

No. SC94269

IN THE MISSOURI SUPREME COURT

AIRPORT TECH PARTNERS, LLP, and STENTOR COMPANY, LLP,
Appellants,

v.

STATE OF MISSOURI,
Respondent,

and

CITY OF KANSAS CITY, MISSOURI,
Intervenor/Respondent.

Appeal from the Nineteenth Judicial Circuit, Cole County, Missouri,
Honorable Jon Beetem, Circuit Judge

BRIEF OF RESPONDENT STATE OF MISSOURI

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ATTORNEYS FOR RESPONDENT
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ARGUMENT

The taxpayers do not have standing to challenge the constitutionality of the legislature’s change in the bonus value method of determining the fair market value of leaseholds in certain municipally owned real property, because the legislative change, in this case, cannot result in increased levy rates. The

leasehold, in this case, was not assessed and did not create tax revenue before application of the change. (Responds to taxpayers' Arguments I and II)

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STATEMENT OF FACTS

Amended petition

Petitioners Airport Tech Partners, LLP, and Stentor Company, LLP, filed an amended petition for declaratory judgment. LF9. The companies alleged that the City of Kansas City, Missouri, had leased its land at the Kansas City International Airport to TCC KCI Logistics I, LLC, and that TCC/KCI had improved the land by constructing a warehouse and conveying it to the City pursuant to the lease. LF10. Citing Attachment A, the companies alleged that Platte County had applied Section 137.115.1 to “the leasehold interests” and assessed those interests at zero for 2012. LF10. The companies also averred that they had been harmed by application of the statute that resulted in an increase in levy rates applied to their property. LF10.

Attachment A includes an e-mail from Eldon Kottwitz, an appraiser in the Platte County Assessor’s office, to the companies’ counsel, which states:

This is the actual assessment. Due to HB 1836 and the exempt status we have not determined the leasehold values since that would be an inefficient use of resources.

LF14, AppA10.

Attachment A also includes a 2012 Platte County Property Report that lists a parcel number owned by the City of Kansas City, Missouri, located at

10331 Transcon Dr. and consisting of a leasehold building, which is a warehouse of a certain square footage, doing business as Blount International. LF15. The property report lists an appraised value of \$22,000,000 and is dated November 28, 2011. LF15, AppA11.

Answers

Respondent State of Missouri and intervenor/respondent City of Kansas City, Missouri, answered. LF21, 26. Each denied that Platte County had applied the statute to the leasehold interests and assessed those interests at zero for 2012 and that the companies had been harmed thereby from increased levy rates. LF22, 27.

State's motion for summary judgment

The State filed a motion for summary judgment, LF31, whose statement of uncontroverted material facts relied upon the allegations in the amended petition and the answers and upon Attachment A to the amended petition. LF32–35. The State alleged that two uncontroverted material facts were:

9. Platte County has not applied the fourth sentence of Section 137.115.1 RSMo Cum. Supp. to the leasehold interests and assessed the leasehold interests at zero for 2012.

(Attachment A to the Amended Petition)

10. Because Platte County has not applied the fourth sentence of Section 137.115.1 RSMo Cum. Supp. to the leasehold interests and assessed the leasehold interests at zero for 2012, petitioners have not been harmed by any increase in levy rates applied to their property in 2012. (Attachment A to Amended Petition)

LF34–35. The State supported its allegations with the companies’ Attachment A to the amended petition (the Kottwitz e–mail and property report). LF34, 35, AppA10, 11.

Companies’ response

Airport Tech and Stentor filed a response to the State’s statement of uncontroverted material facts, in which they admitted all the of the State’s material facts except that Platte County had not applied the statue to the leasehold interests and assessed them at zero for 2012 and that the companies had not been harmed by any increase in levy rates to their property. LF44–46. The companies supported their denial with their Attachment A to the amended petition (the Kottwitz e–mail and property report) and “Kottwitz Affidavit ¶6.” LF46.

And the companies alleged in their response to the State’s statement of uncontroverted material facts, an additional statement of uncontroverted material facts that Platte County had applied the statue to the leasehold

interests and assessed them at zero for 2012. LF47. The companies supported their additional statement with “Kottwitz Aff. ¶6” and “Kottwitz Aff. ¶¶5–7.” LF47.

The Kottwitz affidavit identifies a parcel of land owned by the City of Kansas City that corresponds to the parcel identified in the 2012 Platte County Property Report, and states that the City leases the land to TCC/KCI, who subleases it to Blount International, and that the land is improved by a warehouse. LF171, AppA17. The Kottwitz affidavit also states the following:

5. As of January 1, 2012, the land and improvements had a market value of approximately \$22 million dollars, as reflected in the Assessor’s records.

6. In our opinion, applying the provision of the fourth sentence of Section 137.115.1 to the leasehold interests reduced their assessments to zero.

7. Because we estimated the assessed value to be zero, we did not individually value the leasehold interests in the fee.

LF171–172,¹ AppA17–A18.

¹ The Kottwitz affidavit does not appear in the legal file in association with the companies’ response to the State’s motion for summary judgment,

The companies attached to their memorandum in opposition to the State's motion, LF52, the following: 1) Exhibit A, A General Statement of the Property Tax, consisting of two pages of mathematical equations from two treatises, LF72; 2) Exhibit B, the lease entered into between the City of Kansas City and TCC KCI Logistics I, LLC, LF74; and 3) Exhibit C, Algebraic Expression of Constitutional Problems with Section 137.115 RSMo, consisting of one page of mathematical equations whose source was not identified, LF110. The lease was entered into June 15, 2011. LF75.

In their memorandum in opposition to the State's motion, the companies asserted that levy rates are "determined by dividing the revenue to be raised by the political subdivision (the numerator) by the total assessed value within the political subdivision (the denominator)." LF65. The companies also asserted that "[u]nconstitutional reduction of the assessed value of some commercial real property causes an increase in the levy rate for all other property taxpayers in the political subdivision by reducing the denominator in the rate calculation. See Exhibit A to the Memorandum." LF65.

but in the legal file in association with the companies' later-filed motion for summary judgment.

State's reply

The State filed a reply memorandum in support of its motion for summary judgment and denied that Platte County had applied the statute to the leasehold interests and assessed them at zero for 2012, LF176–177, citing in support thereof the Kottwitz affidavit, paragraph 7: “Because *we estimated* the assessed value to be zero, *we did not* individually *value* the leasehold interests in the fee. (Emphasis added)” LF176, 177; AppA18.

In addition, assuming that the Assessor had applied the statute, the State argued that Airport Tech and Stentor did not have standing because there is no evidence, and there cannot be any evidence, that TCC/KCI's leasehold created any tax revenue prior to the application of the statute in 2012. LF179–180.

Companies' motion for summary judgment

Airport Tech and Stentor filed a motion for summary judgment, LF111, whose statement of uncontroverted material facts relied upon the allegations in the amended petition and the answers and upon the Kottwitz affidavit, LF113–115. The companies alleged, among other things, that the Platte County Assessor had applied the statute to the leasehold interests and assessed them at zero for 2012 and that the companies had been harmed thereby. LF115. The companies supported these averments with the Kottwitz affidavit. LF115.

In their memorandum in support of their motion, the companies repeated their argument that they had standing by virtue of an increase in levy rates, LF127, and attached the same three documents they had attached to their memorandum in opposition to the State's motion — Exhibit A (the two pages of equations), Exhibit B (the lease between the City and TCC/KCI Logistics), and Exhibit C (the one page of equations), LF133, 135, 170 — and the Kottwitz affidavit, LF171, App.A17–A18.

State's response

The State filed a response to the companies' motion for summary judgment, LF186, in which it denied that Platte County had applied the statute to the leasehold interests and assessed them at zero for 2012 and that the companies were harmed thereby, LF188–189, citing in support thereof the Kottwitz affidavit, paragraph 7: “Because *we estimated* the assessed value to be zero, *we did not* individually *value* the leasehold interests in the fee. (Emphasis added)” LF188, 189; AppA18.

The State also asserted: “In addition, petitioners provide no evidence of increased levy rates as a result of application of Section 137.115.1, nor could there be increased levy rates resulting from the application of Section 137.115.1.” LF189. The State argued, assuming that the Assessor had applied the statute, that Airport Tech and Stentor did not have standing because there is no evidence, and there cannot be any evidence, that TCC/KCI's

leasehold created any tax revenue prior to the application of the statute in 2012. LF191–192.

City of Kansas City's response

The City of Kansas City filed a response to the companies' motion for summary judgment, LF198, in which it denied that Platte County had applied the statute to the leasehold interests and assessed them at zero for 2012 and that the companies had been harmed thereby, LF200–201, citing in support thereof the Kottwitz affidavit, LF200– 201.

In addition, the City asserted that its land was unimproved before the leasehold was created and was never subject to property tax assessment and created no property tax revenue. LF204–205.

Companies' reply

The companies filed a reply to the State's and the City of Kansas City's response to the companies' motion for summary judgment that did not allege any additional facts and asserted that its Exhibit A to its memorandum demonstrates that a reduction in the assessed value increases the levy rate. LF212.

City's supplemental response

The City of Kansas City filed a supplemental response to the companies' motion for summary judgment, LF 225, in which it denied that Platte County had applied the statute to the leasehold interests and assessed

them at zero for 2012 and that the companies had been harmed thereby, LF225–227. In support of its denial, the City supplemented its previous denial with the affidavit of Brian Everly, the Chief Commercial Appraiser and custodian of records of the Platte County Assessor’s office. LF225–227; SuppLF7; AppA19. Among other things, the Everly affidavit states, that he has reviewed the records of the office and that:

16. For the calendar year 2012, the Platte County Assessor’s records do not reflect that a calculation of the “true value in money of any possessory interest” in the Parcel [identified in paragraph 3 of the affidavit, which corresponds to the parcel identified in the 2012 Platte County Property Report] as held by either TCC/KCI Logistics, LLC or Blount International was made, as that phrase is used in Section 137.115.1, RSMo.

17. For the calendar year 2012, the Platte County Assessor’s records do not reflect the actual costs of construction of the warehouse facility situated on the Parcel paid by TCC/KCI Logistics, LLC or anyone else.

18. For the calendar year 2012, the Platte County Assessor’s records do not reflect that the costs of construction of the warehouse facility were subtracted from the “true value in money of any possessory interest” in the Parcel.

SuppLF9, AppA21.

In addition, the Everly affidavit states upon information and belief that in calendar year 2011 and prior years, the Parcel was unimproved land and no real property taxes were paid by the City of Kansas City or anyone else on the Parcel, SuppLF7–8, AppA19–20; and that in calendar year 2012, the Parcel was leased by the City to TCC KCI Logistics, LLC, which constructed a warehouse on the Parcel that was completed in April 2012, SuppLF8, AppA20.

Finally the Everly affidavit states that the warehouse constitutes improvements to the Parcel for real property assessment purposes. SuppLF8, AppA20.

Companies' reply to supplemental response

Airport Tech and Stentor filed a reply to the City of Kansas City's supplemental response to the companies' motion for summary judgment and stated that the State and the City had not challenged the mathematical formula in Exhibit A to their memorandum. LF232.

Judgment and post-judgment motion

After oral argument on the motions for summary judgment, LF7, the trial court sustained the State's motion for summary judgment on the issue of standing, denied Airport Tech and Stentor's motion for summary judgment, and rendered judgment. LF235, AppA1. The judgment states:

Petitioner’s claim standing on what is essentially this argument — “If someone’s taxes go down, mine will go up.” This argument does not establish injury in fact and the undisputed material facts established by the State support this conclusion.

LF235, AppA1.

Airport Tech and Stentor filed a motion for rehearing. LF236. The State and the City of Kansas City responded. LF240, 246. The State argued that no actual or potential injury exists because there is no evidence, and there cannot be any evidence, that TCC/KCI’s leasehold was assessed and created tax revenue before application of the statute in 2012. LF242–243. The companies did not call up their motion; rather, they filed a notice of appeal.

LF250.

ARGUMENT

The taxpayers do not have standing to challenge the constitutionality of the legislature’s change in the bonus value method of determining the fair market value of leaseholds in certain municipally owned real property, because the legislative change, in this case, cannot result in increased levy rates. The leasehold, in this case, was not assessed and did not create tax revenue before application of the change. (Responds to taxpayers’ Arguments I and II)

The statute

The third sentence of subsection 1 of § 137.115, RSMo,² requires county assessors to “annually asses all real property, including any new construction and improvements to real property, and possessory interests in real property, at the percent of its true value in money set in subsection 5 of this section.”

§ 137.115.1. For subclass (3) real property, commercial and industrial real property, that percent is 32% of true value. § 137.115.5(3); Mo. Const. art X, § 4(b)(3). Property is subject to tax as of January 1 of each year. § 137.075.

² All statutory citations are to the current version of the Revised Statutes of Missouri.

The fourth sentence of subsection 1 of § 137.115³ sets forth a method of determining the true value in money of possessory interests, or leaseholds, in commercial and industrial real property located within federally qualifying airport boundaries and owned by municipalities.

The true value in money of any possessory interest in real property in subclass (3), where such property [is within a federally qualifying airport boundary] and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision towards any new construction or improvements on such real property

§ 137.115.1. Airport Tech and Stentor challenge this sentence as unconstitutional.⁴

³ The legislature added the fourth sentence to subsection 1 of § 137.115 in 2008 and has not subsequently amended it. H.B. 2058, 94th General Assembly, 2d Reg. Sess. (Mo. 2008).

⁴ Airport Tech and Stentor say in their brief at pages 1–2 and 25 that the fourth sentence violates the uniformity provision and the prohibitions against creating sub–classes of commercial and industrial property and

The General Assembly intended the fourth sentence of subsection one of § 137.115 to change the bonus value method of determining the true value in money of these leaseholds. *In re Removal of Human Remains in Cemeteries in Kansas City, Platte County*, 297 S.W.3d 616, 618 (Mo.App. 2009)⁵ Bonus value refers to the economic advantage to the lessee when the economic rental (fair market value) of the leasehold exceeds the contract rental (actual rent paid under terms of the lease) of the leasehold. *Id.*; *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 456 (Mo.App. 1993).

Rather than applying the assessment rate of 32% to the bonus value of a leasehold, the fourth sentence of subsection 1 of § 137.115 requires the assessor to apply that rate to the bonus value reduced by

exemptions not specified in the constitution. Mo. Const. art. X, §§ 3 (uniformity), 4(b) (sub-classification), 6.1 (exemption). The amended petition, however, neither raises a sub-classification claim nor cites § 4(b) of Article X.

⁵ The issue on the merits of this case is not whether the true value in money of TCC/KCI's leasehold is its fair market value, as Airport Tech and Stentor suggest in their brief at pages 26–27, but rather: Is the legislature's prescription of how to determine the leasehold's fair market value consistent with the constitution?

the cost to the lessee of any new construction or improvements on the property. *In re Removal of Human Remains*, 297 S.W.3d at 618. This change in the method of determining the true value in money results in a “significant decrease” in the value of property subject to the assessment rate, “in some cases resulting in a 100–percent property tax abatement.” *Id.*

But the tax abatement exists only for so long as the contract rental is less than the economic rental of the leasehold. The lessee can recover over time its cost of new construction or improvements through steadily rising contract rental payments. TCC/KCI pays a steadily rising contract rental. LF76. When the cost of new construction or improvements is recovered by the lessee, the difference between the contract rental and the economic rental becomes zero.

No increase in levy rates when statute applied

Viewing the record in the light most favorable to the party against whom judgment is entered, and affording that party the benefit of all inferences that may reasonably be drawn from the record, this Court reviews a grant of summary judgment de novo. *ITT Commercial Finance Corp. v. Mid–America Marine Supply Corp.*, 854 S.W.2d 371, 376 (1993). The key to summary judgment, however, is the undisputed right to judgment as a matter of law, not simply the absence of a fact question. *Id.* at 380.

Assuming that the Assessor applied the fourth sentence of subsection 1 of § 137.115 to TCC/KCI's leasehold interest, and thus that the question of whether he applied the statute at all is resolved in Airport Tech and Stentor's favor,⁶ the State of Missouri is still entitled to judgment as a matter of law.

To have standing in a declaratory judgment action, the petitioner must have a legally protectable interest at stake in the outcome of the litigation, which exists if the petitioner is "directly and adversely affected by the action in question" *LeBeau v. Commissioners of Franklin County*, 422 S.W.3d 284, 288 (Mo. 2014). In a declaratory judgment action challenging a taxation statute, the petitioner taxpayer has standing if she can allege and prove "1) a direct expenditure of funds generated through taxation; 2) an increased levy in taxes; or 3) a pecuniary loss attributable to the challenged transaction of a municipality." *LeBeau*, 422 S.W.3d at 289 n. 3, citing *Eastern Missouri Laborers Dist. Council v. St. Louis County*, 781 S.W.2d 43, 47 (Mo. 1989).⁷

⁶ The State does not concede, however, that the Assessor applied the statute. See page 24 below for why the Assessor did not.

⁷ Citing *Lebeau*, 422 S.W.3d at 288 and 289, Airport Tech and Stentor point out in their brief at page 24 that standing can also be established by legislative grant or compelling circumstances, such as fraud. But they do not assert either as a basis for standing in this case. (Footnote continues)

The taxpayer has the burden of establishing standing. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. 2011).

In this case, Airport Tech and Stentor alleged and argued in the trial court that they have standing because increased levy rates result from application of the fourth sentence of subsection 1 of § 137.115 to TCC/KCI's leasehold. LF10 (amended petition), 65 (memorandum in opposition to State's motion for summary judgment), 212 (reply to State's response to companies' motion for summary judgment), 232 (reply to City's supplemental response to companies' motion). And their argument in this Court at pages 10 and 22 of their brief is no different.

Airport Tech and Stentor expressed their standing argument in the trial court, among other places, in their memorandum in opposition to the State's motion for summary judgment. They wrote:

Individual property tax bills are determined by multiplying the assessed value of the individual property by the levy rate of

And contrary to what Airport Tech and Stentor suggest in their brief at page 28, the mere fact that they do not challenge any assessment of TCC/KCI's property does not itself confer standing. They still must be "directly and adversely affected by the action in question." *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 530 (Mo. 2010).

the political subdivision imposing the tax. Section 137.290, RSMo. The rate of levy, in turn, is determined by dividing the revenue to be raised by the political subdivision (the numerator) by the total assessed value within the political subdivision (the denominator). Section 67.110, RSMo. Unconstitutional reduction of the assessed value of some commercial real property causes an increase in the levy rate for all other property taxpayers in the political subdivision by reducing the denominator in the rate calculation. See Exhibit A to the Memorandum. Petitioners have a personal interest in the enforcement of lawful property tax assessments.

LF65. Exhibit A is two pages of equations. LF72.⁸ But, in this case, the equations do not work as Airport Tech and Stentor say they do. The levy rates do not increase.

Using the analysis set forth by Airport Tech and Stentor, the denominator in the equation (levy rate = revenue to be raised ÷ assessed value) is not reduced or lowered as a result of application of the statute.

⁸ Exhibit C to the memorandum, as shown by its title Algebraic Expression of Constitutional Problems with Section 137.115 RSMo, relates to the merits of the case. LF57.

Airport Tech and Stentor say that when the statute is applied to the leasehold, total assessed valuation goes down and in order to acquire the revenue needed (a constant), the levy rate must go up. But that does not happen in this case, because total assessed valuation will go down only if the leasehold was part of total assessed valuation and created tax revenue *before* application of the statute.

The undisputed material facts demonstrate that there is no evidence, and there cannot be any evidence, that the leasehold was assessed and created tax revenue before application of the statute. There is no evidence that the Assessor determined the true value of any leasehold or new construction or improvements on the City's fee and applied an assessment rate to that value before he applied the statute in 2012.

The Everly affidavit states that before 2012, the parcel owned by the City was unimproved land and no one paid taxes on it, SuppLF7, 8, AppA19, A20; but during 2012, the parcel was leased by the City to TCC/KCI who completed construction of a warehouse on the parcel, SuppLF8, AppA20. The earliest the leasehold could exist is June 15, 2011, the date of the lease. LF75. And property is subject to tax as of January 1 of each year. § 137.075. Finally, the City's fee is exempt. Mo. Const. art. X, § 6.1.

There is no evidence and there cannot be any evidence that the leasehold was assessed and created tax revenue before application of the

statute in 2012. Only in that case, which does not exist here, would application of the statute result in reduction in total assessed revenues and increased levy rates.

In their argument at page 23 of their brief, Airport Tech and Stentor essentially turn standing jurisprudence on its head. Even if it were true, as they argue, that total assessed valuation would increase if the statute were *not* applied in 2012, not applying the statute obviously is not the same as applying the statute. Standing — a direct and adverse effect of the action in question — cannot be determined by not applying a statute that the legislature directed to be applied. The application of a statute is the action in question.

Applying the statute in this case results in a “significant decrease” in the value of KCC/TCI’s leasehold subject to the assessment rate, perhaps even “a 100–percent property tax abatement.” *In re Removal of Human Remains*, 297 S.W.3d at 618. But that alone does not directly and adversely affect Airport Tech and Stentor. Rather, applying the statute “merely excuse[s] the tax obligations of others.” *Manzara*, 343 S.W.3d at 660.

Airport Tech and Stentor recognize that they need more to have standing, and they argue that an increase in levy rates gives them that more. But because TCC/KCI’s leasehold was not assessed and did not produce tax

revenue before application of the statute, levy rates do not increase. Airport Tech and Stentor are left with, in the words of the judgment:

Petitioners claim standing on what is essentially this argument
— “If someone’s taxes go down, mine will go up.”

AppA1. That is not enough for standing.

The Assessor did not apply the statute

There is no “genuine issue” of material fact in this case. Rule 74.04(c) (1). A “genuine issue” exists only when “two plausible, but contradictory, accounts” of a material fact exist in the record. *ITT Commercial Finance Corp.*, 854 S.W.2d at 382. That the Assessor applied the fourth sentence of § 137.115.1 to the leasehold interest of TCC/KCI is not plausible, or appearing worthy of belief.

There is no contradiction between the Eldon Kottwitz e–mail to Airport Tech and Stentor’s counsel and his affidavit, on the one hand, and the affidavit of Brian Everly, on the other. They all say that the Assessor did not apply the statute.

The Kottwitz e–mail states: “[W]e have *not* determined the leasehold values.” LF14, AppA10 (emphasis added).

The Kottwitz affidavit states: “Because *we estimated* the assessed value to be zero, *we did not* individually *value* the leasehold interests in the fee.” LF172, AppA18 (emphasis added). To estimate means to judge the value of a

thing in a “not entirely definitive” manner. *Webster’s Third New Int’l Dictionary* 778–79 (1993).

The Everly affidavit states what the Assessor would have done, but did not do, if he had applied the statute — if he had determined, in accordance with the fourth sentence of the statute, the true value in money of TCC/KCI’s leasehold interest.

According to the statute, the Assessor would have first determined the value of the TCC/KCI leasehold without taking into account the cost of any new construction or improvements to the lessee. “The true value in money of any possessory interest in real property in subclass (3), [within a federally qualifying airport] and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property,” § 137.115.1. This, the Everly affidavit states, the Assessor did not do. “For the calendar year 2012, the Platte County Assessor’s records do not reflect that a calculation of the ‘true value in money of any possessory interest’ in the Parcel as held by either TCC/KCI Logistics, LLC or Blount International was made, as that phrase is used in Section 137.115.1, RSMo.” SuppLF9, AppA21.

Then, according to the statute, the Assessor would have determined “the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real

property” § 137.115.1. This, the Everly affidavit states, the Assessor did not do. “For the calendar year 2012, the Platte County Assessor’s records do not reflect the actual costs of construction of the warehouse facility situated on the Parcel paid by TCC/KCI Logistics, LLC or anyone else.” SuppLF9, AppA21.

Finally, according to the statute, the Assessor would have deducted the cost of constructing the warehouse facility to the lessees from the “otherwise applicable true value in money” of the leasehold. “The true value in money of any possessory interest in real property in subclass (3), [within a federally qualifying airport] and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property” § 137.115.1. This, the Everly affidavit states, the Assessor did not do. “For the calendar year 2012, the Platte County Assessor’s records do not reflect that the costs of construction of the warehouse facility were subtracted from the “true value in money of any possessory interest” in the Parcel.” SuppLF9, AppA21.

In light of all this, that the Assessor applied the statute does not appear worthy of belief.

CONCLUSION

For the reasons stated above, the judgment should be affirmed.

Respectfully submitted,

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CERTIFICATES OF SERVICE AND COMPLIANCE

I certify that the Brief of Respondent State of Missouri was filed electronically and served via Missouri Case.net this 25th day of September, 2014, upon James Deutsch, Marc Ellinger, Thomas Rynard, Thomas Schwarz, and Galen Beufort.

I certify that I signed the original of this brief and that it contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06 (b), and contains 5,131 words exclusive of cover, signature block, and certificates.

/s/ Gary L. Gardner