

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

TX 2014-000606

05/18/2017

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

BILL STAPLES

ROBERTA S LIVESAY

v.

T K G EL CON CENTER L L C, et al.

JODI A BAIN

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Partial Summary Judgment, filed September 13, 2016, Defendants' Amended Opposition and Defendants/Counterclaimants' Amended Motion for Partial Summary Judgment, filed December 8, 2016, Plaintiff's Reply and Response, filed February 17, 2017 and Defendant's Reply, filed April 17, 2017.

The Court also has Plaintiff's First Motion to Amend Complaint, filed April 6, 2017 and fully briefed as of May 8, 2017.

The Court benefited from oral argument on the motions on May 15, 2017.

A plaintiff has an absolute right to dismiss his case with prejudice. *Damron v. Sledge*, 105 Ariz. 151, 153-54 (1969). Because the time limit for filing an appeal has long since passed, dismissal of the 2014 claims amounts to dismissal with prejudice. Plaintiff may therefore do so. However, A.R.S. § 12-348(B) applies. *4501 Northpoint LP v. Maricopa County*, 212 Ariz. 96, 101 ¶ 18 (2006).

Neither party disputes that El Con Center is, and should be, classified as a shopping center. A.R.S. § 42-13201 defines "shopping center" as "an area that is comprised [sic] of three or more commercial establishments ... that is owned or managed as a unit...." A shopping center is also valued as a unit. In an appeal, it is valued according to either SLBR or RCLD, unless the

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shopping center has been sold within the preceding two years. A.R.S. § 42-13205. It is the shopping center, not the individual stores, that is the taxable entity. *Nordstrom, Inc. v. Maricopa County*, 207 Ariz. 553, 557 ¶ 14 (App. 2004). *Nordstrom* overruled a recently-published Tax Court opinion, *May Dept. Stores Co. v. Maricopa County*, 205 Ariz. 442 (Tax 2003), which had held that the shopping center classification was to be applied to individual unit owners: “for the Shopping Center statute to be given meaning it would have to be applicable to individual owners/taxpayers within the shopping center just as it would be available to the mall owner if it were the sole taxpayer, provided the elements of the statute are satisfied.” *Id.* at 444. *Nordstrom* looked to the “plain language” of the statute in holding that, because a shopping center was defined as being “comprised of three or more commercial establishments,” no individual commercial establishment could be taxed as a shopping center. *Supra* at 556-57 ¶ 10. Because the valuation of the property must be that of the shopping center as a whole, the sum of its parts, the sum of the valuations of each unit and parking and common areas, must by definition be the valuation of the whole.

If § 42-13302(B) applies as Defendant urges, this becomes impossible. The shopping center itself must be valued using the replacement cost less depreciation method, as required by § 42-13203(A), or if the owner qualifies under § 42-13204, using SLBR; on appeal, the reviewing entity shall use the same method or, if the owner has chosen the income method, SLBR or RCLD (or a sale of the property in the preceding two years). Preserving the equality of the whole with the sum of the parts requires that the values of the individual units must be determined in the same manner, under the same rules. The valuation of a shopping center cannot be affected by the fortuity of some constituent parts being changed, thus valued under Rule A, and others not, thus valued under Rule B.

The legislative goal in specifying valuation methods was to approximate the market value of a difficult-to-value entity, a shopping center. *Business Realty of Arizona, Inc. v. Maricopa County*, 181 Ariz. 551, 557-59 (1995). *Nordstrom* makes clear that the value that must be found is that of the shopping center as a complete entity. To remain consistent with *Nordstrom*, § 42-13302(B) cannot apply to individual units of a shopping center.

THEREFORE, IT IS ORDERED awarding Defendant fees and costs relating to Plaintiff’s claims for tax year 2014, pursuant to A.R.S. § 12-348(B).

IT IS FURTHER ORDERED granting Plaintiff’s Amended Motion for Partial Summary Judgment, and denying Defendant’s Motion for Partial Summary Judgment, with respect to the tax year 2015 claims.

FINALLY, IT IS ORDERED denying Plaintiff’s First Motion to Amend Complaint as moot given the rulings above.