

Arizona Court of Appeals, Division One
Oral Argument Case Summary

Las Ventanas LLC v. Arizona Department of Environmental Quality

No. 1 CA-CV 21-0635

(Appeal from Maricopa County Superior Court No. CV2020-008499)

PARTIES AND COUNSEL:

Appellant: LAS VENTANAS LLC
Represented by:
Martin A. Aronson
Jeffrey D. Gross
Michael W. Zimmerman
Berry Riddell LLC, Scottsdale

Appellee: ARIZONA DEPARTMENT OF ENVIRONMENTAL
QUALITY
Represented by:
Scot L. Claus
Vail Cloar
Holly M. Zoe
Dickinson Wright PLLC, Phoenix

FACTS:

In the early 1990s, underground storage tanks on property called the Perryville Feed Store at the intersection of Perryville and Yuma Roads in Maricopa County were removed. The tanks were leaking gasoline and, given that contamination, the property needed to be cleaned up. The Arizona Department of Environmental Quality (ADEQ) has been involved in the cleanup, which has taken decades and has involved some stops and starts.

Las Ventanas LLC purchased, and began improving, land to the east of the Perryville Feed Store property. Over time, there have been various communications and meetings between Las Ventanas and ADEQ about the cleanup of the Perryville Feed Store property.

At some point before March 2019, the contamination had spread to Las Ventanas' land, with increased levels of nitrate in the groundwater on Las Ventanas' land. In January 2020, Las Ventanas served a notice of claim (required before a suit may be filed against the State of Arizona and its agencies) on ADEQ, alleging negligence for failure to prevent the contamination of its property and estoppel, and seeking damages. In July 2020, Las Ventanas filed this case making those claims.

ADEQ moved to dismiss Las Ventanas' claims, arguing the notice of claim was not timely because Las Ventanas knew or should have known of its claims more than 180 days before serving the notice of claim. Las Ventanas opposed that motion, and asked to amend its complaint to add more claims. The superior court found Las Ventanas' claims against ADEQ are time-barred because the notice of claim was untimely, denied Las Ventanas' request to amend its complaint and dismissed the case. Las Ventanas appeals from that dismissal.

The primary issues Las Ventanas raises on in this appeal are:

1. Whether the superior court erred in granting the motion to dismiss based on the conclusion that Las Ventanas' claims are time-barred.
2. Whether Las Ventanas should have been permitted to amend its complaint.

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