER FINDS that** the mandate does not preclude Mesquite's proposed amendment.

Defendants also contend that Ariz. R. Civ. P. 15 is irrelevant given the mandate to the Tax Court. (Resp. to Mesquite's Mot., at 4.) However, Defendants do not cite to any authority stating that Ariz. R. Civ. P. 15 is irrelevant. (See Resp. to Mesquite's Mot., at 4.)

"Leave to amend must be freely given when justice requires." Ariz. R. Civ. P. 15(a)(2). "Amendments will be permitted unless the court finds undue delay in the request, bad faith, undue prejudice, or futility in the amendment." *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996) (citations omitted). "Denial of leave to amend is generally an abuse of discretion where the amendment merely seeks to add a new legal theory." *Id.* (citations omitted).

"'Mere delay'—the mere fact that the attempt to amend comes late—is not justification for denial of leave to amend." *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982) (citations omitted). Prejudice is "not that occasioned by defeat on the merits, but rather the inconvenience and delay suffered when the amendment raises new issues or inserts new parties into the litigation." *Romo v. Reyes*, 26 Ariz. App. 374, 376 (1976).

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Here, both parties are hiring new experts in light of the Supreme Court's opinion. The case has been stayed and no scheduling order has been entered. (*See* Order Staying Proceedings Until January 31, 2025, filed December 3, 2024; Order, filed March 25, 2025.) **THE COURT FURTHER FINDS that** granting Plaintiff leave to amend its Complaint will not cause undue delay.

THE COURT FURTHER FINDS that granting Plaintiff leave to amend its Complaint will not cause undue prejudice to Defendants. Whether the full cash value as determined by the Department is excessive has always been the issue in this action. (*See* Compl., filed December 14, 2018.) Therefore,

IT IS FURTHER ORDERED granting Plaintiff's Motion for Leave to Amend its Complaint to Address the Supreme Court's Opinion Following Remand, filed June 4, 2025. The Parties shall comply with Ariz. R. Civ. P. 15(a)(5) within the timeframes stated in that rule.

At oral argument, the Court noted that Plaintiff's Motion for Leave to Amend its Complaint, filed June 4, 2025, in TX2020-001124 was moot based on stipulation of the Parties. (*See* Minute Entry, filed July 7, 2025; *see also* Joint Motion to Consolidate, filed July 1, 2025.) No such stipulation was reached on Defendants' Motion for Leave to File Amended Answer for Tax Years 2021 and 2022, filed March 6, 2025.

Based on the analysis set forth above, **IT IS FURTHER ORDERED denying** Defendants' Motion for Leave to File Amended Answer for Tax Years 2021 and 2022, filed March 6, 2025, in TX2020-001124.