

No. A06-1193
STATE OF MINNESOTA
IN SUPREME COURT

Irongate Enterprises, Inc.,

Relator,

vs.

County of St. Louis,

Respondent.

REPLY BRIEF OF RELATOR IRONGATE ENTERPRISES, INC.

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INTRODUCTION

Relator, Irongate Enterprises, Inc. (“Irongate”) submits this reply brief in response to the Brief of Respondent County of St. Louis (“St. Louis County”). St. Louis County failed to refute Irongate’s argument or to address the central issue of statutory construction in this case – whether the Legislature’s omission from Minn. Stat. § 278.05, subd. 6(a) (“the 60 Day Rule”) of the terms “lease” or “lease information,” in contrast to its inclusion of those terms in a related statute, is dispositive evidence that the legislature did not intend the 60 Day Rule to require the production of leases. The rest of St. Louis County’s arguments are based on quotations taken out of context and/or misinterpretations or mischaracterizations of the existing case law. Accordingly, St. Louis County’s arguments should be disregarded. This Court should overturn the Tax Court’s decision and reinstate Irongate’s petition.

ARGUMENT

I. ST. LOUIS COUNTY HAS CONCEDED THAT MINN. STAT. § 278.05, SUBD. 6(A) DOES NOT REQUIRE THE PRODUCTION OF LEASES.

In its opening brief, Irongate described in detail why the plain language of the 60 Day Rule does not extend to leases. As Irongate explained, the language contained in the 60 Day Rule is nearly identical to the language of Minn. Stat. §13.51, subd. 2, a related statute governing the data practices treatment of assessors’ data, including data produced by taxpayers in connection with property tax appeals under Minn. Stat. Chapter 278. There is, however, one significant difference between the two statutes. While Minn. Stat. §13.51, subd. 2 expressly *includes* the term “lease information,” the 60 Day Rule

expressly *excludes* the term “lease information.” As Irongate explained, this difference establishes the Legislature’s intent that the terms “income and expense figures, verified net rentable area, and anticipated income and expenses” contained within the 60 Day Rule do not include “lease information,” and therefore, that leases need not be produced under the 60 Day Rule. (See Brief of Relator at pp. 14-17.)

St. Louis County notably failed to refute these facts or address this argument in its responsive brief. Presumably, it failed to do so because it has no ability to do so. The truth is that these facts are not in dispute. The 60 Day Rule does not contain any reference to lease information, but instead contains a subset of the categories found in § 13.51, subd. 2. The Legislature’s decision to include lease information as a separate category in one statute but not the other is telling. This Court should consider St. Louis County’s failure to address Irongate’s argument regarding this issue as an implied concession that the clear language of the 60 Day Rule does not require the production of leases or lease information.¹

II. THE MINNESOTA SUPREME COURT AND MINNESOTA TAX COURT CASES CITED BY RESPONDENT DO NOT REQUIRE A TAXPAYER TO PROVIDE DUPLICATIVE INCOME AND EXPENSE INFORMATION CONTAINED WITHIN LEASES OR LEASE ABSTRACTS IN CONNECTION WITH THE 60 DAY RULE.

St. Louis County relies upon a number of direct quotes and indirect citations from previous Minnesota Supreme Court cases to support its argument that Irongate should have produced a copy of all of its leases in connection with the 60 Day Rule.

¹ St. Louis County also failed to address Irongate’s argument and supporting case law that any ambiguity in the statute, to the extent such ambiguity exists, should be resolved in favor of the taxpayer.

Unfortunately, St. Louis County has either mis-cited, or has selected quotations from these decisions out of context. When these direct quotes and indirect citations are corrected and considered in their proper context, they do not support St. Louis County's position.

A. **BFW Co. v. County of Ramsey Does Not Require the Production of Income and Expense Information in Multiple Forms.**

St. Louis County claims that under BFW Co. v. County of Ramsey, 566 N.W.2d 702 (Minn. 1997), a taxpayer must produce “*any and all* income and expense information within its possession” in connection with the 60 Day Rule. (Brief of Respondent St. Louis County, p. 5, emphasis added.) St. Louis County overstates the holding in BFW. This Court's decision in BFW did not address the scope of the informational categories found within the 60 Day Rule; instead, it concerned whether the statute's “unavailability” clause extended to unaudited income and expense statements. The Court concluded that the unaudited statements must be produced, because a taxpayer must produce “all information within its possession.” BFW, 566 N.W.2d at 705. This statement, however, was not made in a vacuum. As detailed in Irongate's opening brief, this Court's reasoning in BFW was based on both parties' implicit agreement that the particular category of information in dispute in that case – the owner and landlord's *income and expense statements* for the subject property – fell within the ambit of the 60 Day Rule. Thus, the statement that a taxpayer must produce “all information within its possession” was limited to that one particular category – *income and expense statements*. Nothing in BFW requires a court or taxpayer to consider other categories of information, such as

leases. Nor does BFW authorize a court to expand the statute to include any and all *documents*, such as leases, instead of income and expense information, as the Legislature has expressly prescribed, especially where the income and expense information contained within the leases was timely produced.

St. Louis County does not dispute that Irongate produced the relevant income and expense information within the deadline under the 60 Day Rule. St. Louis County claims only that the income and expense information Irongate provided was in the aggregate for the property as a whole, and that the documentation Irongate provided did not break that information down on a detailed lease by lease basis. Nothing in the 60 Day Rule requires such a detailed breakdown.

In fact, the Minnesota Tax Court has considered arguments similar to St. Louis County's argument in this case and concluded that such detail is not required under the 60 Day Rule. In LG&E Power Services, Inc. v. County of Lincoln, File No. C4-95-055 (Minn. Tax Ct. Order May 18, 1999), the taxpayer produced a one-page income and expense statement, which even the Tax Court described as "skeletal at best." Id. The County argued that without more, the information was insufficient for its appraiser to reach a conclusion under the income approach. In ruling in favor of the taxpayer, the Tax Court cited the Supreme Court's holding in BFW that "all [income and expense] information to which petitioner has access' must be provided." Id., citing BFW, 566 N.W.2d at 705. However, the Tax Court cautioned that BFW did not:

hold that all the backup data support memorandum and marginally relevant underlying accounting information is also required. To make such a ruling would impose a huge and unworkable burden on the taxpayer. Such a

ruling would also put taxpayers at risk of dismissal while never knowing how much is enough. . . . The information provided should be sufficient to allow an expert to begin (if not complete) reaching a decision regarding value. Additional material may be useful and discoverable but is not mandated within the 60 Day Rule.

Id.

Ultimately, the issue here is one of the scope of the 60 Day Rule's informational categories. For example, the lease abstracts in this case, about which St. Louis County makes much ado, contains information dating back as far as 1979, 25 years prior to the valuation date in dispute. (Respondent's App.- 1.) St. Louis County cannot reasonably claim this information is relevant, yet it argues that under the 60 Day rule, all of this information should have been produced.

The bottom line is that requiring a taxpayer to produce a copy of every one of its leases in connection with the 60 Day Rule despite already producing its income and expense information in another form, could in many cases, like here, require the production of hundreds if not thousands of pages of duplicative documentation, much of which would have marginal if any relevance to the valuation issues in dispute. That the Legislature did not intend such a requirement is beyond doubt. Given that the general purpose of Chapter 278 is to provide:

an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the . . . court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed

BFW Co. v. County of Ramsey, 566 N.W.2d 702, 705 (Minn. 1997), it would be absurd to interpret the 60 Day Rule so as to render a taxpayer's Chapter 278 remedy inadequate,

inordinately time-consuming, and unnecessarily complicated. Moreover, it would contravene the Minnesota Legislature's guidance that when interpreting statutes, courts are directed to avoid an absurd result. See Minn. Stat. § 645.17 (providing that courts should presume that the Legislature does not intend a result that is "absurd, impossible of execution, or unreasonable," and intends the entire statute to be effective and certain).

B. Kmart Corp. v. County of Stearns Does Not Require the Production of All Leases in Connection With the 60 Day Rule.

St. Louis County asserts that in Kmart Corp. v. County of Stearns, 710 N.W.2d 761 (Minn. 2006) ("Stearns County"), this Court held that the 60 Day Rule requires a taxpayer to produce any and all information of any sort that may be in any way be useful or relevant to the appraisal process. Accordingly, St. Louis County argues that because St. Louis County's expert claimed that a review of each lease was, in his opinion, required to prepare his final appraisal report, Irongate should have produced a copy of each lease in connection with the 60 Day Rule. As with its selective citations from BFW, St. Louis County, once again, cites the holding of Stearns County out of context.

In Stearns County, this Court did not hold that a taxpayer must produce any and all information and documentation of any sort that may have some marginal relevance to the appraisal process. Rather, as in BFW, the holding in Stearns County was limited to the facts and circumstances of that case.

In Stearns County, this Court was presented with the question of whether information regarding tenant-paid real estate expenses must be produced in connection with the 60 Day Rule. This Court ruled that such *expense information* was relevant to the

appraisal process, and therefore should be produced. However, unlike the term “lease,” which is found nowhere in the 60 Day rule, the term “expense information” is one of the categories of information expressly identified in the 60 Day Rule. Moreover, this Court’s holding in Stearns County expressly applied only to “*expense information* that is useful and relevant to the appraisal process.” 710 N.W.2d at 766, emphasis added. Like BFW, Stearns County does not require a court or taxpayer to consider other categories of information, such as leases. Nor does Stearns County authorize a court to expand the statute to include any and all *documents*, such as leases, instead of expense information, as the Legislature has proscribed, especially, like here, where the expense information contained within the leases in question was already produced.

It should be noted that the Tax Court’s decision in Stearns County was broader than the Supreme Court’s ultimate holding. In its decision, the Tax Court concluded that:

[w]hether or not the information is necessary for the purposes of valuation is determined after the 60 Day period. Relevance for a chapter 278 proceeding is any and all information available for the income-producing property. A bright-line itemization rule cannot be created to apply to every property assessment challenge. Given the policy set by the legislature and the precedent of BFW and Becker, a petitioner would be well-advised to produce all information rather than withhold when unsure about meeting the 60 Day Rule requirements.

Kmart Corp. v. County of Stearns, File Nos. CX-00-404, *et al.* (Minn. Tax Ct. March 3, 2005). While affirming the Tax Court’s final conclusion that tenant-paid real estate expenses must be provided, the Supreme Court declined to endorse the broader scope of the Tax Court’s decision, and instead narrowed its scope by holding only that because “tenant-paid real estate expenses are useful and relevant to the appraisal process, we

interpret the 60-day rule to require that they be produced. . .” Kmart Corp. v. County of Stearns, 710 N.W.2d at 766.

St. Louis County also points out that this Court discussed the relevancy of lease information to the appraisal process in Stearns County. Accordingly, St. Louis County argues that because this Court concluded that expense information relevant to the appraisal process must be produced, the subject property’s leases must be produced as well. (Brief of Respondent St. Louis County, p. 6.) There are two problems with St. Louis County’s position.

First, St. Louis County’s argument ignores that this Court’s decision in Stearns County expressly related only to *expense information*, not to leases. Second, the quotation relied upon by St. Louis County does not support the conclusion that the leases of the subject property are required. To the contrary, the quotation, which originally came from the International Association of Assessing Officer’s publication Property Appraisal and Assessment Administration, (Joseph K. Eckert ed., 1990), discusses the importance that an appraiser evaluate the leases of *comparable properties*, not of the subject property itself. Stearns County, 710 N.W.2d at 767.

Ultimately, St. Louis County relies heavily upon the affidavit of Mel Hintz, the St. Louis County Assessor. Mr. Hintz detailed why, in his opinion, the review of leases was relevant and concluded that “[a] review of the actual lease documents is required to prepare a credible appraisal.” (RA-40.) The problem is that the 60 Day Rule is not and never was designed to provide an assessor with every document he or she might determine necessary to complete a formal appraisal report. As even the Minnesota Tax

Court has recognized, it would be impossible to make such a determination within the confines of the 60 Day Rule. See Kmart Corp. v. County of Stearns, File Nos. CX-00-404, *et al.* (Minn. Tax Ct. March 3, 2005) (stating that whether or not the information is necessary for the purposes of valuation is necessarily determined after the 60 day period has run.) This is particularly true where a taxpayer is being asked, in effect, to anticipate every scrap of information its *adversary* may ultimately decide to use in preparing an appraisal. No taxpayer, no matter how clairvoyant, could ever be expected to succeed in that task within the first 60 days of a property tax petition.

As this Court has observed, the purpose of the 60 Day Rule is to allow the assessor sufficient information to *begin* the valuation process. Kmart Corp. v. County of Becker, 639 N.W.2d 856, 861 (Minn. 2002) (emphasis added). See also, LG&E Power Services, Inc. v. County of Lincoln, File No. C4-95-055 (Minn. Tax Ct. Order May 18, 1999) (concluding that the information provided should be sufficient to allow an expert to begin reaching a decision regarding value.) The County's argument that all information necessary to *complete* the process must be provided contravenes the statutory language, the case law, and the purpose of the statute.

C. The 60 Day Rule is Not a Substitute for Discovery.

As acknowledged by St. Louis County, adoption of its proposed interpretation of the 60 Day Rule would effectively obviate the need for discovery in connection with property tax appeals of income-producing property. There is no evidence that was the Legislature's intent when it enacted the 60 Day Rule.

St. Louis County relies upon Kmart Corp. v. County of Becker for the proposition that requiring a county to conduct discovery to obtain information it deems necessary for trial improperly shifts the burden in a Chapter 278 proceeding from the taxpayer to the county. (Brief of Respondent St. Louis County, p. 10.) St. Louis County misinterprets Becker County, and reaches an incorrect conclusion based upon that misinterpretation. The Supreme Court in Becker County did not hold that the 60 Day Rule obviates the need for any discovery in a property tax appeal.

In Becker County, the issue was whether the taxpayer (Kmart) had to provide the county with information regarding whether its overage rent clause had been triggered in order to satisfy the 60 Day Rule. Kmart argued that if it failed to provide any information regarding the matter, the County should assume the clause had not been triggered, and therefore no overage rent was paid. The Supreme Court determined that Kmart was wrong, because to require the County to assume information *in the context of the 60 Day Rule*, would shift the statutorily created burden of producing the information from the taxpayer to a burden of collecting the information by the County. Kmart Corp. v. County of Becker, 639 N.W.2d at 860. The Supreme Court, however, said nothing about the effect on the 60 Day Rule on subsequent discovery of additional information not called for by the 60 Day Rule.

The facts here are dispositively different. Here, Irongate does not suggest that St. Louis County should make any assumptions, nor does it seek to shift the burden of proof in connection with the 60 Day Rule. To the contrary, Irongate has produced all income and expense information within its possession or control relevant to its case at trial.

Irongate's position was, and continues to be, that the actual leases are not relevant or necessary for it to meet its ultimate burden of proof. (RA- 59-63.)

Production under the 60 Day Rule has nothing to with discovery or the ultimate burden of proof at trial. Irongate does not dispute that a taxpayer must produce sufficient information at trial to establish the assessment is wrong. However, the taxpayer's burden should not extend to reading the mind of its adversary, and determining within the first 60 days after filing its petition, what information or documentation its adversary may argue many months or even years later it needs to refute the taxpayer's evidence at trial. Any such requirement would be an impossible burden, effectively placing the taxpayer's right to appeal squarely in the hands of his adversary, who could (and has), long after the deadline has expired, argue that some small piece of additional information might have some marginal relevance to the issues at trial.

The rules of procedure "reflect a preference that actions be determined on the merits." Patterson v. Wu Family Corp., 608 N.W.2d 863, 867 (Minn. 2000). Although the present controversy involves a statute, and not a procedural rule, the statute is procedural in nature. To construe the statute in a way that ignores its plain language would permit assessors to set traps for the unwary, would cause parties to lose their rights without notice, would fly in the face of this Court's preference to hear parties' claims on the merits, and would create uncertainty for all future Tax Court litigants. See e.g., Commandeur LLC, et al. v. Howard Hartry, Inc., 724 N.W.2d 508 (Minn. 2006) (providing that procedural rules should be read in a manner that create certainty and permit cases to be heard on their merits.)

D. The Two Minnesota Tax Court Cases Cited by Respondent Are Factually Different From the Present Case and Do Not Constitute Precedent.

Finally, St. Louis County argues that under 1100 Nicollet Mall, LLP v. County of Hennepin, File Nos. TC-29591 *et al.* (Minn. Tax Ct. March 25, 2004) and Outboard Services Co. v. County of Cass, File No. C6-04-486 (Minn. Tax Ct. Feb. 2, 2005), Irongate was required to produce its leases in connection with the 60 Day Rule. As explained in detail in Irongate's opening brief at pp. 19-22, the facts of both of these cases are dispositively different from the facts of this case. Moreover, as also explained in detail in Irongate's opening brief at p. 22, under the Supreme Court's decision in Stearns County, these tax court cases have no precedential value. Kmart Corp. v. County of Stearns, 710 N.W.2d at 769. Accordingly, other than to direct the Court to the pertinent sections of its opening brief, Irongate will not repeat its arguments regarding these cases herein.

III. IRONGATE'S CONSTITUTIONAL ARGUMENTS ARE PROPERLY BEFORE THIS COURT.

St. Louis County also argues that Irongate's constitutional arguments are not properly before this Court. Because St. Louis County's arguments are identical to the arguments contained in its recently-filed Motion to Strike, and because on December 27, 2006, Irongate filed a detailed memorandum in opposition to that motion, Irongate will not repeat its arguments herein. Rather, Irongate will simply direct the Court to its December 27, 2006 memorandum.

Irongate will point out, however, the logical inconsistency in St. Louis County's argument. On one hand, St. Louis County argues that Irongate should be prohibited from raising its constitutional argument on appeal, because it did not raise the argument in its original response to St. Louis County's motion, but rather raised it for the first time before the Tax Court as permitted on its motion for reconsideration. On the other hand, St. Louis County argues that the County should be permitted to raise a new issue on appeal, because it claims the

question raised for the first time on appeal is plainly decisive of the entire controversy on its merits and . . . there is no possible advantage or disadvantage to either party in not having had the prior ruling on the question by the trial court."

(Brief of Respondent St. Louis County, p. 11, citing Zip Sort, Inc. v. Commissioner of Revenue, 567 N.W.2d 34 (Minn. 1997).

The new issue that St. Louis County raises – whether the lease abstracts alone would have been sufficient under the 60 Day Rule – does not fit the Zip Sort citation. The issue is not plainly decisive of the entire controversy. Presumably, the only reason St. Louis County has highlighted this new issue is because it could find no additional information of even marginal relevance contained in the leases that was not otherwise contained in the rent rolls and income and expense statements that Irongate admittedly timely provided.

IV. IRONGATE DID NOT HAVE NOTICE THAT THE TAX COURT WOULD REQUIRE PRODUCTION OF ALL OF ITS LEASES IN CONNECTION WITH THE 60 DAY RULE.

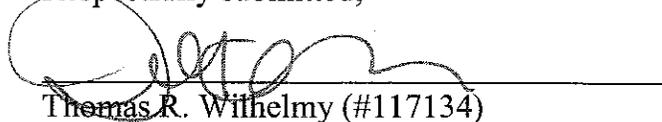
Finally, St. Louis County argues that the Tax Court's interpretation of the 60 Day Rule does not render the statute unconstitutionally vague, because under prior Minnesota Supreme Court and Minnesota Tax Court decisions, Irongate had adequate notice that its leases must be produced under the 60 Day Rule. Again, Irongate addressed this argument in detail in its opening brief at pp. 25-29. The Tax Court cases cited by St. Louis County are not only factually different, but have no precedential value. Accordingly, they could not have provided Irongate with any notice. Moreover, St. Louis County's argument that prior Minnesota Supreme Court decisions directed taxpayers to produce copies of all leases in connection with the 60 Day Rule is just plain false. The cases cited by St. Louis County were all addressed in detail in Irongate's opening brief at pp. 11-14 and 22-25. The issue of whether leases must be produced in connection with the 60 Day Rule is an issue of first impression for this Court.

CONCLUSION

For the reasons detailed herein, Irongate respectfully requests that this Court rule that Irongate complied with the 60 Day Rule, that the 60 Day Rule does not require the production of leases, where the income and expense information contained in the leases has been timely provided under the 60 Day Rule, that the Minnesota Tax Court's endlessly expansive interpretation of the 60 Day Rule has rendered it unconstitutionally vague, and that Irongate's petition should be reinstated.

Dated: January 4, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Wilhelmy", is written over a horizontal line. The signature is fluid and cursive.

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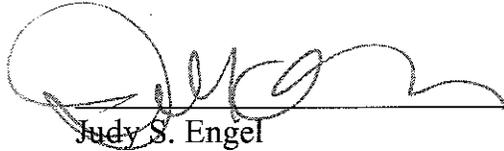
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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that Relator's Brief submitted herein contains 3,951 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Office Word 2000, the word processing system used to prepare this Brief.



Judy S. Engel