

*re: James on
Subj
prop*

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

CLARKSON REGIONAL HEALTH SERVICES, INC.,

Case No. CI 13-535

Plaintiff,

ORDER on DEFENDANTS' MOTION for SUMMARY JUDGMENT

v.

BRENDA CARLISLE, RICH JAMES, DON KELLY, DAN PITTMAN, TOM RICHARDS, JIM THOMPSON, and JIM WARREN,

Defendants.

FILED
SARPY COUNTY
DISTRICT COURT
2013 JUL 31 PM 12:29
Clerk District Court

This matter came on for hearing on July 16, 2013, upon Defendants' motion for summary judgment. Defendants appeared by counsel, Michael Smith. Plaintiff appeared by counsel, Jeremy Fitzpatrick. Evidence was adduced, and the matter was submitted to the Court and taken under advisement.

In reference to a motion for summary judgment, the Nebraska Supreme Court, in Malolepszy v. State, 273 Neb. 313, 318-319 (2007), stated that:

Summary judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. City of Lincoln v. Hershberger, 272 Neb. 839 (2007). In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.

See also, Marcovitz v. Rogers, 276 Neb. 199 (2008).

This Court must also consider which party has the burden of going forward. The Supreme Court, in Dutton-Lainson Co. v. Continental Ins. Co., 271 Neb. 810, 820 (2006), stated:

The party moving for summary judgment has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law. Cerny v. Longley, 270 Neb. 706 (2005). A movant for summary judgment makes a prima facie case by producing enough evidence to demonstrate that the movant is entitled to a judgment if the evidence were uncontroverted at trial.



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Therefore, this Court must examine the pleadings and evidence presented to determine whether Defendants have met their burden to show that there is no genuine issue of material fact and whether they are entitled to judgment as a matter of law and, further, whether this Court should grant summary judgment in total, or only in part. See also NEB.REV.STAT. §25-1331.

According to Exhibit 1, the parties entered into the following stipulation of facts:

1. Plaintiff CRHS is a Nebraska nonprofit corporation and is the taxpayer for the real property involved in this dispute.

2. Sarpy County is a political subdivision organized and existing under the laws of the State of Nebraska.

3. Defendant, Dan Pittman, sued in his individual capacity, is the Sarpy County Assessor. The County Assessor is the government official responsible for establishing the value of real property for the purpose of taxation and recording the value of property on the tax rolls.

4. Defendant, Rich James, sued in his individual capacity, is the Sarpy County Treasurer. The County Treasurer collects property taxes and distributes them to local subdivisions of government, according to their budgets.

5. The County Board is the governing body of Sarpy County. Members of the Sarpy County Board serve on both the Board of Commissioners and Board of Equalization for Sarpy County. The Board of Equalization is obligated to fairly and impartially equalize the values of all items of real property in Sarpy County so that all real property is assessed uniformly and proportionately.

6. The remaining Defendants are members of the Sarpy County Board and sued in their individual capacity.

7. The real property involved in this dispute is located at the Southwest corner of Hwy 370 and S. 25th St. in Bellevue, Sarpy County, Nebraska. This property consists of seven contiguous parcels identified in Sarpy County records as Parcel Nos. 011592207, 011592208, 011592209, 011592210, 011592211, 011592212, and 011592213 (the "Disputed Parcels").

8. In 2011 and prior years, the Disputed Parcels had tax exempt status and were not taxed. In 2011 and prior years, Sarpy County's computer records for the Disputed Parcels contained a code that, therefore, designated the Disputed Parcels as exempt from taxation.

9. Clarkson did not apply for tax exempt status for the Disputed Parcels for 2012, and the Disputed Parcels became eligible for taxation in 2012.

10. In December of 2011, the County Assessor learned that the Disputed Parcels would be subject to taxation for 2012, but failed to change that code in its computer file to show the Disputed Parcels were now susceptible to taxation.

11. The County Assessor did not inspect the Disputed Parcels by March 19, 2012.

12. The County Assessor inspected the Disputed Parcels for the purpose of assessment between August 6 and 15 of 2012 (the "August 2012 Inspection") after the County Assessor discovered that it had failed to change the code in its computer file to show the Disputed Parcels were now susceptible to taxation. The computer code was changed on August 12, 2012.

13. The change to the computer classification for the Disputed Parcels in August 2012 did not itself automatically result in a new assessed value for the Disputed Parcels, but instead indicated the Disputed Parcels needed to be inspected for assessment purposes.

14. The County Assessor therefore conducted the August 2012 inspection over two days on August 6, 2012, and August 15, 2012. Prior to this two-day inspection process, the County Assessor had not inspected the Disputed Parcels for property tax assessment purposes in 2012.

15. On August 21, 2012, the Board of Equalization approved what were termed "valuation changes" proposed by the County Assessor for each of the Disputed Parcels. On or about August 21, 2012, CRHS received notices from the Board of Equalization labeled "Notice of Valuation Change" (the "Notices of Valuation Change") which pertain to each of the Disputed Parcels.

16. The Notices of Valuation Change set out purported assessments for each of the Disputed Parcels. The Notices of Valuation Change did not state they were issued to correct a "clerical error" and did not assert the value of the Disputed Parcels needed to be adjusted as a result of a clerical error. The Notices of Valuation Change advised CRHS that "if it did not agree with this valuation, you may file a protest with the Board for a review of your property valuation" in order to argue that a "reduction in value should be made."

17. In September, 2012, CRHS contacted the County Assessor's office and requested the basis for purportedly increasing the property assessments of the Disputed Parcels outside the timeframes established by Nebraska law. There were conversations between CRHS' representatives and the County Assessor's Office in which the Disputed Parcels were referred to as omitted parcels.

18. On or about September 19, 2012, CRHS filed amended protests of the Notices of Valuation Change (the Protests) which asserted the Notices of Valuation Change were improper because they constituted untimely increases in the valuation of the Disputed Parcels.

19. On October 16, 2012, the Board of Equalization considered the Protests at the Board's regularly scheduled hearing. At the hearing on October 16, 2012, the County Assessor asserted that the Notices of Valuation Change were required to correct a "clerical error." Sarpy County previously had not asserted that a clerical error related to the Disputed Parcels was the cause of the Notices of Valuation Change. The County Assessor claimed the "clerical error", which the Notices of Valuation Change purportedly corrected, was the County's failure to make any valuation assessment for the Disputed Parcels because the County neglected to change the computer code for the Disputed Parcels from tax-exempt to taxable.

20. At the October 16, 2012 hearing, the Board of Equalization approved a motion to deny the protest by [CRHS]" regarding the Protests. The Board of Equalization also approved a motion to deny the request for a reduction in value for the Property.

21. Based on the action taken at the Board of Equalization's hearing on October 16, 2012, the Board of Equalization sent a Final Determination for Protest Form 422 to CRHS for each of the Disputed Parcels dated October 19, 2012 (the Final Determinations).

22. The Final Determinations state the Board of Equalization made a final determination of value regarding your Property Valuation Protest" and further notified CRHS that the Board of Equalization "placed the following value" on the Property. The Final Determinations did not refer to a clerical error correction or indicate the valuation change was based on the correction of a clerical error.

23. On November 13, 2012, CRHS appealed each of the Final Determinations issued with respect the Disputed Parcels to TERC (the "Appeals").

24. On or about January 17, 2013, TERC issued a show-cause hearing setting a June 20, 2013, hearing to determine whether TERC has jurisdiction to hear the Appeals.

25. On or about June 17, 2013, TERC granted a joint motion of CRHS and Sarpy Count staying the TERC matter pending the outcome of this litigation.

Based upon the above facts, the Plaintiff requests this Court to issue a writ of mandamus to enjoin Defendants from collecting any taxes in regard to tax year 2012 and assess the property at the 2011 tax valuations.

The law to which the above facts shall be applied in order to determine whether a writ of mandamus should be issued, was set forth by the Supreme Court, in State ex rel. Steinke v. Lautenbaugh, 263 Neb. 652, 657 (2002), where the Court stated:

Mandamus is a law action and is defined as an extraordinary remedy, not a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act, and (3) there is no other plain and adequate remedy available in the ordinary course of law. Sydow v. City of Grand Island, 263 Neb. 389 (2002).

The controlling issue in the case at hand is whether Plaintiff has shown that there *is no other plain and adequate remedy available in the ordinary course of law*. Plaintiff stipulated that on November 13, 2012, it appealed each of the Final Determinations by Sarpy County with respect to the Disputed Parcels to the Tax Equalization and Review Commission (TERC). Therefore, this Court finds that Plaintiff did have an adequate remedy at law.

Plaintiff argued, however, that it did not have an adequate remedy at law since the Tax Equalization and Review Commission may not accept jurisdiction. However, said argument is only speculation at this point. Until the Tax Equalization and Review Commission finds that it does not have jurisdiction over this issue, and the appellate process has run its course, the fact is that Plaintiff does have an adequate remedy at law.

Lastly, this case is not being decided on the merits, which will address issues involving *res judicata*. This point was made by the Courts in Warren v. Stanton County, 145 Neb. 220 (1944), and Aguirre v. Union Pacific Railroad Company, 20 Neb.App. 597 (2013).

Accordingly, Defendants have met their burden to show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law with regard to Plaintiff's Complaint.

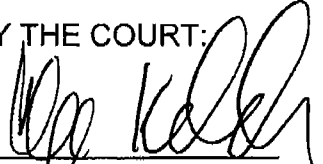
IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is hereby granted.

IT IS FURTHER ORDERED that Plaintiff's Complaint is dismissed as to Defendants.

IT IS FURTHER ORDERED that all claims for relief requested by either party not specifically granted are denied.

Dated this 31st day of July, 2013.

BY THE COURT:


District Judge

Title: CLARKSON REGIONAL HEALTH SERVICES, INC., v. BRENDA CARLISLE, RICH JAMES, DON KELLY
DATE JUDGE'S MINUTES

JAN A.D. 2013

7/31/13

Order on Defendants' Motion for Summary Judgment signed.
Bailiff to mail copy to counsel of record.


, Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

Clarkson Regional Health
Services, Inc.,

Plaintiffs-
Appellants,

v.

Brenda Carlisle, Rich James, Don
Kelly, Dan Pittman, Tom Richards,
Jim Thomson, and Jim Warren,

Defendants-
Appellees,

Case No. CI 13-535

JUDGMENT
ON MANDATE

Carol Korman
CLERK DISTRICT COURT

2014 JAN 21 PM 4: 24

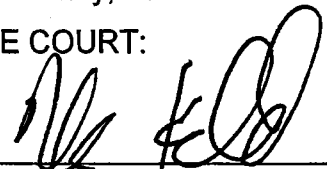
FILED
SARPY COUNTY
DISTRICT COURT

On the 21st day of January, 2014, this matter came on pursuant to the Mandate, dated January 14, 2014, issued by the Nebraska Court of Appeals dismissing the appeal filed by Defendant.

IT IS THEREFORE ORDERED, that the Opinion and Order of the Nebraska Court of Appeals dismissing the appeal filed by Plaintiffs, Appellants, is filed of record in the District Court of Sarpy County Nebraska.

Dated and signed this 21st day of January, 2014.

BY THE COURT:



District Judge

Certificate of Service

I, the undersigned certify that on the 21st day of January, 2014, I mailed a copy of the foregoing Order upon the following persons:

Jeremy Fitzpatrick, attorney for Plaintiffs

Michael Smith, attorney for Defendants

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Gina Zaner, Court Bailiff



000381450D59

Title: CLARKSON REGIONAL HEALTH, SERVICES, INC., v. BRENDA CARLISLE, RICH JAMES, DON KELLY
DATE JUDGE'S MINUTES

JAN A.D. 2013

7/31/13

Order on Defendants' Motion for Summary Judgment signed.
Bailiff to mail copy to counsel of record.

Judge

JAN. A.D. 1014

1/21/14

Mandate from Court of Appeals received and filed herein.
Judgment on Mandate signed.

Judge

NEBRASKA COURT OF APPEALS MANDATE

January 14, 2014

TO: Sarpy County District Court

Court of Appeals No. A-13-000752
Trial Tribunal No. CI13-535
No Opinion Issued.

FILED
SARPY COUNTY
DISTRICT COURT
2014 JAN 17 AM 11:44
Clerk of the Court
CLERK DISTRICT COURT

WHEREAS, in a late action in your court, captioned:
Clarkson Regional Health Services, Inc. v. Carlisle
you rendered judgment.

And, WHEREAS, plaintiff Clarkson Regional Health Services, Inc.
prosecuted an appeal to this court.

ON CONSIDERATION WHEREOF:

The appeal from the judgment which you rendered has been dismissed by
the Nebraska Court of Appeals.

NOW, THEREFORE, you shall, without delay, proceed to enter judgment
in conformity with the judgment of this court.

Costs of this appeal are to be paid by appellant.
Total Costs are taxed at \$125.00

WITNESS the Honorable Everett O. Inbody, Chief Judge, and the seal of
this court.



Clerk of the Court of Appeals

Scott A. Mussen

Cost	Amount Accessed	Amount Paid	Payor
Costs in the Court of Appeals			
Automation Fee	\$ 8.00	\$ 8.00	appellant
Uniform Data Analysis Fee	\$ 1.00	\$ 1.00	appellant
Dispute Resolution Fee	\$ 0.75	\$ 0.75	appellant
Docket/Judges Retirement Fee	\$ 50.00	\$ 50.00	appellant
Docket Fee	\$ 50.00	\$ 50.00	appellant
NSC Education Fee	\$ 1.00	\$ 1.00	appellant
Indigent Defense Fee	\$ 3.00	\$ 3.00	appellant
Judges Retirement Fee	\$ 6.00	\$ 6.00	appellant
Legal Services Fee	\$ 5.25	\$ 5.25	appellant

Costs Due to the Clerk of the Nebraska Supreme Court: \$.00



000381382D59

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

CLARKSON REGIONAL HEALTH
SERVICES, INC.,

Plaintiff,

v.

BRENDA CARLISLE, RICH JAMES, DON
KELLY, DAN PITTMAN, TOM RICHARDS,
JIM THOMPSON, and JIM WARREN,

Defendants.

CASE NO. _____

PETITION FOR WRIT OF MANDAMUS

AND

COMPLAINT

COMES NOW Clarkson Regional Health Services, Inc. ("CRHS") and for its complaint against Brenda Carlisle, Rich James, Don Kelly, Dan Pittman, Tom Richards, Jim Thomas, and Jim Warren, each in their individual capacity (collectively referred to as "Individual Defendants"), and states and alleges as follows:

INTRODUCTION

1. Nebraska law sets out notice and timing requirements a county must follow in order to increase the assessed value of a taxpayer's property. These notice and timing requirements enable private landowners to budget for, and if necessary, protest any increase in their property tax valuation. A county has no authority to increase a landowner's property valuation, and any attempt to do so is void, if these notice and timing requirements are not met.

2. A narrow exception to the notice and timing requirements, which a county otherwise must strictly follow in order to alter a property assessment value, allows a county to correct "clerical errors" related to a property at any time. A "clerical error" is narrowly defined by statute to include the transposition of numbers, mathematical errors, computer malfunctions, and data entry errors, but does not include incorrect records or failures of oversight.

3. In 2012, the Individual Defendants and other Sarpy County officials, in an abuse of their authority, purported to increase the assessed value of property owned by CRHS in Sarpy County (the "2012 Property Tax Valuation") outside the legal time period for a county to take such action.

4. The Individual Defendants offered changing and inconsistent reasons for the 2012 Property Tax Valuation before finally, at the protest hearing concerning the 2012 Property Tax Valuation, describing the valuation change as a "clerical error" correction without any prior notice to CRHS of such an alleged error. The 2012 Property Tax Valuation does not in fact qualify as a clerical error and instead constitutes an out-of-time valuation change which is unauthorized and void. The property tax associated with the 2012 Property Tax Valuation therefore is unauthorized and void.

5. CRHS timely perfected an appeal of the 2012 Property Tax Valuation to the Nebraska Tax Equalization Review Commission ("TERC"). TERC, however, has raised questions as to whether it has jurisdiction to hear the appeal given the facts of the dispute. To the extent TERC lacks jurisdiction over CRHS's appeal because the Individual Defendants lacked jurisdiction to enter the 2012 Property Tax Valuation in the first place and the 2012 Property Tax Valuation therefore is void, this Court is the only venue for CRHS to remedy the void and unauthorized property tax associated with the 2012 Property Tax Valuation, thus necessitating this lawsuit.

6. CRHS seeks injunctive relief, a writ of mandamus or, in the alternative, declaratory relief, to enjoin the Individual Defendants from implementing or collecting property taxes in connection with the 2012 Property Tax Valuation which is a substantive valuation change made in violation of the notice and timing requirements set forth in state statutes.

THE PARTIES AND THE PROPERTY

7. Plaintiff, CRHS, is a Nebraska corporation and the owner of real property located at the Southwest corner of Hwy 370 and S. 25th St. in Bellevue, Sarpy County, Nebraska. This property consists of seven contiguous parcels identified in Sarpy County records as Parcel Nos. 011592207, 011592208, 011592209, 011592210, 011592211, 011592212, and 011592213 (the "Disputed Parcels"). The Disputed Parcels comprise the land upon which the Bellevue Medical Center Campus ("Bellevue Medical Center") is located.

8. Sarpy County is a political subdivision organized and existing under the laws of the State of Nebraska. Sarpy County is not a defendant in this action, nor is any of its boards, commissions, or agencies, or any other governmental entity. As such, the doctrine of sovereign immunity is no impediment to this action.

9. Defendant, Dan Pittman, sued in his individual capacity, is the Sarpy County Assessor. The County Assessor is the government official responsible for establishing the value of real property for the purpose of taxation and recording the value of property on the tax rolls.

10. Defendant, Rich James, sued in his individual capacity, is the Sarpy County Treasurer ("County Treasurer"). The County Treasurer collects property taxes and distributes them to local subdivisions of government, according to their budgets.

11. The County Board is the governing body of Sarpy County. Members of the Sarpy County Board serve on both the Board of Commissioners and Board of Equalization for Sarpy County. The Board of Equalization is obligated to fairly and impartially equalize the values of all items of real property in Sarpy County so that all real property is assessed uniformly and proportionately.

12. Defendant, Brenda Carlisle, sued in her individual capacity, is a member of the Sarpy County Board.

13. Defendant, Don Kelly, sued in his individual capacity, is a member of the Sarpy County Board.

14. Defendant, Tom Richards, sued in his individual capacity, is a member of the Sarpy County Board.

15. Defendant, Jim Thompson, sued in his individual capacity, is a member of the Sarpy County Board.

16. Defendant, Jim Warren, sued in his individual capacity, is a member of the Sarpy County Board.

JURISDICTION AND VENUE

17. Subject matter jurisdiction is proper in this Court pursuant to Neb. Rev. Stat. § 24-302 because this is a civil matter over which this Court has general and original jurisdiction.

18. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01(1) and (2) because Sarpy County is the County where Defendants reside and the county where the causes of action asserted herein arose.

NEBRASKA'S NOTICE AND TIMING REQUIREMENTS FOR A COUNTY TO INCREASE A PROPERTY VALUATION

19. Nebraska law prohibits the County Assessor and County Board of Equalization from changing the assessed value of property except during specified time periods each year, subject to notice to the property owner. The statutes which contain these notice and timing requirements include Neb. Rev. Stat. §§ 77-1301, 77-1315, 77-1315.01, 77-1502, and 77-1504.

20. In order to change the assessed value of property for property tax purposes in any given year, county officials must strictly comply with the schedule set forth in state statutes. Pursuant to Neb. Rev. Stat. § 77-1301(3), the County Assessor must complete the assessment of all property within the county by March 19. Pursuant to Neb. Rev. Stat. § 77-1315(2), any notice of valuation change must be issued on or before June 1. Pursuant to Neb. Rev. Stat. § 77-1502(1), the Board of Equalization is only permitted to meet for the purpose of reviewing and deciding such written protests beginning on or after June 1 and ending on or before July 25 of each year.

21. Any increased assessment of real property is “void” and unauthorized if a county assessor fails to meet the notice requirement provided for in Nebraska’s statutes.

22. TERC is generally the exclusive venue for an aggrieved taxpayer to protest a county’s increase to the assessed value of a property. However, a collateral attack by lawsuit is permitted when a purported property valuation increase is void and unauthorized, such as this case.

23. An action against a state or county official is not barred by the state’s sovereign immunity if the official committed an invalid act or abused his or her authority, as occurred here.

FACTUAL BACKGROUND

A. The County Assessor and Board of Equalization Failed to Comply with the Notice and Timing Requirements to Increase the Valuation of the Disputed Parcels

24. The Disputed Parcels enjoyed tax exempt status and accordingly had not been taxed prior to 2012. The Disputed Parcels became eligible for taxation in 2012.

25. The County Assessor did not inspect the Disputed Parcels within the timeframes set out in Nebraska law for a county to assess property for the purposes of increasing the assessed value of property for tax purposes.

26. Instead, the County Assessor inspected the Disputed Parcels in August 2012.

B. The Notices of Valuation Change

27. On August 21, 2012, the Board of Equalization approved valuation changes proposed by the County Assessor for each of the Disputed Parcels. In approving the valuation changes, the Board of Equalization took action outside the timeframe under Nebraska law for changes to the valuation of real property for a particular tax year. The Board of Equalization's actions therefore were unauthorized.

28. On or about August 21, 2012, CRHS received notices from the Board of Equalization labeled "Notice of Valuation Change" (the "Notices of Valuation Change") which pertain to each of the Disputed Parcels. The Notices of Valuation Change are attached hereto as Exhibit A.

29. The Notices of Valuation Change set out purported assessments for each of the Disputed Parcels and were CRHS's first notice of any purported valuation increase in the Disputed Parcels. The Notices of Valuation Change did not state they were issued to correct a "clerical error" and did not assert the value of the Disputed Parcels needed to be adjusted as a result of a clerical error.

30. The Notices of Valuation Change instead advised CRHS that "if [it] did not agree with this valuation, you may file a protest with the [Board] for a review of your property valuation" in order to argue that a "reduction in value should be made."

31. In September 2012, CRHS contacted the County Assessor's office and requested the basis for purportedly increasing the property assessments of the Disputed Parcels outside the timeframes established by Nebraska law. The County Assessor's office originally stated the Notices of Valuation Change were triggered by a determination that the Disputed Parcels were classified as "omitted property" under Neb. Rev. Stat. § 77-1507. The County Assessor did not at that time assert the Notices of Valuation Change were based on the correction of a "clerical error".

32. On September 24, 2012, CRHS submitted a public records request to the County Assessor which requested, among other items, any documents or records relating to the Notices of Valuation Change. The documents produced in response to said request did not include any mention of a "clerical error."

C. The October 16, 2012 Board Hearing and the Final Determinations

33. On or about September 19, 2012, CRHS filed amended protests of the Notices of Valuation Change (the "Protests") which asserted the Notices of Valuation Change were improper because they constituted untimely increases in the valuation of the Disputed Parcels. The Protests are attached as Exhibit B.

34. On October 16, 2012, the Board of Equalization considered the Protests at the Board's regularly scheduled hearing. The meeting minutes are attached as Exhibit C.

35. At the hearing on October 16, 2012, the County Assessor asserted for the first time that the Notices of Valuation Change were required to correct a "clerical error". Sarpy County previously had not given any indication to CRHS, written or otherwise, that a supposed "clerical error" related to the Disputed Parcels necessitated the Notices of Valuation Change.

36. The County Assessor claimed the “clerical error”, which the Notices of Valuation Change purportedly corrected, was the County’s failure to make any valuation assessment for the Disputed Parcels because the County neglected to change the computer code for the Disputed Parcels from tax-exempt to taxable.

37. Based on the County Assessor’s testimony that the so called “clerical error” necessitated correction by way of the Notices of Valuation Change, the Board of Equalization approved a motion “to deny the protest by [CRHS]” regarding the Protests. The Board of Equalization also approved a motion to deny the request for a reduction in value for the Property. These actions were void and unauthorized, as are the resulting taxes associated with them.

38. Based on the action taken at the Board of Equalization’s hearing on October 16, 2012, the Board of Equalization sent a Final Determination for Protest Form 422 to CRHS for each of the Disputed Parcels dated October 19, 2012 (the “Final Determinations”). The Final Determinations are attached as Exhibit D.

39. The Final Determinations state the Board of Equalization “made a final determination of value regarding your Property Valuation Protest” and further notified CRHS that the Board of Equalization “plac[ed] the following value” on the Property.

40. Notwithstanding that the Board of Equalization’s vote turned on its determination that a “clerical error” necessitated correction by way of the Notices of Valuation Change, the Final Determinations did not refer to a “clerical error” correction or give any indication the valuation change was based on the correction of a “clerical error”.

D. CRHS’s TERC Appeal and TERC’s Show-Cause Order

41. On November 13, 2012, CRHS appealed each of the Final Determinations issued with respect the Disputed Parcels to TERC (the “Appeals”).

42. On or about January 17, 2013, TERC issued a show-cause hearing setting a June 20, 2013 hearing to determine whether TERC has jurisdiction to hear the Appeals. A copy of the January 17, 2013 show-cause order is attached as Exhibit E.

PETITION FOR RELIEF

PETITION FOR WRIT OF MANDAMUS

43. CRHS incorporates Paragraphs 1 through 42 as though fully stated herein.

44. A collateral attack, by way of a writ of mandamus, is proper here because, as set forth above, (a) CRHS does not have a plain and adequate remedy in the ordinary course of the law, (b) the property tax valuation pertaining to the Disputed Parcels is wholly void, and (c) Individual Defendants lack discretionary authority to implement, approve, and/or collect the 2012 Property Tax Valuation, and/or (d) to the extent Individual Defendants' possess any discretionary authority with respect to the Disputed Parcels, Individual Defendants' exercise of such discretion to implement, approve, and/or collect the 2012 Property Tax Valuation constitutes a clear abuse of their discretion.

45. For the reasons stated herein, this Court should issue a writ as follows:

- a. Defendant Pittman should be enjoined from taking any action to approve, implement, or collect the 2012 Property Tax Valuation and/or Defendant Pittman should be compelled to refrain from taking any action to approve, implement, or collect the 2012 Property Tax Valuation; and
- b. Defendant James should be enjoined from taking any action to implement, collect, or distribute the 2012 Property Tax Valuation and/or Defendant James should be compelled to refrain from taking any action to implement, collect, or distribute the 2012 Property Tax Valuation; and

- c. Defendants Carlisle, Kelly, Richard, Thompson, and Warren should be compelled to invalidate the Board of Equalization's approval of the August 21 Notices of Valuation Change.

**ALTERNATIVE CLAIM FOR RELIEF
(Declaratory Judgment)**

46. CRHS incorporates Paragraphs 1 through 45 as though fully stated herein.

47. There is an actual case and controversy as to whether Pittman's omission and failure to timely assess the Disputed Parcels qualifies as a clerical error pursuant to Neb. Rev. Stat. § 77-128, which the Court should resolve and determine through a declaratory judgment.

48. To the extent Pittman's omission and failure to timely assess the Disputed Parcels does not qualify as a "clerical error" pursuant to Neb. Rev. Stat. § 77-128, the Final Determinations and the Board of Equalization's action at its October 16, 2012 meeting was void and the Board of Equalization lacked jurisdiction to enter the Final Determinations.

49. There is an actual case and controversy as to whether TERC has jurisdiction over the Appeals for the reason that TERC does not have jurisdiction over actions in which the Board of Equalization lacked jurisdiction in the first instance.

50. To the extent Pittman's omission and failure to timely assess the Disputed Parcels does not qualify as a "clerical error" pursuant to Neb. Rev. Stat. § 77-128, the Court should enter a declaratory judgment finding the Board of Equalization's actions at the October 16, 2012 hearing were wholly void and invalid; that the Final Determinations are wholly void; vacate the Final Determinations; and direct the Sarpy County Assessor to place the Property on the tax rolls at the same levels as were recorded in 2011.

PRAYER FOR RELIEF

WHEREFORE, CRHS respectfully requests relief as follows:

(1) A temporary injunction, pursuant to Neb. Rev. Stat. § 25-1063 or otherwise, which enjoins the Individual Defendants from taking any action, individually or collectively, to collect the property taxes associated with the 2012 Property Tax Valuation during the pendency of this matter, for the reason that the 2012 Property Tax Valuation (and the resulting property tax) is unauthorized and void, and, thus, CRHS is entitled to the relief demanded in this Complaint and such relief consists in restraining the commission or continuance of some act (i.e., collection of the void tax) during this litigation which would produce great or irreparable injury to CRHS;

(2) A writ of mandamus, pursuant to Neb. Rev. Stat. § 25-2156 or otherwise, to compel Defendants Carlisle, Kelly, Richard, Thompson, and Warren to vacate the Final Determinations and assess the Disputed Parcels at the same levels as 2011;

(3) A writ of mandamus, pursuant to Neb. Rev. Stat. § 25-2156 or otherwise, enjoining the Individual Defendants from taking any action, individually or collectively, to implement, approve, collect, and/or distribute the 2012 Property Tax Valuation or the taxes associated therewith, for the reason that the 2012 Property Tax Valuation (and the resulting property tax) is unauthorized and void and, thus, the Individual Defendants have a clear legal duty to perform the act in question and there is no other plain and adequate remedy available in the ordinary course of the law; and

(4) Such other relief as the Court deems proper.

Dated this 4th day of April, 2013.

CLARKSON REGIONAL HEALTH
SERVICES, INC., Plaintiff

By: *s/ Jeremy Fitzpatrick*

Jeremy Fitzpatrick #21943

Howard Hahn # 11655

Garth Glissman #24149

KUTAK ROCK LLP

The Omaha Building

1650 Farnam Street

Omaha, NE 68102-2186

(402) 346-6000

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

CLARKSON REGIONAL HEALTH SERVICES, INC.,

Plaintiff,

v.

BRENDA CARLISLE, RICH JAMES, DON KELLY, DAN PITTMAN, TOM RICHARDS, JIM THOMPSON, and JIM WARREN,

Defendants.

CASE NO. CI 13-0000535

MOTION FOR SUMMARY JUDGMENT AND FOR WRIT OF MANDAMUS

FILED
SARPY COUNTY
DISTRICT COURT

JUN 11 2013

Caleb Korman
CLERK DISTRICT COURT

COMES NOW Plaintiff, CLARKSON REGIONAL HEALTH SERVICES, INC. ("CRHS"), pursuant to Neb. Rev. Stat. §§ 25-1330 and 25-1332, and moves the Court for entry of summary judgment in favor of CRHS. In support of its motion, CRHS states the pleadings and evidence in this matter demonstrate there is no genuine issue as to any material fact and that CRHS is entitled to a judgment as a matter of law that the (1) August 21, 2012 Notices of Valuation Change and the (2) October 19, 2012 Final Determinations for Protest Form 422 issued in this matter are void because they effected a change in the property tax valuation of the disputed parcels of real property involved in this matter outside the timeframes allowed by Nebraska law.

As a result, a writ of mandamus should issue, pursuant to Neb. Rev. Stat. § 25-2156 or otherwise, enjoining the defendants from taking any action, individually or collectively, to implement, approve, collect, and/or distribute any property tax from CRHS related to the disputed parcels involved in this matter for the 2012 tax year and to instead assess the disputed parcels of real property at the same levels as 2011 for the 2012 tax year.

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In support of this Motion, CRHS relies upon the pleadings in this matter and the affidavit of Garth Glissman and the Brief in Support of Partial Motion for Summary Judgment.

Dated this 12th day of June, 2013.

CLARKSON REGIONAL HEALTH
SERVICES, INC., Plaintiff

By: /s/ Jeremy Fitzpatrick

Jeremy Fitzpatrick #21943
Howard Hahn # 11655
Garth Glissman #24149
KUTAK ROCK LLP
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186
Phone: (402) 346-6000
Jeremy.Fitzpatrick@kutakrock.com
Howard.Hahn@kutakrock.com
Garth.Glissman@kutakrock.com

NOTICE OF HEARING

TO: BRENDA CARLISLE, RICH JAMES, DON KELLY, DAN PITTMAN, TOM RICHARDS, JIM THOMPSON, AND JIM WARREN

You are hereby noticed that Plaintiff will call up for hearing its Motion for Summary Judgment in the District Court of Sarpy County, Nebraska, before the Honorable Max J. Ketch, in Courtroom No. 8, on the 2nd day of July, 2013 at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard.

By: /s/ Jeremy Fitzpatrick

Jeremy Fitzpatrick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 12, 2013 a true and correct copy of Plaintiff's Motion for Partial Summary Judgment and Notice of Hearing was served on Defendants Brenda Carlisle, Rich James, Don Kelly, Dan Pittman, Tom Richards, Jim Thompson, and Jim Warren by regular United States Mail, postage prepaid, to:

Michael Smith, Esq.
Deputy Sarpy County Attorney
1210 Golden Gate Drive
Papillion, NE 68046

/s/ Jeremy Fitzpatrick
Jeremy Fitzpatrick

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

CLARKSON REGIONAL HEALTH SERVICES, INC.,

Plaintiff,

vs.

BRENDA CARLISLE, RICH JAMES, DON KELLY, DAN PITTMAN, TOM RICHARDS, JIM THOMPSON, and JIM WARREN

Defendants.

CASE NO. CI13-535

MOTION FOR SUMMARY JUDGEMENT

Carol Ramsey
CLERK DISTRICT COURT

2013 JUN 27 PM 3:33

FILED
SARPY COUNTY
DISTRICT COURT

COMES NOW the Defendants in the above captioned matter, and each of them, by and through the undersigned Deputy County Attorney, and, pursuant to Neb. Rev. Stat. §§ 25-1331 and 25-1332, hereby moves that the Court enter a judgment in the Defendants' favor, in whole or in part. In support of said Motion, the Defendants hereby state that there is no genuine issue of material fact and the the Defendants are entitled to judgment as a matter of law for the following reasons:

1. That the Plaintiffs have a plain and adequate remedy at law by appeal to the Tax Equalization and Review Commission, and therefore mandamus is unavailable to the Plaintiffs by virtue of Neb. Rev. Stat. §25-2157;

2. That pursuant to Neb. Rev. Stat. §77-5013(1)(a), §77-5007(10) and §77-5007(14) the Tax Equalization and Review Commission has exclusively jurisdiction over the claims of the Plaintiff, and that this Court lacks subject matter jurisdiction.

3. That because of a clerical error, the Defendants actions regarding the parcels which are the subject of this action were permissible by virtue of Neb. Rev. Stat. §77-1507.

WHEREFORE, Defendants pray that the Court grant the above Motion for Summary Judgment and dismiss this case at Plaintiff's cost.



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✓K

BRENDA CARLISLE, RICH JAMES, DON
KELLY, DAN PITTMAN, TOM RICHARDS, JIM
THOMPSON, and JIM WARREN
Defendants

L. KENNETH POLIKOV,
SARPY COUNTY ATTORNEY

BY: 

Michael A. Smith, #18403
Deputy County Attorney
1210 Golden Gate Drive
Papillion, Nebraska 68046
(402) 593-2230

NOTICE OF HEARING

PLEASE BE ADVISED that the Plaintiff's Motion for Summary Judgment in the above-captioned matter will be called up for hearing before the Honorable Max Kelch, ✓ District Court Judge, Sarpy County Courthouse, 1210 Golden Gate Dr., Papillion, Nebraska, on the 16th day of July at 8:30 o'clock a.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing Answer was mailed by first class U.S. mail, postage prepaid to Jeremy Fitzpatrick, Howard Hahn and Garth Glissman, Attorneys for the Plaintiff, at their address of The Omaha Building, 1650 Farnam Street, Omaha, NE 68102-2186 on this 27th day of June, 2013

