



Iowa General Assembly

2011 Legal Updates

Legislative Services Agency – Legal Services Division

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PROPERTY TAX CLASSIFICATION - MULTIPLE HOUSING COOPERATIVES

Filed by the Iowa Supreme Court

July 29, 2011

Krupp Place 1 Co-op, Inc. v. Board of Review of Jasper County

No. 09-0654

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20110729/09-0654.pdf

Background Facts and Procedure. Krupp Place 1 Co-op, Inc. and Krupp Place 2 Co-op, Inc., are both corporations organized as multiple housing cooperatives under Code Chapter 499A. Each cooperative holds title to real estate improved with a building containing apartment units. Larry and Connie Krupp, however, were the only members of the cooperatives, each with a 50 percent interest in each cooperative. As members of the cooperatives, Larry and Connie Krupp then entered into proprietary leases with the cooperatives requiring them to pay rent. The Krupps never resided in the cooperative properties. Instead, they subleased the apartments to subtenants for residential purposes. The Krupps use the net rental income from subtenants to pay the rent they owe to the cooperatives under the proprietary leases. The cooperatives in turn use the rent paid by the Krupps to meet cooperative expenses.

In 2008, the Jasper County Assessor classified the cooperatives' real estate as commercial real estate for property tax purposes. The cooperatives appealed the classification and assessments to the Board of Review of Jasper County. The Board of Review adjusted the assessed value of the properties but did not alter its classification of the properties as commercial. The cooperatives appealed the board's decision to the district court. Following a stipulation of facts, the district court issued its decision on a motion for summary judgment by affirming the classification of the real estate as commercial. Despite recognizing that under Code Section 441.21(11), "all land and buildings of multiple housing cooperatives organized under chapter 499A" are to be classified as residential property for tax purposes, the district court concluded the Krupps had not complied with "the spirit of the law." The district court stated that like any corporation, the corporate entity may be disregarded and the corporate veil pierced if the entity is a sham or if corporate formalities are not followed.

The cooperatives filed a combined motion for amendment and enlargement of findings and for a new trial. The cooperatives asserted that compliance with corporate formalities was not in dispute as no evidence was presented on this issue. As a result, the cooperatives argued the court's previous piercing of the corporate veil was erroneous. The cooperatives further reiterated that because all of the statutory prerequisites of Code Chapter 441 were met, the court had no choice but to follow the legislative directive that residential cooperative property be classified as residential for property tax purposes. In light of the additional motion and filings, the district court concluded the cooperatives had followed all proper formalities as prescribed by Iowa law. Accordingly, the district court reversed its prior ruling and concluded the cooperative real estate should properly be classified as residential. The Board of Review appealed. The Iowa Court of Appeals affirmed the district court. The Iowa Supreme Court (Court) granted further review.

Issue on Appeal. Whether two multiple housing cooperatives organized under Code Chapter 499A were properly classified as residential real estate for property tax purposes.

Analysis. Ordinarily, multiunit apartment buildings are classified as commercial property, thereby subjecting the property to commercial property tax rates. However, Code Chapter 499A allows two or more adult persons to organize themselves into a residential cooperative. The real estate of such cooperatives is classified for property tax purposes as residential under Code Section 441.21(11).

Both parties agreed that the cooperatives were properly organized under Code Chapter 499A. The Board of Review, however, requested the Court to look beyond the organizational formalities and to the actual operation of the property in

classifying the property. According to the Board of Review, the Court should utilize the “actual use” test to inquire if the property’s operation is solely to circumvent current tax classifications and to avail themselves of reduced tax assessments. The cooperatives relied on the explicit language of Code Section 441.21(11), which provides that the term “residential property” includes “all land and buildings of multiple housing cooperatives organized under chapter 499A,” in arguing that the property is entitled to be classified as residential property as a matter of law.

The Court held that Code Section 441.21(11) does not contemplate an “actual use” test and determined that the only fact finding required under Code Section 441.21(11) is whether the property is owned by an entity organized under Code Chapter 499A.

The Court also rejected the Board of Review’s suggestion that the Court may pierce the corporate veil if the corporation is operated as a mere sham by pointing out that there is no evidence in the record that the cooperatives are making any profit in this case. Additionally, under Code Chapter 499A, the cooperatives must operate on a nonprofit basis. Nothing in the chapter prohibits a member from leasing out a unit or units with desirable economic terms.

Conclusion. The Court affirmed the decisions of the district court and the court of appeals classifying the real estate owned by the multiple housing cooperatives as residential property for property tax purposes.

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