

**IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT**

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**No. ED 104000**

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**ARMSTRONG-TROTWOOD, LLC, et al.,  
Plaintiffs/ Appellants,**

**v.**

**STATE TAX COMMISSION OF MISSOURI, et al.,  
Defendants/ Respondents.**

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Appealed from the Circuit Court of St. Louis County  
Cause No. 15SL-CC00145  
Division 17

**HONORABLE JOSEPH WALSH**

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**Brief of Defendants St. Louis County, Missouri  
and Jake Zimmerman, Assessor for St. Louis County Missouri**

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**OFFICE OF THE COUNTY COUNSELOR**

Edward W. Corrigan #33332

Associate County Counselor

41 South Central, 9<sup>th</sup> Floor

Clayton, MO 63105

Phone: (314) 615-7042

Fax (314) 615-3732

**E-mail: [ecorrigan@stlouisco.com](mailto:ecorrigan@stlouisco.com)**

**Attorneys for Defendants' St. Louis County,  
Missouri and Jake Zimmerman, Assessor**

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## STATEMENT OF FACTS

Plaintiffs are owners of “residential” sub-class real estate parcels all of which are located within St. Louis County, Missouri. LF<sup>1</sup> 73, 410, 415,420, 427, 432, 444, 449, 454, 460, 465, 468, 471, 474, 477, 481,487, 494. Plaintiffs’ subject properties are also located in multiple taxing jurisdictions that cross county territorial lines. LF 73-74. The plaintiffs; the parcels of real estate they own; the 2011 values they appealed to the State Tax Commission of Missouri; and their corresponding appeal number(s) with the State Tax Commission of Missouri are all identified herein below:

1. Armstrong Trotwood LLC; 8455 Tally Ho Dr., Hazelwood, MO 63042; \$1,730,700; Appeal No. 11-10827. LF 468-470.
2. Armstrong Trotwood LLC; 8401 Tally Ho Dr., Hazelwood, MO 63042; \$1,538,900; Appeal No. 11-10828. LF 471-473.
3. Armstrong Brittany LLC; 7200 Brittany Town Place, Hazelwood, MO 63042; \$2,030,700; Appeal No. 11-10829. LF 474-476.
4. Armstrong Arbor Village, LLC; 20 Arbor Village Ct., Ferguson, MO 63135; \$2,325,700; Appeal No. 11-10830. LF 477- 479.
5. Robert S. and Susan H. Rothschild; 6340 Clayton Rd., Unit 406, St. Louis, MO 63117; \$473,400; STC Appeal No. 11-11018. LF 410-412.

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<sup>1</sup> The Legal File is cited as “LF \_\_\_” throughout this brief.

6. Robert S. and Susan H. Rothschild; 206 Weber Dr., Eureka, MO 63025; \$88,400; STC Appeal No. 11-11019. LF 415-417.
7. Geiger Real Estate, Inc.; 4220 N. Hanley Rd., St. Louis, MO 63121; \$45,800; STC Appeal No. 11-11020. LF 420-422.
8. Geiger Real Estate, Inc.; 8731 Link Ave., St. Louis, MO 63121; \$25,700; STC Appeal No. 11-11021. LF 427-429.
9. Geiger Real Estate, Inc.; 4222 N. Hanley Rd. , St. Louis, MO 63121; \$34,100; STC Appeal No. 11-11022. LF 432-434.
10. Geiger Real Estate, Inc.; 8708 University Place Dr., St. Louis, MO 63121; \$22,600; STC Appeal No. 11-11023. LF 444-446.
11. Geiger Real Estate, Inc.; 8706 University Place Dr., St. Louis, MO 63121; \$22,600; STC Appeal No. 11-11024. LF 449-451.
12. Geiger Real Estate, Inc.; 4230 N. Hanley Rd. , St. Louis, MO 63121; \$22,400; STC Appeal No. 11-11025. LF 454-457.<sup>2</sup>

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<sup>2</sup> Actually, this plaintiff had no right to file any State Tax Commission appeal or lawsuit over the 2011 assessment given the undisputed record fact that the Property Owner, Mr. Rothschild, executed on 8-22-11 a “**Settlement and Withdrawal of Appeal**” memorandum expressly promising to withdraw the BOE appeal and to refrain from filing “any other appeal or suit concerning the 2011 assessment of the Subject Property with the State Tax Commission or.... court of law”. LF 457.

13. Josh & Elaine, LLC; 105 Fermo Ave., Ferguson, MO 63135; \$32,300; STC Appeal No. 11-11026. LF 460-462.

14. Josh & Elaine, LLC; 107 Fermo Ave., Ferguson, MO 63135; \$39,000; STC Appeal No. 11-11027. LF 465-467.

15. Geiger Real Estate, Inc.,; 4228 N. Hanley Rd, St. Louis County, MO 63121;\$24,200; STC Appeal No. 11-13959. LF 481-483.

16. Geiger Real Estate, Inc.,; 4120 N. Hanley Rd, St. Louis County, MO 63121;\$24,700; STC Appeal No. 11-13960. LF 487-489.

17. Geiger Real Estate, Inc.,; 4102 N. Hanley Rd, St. Louis County, MO 63121;\$27,400; STC Appeal No. 11-13961. LF 494-496.

For each and every appeal plaintiffs filed for 2011 tax year to the State Tax Commission, plaintiffs' proposed values, both market and assessed values, indicated on the Complaint for Review of Assessment appeal forms plaintiffs filed with the State Tax Commission to institute their tax appeals for tax year 2011 exactly equated to the County's market and assessed values for each and every one of plaintiffs' subject properties. LF 410-412, 415-417, 420-422, 427-429, 432-434, 442-446, 449-451, 454-457, 460-462, 465-467, 468-469, 471-473, 474-476, 477-479. Plaintiffs asserted the grounds of inter-county discrimination and lack of uniformity for their 2011 tax year appeals to the State Tax Commission of Missouri. LF 73, 381.

Plaintiffs' requested remedy is to reduce the assessments on their subject properties so that the residential ratios are uniform among the following four (4) separate tax levying jurisdictions:

St. Louis Community College District

Special School District of St. Louis County

Rockwood School District

Eureka Fire Protection District

LF 73-74, 387-388.

Plaintiffs admit that the remedy they seek will result in different assessments on the same property for different taxing jurisdictions. LF 381-382, 391. Plaintiffs asserted before the State Tax Commission that they have a ratio study that shows that similar residential class real estate parcels located in Jefferson County are assessed at .85 of their market value. LF 387-392. Therefore, Plaintiffs contend they are being discriminated against because they are paying higher tax levies in the four (4) tax levying jurisdictions identified hereinabove than are neighboring properties that are undervalued by Jefferson County. LF 74. After consideration of the arguments advanced by plaintiffs' counsel and the latter's Memorandum on Clarification and Explanation which the State Tax Commission requested plaintiffs submit, the State Tax Commission's Senior Hearing Officer Luann Johnson entered an Order Dismissing Cases *Sua Sponte*. LF 381-386.



Plaintiffs filed their Application for Review with the State Tax Commission. LF 112-122. The State Tax Commission entered its Order Affirming Hearing Officer Decision Upon Application for Review. LF 73-80. Plaintiffs filed a lawsuit against the State Tax Commission, the Assessor and St. Louis County in St. Louis County Circuit Court on January 15, 2015 setting forth five (5) counts in their lawsuit, only three (3) of which remain the subject of this litigation. LF 0008-0029 and see plaintiffs' brief at p.5.

Defendants' State Tax Commission and the Assessor filed their respective Answers to Plaintiff's lawsuit and also filed separate Motions to Dismiss. LF 0030-0053; 0054-0065, 584-599. On January 6, 2016 the St. Louis County Circuit entered its Judgment granting Defendants' motions to dismiss. LF 602. This appeal ensued.

## ARGUMENT

- I. The State Tax Commission did not err in dismissing plaintiffs' appeals because Count I of the plaintiffs' petition fails to state a claim for judicial review of a contested case in that plaintiffs' theory of recovery is neither recognized nor mandated under Missouri law and the State Tax Commission had no duty to grant the relief requested by plaintiffs. (Responds to Point I)**

This Court reviews the decision of the State Tax Commission and not the decision of the trial court. *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005). This Court's review of the State Tax Commission's decision is limited to determining whether the commission's decision is supported by competent and substantial evidence upon the whole record or whether it is arbitrary, capricious, unreasonable, unlawful or in excess of the commission's jurisdiction. *Id.* It is the burden of the taxpayer to establish intentional discrimination or an assessment so grossly excessive as to be entirely inconsistent with an honest exercise of judgment. *Town and Country Racquet Club v. State Tax Commission of Missouri*, 811 S.W. 2d 403, 404 (Mo. App. 1991).

The State Tax Commission did not err in dismissing plaintiffs' appeals for 2011-2012 tax years *sua sponte* because plaintiffs' theory of recovery, as is presented in their tax appeals, is neither recognized or mandated under Missouri law as the State Tax Commission Orders dismissing plaintiffs' appeals appropriately and reasonably ruled in applying the holdings set forth in *Foster Bros. Mfg., Co. v. State Tax Commission of Missouri*, 319 S.W. 2d 590 (Mo. 1958) and in *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003). Both of those cases serve as persuasive authority to support the State Tax Commission's dismissal of plaintiffs' appeals, for all of the same reasons explained within the State Tax Commission Orders. LF 73-80 & LF 381-386. The State Tax Commission consequently correctly dismissed plaintiffs' appeals because it did not have the duty under Missouri law to hear plaintiffs' appeals of their assessments for 2011 tax year and grant the relief they requested.

Plaintiffs criticize the State Tax Commission's reliance upon the decisions in *Foster Bros Mfg. Co.* and *Westwood Partnership*. See plaintiffs' brief at pp. 10-11. Plaintiffs' criticism is without merit, for all of the same reasons articulated by the State Tax Commission in their Orders. LF 74-76, 382-385. Contrary to plaintiffs' suggestion, both of these decisions still constitute good law and have not been overruled by subsequent Missouri Supreme Court decisions.

Both of these decisions provide sufficient authoritative support for the State Tax Commission's ruling that the county which generated the assessment of the property that is the subject of the tax appeal constitutes the "authority levying the tax", as that term is used in Article X, Section 3 of the Missouri Constitution. *Foster Bros Mfg. Co.*, 319 S.W.2d at p. 595 and *Westwood Partnership*, 103 S.W.3d at p. 160. That these cases do not feature the particular fact circumstance presented in plaintiffs' appeals where the subject properties are located in taxing jurisdictions that are located in more than one county is a distinction without a difference and does not render the State Tax Commission's reliance upon these cases invalid or unreasonable. Plaintiffs sued defendant Assessor over the latter's 2011 assessments of their subject properties when plaintiffs filed appeals to the State Tax Commission of Missouri. By doing so, plaintiffs invoked the State Tax Commission's jurisdiction and authority under Section 138.100 RSMo to review and determine their 2011 appeals.

The State Tax Commission’s authority to hear and determine any appeal grounded on claims of overvaluation, discrimination or misclassification is derivative of the authority conferred by Section 138.100 RSMo upon the St. Louis County BOE.<sup>3</sup> *Foster Bros Mfg. Co.*, supra, at p. 595, and *Westwood Partnership*, supra, at p. 160 so hold.

Plaintiffs assert in their brief that “*the proceeding was one in which a hearing (by the State Tax Commission of Missouri) was required by law.*” See plaintiffs’ brief at pp. 9 and 10. Plaintiffs’ primary argument is that the State Tax Commission of Missouri had a “*duty to equalize assessments within the multi-county territorial limits of the authorities levying the tax*” citing as support Article X, Section 3 of the Missouri Constitution for which, plaintiffs argue, “*the uniformity requirements apply to all taxing jurisdictions, not just to counties.*” See plaintiffs’ brief at pp. 10-12.

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<sup>3</sup> Plaintiffs have sought to invoke the Commission’s duty to correct assessments or valuations that are “unlawful, unfair, improper, arbitrary or capricious” under Section 138.430.1 RSMo.; when, at the same time in these tax appeals, Plaintiffs do not contest and, in fact, concede that the St. Louis County Board of Equalization’s (“BOE”) 2011 assessments are correct. LF 73, 381, 410, 415, 420, 427, 432, 444, 449, 454, 460, 465, 468, 471, 474, 477, 481, 487, 494.

Plaintiffs fail to recite any controlling or persuasive Missouri case law authority that supports their argument that Article X, Section 3 of the Missouri Constitution mandates the hearing plaintiffs assert is “*required by law*” and that “*the uniformity requirements of Article X, Section 3 of the Missouri Constitution apply to all taxing jurisdictions, not just to the counties.*” See plaintiffs’ brief at pp. 10-12. Plaintiffs rely upon *State ex Rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979), *Sperry Corp. v. State Tax Commission*, 695 S.W.2d 464, (Mo. banc 1985) and *State ex rel. Commissioners of State Tax Commission v. Schneider*, 609 S.W.2d 149 (Mo. banc. 1980) as authority for their argument that defendant Assessor’s assessments of their subject property are discriminatory and non-uniform under Article X, Section 3 of the Missouri Constitution because they are asserted to be at higher assessment ratios than are similarly situated “residential” sub-class property located in Jefferson County. *Id.* Plaintiffs’ argument set forth in their brief at pages 10-12 that the Commission had a duty to equalize plaintiffs’ assessments within the multi-county territorial limits of the authorities levying the tax is without merit since none of cases cited and relied upon by plaintiffs are apposite authority since none feature the particular fact pattern present in this case.

Specifically, plaintiffs' reliance upon the Missouri Supreme Court's decision in *State ex Rel. Cassilly* is misplaced. *State ex rel. Cassilly* is distinguishable on its facts, and is also inapposite and is not controlling legal precedent here because the factual context in that case concerned allegations and proof of disparate and non-uniform treatment by the St. Louis County Assessor of the same sub-class (residential) of real estate, all of which was located within that same county.

As the Missouri Supreme Court held:

“Article X, Section 3 of the Constitution of Missouri requires that taxes “shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” The Stipulation, *supra*, evidences the fact that this constitutional provision is being violated. It is apparent that taxes are not uniform as between new homes and homes not assessed since 1960.” *State ex rel. Cassilly*, 576 S.W.2d at p.328.

The Court's holding in *State ex rel. Cassilly* which plaintiffs misconstrue, does not support plaintiffs' argument that the State Tax Commission has the duty or responsibility, under the Commission's inter-county equalization authority, to grant the relief that plaintiffs request in Count I of their petition. Instead, the Court in *State ex rel. Cassilly* held that the State Tax Commission possesses the duty, right and responsibility to exercise general supervisory authority under Section 138.410 RSMo over all Missouri County Assessors and boards of equalization

throughout the State of Missouri. *State ex rel. Cassilly* 576 S.W.2d at p. 329.

Additionally, *Savage v. State Tax Commission*, 722 S.W. 2d 72 (Mo. banc 1986) does not support plaintiffs' argument. The Missouri Supreme Court in that case held that acts (or failures to act) by Missouri County Assessors which have the effect of intentional discrimination, or "discrimination in effect", violate the federal and state constitutions, as well as proof of intentional discrimination, and it also held that discrimination in effect is only established when the taxpayers alleging "discrimination" show through a properly conducted and statistically representative ratio study that their assessments are so "grossly excessive as to be entirely inconsistent with an honest exercise of judgment." *Savage v. State Tax Commission*, 722 S.W.at p. 78-79.

Such "discrimination in effect" is only demonstrated by measuring the average assessment level for the particular sub-class of real property located within the county at issue in a discrimination case and comparing that average level of assessment against the actual assessment level of the subject property applied by the Missouri County Assessor affected by such discrimination case to determine whether the disparity between the average and actual assessment levels for such subject property within the county is "grossly excessive". *Id.* The *Savage* case, therefore, is clearly supportive of the validity of the State Tax Commission's Orders dismissing plaintiffs' appeals and do not support plaintiffs' convoluted and



incoherent theory of recovery in their appeals because the analysis of “discrimination in effect” begins and ends with a review only of the assessments (or failures to assess) of the Missouri County Assessor in whose county the appealed property or properties are located.

As the Court in *Savage*, 722 S.W. at p. 79 held:

“A taxpayer has the right to have his “assessment reduced to percentage of that value at which others are taxed...” *Sioux City Bridge Co., v. Dakota County, Nebraska*, 260 U.S. 441, 446 43 S. Ct. 190, 192 67 L.Ed. 340 (1923); *Breckenridge Hotels Corp. V. Leachman*, 571 S.W.2d 251,252 (Mo. banc. 1978). See also *Drey v. State Tax Commission*, 345 S.W.2d 228, 238 (MO. 1961) (**Taxpayer’s assessed valuation should be set at the assessment “placed upon the general mass of other taxable property in the county.”**) [emphasis added].

Accordingly, *Savage* does not hold nor mandate that the assessments of any sub-class of real property by Missouri County Assessor “A” can be reviewed and reduced by actions taken by the State Tax Commission due to the alleged failures to assess property within that same sub-class committed by Missouri County Assessor “B” so that plaintiffs’ argument of “inter-county equalization” can be realized.<sup>4</sup> Instead, the Court’s holding in *Savage* makes clear and explicit that any taxpayer’s claims of discriminatory assessment are to be measured only by the comparison of the disputed assessment against the assessment placed upon the general mass of other, similarly situated property in the county, not by reference to the assessment placed upon other property in a neighboring county where there are asserted to be taxing districts that cross county territorial lines.

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<sup>4</sup> In other words, Missouri law does not sanction or support Plaintiffs’ lawsuit against County Defendants whose assessments of plaintiffs’ subject properties for 2011 are admittedly correct in order to remedy an under-assessment of similarly situated property in a neighboring county like Jefferson or Franklin County.

As noted hereinabove, plaintiffs fail to recite any controlling or persuasive Missouri case law or statutory authority that supports or demonstrates the validity of their inter-county equalization duty argument they presented under Point 1 of their brief. Similarly, plaintiffs fail to recite any controlling or persuasive Missouri case law or statutory authority that supports the remedy they request under Count I of their petition. The Court is reminded again of the basis for plaintiffs' cause of action in this case; i.e., that defendant Assessor's assessments of plaintiffs' properties for 2011 tax year are discriminatory. As such, under Missouri law, plaintiffs exclusively bear the burden to establish proof of such discrimination in defendant Assessor's assessments, either intentional or discrimination by effect. *Town and Country Racquet Club*, 811 S.W.2d at p. 404. Plaintiffs have failed to do so, both with their cause of action and with their arguments in their brief stated hereinabove that the State Tax Commission is required by Missouri law and the Missouri Constitution to hold a hearing upon plaintiffs' claims of discrimination asserted in their tax appeals for 2011 tax year, and to "*equalize the taxes assessed against plaintiffs' properties within the territorial limits of the authorities levying the tax*", as plaintiffs assert. See plaintiffs' brief at p. 12.

Finally, plaintiffs assert in their brief at pp. 10-12 that they are “*aggrieved by a final decision in a contested case*”.<sup>5</sup> Such assertion is specious and without merit given the undisputed record fact that plaintiffs, for each and every appeal they filed with the State Tax Commission of Missouri instituting their underlying tax appeals for 2011 tax year, expressly conceded the correctness of the County’s valuations and assessments of their subject properties on the face of each and every Complaint for Review of Assessment appeal form their agent(s) filed with the State Tax Commission of Missouri on their behalf. LF 410, 415,420, 427, 432, 444, 449, 454, 460, 465, 468, 471, 474, 477, 481,487, 494. For all of the reasons set forth hereinabove, defendant Assessor maintains that the State Tax Commission of Missouri did not err in dismissing plaintiffs’ appeals.

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<sup>5</sup> Plaintiffs’ standing as “aggrieved persons” is questionable given the fact of their concession to the County defendants’ values of their subject properties for 2011 tax year, and also given the fact that Missouri law requires that the interest the person seeks to defend must be one the law protects. *State ex rel. St. Louis Retail v. Kraiberg*, 343 S.W.3d 712,716-717 (Mo. App. E.D. 2011). That is not the case here, for all of the reasons County defendants have discussed previously in this Point of their brief.

**II. The St. Louis County Circuit Court did not err in entering judgment for defendants, ruling that plaintiffs' petition fails to state a claim upon which relief can be granted, because Count II of plaintiffs' petition fails to state an alternative claim for relief for declaratory judgment, in that there is no justiciable controversy between the parties because plaintiffs have conceded the correctness of St. Louis County's and the Assessor's assessments for 2011 tax year. (Responds to Point III)**

When a petition is dismissed under Rule 55.27(a)(6) for failure to state a claim upon which relief may be granted, the standard of review is de novo.

*Anderson v. Union Electric Company*, 463 S.W.3d 783(Mo. 2015). Thus, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action. *State ex. rel. Henley v. Bickel*, 285 S.W.3d 327 (Mo. 2009).

“When reviewing a motion to dismiss for failure to state a claim upon which relief may be granted, no attempt is made to weigh any facts alleged as to whether they are credible or persuasive; instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or a cause that might be adopted in that case.” *Willits v. Peabody Coal Co., LLC.*, 400 S.W.3d 442, 447 (Mo. App. E.D. 2013)(quoting

*State ex. rel. Henley v. Bickel*, 285 S.W.3d 327,329 (Mo. banc 2009). The appellate court may affirm a trial court's dismissal on any ground before the court in the motion to dismiss. *Willits* at 448. In fact, if a trial court granting a motion to dismiss reaches a correct result for the wrong reason, an appellate court must still affirm. *Id.*

Plaintiffs argue under Point III of their brief that the St. Louis County Circuit Court erred in entering a judgment dismissing plaintiff's' petition because they argue that Count II of their petition states an alternative claim for declaratory judgment in that the action of the State Tax Commission in dismissing plaintiffs appeals together with the asserted failure of the State Tax Commission to perform inter-county equalization to confer upon plaintiffs the specific remedy they demand for 2011 tax year have created a justiciable controversy and plaintiffs have no adequate remedy at law. Plaintiffs' arguments are without merit and this Court should reject the same for several reasons.

First, for the same reasons defendants' Assessor and St. Louis County have detailed previously in responding hereinabove to Point I arguments set forth in plaintiffs' brief, the action of the State Tax Commission in dismissing plaintiffs appeals was justified, appropriate and the State Tax Commission had no duty to equalize plaintiffs' assessments within the multi-county territorial limits of the authorities levying the tax as requested by plaintiffs.

Second, regarding the matter of whether a satisfactory case has been made by plaintiffs for an award of declaratory judgment against defendants Assessor and St. Louis County, Missouri case law is quite clear and straightforward in requiring that there be a justiciable controversy that presents a real, substantial presently existing controversy admitting of specific relief. *Schaefer v. Koster*, 342 S.W.3d 299,300 (Mo. banc 2011). A substantial controversy exists between parties with genuinely adverse interests. *Foster v. State*, 352 S.W.3d 357,359 (Mo. banc. 2011). Plaintiffs assert that since the "*prayer for relief* (as plead in Count II of their Petition) *seeks a refund of taxes in amounts to be determined by the court*" that this prayer suffices as satisfying the requirement of proof of an existing and substantial controversy between the parties. See plaintiffs' brief at p. 18.

Plaintiffs fail, however, to recite under Point III of their brief any controlling or persuasive Missouri case law authority to support that argument. More importantly is the undisputed record fact that there is actually no substantial

controversy between the parties with genuinely adverse interests in this case as demonstrated by the fact that plaintiffs have conceded the correctness of the valuations and assessments of St. Louis County's assessments of their subject properties for 2011. LF 410, 415,420, 427, 432, 444, 449, 454, 460, 465, 468, 471, 474, 477, 481,487, 494. Specifically, plaintiffs agreed with and accepted the valuations and assessments of St. Louis County in their Complaint for Review of Assessment appeal forms they filed with the State Tax Commission for 2011 tax year. *Id.* Therefore, there is no basis or predicate for the entry of declaratory judgment against defendants Assessor and St. Louis County because the plaintiffs conceded that the assessments they allege to be discriminatory and not uniform are correct.

Additionally, plaintiffs argue on page 19 of their brief that the "*specific relief requested in the appropriate relief*" stating that "*When assessments are discriminatory and not uniform, the remedy is to reduce these assessments so that the residential assessment ratios are uniform among the taxing jurisdictions*", reciting as authority for such argument, among other cases, *Savage*.

Plaintiffs' argument is without merit because plaintiffs misconstrue and misstate the Court's holding in *Savage*. Again, the Court's holding in *Savage* is quite clear and explicit that a taxpayer has the right to have his assessment reduced to the percentage of that value at which others owning similarly situated real estate in the



county are assessed since a taxpayer's assessed valuation should be set at the assessment placed upon the general mass of other taxable property in the county. *Savage*, 722 S.W.2d at p. 79. The Court's holding in *Savage* however, does not support or validate plaintiff's inter-county equalization argument, or requested remedy, for reasons discussed previously in this brief. Plaintiffs also argue at p. 19 of their brief that the remedy they seek which is "*to reduce plaintiffs' assessments so that the residential assessment ratios are uniform among the taxing jurisdictions*" is the "*appropriate relief.*" Such relief is far from appropriate or just. Instead, what plaintiffs actually seek is to have the State Tax Commission exercise its inter-county equalization powers in such a manner as to arbitrarily and capriciously reduce by no less than fifteen percent (15%) the admittedly correct assessed valuations imposed by the St. Louis County BOE for 2011 to insure that these same properties receive the same "appraisal ratio" of 85% as is allegedly being applied by the Jefferson County assessment authorities to residential class real estate within Jefferson County.

It is undisputed that plaintiffs admitted that County defendants have not overvalued or incorrectly assessed any of plaintiffs' subject properties for 2011 and 2012 tax years. County defendants' assessments of plaintiffs' properties for 2011 are without fault. The County defendants' admittedly correct assessments of plaintiffs' subject properties for 2011 and 2012 tax years are at risk of receiving

arbitrary, capricious and completely unwarranted across-the-board fifteen (15%) percent reductions due to the alleged under-assessment of residential class real estate allegedly committed for 2011 and 2012 tax years by the Jefferson County assessment authorities. Such a remedy, if it were to be granted by the State Tax Commission or the Court, would be outrageously unfair and discriminatory to the owners of all other similarly situated residential properties in St. Louis County, Missouri whose 2011-2012 assessments will not be benefited by the grant of such an extraordinary remedy reserved exclusively for plaintiffs, and has no support or justification whatsoever in any Missouri constitutional provision or Missouri case law authority cited by plaintiffs within the ambit of Count I of their petition or their brief filed with the Court. Plaintiffs seek an extraordinary and unwarranted remedy (a windfall, actually) devoid of any support in Missouri case law for which the State Tax Commission correctly ruled in their Orders Dismissing plaintiffs appeals. St. Louis County taxpayers not affected by these appeals are at risk of being unfairly penalized and ordered to pay for the Jefferson County assessment authorities' alleged 2011 underassessment of residential class property located in Jefferson County. That is not fair and is not warranted or required under Missouri law. Accordingly, Count II of plaintiffs' Petition fails to state a claim upon which relief can be granted and the trial court's order granting dismissal of plaintiff's cause of action should be affirmed.

**CONCLUSION**

For the foregoing reasons, the judgment of the St. Louis County Circuit Court and the State Tax Commission's Order dismissing plaintiffs' tax appeals for 2011 tax year, should be affirmed.

Respectfully Submitted,

PETER J. KRANE  
COUNTY COUNSELOR

/s/ Edward W. Corrigan  
Edward W. Corrigan MBE 33332  
Associate County Counselor  
St. Louis County Government Center  
41 S. Central, Ninth Floor  
Clayton, MO 63105  
(314)615-7042 tel.  
(314)615-3732 fax  
Ecorrigan@stlouisco.com

Attorneys for Defendants/Respondents  
St. Louis County, MO and Jake  
Zimmerman, Assessor

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 22<sup>nd</sup> day of August, 2016 the foregoing was filed electronically with the Clerk of Court and thereafter to be served electronically upon Bruce A. Morrison, Esq., counsel for Plaintiffs-Appellants, and Emily A. Dodge, Esq., counsel for State Tax Commission of Missouri, by operation of the Missouri Courts e-filing system.

/s/ Edward W. Corrigan

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word and contains 5,170 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure. The font is Times New Roman, proportional spacing, 14-point type. The full text of this brief has been served on each party separately represented by counsel and is electronically filed after Respondent's Attorney scanned the electronic file for viruses and determined that the file is virus-free.

/s/ Edward W. Corrigan