Summary of SC100219, *Crown Diversified Industries Corp., et al. v. Jake Zimmerman, Assessor, St. Louis County, Missouri*

Appeal from the St. Louis County circuit court, Judge Brian H. May
Argued and submitted January 4, 2024; opinion issued February 14, 2024

Attorneys: The taxpayers were represented by Christopher O. Bauman, Mark R. Sanders and Thomas H. Limbrick of Blitz, Bardgett & Deutsch LC in St. Louis, (314) 863-1500. The assessor was represented by Jeremy D. Shook and Robert F. Murray of Shands, Elbert, Gianoulakis & Giljum LLP in St. Louis, (314) 241-3963.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The St. Louis County assessor appeals from the circuit court's judgment reversing the state tax commission's decision and remanding (sending back) the case for retrial of the commercial property owners' discrimination claims. In a 5-2 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri vacates the circuit court's judgment and reinstates the state tax commission's decision. The assessment level used to analyze a claim of discriminatory assessment and taxation is based on the assessed value used to determine tax liability. The commission's findings with respect to sales chasing and regressivity are supported by competent and substantial evidence.

Judge Paul C. Wilson dissents. He would affirm the circuit court's judgment, finding the correct method of calculating the actual assessment of property for purposes of a discrimination claim is by reviewing the assessor's original calculations.

Judge Cristian M. Stevens of the Missouri Court of Appeals, Eastern District, sat in this case by special designation in place of Judge Kelly C. Broniec.

Facts: In 2017, the St. Louis County assessor assessed commercial properties in the county using a computer-assisted system to estimate the fair market value of each individual commercial property. The assessor's staff conducted final reviews of all improved properties to determine whether the computer-generated fair market value estimates required adjustments. After the properties' fair market values were determined, the assessor multiplied the values by the 32-percent statutory assessment rate to determine each property's tax liability. Following the assessments, 2,625 commercial property owners appealed to the county board of equalization and then the state tax commission alleging the assessments were discriminatory. In 738 of the appeals, the property owners' fair market value was reduced, resulting in decreased tax liability. Before the state tax commission, all the discrimination claims were consolidated for a single, evidentiary hearing. The commission concluded there was no substantial or persuasive evidence of discrimination in the assessments. In doing so, the commission relied on the actual assessed values as adjusted by the board or commission. The property owners moved for judicial review. The circuit court reversed the commission's decision and remanded the case for retrial on the property owners' discrimination claims. The assessor appeals.

VACATED.

Court en banc holds: (1) The assessment level used to analyze a claim of discriminatory assessment and taxation is based on the final assessed value used to determine tax liability. An assessment is discriminatory if it causes the property owner to bear more than their allocable share of the property tax burden by subjecting the owner to taxes not imposed on others of the same class. Because the purpose of the discrimination remedy is to relieve a property owner from a disproportionate tax burden, it follows that the level of assessment is based on the valuation decision establishing the property owner's actual tax liability. The statutorily prescribed steps in the assessment process make it clear that, when the board or commission corrects an erroneous assessment, the assessor's original assessed value is discarded, and the assessment level determining the actual tax liability is based on the assessed value determined by the board or the commission. Accordingly, court of appeals precedent suggesting the actual assessment level is based on the assessor's original value, even when adjusted by the board or commission, is overruled.

(2) Competent and substantial evidence supports the commission's finding there was no practically significant sales chasing. Sales chasing undermines the validity of a ratio study by including properties selectively reappraised to their sale price instead of being valued by the assessor's normal valuation procedures. This Court defers to the commission's findings of fact and recognizes the proper methods for valuing and assessing property are delegated to the commission. The commission determined a primary way to test for sales chasing is to compare the values of recently sold properties with unsold properties. The assessor's expert testified sales chasing may be practically significant if the median value of recently sold properties is 5 percent higher than other properties. The expert concluded there was no significant indication of sales chasing in the 2017 assessment data because the median value of sold properties was only 3.38 percent higher than the value of unsold properties.

(3) Competent and substantial evidence supports the commission's adoption of a median common assessment level in evaluating regressivity. The commission found the preferred metric for detecting regressive assessment is the price-related bias coefficient. Relying on recognized standards, the commission concluded the bias coefficient should fall between -0.05 and 0.05 and measures within -0.10 and 0.10 are generally acceptable. Both experts calculated bias coefficients within the acceptable range. The commission also concluded a value-weighted mean or median is not the best measure of the common assessment level for all commercial properties because it emphasizes the assessment level for high-value properties. Based on this evidence, the commission concluded the property owners failed to produce persuasive evidence of actionable regressivity.

(4) The assessment level used to establish tax liability was not grossly excessive. Neither Missouri courts nor the commission has established a bright-line test to identify what constitutes a grossly excessive assessment as opposed to a mere *de minimus* error in judgment. The commission repeatedly has concluded disparities of less than 15 percent are not grossly excessive. The common assessment levels in this case were between 4.6 and 6.3 percent below the 32-percent assessment level applied to the owners' properties. The property owners provide

no persuasive authority or argument showing the single digit disparity in this case is grossly excessive.

(5) The hearing officer did not abuse her discretion by quashing subpoenas to depose the assessor and several of his appraisers. Allowing the property owners to depose senior staff rather than the assessor is consistent with this Court's recognition that persons lower in the organization may have the same or better information than organizational leaders. Additionally, the requests to depose the appraisers were made days prior to the evidentiary hearing despite the identities of such appraisers being known early in the discovery process. Under the circumstances, there is no persuasive basis for finding an abuse of discretion in balancing the need for discovery with the goal of avoiding future delay.

(6) The hearing officer did not abuse her discretion by denying access to the independent appraisal and computer-generated appraisal system. The hearing officer entered an unambiguous scheduling order based on the parties' input. The parties conducted substantial discovery over several months while they prepared. The hearing officer resolved numerous discovery motions and conducted several motion hearings. The record shows the hearing officer and the commission carefully considered the discovery requests, specifically weighing the delay versus the potential for gaining relevant and useful information.

Dissenting opinion by Judge Wilson: The author would affirm the circuit court's judgment. He would conclude the correct method of calculating the actual assessment of property is by reviewing the assessor's original calculations. He believes this Court's precedent has made clear that a discrimination claim is a claim against the assessor; therefore, the assessor's valuation is the one that should be used in determining whether discrimination occurred.