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SIOB A. NOLAND  
SUPERIOR COURT

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DEPUTY

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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF PIMA**

8 **JOHN KROMKO and SHELBY**  
9 **HAWKINS,**

10 **Plaintiff,**

11 **vs.**

12 **RIO NUEVO MULTIPURPOSE**  
13 **FACILITIES DISTRICT and BP POST**  
14 **INVESTORS, LLC,**

14 **Defendants.**

15 **RIO NUEVO MULTIPURPOSE**  
16 **FACILITIES DISTRICT,**

17 **Cross-Claimant,**

18 **vs.**

19 **BP POST INVESTORS, LLC,**

20 **Cross-Defendant.**

21 **RIO NUEVO MULTIPURPOSE**  
22 **FACILITIES DISTRICT,**

22 **Third-Party Plaintiff,**

23 **vs.**

24 **THE CITY OF TUCSON; and BP POST**  
25 **DEVELOPERS, LLC,**

26 **Third-Party Defendants.**

**No. C2011-1105**

**RULE 54(b) JUDGMENT**

*(Hon. Jan E. Kearney)*

MM

1           The Motion for Partial Summary Judgment filed by Defendant Rio Nuevo  
2 Multipurpose Facilities District ("Rio Nuevo") came on regularly for hearing on  
3 October 15, 2012. The Court having considered Rio Nuevo's motion, along with the  
4 associated joinders, oppositions and replies thereto, as well as arguments of counsel, the  
5 Court rules as follows:  
6

7           The sole claim stated in Plaintiff's Complaint alleges that Rio Nuevo violated the  
8 Gift Clause of Art. 9, § 7 of the Arizona Constitution, by a development agreement  
9 pertaining to a parcel of downtown Tucson property known as the Thrifty Block. The  
10 Gift Clause provides:  
11

12           Neither the state, nor any county, city, town, municipality, or other  
13 subdivision of the state shall ever give or loan its credit in the aid of,  
14 or make any donation or grant, by subsidy or otherwise, to any  
15 individual, association, or corporation, or become a subscriber to, or  
16 a shareholder in, any company or corporation, or become a joint  
17 owner with any person, company, or corporation, except as to such  
18 ownerships as may accrue to the state by operation of law or as  
19 authorized by law solely for investment of the monies in the various  
20 funds of the state.

21           Rio Nuevo has moved for summary judgment on Plaintiff's Gift Clause claim,  
22 contending that Rio Nuevo is exempt from the mandates of that constitutional provision.  
23 City of Tucson and BP Post Investors, LLC ("BP Post") have joined in the motion.  
24

25           The only question before this Court is whether Rio Nuevo is subject to the Gift  
26 Clause. Though many aspects of the history of the development agreement are in  
dispute, only a narrow band of facts pertaining to the existence and character of Rio  
Nuevo are pertinent to the inquiry before the Court, namely that Rio Nuevo was created

1 pursuant to A.R.S. § 48-4201, *et seq.* by an intergovernmental agreement between the  
2 City of Tucson and the City of South Tucson. These facts are not in dispute. Rio Nuevo  
3 contends that the plain language of Article 13, Section 7 of the Arizona Constitution  
4 exempts it from the Gift Clause. Plaintiff argues that the complete exemption asserted  
5 by Rio Nuevo is contrary to the history and purpose of the exemption provision; and  
6 that Rio Nuevo is not a “tax levying improvement district” within the exemption of Art.  
7 13, § 7.

8           The Exemption Clause of Art. 13, § 7 of the Arizona Constitution provides:

9           Irrigation, power, electrical, agricultural improvement, drainage, and flood  
10          control districts, and *tax levying public improvement districts*, now or  
11          hereinafter organized pursuant to law, shall be political subdivisions of the  
12          state, and vested with all the rights and privileges and benefits, and entitled  
13          to the immunities and exemptions granted to municipalities and political  
14          subdivisions under this constitution or any law of this state or of the United  
15          States; but all such districts *shall be exempt from the provisions of sections*  
16          7 and 8 of Article IX of this constitution. (Emphasis supplied.)

17           In interpreting constitutional provisions, this Court must follow the principles of  
18          construction as stated in *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430  
19          (1994):

20           Our primary purpose is to effectuate the intent of those who framed the  
21          provision and, in the case of an amendment, the intent of the electorate that  
22          adopted it. To this end, we first examine the plain language of the  
23          provision. If the language is clear and unambiguous, we generally must  
24          follow the text of the provision as written. No extrinsic matter may be  
25          shown to support a construction that would vary its apparent meaning. In  
26          short, judicial construction is neither necessary nor proper.

          Plaintiff urges that, in order to “effectuate the intent of the electorate that  
adopted” the Exemption Clause, this Court can and must look beyond the apparently

1 plain language of the provision itself to the history of the amendment. In short,  
2 Plaintiff's argument requires the court to first determine the intent of the electorate, and  
3 then determine whether the language of the constitutional provision is consistent with  
4 that intent. It is clear from the above statement in *Jett* that this argument puts the cart  
5 before the horse. The first and primary indicator of the intent of the electorate is the  
6 "plain language of the provision."  
7

8 Plaintiff has not alleged any ambiguity, nor shown any reason to depart from the  
9 usual rule that where, as here, the language is clear and unambiguous, the language  
10 must be followed as written, and judicial construction is "neither necessary nor proper."  
11 See also *Heath v. Kriger*, 217 Ariz. 492, 495, 176 P.3d 690, 693 (2008). Therefore, if  
12 Rio Nuevo is a district within the scope of the Exemption Clause, it is exempt from the  
13 Gift Clause and Plaintiff has no cause of action under that Clause.  
14

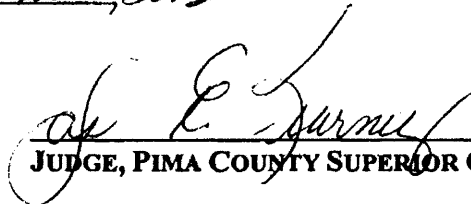
15 Plaintiff does not contest Defendant's factual assertion that it was created under  
16 A.R. S. § 48-4201 *et seq.*; however, Plaintiff contends that Rio Nuevo cannot be a "tax  
17 levying public improvement district" subject to the Exemption Clause because it does  
18 not levy taxes, instead being funded through another legislatively-enacted method.  
19 However, A.R.S. § 48-4202 specifically defines a district organized under the statute as  
20 "tax levying public improvement district," and gives such districts the power to levy a  
21 transaction privilege tax. That a district does not actually obtain its funding through tax  
22 levies does not remove its status as a "tax levying public improvement district" as  
23 provided in A.R.S. § 48-4202, and as included within the scope of the Exemption  
24  
25  
26

1 Clause. In fact, A.R.S. § 48-4202(1) appears to allow for just such situations. Plaintiff's  
2 claim against Rio Nuevo grounded in the Gift Clause, therefore, is precluded.

3 This Court hereby FINDS and ORDERS that there are no contested issues of  
4 material fact pertinent to the question before the Court, and that Defendant is entitled to  
5 judgment as a matter of law. Rio Nuevo is, therefore, entitled to partial summary  
6 judgment on Plaintiffs claim that Defendant's actions violated the Gift Clause, and that  
7 claim is hereby DISMISSED.  
8

9 Further, pursuant to Rule 54(b), Ariz. R. Civ. P., the Court expressly finds that  
10 there is no just reason for delay and expressly directs that this Judgment be entered at  
11 this time as a final and appealable Judgment.  
12

13 DATED: November 5, 2012

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17 JUDGE, PIMA COUNTY SUPERIOR COURT