

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

TX 2024-000218

05/27/2025

HONORABLE ERIK THORSON

CLERK OF THE COURT
A. Smith
Deputy

MESQUITE POWER L L C

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

KIMBERLY J CYGAN

RULING

The Court held oral argument on March 28, 2025, regarding Defendants Arizona Department of Revenue and Maricopa County's Motion to Dismiss Complaint for Failure to Timely Serve Defendants and for Failure to State a Claim, filed January 6, 2025 ("Motion"), 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.

The Court hereby finds as follows regarding the Motion.

Plaintiff Mesquite Power, LLC ("Mesquite") owns real and tangible personal property in Maricopa County known as Block 2 of the Mesquite Power Plant (the "Property") that the Department is charged with valuing. (Compl., filed September 23, 2024, ¶¶1–2.) Mesquite failed to timely file a property tax report on or before April 1, 2019, as required by A.R.S. § 42-14152(A). (Compl., ¶4.) For tax year 2020, the Department therefore valued the Property pursuant to A.R.S. § 42-14152(C)(1) by multiplying the full cash value of the Property for tax year 2019 (\$196,870,000) by 105%. (Compl., ¶4–5.)

Mesquite had appealed the full cash value for tax year 2019 prior to the time the Department determined the full cash value for tax year 2020 using that statutorily required method. (Compl., ¶6.) Following a trial, appeal, petition for review that was granted by the Arizona Supreme Court, and eventual remand, however, the full cash value for tax year 2019 is still not final. (Compl., ¶¶8–11.)

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Issues regarding the tax year 2020 valuation at issue here have previously been raised before the Tax Court and the Court of Appeals. In *Mesquite Power, LLC v. Ariz. Dept. of Rev.*, 252 Ariz. 74 (App. 2021) (“Mesquite I”), the Court of Appeals affirmed the Tax Court’s ruling that Mesquite forfeited the right to appeal the valuation by failing to submit a timely report pursuant to A.R.S. § 42-14152. There, Mesquite had asserted the following claims:

In Count 1, Mesquite generally disputed the Department’s valuation. In Counts 2 through 4, Mesquite alleged that the Department disregarded all available information when it determined the full cash value in compliance with A.R.S. § 42-14003. In Count 3, Mesquite also asserted that the Department ignored the information submitted in Mesquite’s untimely filed report. In Count 4, Mesquite claimed that the Department incorrectly estimated the full cash value by relying on an estimate of the full cash value from the 2019 tax year because that value was under appeal.

Id. at 77 ¶5. The Court of Appeals concluded, “[B]ecause Mesquite forfeited its statutory right to challenge the Department’s valuation of its property under A.R.S. § 42-14152(D), it may not seek the same relief by any other means.” *Id.* at 81, ¶25.

Mesquite filed another action for an illegal tax based on how the Department calculated the full cash value for tax year 2020. *Mesquite Power, LLC v. Ariz. Dept. of Rev.*, 1 CA-TX 22-0008, 2023 WL 3239085 (App. May 4, 2023) (“Mesquite II”). The Court of Appeals affirmed the Tax Court’s dismissal and found that the claims on appeal were precluded. *Id.* at *4 ¶23. Mesquite asserted its claims under A.R.S. § 42-11005, but the Court of Appeals found that the “claim rest[ed] on Mesquite’s argument that the Department’s value was ‘excessive and illegal’ because the Department violated A.R.S. § 42-14152.” *Id.* at *3 ¶14. “And Mesquite explicitly argued in its First Action complaint that it [was] entitled ‘to receive a refund of any taxes levied, assessed and paid based on the illegal tax year 2020 values, together with interest as provided by law.’” *Id.*

Now, Mesquite has filed this—a third action regarding tax year 2020. Mesquite filed its Complaint pursuant to A.R.S. § 42-16254(G) to appeal the State Board of Equalization’s decision rejecting its Notice of Claim. (Compl., at ¶20.) Because the Department calculated the full cash value for tax year 2020 by multiplying the full cash value for tax year 2019 by 105%, Mesquite contends that the full cash value for tax year 2020 cannot be finally determined until there is a final judgment establishing the full cash value for tax year 2019. (Compl., at ¶12.) Mesquite asks the Court, under A.R.S. § 42-16251(3)(e), to stay these proceedings until a final

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decision is made on the full cash value for tax year 2019 and then make the appropriate calculations for tax year 2020. (Compl., at ¶¶ 14, 22.)

Defendants seek dismissal of Mesquite's Complaint. (Mot., at 1.) The Motion is predicated on the arguments that Mesquite failed to timely serve Defendants, the Complaint is barred by claim and issue preclusion, and the error-correction provisions do not apply. (*See generally* Motion.)

Defendants contend that Mesquite was required to serve Defendants within ten days of filing its notice of appeal pursuant to A.R.S. § 42-16209(A). (Mot., at 6.) An error-correction proceeding is a distinct type of legal proceeding, different from property tax valuation or classification appeals under A.R.S. §§ 42-16201, *et seq.* *See, e.g.,* A.R.S. §§ 42-16251, *et seq.* In addition, A.R.S. § 12-166 provides, "Except as provided in this article, proceedings in the tax court shall be governed by the rules of civil procedure in the superior court."

THE COURT FINDS that the appeal at issue does not fall under the exception to A.R.S. § 12-166 set forth in A.R.S. § 42-16209 for property tax valuation or classification appeals. Therefore, Mesquite satisfied the service requirements as set forth in Ariz. R. Civ. P. 4(i), and dismissal based on service is not warranted.

Hees v. Maricopa Cty., 1 CA-TX 17-0004, 2018 WL 4907580, at *2 (App. Oct. 9, 2018), cited by Defendants for persuasive value only pursuant to Ariz. R. Supreme Ct. 111(c)(1)(C), nowhere had presented to it, nor did it engage with, the legal history raised by Mesquite in its Response filed February 17, 2025. Instead, *Hees* used the canon of *in pari materia* to construe as like, statutes that are in fact about different subject matter.

This, despite relatively clear legislative language to the contrary. *See* A.R.S. § 42-16256(D) (excluding issues of overall valuation from error-correction proceedings); *see also* A.R.S. §§ 42-16168 (appeals from Board of Equalization decisions other than about valuation and classification are "as provided by law"), -16169 (finality of Board's decisions in valuation and classification cases—omitting error-correction proceedings).

As for the issue and claim preclusion arguments on which the Motion is grounded in part:

"Generally, the elements of collateral estoppel are: the issue was actually litigated in the previous proceeding; there was a full and fair opportunity to litigate the issue; resolution of the issue was essential to the decision; there was a valid and final decision on the merits; and there is common identity of the parties." *Irby Const. Co. v. Ariz. Dept. of Revenue*, 184 Ariz. 105, 107 (App. 1995).

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And: “The defense of claim preclusion has three elements: (1) an identity of claims in the suit in which a judgment was entered and the current litigation, (2) a final judgment on the merits in the previous litigation, and (3) identity or privity between parties in the two suits.” *In re Gen. Adjudication of All Rights to Use Water In Gila River Sys. & Source*, 212 Ariz. 64, 69–70 ¶14 (2006).

Defendants contend that the claim for relief in this action is virtually identical to the fourth claim for relief in *Mesquite I*. (Mot., at 9.) Defendants contend that labeling the claim now as an “error-correction” claim does not change the claim from a valuation claim that Mesquite forfeited for tax year 2020. (Mot., at 10.)

Mesquite contends that it has not raised a valuation issue but rather an error-correction one—that the full cash value for tax year 2020 should be established based on the final full cash value for tax year 2019. (Resp., at 9.) Mesquite contends that it could not have brought an error-correction claim in *Mesquite I* because the 2020 property tax was not yet levied. (Resp., at 8.) *See Park Central Mall, LLC v. Maricopa Cty.*, 197 Ariz. 532, 534 ¶9 (App. 2000) (“Until taxes have been assessed on the third Monday in August of a given tax year, no correctable error ‘in assessing or collecting taxes’ for that tax year has occurred.”).

Valuation based on the Department’s estimate of tax year 2019 was certainly at issue in the prior actions. However, Mesquite did not previously assert an error-correction claim as it has here.

In *Mesquite I*, the Court of Appeals “reject[ed] that Mesquite’s appeal properly invokes the error-correcting statutes.” 252 Ariz. at 81 ¶26. “Mesquite argue[d] that it was improper for the Department to use the still-disputed 2019 valuation to calculate the 2020 valuation.” *Id.* at 81 ¶28. “The Department asserted it considered all available information and concluded that its preliminary valuation in 2019 was correct.” *Id.* at 82 ¶31. The Court of Appeals found, “Given the broad discretion the statutes grant the Department, we cannot conclude the Department failed in its statutory duty.” *Id.*

While the Court of Appeals referenced the error-correction statutes in *Mesquite I*, it was in the context of whether the Department acted improperly by using the 2019 full cash value when it was still in dispute, as it had been appealed. *Id.* at 81 ¶26. Here, there is no longer a 2019 full cash value, due to intervening action of the Arizona Supreme Court. *See Mesquite Power, LLC v. Arizona Dep’t of Revenue*, 258 Ariz. 1 ¶ 44 (2024) (reversing the tax court’s judgment, remanding to that court for further proceedings, vacating the court of appeals’ opinion, and instructing this Court to give the Parties opportunities to offer new valuations under the income approach consistent with the Arizona Supreme Court opinion).

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The Court of Appeals did not address whether there would be an error to correct if the final 2019 full cash value was ultimately lower than the 2019 full cash value used by the Department in its calculations for tax year 2020. Here, the only claim and issue before the Court is whether the 2020 full cash value is erroneous once the 2019 full cash value is finalized. (*See generally* Compl.) Therefore,

THE COURT FINDS that whether there is an error to be corrected for the 2020 full cash value has not been decided in *Mesquite I* or *II*. Therefore, the error-correction claim asserted in this action is not precluded under the doctrines of collateral estoppel or claim preclusion.

Finally, Defendants contend that the error-correction statutes do not apply. (Mot., at 12–13.) Mesquite contends that it did not forfeit its right to use the correct 2019 full cash value to calculate the 2020 full cash value even if it forfeited its right to appeal the 2020 full cash value. (Resp., at 13.) Mesquite contends that it would not be disputed if Mesquite challenged the computation based on the use of an erroneous tax rate under A.R.S. § 42-16254. (Resp., at 13 n.8.) The Court agrees. The calculation using 105% of the final full cash value for tax year 2019 is “objectively verifiable.” A.R.S. § 42-16251(3)(e)(vi),

THE COURT FINDS that the error-correction statutes may be applicable once the final full cash value for tax year 2019 is entered.

IT IS ORDERED denying Defendants’ Motion to Dismiss Complaint for Failure to Timely Serve Defendants and for Failure to State a Claim, filed January 6, 2025.

IT IS FURTHER ORDERED staying this action pending resolution of TX2018-000928.