

NO. A06-0153

State of Minnesota
In Supreme Court

Croixdale, Inc.,

Relator,

v.

County of Washington,

Respondent.

RELATOR'S REPLY BRIEF

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INTRODUCTION

The affirmative arguments supporting the request by Relator Croixdale, Inc. (“Croixdale”) for a property tax exemption are set forth in detail in Croixdale’s initial brief to this Court. Moreover, that initial brief effectively rebuts the arguments contained in the responsive brief that Respondent County of Washington (the “County”) has recently filed. Accordingly, this reply brief is limited to a few arguments of the County that warrant a limited additional response.

ARGUMENT

I. THE COUNTY OPENLY DISPUTES THE TAX COURT’S FINDINGS.

Unlike many appeals, this is not a case in which the respondent contends that the lower court properly analyzed all of the issues. Indeed, far from advocating broad deference to all of the Tax Court’s actual determinations, the County argues that this Court should only give deference to selected Tax Court determinations. Specifically, the County openly attacks the Tax Court’s resolution of the three *North Star* factors that were not found to favor the County’s position. Under the circumstances – with both sides questioning many of the Tax Court’s determinations – this Court should not hesitate to carefully reexamine all of the Tax Court’s determinations. That is, the Court should reject the County’s call for what amounts to selective deference.

Contrary to the ill-conceived contention contained in the County’s brief, any reasonable analysis of Factors 1, 2 and 6 of the so-called *North Star* test will confirm that the Tax Court was correct when it concluded that each of those factors supports granting

the relief that Croixdale seeks in this case. Moreover, as discussed more fully in Croixdale's initial brief, none of the various *North Star* factors should be viewed in isolation. The "fundamental considerations" underlying the *North Star* factors are "whether individual profits are realized and whether the charity is a subterfuge for the accommodation of a select few." *Skyline Preservation Found. v. County of Polk*, 621 N.W.2d 727, 735 (Minn. 2001) (citing *North Star Research Inst. v. County of Hennepin*, 306 Minn. 1, 6, 236 N.W.2d 754, 747 (1975)). The factors should all be considered together to determine whether Croixdale is an exempt "institution of purely public charity" or whether it is a mere subterfuge for the benefit of a select few. No single factor is determinative. See *Mayo Found. v. Comm'r of Revenue*, 306 Minn. 25, 236 N.W.2d 767, 773 (1975); *Care Inst., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000).

A. Croixdale Plainly Satisfies Factors 1 and 6.

The Tax Court had no difficulty concluding that Croixdale satisfies Factors 1 and 6 of the *North Star* analytical framework. The Tax Court rejected each of the arguments that the County has reiterated in its brief with regard to Factor 1 (A. 13-14) and noted that the County conceded that Croixdale had satisfied Factor 6 (A. 24). This Court should likewise conclude that Croixdale has satisfied Factors 1 and 6.

Unhappy with the Tax Court's conclusions, the County now invites the Court to change the law with regard to Factors 1 and 6. Resp. Br. at 14. This Court should reject that invitation. This is not an appropriate case in which to change the law, because there is ample evidence that Croixdale satisfies both the letter and the spirit of Factors 1 and 6.

The County suggests that the law should require non-profit corporations to do more than merely “state” in their “organizational documents” that their purpose is to be helpful to others without expectation of material reward and that no dividends or assets upon dissolution are available to private interests before granting them a property tax exemption. The fact is, however, the record amply demonstrates that Croixdale follows through on the statements contained in its organizational documents. T. 14-16, 28-29, 33, 35, 37-38, 43-44, 69, 88-91, 101, 103-104; Exs. 1, 2, 4, 5, 7-10. As a result, the Tax Court expressly found that “[Croixdale’s] Board has consistently affirmed [Croixdale’s] Mission to help older people live longer and has planned, provided for and operated Croixdale in accordance with that mission.” A. 14.

In short, as discussed at page 17 of Croixdale’s initial brief, Croixdale is not merely a nonprofit entity in name. Croixdale actually follows through on its stated purpose of furthering charitable objectives without delivering profits to individuals or others from ownership of the entity. Accordingly, the County’s suggestion that the Tax Court’s analysis of Factors 1 and 6 would have been different if the law required entities to do more than state their charitable intentions is misguided, and the County’s plea for a change in the law should be rejected since such a change would not affect the outcome of this case.

B. Croixdale Plainly Satisfies Factor 2.

Curiously, the County has also opted to take issue with the Tax Court's analysis of the second *North Star* factor. That factor asks whether the entity seeking charitable status is supported by gifts and donations. As noted in Croixdale's initial brief, the evidence of the impact of charitable donations in this case is too substantial to ignore. Charitable donations have paid for more than half of the cost of constructing Croixdale's new facility. Without those donations, the new facility would not exist. Moreover, the record establishes that those donations have substantially reduced the monthly amount that Croixdale has to collect from the residents of its Assisted Living Facility. T. 332-339; Ex. 33.¹

Ultimately, the County's position seems to be that a charity must collect and use the bulk of its donations on an ongoing basis, rather than all at once, in order to qualify for a property tax exemption. The County asks this Court to ignore the massive sums that Croixdale raised through its capital campaign, because those sums were used to pay initial construction costs rather than being doled out in an incremental fashion over many years. Under the County's approach, Croixdale would have had a better claim to a tax exemption if it had borrowed all of the construction costs and used the charitable donations to help pay the monthly debt service. That makes no sense. Using the donated funds at the outset to reduce the amount of borrowing actually provides a greater monthly

¹ The evidence presented to the Tax Court plainly indicated a monthly benefit of \$650 per resident, not the \$400-\$500 per resident set forth in the County's brief. T. 332-334; Ex. 33. It is not clear why the County mischaracterizes the evidence in this fashion, since a monthly benefit of \$400-\$500 per resident would still be significant enough to justify the Tax Court's determination that Croixdale is supported by gifts and donations.

benefit than could have been achieved if the funds were used on a monthly basis to pay back the additional amounts that Croixdale would have had to borrow to complete construction. By reducing the amount that had to be borrowed, the charitable donations reduced both the principal amount that Croixdale had to borrow and the interest that Croixdale has to pay on the additional principal amount. Croixdale should not be punished for using the donated funds in a fiscally prudent manner.

II. THE COURT SHOULD REJECT THE REAL ESTATE APPRAISAL APPROACH ADVOCATED BY THE COUNTY.

The County misperceives the key question with regard to the expert testimony that was presented to the Tax Court. Contrary to the County's suggestions, the key question is not one of witness credibility. Rather, the key question is whether it is appropriate to use a conventional real estate appraisal approach when evaluating the amounts that an assisted living facility charges its residents. That is a legal question that is subject to *de novo* review by this Court.

In an obvious attempt to obtain a more favorable standard of review, the County argues that the testimony of its expert, Mr. Huber, is more "credible" than the testimony of Croixdale's various experts. Curiously, the County goes so far as to suggest in its brief that the testimony of one of Croixdale's experts, Jeffery Vrieze, should be disregarded because he was paid to testify and because he readily acknowledged his willingness to argue in favor of his expert opinions. Of course, the County's suggestion overlooks the fact that (a) experts are routinely compensated for their services and (b) the County's own expert is a paid employee of the County. Similarly, the County's use of selected remarks

by Mr. Vrieze to imply that he conceded that he was biased ignores the fact that Mr. Vrieze works for a very reputable firm that the County itself employs to perform audit services (T. 354) and fails to even acknowledge the following testimony in which Mr. Vrieze emphasized his duty of objectivity as a CPA:

Q. After all those decisions were made, you were asked, you were hired to come in to court and support the decisions that have already been made?

A. I wouldn't say support, I would say be objective to the facts that I was given, given a pro forma that was put into evidence to just say is this how organizations would go at looking at projects such as this, just given the background that I have. Not to support, but to really be objective and lend credibility or objectivity to this case.

Q. And objectivity in what sense?

A. As a CPA, we have to be objective, and that's what I am standing on, objectivity related to what I see and not just saying what I know someone wants to hear. These are the facts as I see them as an expert in this field.

T. 358-59.

Ultimately, the issue to be decided with regard to the competing expert testimony in this case is not a question of credibility, but rather a question of approach. The County contends that only Mr. Huber's testimony should be considered, because he is the only expert who used a pure real estate valuation approach. However, that is precisely the problem with Mr. Huber's testimony. As discussed more fully at page 30 of Croixdale's initial brief, assisted living with memory care is not conventional housing and cannot be properly valued using a conventional real estate approach.

III. THE COURT SHOULD SEE THROUGH THE COUNTY'S OTHER ATTEMPTS TO CONFUSE THE ISSUES.

In addition to misstating the key issue with respect to the experts, the County makes several other misstatements in its brief. A few of the more egregious examples are set forth below:

- In the Statement of the Case portion of its brief, the County wrongly asserts that Croixdale took the position that it was different from other assisted living facilities because it maintained a Mission Benevolence program for the benefit of its most needy residents. While Croixdale certainly does provide charity through the Mission Benevolence program, that program has never been the primary focus of this matter. Instead, Croixdale has consistently made the \$ 9.0 million of charitable donations that were used to construct the new facility the primary focus of its request for relief.
- The County erroneously implies that the Court should disregard the testimony of one of Croixdale's experts (Mr. Collins) because his market analysis did not include other facilities operated by Presbyterian Homes. An examination of that expert's testimony reveals, however, that the expert did not believe that it was appropriate to use commonly-operated facilities as part of a price comparison. T. 289-90. Furthermore, the County offers no evidence that the exclusion of other Presbyterian Homes had an impact favorable to Croixdale's position. Frankly, Croixdale believes that it is more likely that the impact of excluding the other Presbyterian Home facilities from the analysis was unfavorable to Croixdale.

- The County incorrectly asserts that the fact that Croixdale is able to maintain 100% occupancy proves that Croixdale made a marketing decision to use the charitable donations to achieve a price that placed it at the lower end of the market and, thereby, ensure high occupancy. Croixdale is priced at the low end of the market because that is consistent with its mission and with the purpose of the capital campaign. By comparison, the lowest priced providers are not fully occupied, despite their lower prices, because they do not offer as desirable a product as Croixdale.

CONCLUSION

For all of the reasons set forth above and in Croixdale's initial brief, this Court should reverse the decision of the Tax Court and should authorize the property tax exemption that Croixdale has requested with regard to its Assisted Living Unit pursuant to the portion of Minn. Stat. § 272.02 that provides that "institutions of purely public charity" are exempt from real property taxation.

Respectfully submitted,

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Dated: April 13, 2006.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, in Times New Roman font, 13 point, and according to the word processing system's word count, is no more than 2,084 words, exclusive of the cover page, table of contents, table of authorities, signature block and this certification, and complies with the typeface requirements of Minn. R. Civ. App. P. 132.01.

Dated: April 13, 2006.



Peter A. Koller

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