



MEMORANDUM

Date: May 20, 2016

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

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: ***Ruling in Pima County versus Rosemont Copper Company***

Please see the attached May 17, 2016 copy of the Superior Court Ruling regarding the above referenced litigation.

The Court has found in favor of Rosemont Copper and ruled the County's Outdoor Lighting Code does not apply to Rosemont based on the exemption for mining contained in ARS 11-812.

The County Attorney advises there are few, if any, grounds that would warrant an appeal; therefore, the matter should be considered closed.

As you may recall, this was essentially a consensual litigation to determine the applicability of the Outdoor Lighting Code to mining activities. The May 17, 2016 Ruling answers this question.

CHH/mjk

Attachment

c: Lesley Lukach, Deputy County Attorney, Pima County Attorney's Office
Linda Mayro, Director, Office of Sustainability and Conservation
Nicole Fyffe, Executive Assistant to the County Administrator
Julia Fonseca, Environmental Planning Manager, Office of Sustainability and Conservation

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. STEPHEN C. VILLARREAL

CASE NO. C20151842

DATE: May 17, 2016

PIMA COUNTY
Plaintiff/Counter-Defendant

VS.

ROSEMONT COPPER COMPANY
Defendant/Counter-Claimant

R U L I N G

IN CHAMBERS UNDER ADVISEMENT RE: PIMA COUNTY'S MOTIONS FOR SUMMARY JUDGMENT AND ROSEMONT'S CROSS-MOTION FOR SUMMARY JUDGMENT

At issue in this Under Advisement Ruling are Pima County's two Motions for Summary Judgment, and Rosemont Copper Company ("Rosemont") Cross-Motion for Summary Judgment. The court has considered the pleadings and the arguments of counsel, and rules as follows.

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). In this case, the parties agree that there is no issue of material fact. Both Pima County's Motion and Rosemont's Cross-Motion center on one legal issue: whether A.R.S. § 11-812(A)(2) exempts Rosemont from the regulations of Pima County's Outdoor Lighting Code. Pima County claims that Rosemont must comply with the regulations and apply for a lighting permit. Rosemont claims that it is exempt from the code, or in the alternative, that the Outdoor Lighting Code is pre-empted by state and federal law and that Pima County's enforcement of the code as it applies to Rosemont is a violation of Rosemont's right to equal protection of the law under the United States and Arizona Constitutions.

The material facts are undisputed. In 1974, Pima County adopted by reference the Exterior Light Shielding and Filtration Code, as authorized by A.R.S. § 11-861. From 1974 to 2006, Pima County repealed and adopted new outdoor lighting codes, all of which were contained in Pima County's Building Code, which is authorized by A.R.S. § 11-861. In 2006, Pima County claimed for the first time it had authority for the

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Law Clerk

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outdoor lighting code under both A.R.S. §§ 11-251(35) and 11-861. In 2012, Pima County again repealed and adopted by reference the City of Tucson/Pima County Outdoor Lighting Code under both A.R.S. §§ 11-861 and 11-251(35). Rosemont has not applied for a lighting permit for its operations. The Rosemont project is a mining activity.

Arizona Revised Statutes § 11-812(A)(2) provides: " Nothing contained in any ordinance authorized by this chapter shall:...2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. ... For the purposes of this paragraph, "mining" has the same meaning prescribed in § 27-301." Ariz. Rev. Stat. Ann. § 11-812(A)(2)(2016). "This chapter" includes A.R.S. § 11-861. The statute does not say that the ordinance must be solely authorized by this chapter. "When the language of a statute is clear, we are to apply it according to its terms because the language is the 'best and most reliable index' of the meaning of the statute." *City of Tucson v. Clear Channel Outdoor, Inc.*, 209 Ariz. 544, 559, 105 P.3d 1163, 1178 (2005). Here, the language is not ambiguous. The Outdoor Lighting Code is authorized by "this chapter," and therefore, § 11-812(a)(2) applies and exempts mining operations. The Outdoor Lighting Code therefore does not apply to the Rosemont Project.

IT IS THEREFORE ORDERED that Pima County's Motions for Summary Judgment are DENIED.

IT IS FURTHER ORDERED that Rosemont's Cross Motion for Summary Judgment is GRANTED in part. Pima County's Outdoor Lighting Code does not apply to Rosemont based on the exemption for mining in A.R.S. § 11-812. The court therefore need not rule on whether the Outdoor Lighting Code is pre-empted by state or federal law or whether the application of it is a violation of Equal Protection, and those claims are therefore dismissed as moot.

Rosemont requests its attorneys' fees and costs under A.R.S. § 12-341 and 12-348(A)(1). As the successful party,

IT IS ORDERED that Rosemont Copper Company is entitled to its reasonable attorneys fees and costs. Counsel shall have 10 days to submit an Application for And Affidavit of Costs and Attorneys' Fees that comports with the requirements of *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 883, 673 P.2d 927 (1983).

IT IS FURTHER ORDERED vacating the Status Conference on August 15, 2016, and the trial set to begin on September 7, 2016.

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No further matters remain pending and the judgment is entered pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure. The Court signs this ruling in lieu of a more formal order.



HON. STEPHEN C. VILLARREAL

(ID: 2d0c3789-5641-41aa-8957-44c72cb141a8)

cc: Hon. Stephen C. Villarreal
George O. Krauja, Esq.
Kelli L Olson, Esq.
Michael D Leblanc, Esq.
Scott D. McDonald, Esq.
Clerk of Court - Under Advisement Clerk

Jennifer Thorson
Law Clerk