No. 128252

In the

Supreme Court of Illinois

MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated May 9, 1980, known as Trust No. 1252; MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated July 1, 1982, known as Trust No. 1335; NEW WEST, an Illinois Limited Partnership, beneficial owner of Trust No. 1252; NEW BLUFF, an Illinois Limited Partnership, beneficial owner of Trust No. 1335; and BURNHAM MANAGEMENT COMPANY, an Illinois Corporation, as tax assessee,

Plaintiffs-Appellees,

v.

TIM BROPHY, Treasurer and ex-officio County Collector for Will County, Illinois,

Defendant-Appellant,

FOREST PRESERVE DISTRICT OF WILL COUNTY; JOLIET PUBLIC SCHOOL DIST. 86; JOLIET HIGH SCHOOL DIST. 204; JOLIET JUNIOR COLLEGE DIST. 525; CITY OF JOLIET; and JOLIET PARK DISTRICT,

Intervenors-Defendants-Appellants.

On Leave to Appeal from the Illinois Appellate Court,
Third Judicial District, Case No. 3-20-0192.
There Heard On Appeal from the Circuit Court of the Twelfth Judicial Circuit,
Will County, Illinois, Case No. 18 MR 2346.
The Honorable **John C. Anderson**, Judge Presiding.

APPELLEES' REPLY IN SUPPORT OF REQUEST FOR CROSS RELIEF

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ORAL ARGUMENT REQUESTED

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ARGUMENT

I. Introduction.

The Defendant and Intervenors, collectively referred to herein as "Defendants", have incorporated all of their arguments against the Appellate Court's holding regarding 35 ILCS 200/20-175 to support their opposition to Plaintiffs' request for cross-relief. Separate and apart from Plaintiffs' claim for refund under 35 ILCS 200/20-175, Plaintiffs seek equitable relief on the basis that the $6,350,472.61 in property taxes assessed to Plaintiffs were unauthorized by law. Defendants respond by contending that the amount of the tax itself was valid, but they ignore the absence of authority to impose an otherwise valid tax on taxpayers who were non-owners. The assessor only has the authority to impose tax on owners. *See* 35 ILCS 200/20-5(a); 35 ILCS 200/9-175; *601 W. 81st St. Corp. v. City of Chicago*, 129 Ill. App. 3d 410, 415 (1st Dist. 1984); *Alvarez v. Pappas*, 229 Ill. 2d 217, 227 (2008). As a matter of law, Plaintiffs were retroactively not the owners of the Properties, rendering the tax assessments unauthorized by law. "Where a tax is unauthorized by law, the taxpayer may proceed with equitable redress regardless of the availability of a complete and adequate legal remedy." *Communications & Cable of Chicago, Inc. v. Dep't of Revenue of City of Chicago*, 275 Ill. App. 3d 680, 684 (1st Dist. 1995) (citing *Lackey v. Pulaski Drainage Dist.*, 4 Ill. 2d 72, 78 (1954)); *see also Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 296 (2010).

II. The County Collector has no authority to assess taxes to a non-owner.

"The *owner* of property on January 1 in any year shall be liable for the taxes of that year". 35 ILCS 200/9-175 (emphasis added). Absent an agreement, it is the *owner* of property that is liable for taxes. *See 601 W. 81st St. Corp. v. City of Chicago*, 129 Ill.

App. 3d 410, 415 (1st Dist. 1984); 35 ILCS 200/9-175; *Alvarez*, 229 Ill. 2d at 227 ("The Property Tax Code mandates that defendant, as county collector, mail tax bills to property owners."); 35 ILCS 200/20-5(a) ("A copy of the bill shall be mailed by the collector *** to the *owner* of the property taxed or to the person in whose name the property is taxed.")(emphasis added). As a matter of law, Joliet, not Plaintiffs, was the owner of the Properties retroactive to the date the condemnation petition was filed, October 7, 2005.

The Defendants state, "Under Plaintiffs' theory, the tax was authorized when assessed, but became retroactively unauthorized due to the outcome of the condemnation proceeding, which had nothing to do with the tax itself." *See* Intervenors' Reply Brief and Response to Request for Cross-Relief, p. 20. Defendants misinterpret Plaintiffs' argument. Defendants focus on the collector's authority to set the amount of the tax but ignore that the collector's authority to impose the tax is limited to *owners*. While the condemnation was ongoing Plaintiffs were the owners and paid the taxes assessed. But at the conclusion of the condemnation, Plaintiffs retroactively lost their ownership, rendering the collector unauthorized to assess any taxes as to Plaintiffs—non-owners. "It is rather apparent that if a suit at law were brought against one for the payment of taxes on real estate, and his answer should disclose he was not the owner of the property at the time the tax was imposed, it would be a complete bar to judgment." *City of Chicago v. McCausland*, 379 Ill. 602, 607 (1942). By virtue of the condemnation's conclusion, Plaintiffs were retroactively not the owners of the Properties at the time the tax was imposed. Defendants' assertion that the condemnation had nothing to do with the tax itself ignores the ultimate result of the condemnation. Had Joliet abandoned its

condemnation or lost at trial then Plaintiffs would have remained owners of the Properties and the taxes they paid would have been based on authorized assessments. But that is not what occurred. Joliet was successful in its condemnation and, as a matter of law, Plaintiffs were retroactively not the owners of the Properties dating back to October 7, 2005. The result of this retroactivity is that the county collector was unauthorized to impose the tax on Plaintiffs because, as a matter of law, Plaintiffs were not the owners.

Furthermore, that the condemnor—and not the condemnee—is retroactively responsible for taxes as of the petition filing date is expressly stated in multiple provisions of the Illinois property tax code. *See* 35 ILCS 200/9-185 ("property acquired by condemnation is exempt as of the date the condemnation petition is filed."); 35 ILCS 200/23-25(b) ("Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property *for those years during which eminent domain proceedings were pending before a court*, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section 8-40.") (emphasis added). If Plaintiffs—the condemnees—are responsible for the taxes assessed after the condemnation petition was filed then 35 ILCS 200/9-185 and 35 ILCS 200/23-25(b) would both be rendered moot. "The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature." *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). The availability of retroactive exemption for the condemnor in 35 ILCS 200/9-185 and 35 ILCS 200/23-25(b) implicitly but unequivocally shows legislative intent that the condemnor—not the condemnee—is responsible for taxes from the date the condemnation petition is filed. There is no reason for the legislature to give the condemnor the ability to have retroactive exemption if the condemnee is responsible

for the taxes. Accordingly, there can be no contention that an assessor has the authority to contravene that intent and that law.

III. Under Illinois law a condemnee's tax liability ends on the day the condemnation petition is filed, thereby rendering a tax against the condemnee retroactively unauthorized by law upon the conclusion of the condemnation.

The Defendants rely heavily on *People v. Chicago Title & Tr. Co.*, 75 Ill. 2d 479 (1979), a case concerning the tax liability of parties to a land trust, to separate "ownership" from title. *Chicago Title* does no such thing. The issue addressed by the Court in *Chicago Title* was narrow: who amongst the parties to a land trust are liable for unpaid property taxes? *See People v. Chicago Title & Tr. Co.*, 75 Ill. 2d 479, 484-85 (1979). That issue is not present here. The relevant question at issue here is who is responsible for property taxes between condemnor and condemnee—an issue already decided by this Court and enshrined in the Illinois property tax code. *See Forest Preserve Dist. of Du Page Cnty. v. First Nat'l Bank of Franklin Park*, 2011 IL 110759, ¶ 45; *Bd. of Jr. Coll., Dist. 504 v. Carey*, 43 Ill. 2d 82, 86 (1969); *Pub. Bldg. Comm'n of Chicago v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 30 Ill. 2d 115, 118 (1963); *Chicago Park Dist. v. Downey Coal Co.*, 1 Ill. 2d 54, 59 (1953); 35 ILCS 200/9-185; 35 ILCS 200/23-25(b).

Under the Illinois Municipal Code Joliet took the property in its entirety, not just title to the property. *See* 65 ILCS 5/11-61-1. It condemned the property and whoever held title to it, owned it, and had any lien or claim against it. That's what condemnation does. "The mere filing of a petition to condemn effectively encumbers the land, imposing a burden upon it, impeding its transfer, and to that extent destroying the fee-simple estate of the owner." *Pub. Bldg. Comm'n of Chicago v. Cont'l Illinois Nat. Bank & Tr. Co. of*

Chicago, 30 Ill. 2d 115, 122 (1963). Joliet made no effort to take only "title" and leave "ownership", it condemned the Properties in total. This was not a voluntary apportionment of responsibilities between trustee and beneficiary or an attempt hide the true owner of a property; this was a hostile taking by a condemning authority of any and all claims to title, ownership and possession of the Properties.

The language in *Chicago Title* that specifically imposes property tax liability on beneficiaries in a land trust—a mechanism by which the parties have sought, for their own convenience, to separate the beneficiaries from legal title—has no application to determining the tax liability of a condemnee. Illinois cases have specifically found that a condemnee is not responsible for the taxes assessed after the condemnation petition has been filed, including this Court most recently in *Forest Preserve Dist. of Du Page Cnty. v. First Nat'l Bank of Franklin Park*, 2011 IL 110759, ¶ 45. "A party is liable for taxes on the property until compensation is paid and the landowner relinquishes title, but he may be reimbursed by the county for the taxes paid dating back to the filing of the complaint." *Id*. That 2011 statement of law effectively summarizes this Court's longstanding precedent that a condemnee's tax liability ends retroactive to the date the condemnation petition is filed. *See Bd. of Jr. Coll., Dist. 504 v. Carey*, 43 Ill. 2d 82, 86 (1969) (Requiring the landowner to pay property taxes accrued *after* the date the condemnation petition was filed would "make the condemnee liable for taxes on land when in law he had become divested of title to the land" and would "unconstitutionally effect a taking of private property for public use without just compensation."); *Pub. Bldg. Comm'n of Chicago v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 30 Ill. 2d 115, 118 (1963) ("It is also settled that general taxes for the years following the year in which the petition to

condemn is filed are not the obligation of the property owner and are not deductible from the award regardless of when it is paid."); *Chicago Park Dist. v. Downey Coal Co.*, 1 Ill. 2d 54, 59 (1953) ("To permit taxes of subsequent years to be charged as a lien against just compensation for land, title to which relates back to a time before their assessment, would infringe the constitutional provision that property shall not be taken for public use without just compensation."). Accordingly, the assessor has no authority to assess the Plaintiffs who were non-owners. The Illinois cases that actually concern tax responsibility in a condemnation action all hold that the petition date is the end date for tax liability for the condemnee. There can be no reasonable contention that an assessor's actions are "authorized by law" where they would be constitutionally forbidden. The Court's ruling in *Chicago Title* concerning tax responsibility amongst parties to a land trust is not to the contrary.

Defendants assert that on August 25, 2017 Joliet only became the *titleholder* of the Properties retroactive to October 7, 2005 and only became the *owner* of the Properties from August 25, 2017. This spurious assertion has no basis in the law, cases and statutes governing condemnation; is contravened by Joliet's condemnation petition seeking to take the Properties as a whole; and is directly counter to Defendants' stated position in their September 14, 2018 motion to dismiss, where Defendant Treasurer and Ex-Officio County Collector stated: "Pursuant to the entry of that [August 25, 2017] order the subject properties were retroactively considered to be *the property of the City of Joliet from the date of filing of the eminent domain action*." *See* C37[1], ¶ 10 (emphasis added). Black's Law Dictionary, as useful here as it was in *Alvarez v. Pappas*, defines title as

[1] Citations to the Common Law Record are identified with the prefix, "C".

"The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself"; and "Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence". TITLE, Black's Law Dictionary (11th ed. 2019). Common sense counts. Title and ownership, for purposes of condemnation and Joliet's retroactive taking, are one in the same, and the assessor's taxation of Plaintiffs was thereby unauthorized by law.

IV. Counts II and III of Plaintiffs' Complaint seek equitable relief based on retroactive loss of ownership and the concomitant termination of any authority to tax the Plaintiffs for the Properties.

Defendants assert that Plaintiffs' claims for declaratory relief and mandamus are specifically limited to exemption and not based on retroactive title or ownership. Defendants ignore the broad meaning of exemption, and refer only to Paragraphs 29 and 32 through 34 of Counts II and III. Defendants ignore that both Counts II and III "reallege and incorporate by reference the allegations in Paragraphs 1 through 21". *See* AA19[2], ¶ 28; AA20, ¶ 31. Paragraph 21, realleged and incorporated by reference into Counts II and III, states, "Plaintiffs are entitled to a tax refund because, with the vesting of title by operation of law as of the Date of Filing (October 7, 2005), they were not, as a matter of law, the true owners of ET I & II from October 7, 2005 through August 25, 2017." AA17-18, ¶ 21. The claims and arguments now before the Court are encompassed within the allegations of Plaintiffs' Complaint.

Furthermore, regarding the meaning of "exemption" in Plaintiffs' Complaint as to Count I, the Appellate Court succinctly explained, "We believe that the circuit court

[2] Citations to the Appendix filed by Intervenors on June 28, 2022 are identified with the prefix, "AA"

misinterpreted the plaintiffs' argument. They are not arguing that they were exempt from paying taxes. Instead, they are arguing that they are entitled to a refund under section 20-175(a) because they overpaid the taxes as they were not the true owners of the property when Joliet became the owners retroactive to 2005." A11[3], ¶ 13. Whether in Count I, Count II, or Count III, "exemption" encompasses both any statutory entitlement to "exemption" as well as the inherent "exemption" from taxation that non-owners themselves always have. No cases give the assessor the authority to tax in either situation.

CONCLUSION

The Appellate Court stated: "the plaintiffs were not responsible for the tax payments related to the retroactively owned property. We find that it is cognizable for the plaintiffs to bring their claim under section 20-175(a)." *See* A14, ¶ 24. Plaintiffs also submit that they are entitled to equitable relief independent of the legal relief afforded by 35 ILCS 200/20-175. Accordingly, as to Plaintiffs' Request for Cross-Relief, Plaintiffs respectfully request that the Court reverse the Order of the Appellate Court as to Counts II and III of Plaintiffs' Complaint, and use its authority under Illinois Supreme Court Rule 366(a)(5) to:

- enter judgment in favor of Plaintiffs on Count II and III of Plaintiffs' Complaint;
- find that the taxes assessed against Plaintiffs for the Property that retroactively was owned by the City of Joliet were unauthorized by law;

[3] Citations to the Appendix filed by Defendant on June 29, 2022 are identified with the prefix, "A".

- order the Defendant to refund the $6,350,472.61 paid by Plaintiffs plus pre-judgment interest accruing from the date of each payment of property taxes; and
- such other and further relief as the Court deems just and proper.

See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994).

Respectfully submitted,

Plaintiffs-Appellees

/s/ *Theodore R. Tetzlaff*___
By: One of Their Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of the Appellee's Reply Brief in Support of Request for Cross-Relief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance and the certificate of service, is 9 pages.

/s/ *Theodore R. Tetzlaff*
Theodore R. Tetzlaff

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

MB FINANCIAL BANK, N.A., etc., et al.,	)	
	)	
Plaintiffs-Appellees,	)	
v.	)	No. 128252
	)	
TIM BROPHY,	)	
Defendant-Appellant,	)	
	)	
FOREST PRESERVE DISTRICT OF WILL COUNTY, et al.,	)	
	)	
Intervenors-Defendants-Appellants.	)	

The undersigned, being first duly sworn, deposes and states that on November 15, 2022, the Appellees' Reply in Support of Request for Cross-Relief was electronically filed and served upon the Clerk of the above court. On November 15, 2022, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Theodore R. Tetzlaff
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Theodore R. Tetzlaff
Theodore R. Tetzlaff