



MEMORANDUM

Date: September 21, 2016

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Primavera Foundation Versus Bill Staples and Pima County**

Attached is a summary of the Primavera property tax case located in the City of South Tucson from the County Attorney, as well as the Amended Judgment of the Superior Court. The case primarily revolved around whether Primavera was entitled to a property tax exemption related to charitable institutions. The Assessor pursued the case when the County declined to be an active party and retained his own legal counsel, Terri A. Roberts.

The monetary value of the case as originally filed for 2011, 2012, and 2013 was for property taxes paid by Primavera in the amount of approximately \$15,800. The Superior Court found in favor of the Primavera Foundation for 2013 taxes paid in the amount \$5,685 and ordered attorney's fees and costs in the amount of \$47,340. In addition, the County paid the Assessor's attorney \$46,815. Hence, a dispute over roughly \$15,800 in property taxes has cost the County, not the Assessor, over \$94,000 in attorney's fees.

CHH/lab

Attachments



**ATTORNEY/CLIENT PRIVILEGED
M E M O R A N D U M**

Pima County Attorney's Office

Civil Division

32 North Stone Ave, Suite 2100

Phone 520.724.5700 Fax 520.620.6556

This is a privileged attorney-client communication and should not be disclosed to persons other than Pima County officials and employees involved in the matter that is the subject of the communication. The privilege is held by Pima County and can be waived only by an official action of the Board of Supervisors.

To: Chuck H. Huckelberry, Pima County Administrator
Cc: Thomas Weaver, Chief Civil Deputy County Attorney
Lesley Lukach, Deputy County Attorney
From: David W. Krula, Deputy County Attorney
Date: September 14, 2016
Subject: Primavera Foundation, Inc. v. Bill Staples and Pima County
Arizona Superior Court, Pima County, Case Number C20142934

Per your request, a brief and limited history of this litigation follows. Primavera sought property tax exemptions from the Pima County Assessor for several residential properties, located primarily in the City of South Tucson, for tax years 2011, 2012, and 2013. The Assessor denied the exemptions based upon his determination that the properties did not qualify for exemption under A.R.S. § 42-11107 (property of charitable institutions for the relief of the indigent or afflicted). Primavera filed suit arguing, in part, that the standard the Assessor created to determine "indigency," and which the Assessor applied to the subject parcels, was too strict.

During the course of the litigation, the Assessor requested and obtained outside counsel. From that point forward, at the direction of the Board of Supervisors, the role of the Pima County Attorney's Office primarily was limited to monitoring the litigation on behalf of Pima County. Prior to trial, the judge granted the Assessor's motion to dismiss Primavera's claims for tax years 2011 and 2012.

The case proceeded to a bench trial in May of this year in regard to Primavera's claims for tax year 2013. After Primavera presented its testimony, the judge found that Primavera failed to present evidence that two of the seven parcels were used for charitable purposes during 2013. At the end of the trial, the judge found that Primavera met its burden of proof in regard to the remaining five parcels.

The judge entered an amended judgment at the end of August. It included her prior findings, and it ordered that refunds be paid to Primavera in the total principal amount of \$5,685 (rounded), with statutory interest, for the five parcels for tax year 2013. The judge also awarded Primavera slightly less than \$46,000 in attorney fees, reduced from Primavera's request for approximately \$59,875, as well as roughly \$940 in taxable costs. We have been advised by outside counsel for the Assessor that the Assessor does not intend to appeal from the judgment of the Superior Court.

1 MESCH CLARK ROTHSCHILD
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (520) 624-8886
5 Fax: (520) 798-1037
6 Email: plopez@mccrazlaw.com
7
8 By: Patrick J. Lopez, #19183
9 76118-5/blc
10 Attorneys for Plaintiff

11 PIMA COUNTY SUPERIOR COURT
12 STATE OF ARIZONA

11 PRIMAVERA FOUNDATION, INC., an
12 Arizona non-profit corporation,
13 Plaintiff,

No. C20142934

14 Vs.

AMENDED JUDGMENT

15 BILL STAPLES, in his official capacity as
16 Pima County Assessor; PIMA COUNTY, a
17 political subdivision,
18 Defendants.

(Hon. Catherine M Woods)

19 This matter having come before this Court for trial on May 10 and 11, 2016, the
20 Honorable Catherine M. Woods presiding. The Court having considered the testimony and
21 exhibits presented at trial, and for these reasons and in accordance with the Court's Ruling
22 made in open Court on May 11, 2016:

23 THE COURT FINDS that Plaintiff Primavera Foundation, Inc. ("Primavera")
24 met its burden of proof that during 2013 the following four properties were used by
25 Primavera to aid people who were in need of housing assistance and used those properties to
26

1 provide relief for the indigent within the meaning and intention of A.R.S. §42-11107. Those
2 properties were:

3 325 West 28th Street – APN 118-22-3150

4 24 West 34th Street – APN 118-24-1690

5 112 East 30th Street – APN 118-25-081F

6 And 138 and 144 East 34th Street – APN 118-25-261A.

7 THE COURT FURTHER FINDS that during 2013, Plaintiff used the property located
8 at 1103 North Anita Avenue, APN #116-16-1680, commonly referred to as the “Community
9 garden” to provide relief for the indigent or the afflicted and/or for the administration of such
10 relief, specifically by providing assistance with food and social necessities within the
11 meaning and intention of A.R.S. §42-11107.

12 THE COURT FURTHER FINDS that Plaintiff should have been granted tax
13 exemption pursuant to A.R.S. §42-11107, for tax year 2013 for each of the above-referenced
14 five parcels.

15 THE COURT FURTHER FINDS that Primavera did not meet its burden of proof that
16 during 2013 the following two properties were used by Primavera to aid people who were in
17 need of housing assistance and used those properties to provide relief for the indigent within
18 the meaning and intention of A.R.S. §42-11107, and Judgment has been entered in favor of
19 Staples as to those two properties. Those properties were:

20 442 W. 27th Street – APN 118-22-173A

21 201 E. 34th Street – APN 118-25-2060

22
23 IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED that
24 Judgment be entered in favor of Plaintiff Primavera Foundation, Inc. and against Defendants
25 Bill Staples, in his official capacity as Pima County Assessor, and Pima County as to 325 W.
26 28th Street, Tucson Arizona (parcel #118-22-3150); 24 W. 34th Street, Tucson Arizona

1 (parcel #118-24-1690); 112 E. 30th Street, Tucson, Arizona (parcel #118-25-081F); 138 and
2 144 E. 34th Street, Tucson, Arizona (parcel #118-25-261A); and 1103 N. Anita Avenue,
3 Tucson Arizona (parcel #116-16-1680), and that Plaintiff is entitled to receive the property
4 tax exemption for each of the five above-referenced parcels pursuant to A.R.S. §42-11107,
5 for tax year 2013;

6 IT IS FURTHER ORDERED that it was an error to deny the exemptions, and that
7 Defendants shall correct the error pursuant to the applicable tax codes and shall make the
8 appropriate refund to address said error.

9 IT IS FURTHER ORDERED that Judgment be entered in favor of Plaintiff
10 Primavera Foundation, Inc. and against Defendants that pursuant to A.R.S. §42-11005(B),
11 Defendant shall refund Plaintiff the amount paid by Primavera for 2013 property taxes
12 related to each of the five above-referenced parcels, including interest **under A.R.S. § 42-**
13 **16214(A)(3), calculated in accordance with A.R.S. § 42-1123, which is 3.0% from the**
14 **date the 2013 taxes were paid until March 31, 2016 and 4.0% from April 1, 2016 until the**
15 **date refund is paid, as set forth below:**

Parcel No.	2013 Tax Paid	Date Paid	Int. thru 3/31/16	Int. from 4/1/16 on Prin.
118-22-3150	\$599.30	10/4/13	\$44.78	\$0.06568 per day
	<u>\$599.29</u>	4/28/14	<u>\$34.63</u>	\$0.06568 per day
	\$1,198.59		\$79.41	
118-24-1690	\$702.34	10/4/13	\$52.47	\$0.07697 per day
	<u>\$702.33</u>	4/14/14	<u>\$41.39</u>	\$0.07697 per day
	\$1,404.67		\$93.86	
118-25-081F	\$486.90	10/4/13	\$36.38	\$0.05336 per day
	<u>\$486.89</u>	4/14/14	<u>\$28.69</u>	\$0.05336 per day
	\$973.79		\$65.07	
118-25-261A	\$595.44	10/4/13	\$44.48	\$0.06525 per day
	<u>\$595.44</u>	4/14/14	<u>\$35.09</u>	\$0.06525 per day
	\$1,190.88		\$79.57	
116-16-1680	\$458.92	10/7/13	\$34.17	\$0.05029 per day
	<u>\$458.91</u>	4/14/14	<u>\$27.04</u>	\$0.05029 per day
	\$917.83		\$61.21	

1 IT IF FURTHER ORDERED that as the prevailing party, Judgment be entered in
2 favor of Plaintiff Primavera Foundation, Inc. and against Defendants Pima County and Bill
3 Staples, in his official capacity as Pima County Assessor, for attorneys' fees in the sum of
4 forty-five thousand six hundred ninety-two dollars and fifty cents (\$45,692.50), incurred in
5 prosecuting the Superior Court appeal challenging the assessment, collection or refund of
6 taxes, pursuant to A.R.S. §§12-348(B)(1).

7 IT IF FURTHER ORDERED that Judgment be entered in favor of Plaintiff Primavera
8 Foundation, Inc. and against Defendants Pima County and Bill Staples, in his official
9 capacity as Pima County Assessor, for taxable costs incurred in the amount of nine hundred
10 thirty-seven dollars and sixty cents (\$937.60), pursuant to A.R.S. §§12-332.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this is a Final
12 Judgment pursuant to Rule 54(c), Arizona Rules of Civil Procedure, finding that there is no
13 just reason for delay, and no further matters remain pending, and the Court hereby directs
14 that this Final Judgment to be entered immediately.

15 DATED August 31, 2016.

16
17 
18 **HON. CATHERINE WOODS**
19 (ID: 52c193ff-539b-40c1-b91e-55b1507820da)

20
21
22 Conformed copy of the foregoing e-mailed and
23 mailed _____, 2016, to:

24 Terri A. Roberts - tar@lawofficeofterriaroberts.com
25 Law Office of Terri A. Roberts
26 PO Box 85220
Tucson AZ 85754
Co-counsel for Defendant Staples

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Brian Marchetti - brian@yourtucsonlawfirm.com
Marchetti Law, PLLC
290 N. Meyer Avenue
Tucson, AZ 85701
Co-counsel for Defendant Staples

David W. Krula - David.Krula@pcao.pima.gov
Deputy County Attorney
32 N Stone Avenue, Ste 2100
Tucson AZ 85701
Counsel for Defendant Pima County
