

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

TX 2011-000736

11/07/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

100 VAL VISTA / MONTGOMERY L L C, et al. PAUL MOORE

v.

PINAL COUNTY

ROBERTA S LIVESAY

BART WILHOIT

MINUTE ENTRY

Courtroom 201-OCH

10:10 a.m. This is the time set for Oral Argument re: Plaintiffs' Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment. Plaintiffs are represented by counsel, Paul Moore. Defendant is represented by counsel, Roberta S. Livesay and Cedic Hay.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

Discussion is held regarding status of case.

The Court conducts a scheduling conference. Based thereon, the Court enters the following orders:

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Bench Trial Set

1. This matter is set for a **3-day Bench Trial** on **March 27-29, 2017 at 9:00 a.m.** in this division. **THIS IS A FIRM TRIAL DATE.**

Judge Christopher Whitten
Maricopa County Superior Court
125 W. Washington
OCH-Courtroom 201
Phoenix, AZ 85003

A record of the proceedings will be made by CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$30.00 charge. If a CD is requested, please obtain a form from the bailiff or from the Self Center to request a daily copy of a court hearing or trial proceeding being conducted

Final Pretrial Management Conference Set

2. A **Final Pretrial Management Conference** is set on **March 17, 2017, at 10:00 a.m.** in this division. All lead trial counsel shall personally appear.

The joint pretrial statement in accordance with Rule 16(d), A.R.C.P., is **due by 5:00 p.m., on March 14, 2017. Plaintiff shall provide a draft of the pretrial memorandum to Defendant(s) no later than March 13, 2017.**

Pursuant to the foregoing trial setting, the Court enters the following additional orders:

1. Motions in limine shall be filed no later than February 15, 2017. Prior to filing any motion in limine, the parties must meet and confer. Unless prior written leave of court is obtained for good cause shown, no party may file more than three (3) motions in limine, including all subparts.
2. Counsel shall meet at least **five (5) days before** the pretrial management. Each attorney shall discuss witnesses called and estimate the time for his or her direct examination of his or her witnesses and his or her cross-examination of opposing witnesses. In addition, counsel will estimate the time they will need for opening statements and closing arguments. **IN PREPARING, BEAR IN MIND THAT ONE**

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TRIAL DAY ALLOWS FOR APPROXIMATELY FIVE (5) HOURS OF ACTUAL TRIAL TIME.

1. Prior to submitting the exhibits for trial to the division, **counsel shall meet and confer** to determine that there are no duplicate exhibits from either party. Duplicate exhibits and original depositions will not be marked. At least **two weeks prior to trial**, counsel or their knowledgeable assistants shall contact the clerk of this division at **602-506-7514** to discuss the procedure for the submission of the exhibits. No later than **one week before trial**, the trial lawyers shall submit all exhibits to the clerk of the division for marking unless otherwise approved by the clerk. The exhibits will be marked numerically and serially - Plaintiff's first, Defendant's second. **Every exhibit must be securely bound by a staple, prong or in a binder of some sort. Exhibits not securely bound or bound with binder clips or rubber bands will not be accepted. Depositions will not be marked as exhibits in any content for any reason.**

The Court does not want a "Bench Book" of all the exhibits marked by either party. If there are a few crucial Exhibits which counsel want the Court to have, copies of those may be provided on the first day of trial.

2. All documents and pleadings described above shall be delivered or telefaxed to opposing counsel on the date they are delivered to the Court.

Time Management

Please note that there are approximately 5 hours of trial time each full day, which includes two 15-minute breaks and 1½ hours for lunch. Each party shall be allotted half of the total time to present its case.

10:59 a.m. Matter concludes.

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

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LATER:

The Court has considered Plaintiffs' Motion for Partial Summary Judgment, filed August 23, 2016, Defendant's response, filed September 27, 2016, and Plaintiffs' reply, filed October 17, 2016. The Court has also considered Defendant's Motion for Summary Judgment, filed August 23, 2016, Plaintiffs' response, filed September 27, 2016, and Defendant's reply, filed October 17, 2016. The Court benefited from both the well-written briefs and oral argument on both motions on November 7, 2016.

The language of A.R.S. § 42-12152(C) is clear: "The [reasonable expectation of operating profit] requirement contained in subsection A, paragraph 2 of this section shall be satisfied if the owner files with the assessor an affidavit of agricultural use, signed by the owner attesting that all information in the affidavit is true and the property is actively producing with an expectation of profit."

This does not eliminate the requirement that the owner have a reasonable expectation of operating profit from the agricultural use of the land, but sets a statutory manner in which that requirement may be met. *See Title USA v. Maricopa County*, 175 Ariz. 244, 255 (App. 1993).¹

A.R.S. § 42-12152(C) must be applied to all three tax years here. Where there is no new substantive right, "the law in effect at the time the evidence is sought by discovery or trial testimony ... governs the admission of trial testimony." *State v. Carver*, 27 Ariz. 438, 442 ¶ 14 (App. 2011) (addressing marital communication privilege). Paragraph C creates no new substantive right, only an easy method whereby a property owner may prove his entitlement pursuant to the already established paragraph 2.

Plaintiff's motion for partial summary judgment is granted

Defendant's motion for summary judgment is denied as there are abundant issues of material fact with respect to Plaintiff's compliance with the remainder of A.R.S. § 42-12152.

¹ Note that the affidavit satisfies only the reasonable expectation of profit requirement of paragraph 2; although the affidavit must include an avowal that the property is in active production, it is not adequate to satisfy that requirement found in paragraph 1. So, if Mr. Bush's primary use of the property leased from Plaintiff is not as agricultural land according to generally accepted agricultural practices then Plaintiff's expectation of profit is immaterial. Mr. Bush's deposition testimony on that subject was adequate to establish a question of material fact that must await trial.