

**IN THE SUPREME COURT
 STATE OF NORTH DAKOTA**

Hudye Group LP,)	
)	
Appellant,)	Supreme Court No. 20210279
)	
)	
)	
Ward County Board of Commissioners,)	
)	
Appellee.)	

Appeal from Order dated August 11, 2021, Judgment dated August 16, 2021, and Notice
 of Entry of Judgment dated August 16, 2021
 Case No. 51-2021-CV-00184
 County of Ward, North Central Judicial District
 The Honorable Richard L. Hagar

REPLY BRIEF OF APPELLANTS

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ARGUMENT

[¶1] North Dakota Century Code §57-23-01 provides that: all assessment of any taxable property in excess of the full and true value in money are subject to correction and abatement and refund under the provisions of this chapter. Further N.D.C.C. § 57-23-04(1)(h) specifically delineates that a taxpayer may request an abatement or refund of real estate taxes when the assessment on the complainant's property is invalid, inequitable, or unjust.

[¶2] In this case the abatement requests were received by the City Assessor's Office on the first business day following the November 1, deadline. (*App. Ap. 0303-0304, 0208*) *Doc. Id Nos. 29 and 15*. These technical errors did not harm the County abatement process but the County's failure to consider the abatement requests after the City Assessor's office made recommendations to lower the taxable value results in an unjust outcome to the taxpayer.

[¶3] If this Court determines that the delivery time and location require strict compliance with the statute, the City of Minot and Ward County should be estopped from assessing the 2018 real estate tax year at its original true and taxable value of \$10,594,000.00 and should be required to reduce the assessment to the City Assessor's recommended adjusted value of \$5,462,540.00.

I. THE COUNTY COMMISSIONS DECISION NOT TO CONSIDER THE 2018 ABATEMENT REQUESTS IS UNREASONABLE

[¶4] Appellee argues that the strict compliance required. While it is true that the N.D.C.C. § 57-23-04 provides for a November 1, 2020, deadline by which the request must be received by the County Auditor's Office - it is beyond rational thought that the

request being received the first following business day would be rejected. Hudye acted in a reasonable manner and sent the request by a third-party carrier with a delivery date of Friday, October 30, 2020. (*App. Ap. 0303-0304, 0208*) *Doc. Id Nos. 29 and 15*.

[¶5] Hudye stated on the record that they delayed in sending the requests as they were waiting for a response from the City Assessor to their informal discussions. (*App. Ap. 0208*) *Doc. Id No. 15*. The package containing the abatement requests was delayed because of weather conditions and actual delivery of the abatement requests was Monday, November 2, 2020, the first business day after the November 1, 2020, statutory deadline. (*App. Ap. 0303-0304, 0208*) *Doc. Id Nos. 29 and 15*.

[¶6] The Ward County Auditor's office requires the original application in duplicate for each parcel, they do not allow for any emailed or facsimile applications. (*App Ap. 203*) *Doc Id No. 15*. Hudye, in good faith put together duplicate original applications each of the 92 parcels of subject property, mailed them with a promised delivery date within the time period prescribed by the statute and strict compliance with the November 1, deadline has an extreme and unjust result in this matter.

[¶7] The abatement requests were sent to the City Assessor's office rather than the County Auditor's office mistakenly. On November 3, 2020, Ryan Kamrowski, City Assessor, drafted a letter returning the 92 abatement requests and their duplicate originals to Hudye by mail in Scottsdale, Arizona. On November 9, 2020, Hudye received their abatement requests back along with the Kamrowski letter. (*App. Ap. 0294*) *Doc. Id No. 29*. It was unreasonable and not the product of a rational mental process to send the abatement requests back to Hudye by mail. The applications provide a space for which

the party making the application to put their phone number and the City Assessor's office made no attempt to telephone Hudye so that other delivery arrangements could be made.

[¶8] Appellee relies on *Trollwood Village Ltd. Ptnr. V. Cass County Bd. Of County Comm'rs* 557 N.W.2d. 732.1996, and *Rice v. Board of County Comm'rs* 135 N.W.2d 597. 1965, but cases are both clearly distinguishable from this matter.

[¶9] In *Trollwood*, the taxpayer was making an application for abatement in October 1994, for real estate tax years beginning in the 1988 real estate tax year. at 733. The Court upheld barring the requests for the real estate tax years 1988-1991 for untimeliness. at 737. *Trollwood* is distinguishable from this matter in that the application for the 1991 real estate tax year was not received the first business day following the November 1, deadline, but nearly a year late.

[¶10] In *Rice*, the statute in effect at the time allowed for abatement of one prior year's real estate taxes. at 601. The taxpayer applied for an abatement of the real estate tax years 1956-1962 on April 22, 1963. at 598. The Court determined that the applications for 1956-1961 were made untimely. at 601. The taxpayers request in that case was received six months after the deadline, not the following business day.

[¶11] Appellee generally states a summary of the taxation process, (Appellee Brief at ¶¶ 6-9), but the technical errors in this case did not harm the county abatement process. The technical errors have essentially resulted in an unjust outcome to the taxpayer which is in direct contravention to N.D.C.C. §57-23-01 and thus the County Commissions decision should be reversed.

II. THE CITY OF MINOT AND WARD COUNTY SHOULD BE ESTOPPED FROM AFFIRMING THE TRUE AND TAXABLE VALUE FOR THE 2018 REAL ESTATE TAX YEAR

[¶12] Appellee argues that Hudye's estoppel argument must be rejected because they knew of the timeframe, and attempted to file abatement applications. (Appellee Brief at ¶ 28) This is precisely the thought process that makes the outcome so unjust. Hudye put together requests for abatement as a result of not hearing back from the City Assessor's office regarding their recommended adjustment to the true and taxable value. North Dakota Century Code §31-11-06 provides:

When a party, by that party's own declaration, act, or omission, intentionally and deliberately has led another to believe a particular thing true and to act upon such belief, that party shall not be permitted to falsify it in any litigation arising out of such declaration, act, or omission.

In *Miller v. Walsh County Water Resource District*, 2012 ND 152 819 N.W.2d 526, The Court stated the elements of promissory estoppel are: (1) a promise which the promisor should reasonably expect will cause a change of position by the promisee; (2) a substantial change in the promisee's position through action or forbearance; (3) justifiable reliance on the promise; and (4) injustice which can only be avoided by enforcing the promise. [internal citations omitted], ¶¶25-26.

[¶13] Appellee correctly states that the statute requires that the abatement applications for 2018 need to be received by November 1, 2020, but mischaracterizes the fact that Hudye knew of the timeline and did not take appropriate action to file their applications with the correct entity or on time. (Appellee Brief ¶ 27) Hudye clearly relied on the City Assessor to make their recommendation. In relying on the City Assessor they delayed in sending the abatement requests until October 28, 2020, and it has created an unjust result.

[¶14] In August 2020, Hudye began discussions with the Auditor's Office regarding a reassessment of value on the subject property. (*App. Ap. 0298-0301*) *Doc. Id*

No. 29. These discussions led to an in person meeting between Ben Hudye, managing partner the Hudye Group, LP.; Damon Druse, City Assessor's office; David Lakefield, City Finance Director; and Marisa Haman, Ward County Auditor; on August 12, 2020, to discuss the subject property. (*App. Ap. 0293-0295*) *Doc. Id No. 29*. The discussion was regarding the property tax valuations of the subject property for the 2018, 2019, and 2020 real estate tax years. *Id.*

[¶15] During that meeting Mr. Druse, stated he would do a site visit the following week to determine if there were any improvements on the property to assist in to coming to a decision on whether the value was correct. *Id.* On August 21, 2020, Mr. Druse informed Hudye that he had been to the property and acknowledged that there were no paved roads adjoining the lots, but that he needed some additional information before he could look at the assessments to make a recommendation. (*App. Ap. 0319*) *Doc. Id No. 34*.

[¶16] On September 8, 2020, Hudye replied to communication from Mr. Druse that included some preliminary evidence of property valuations of comparable properties in the neighborhood. *Id.* Appellant received a reply from Mr. Druse on September 15, 2020, stating that Ryan Kamrowski the City Assessor is out of the office until the first week of October and that Mr. Druse would discuss this matter with Mr. Kamrowski upon his return. *Id.*

[¶17] Hudye put together the abatement requests for each of the 92 parcels because there was no communication from the City since the September 15, 2020. (*App. Ap. 0294 and 0208*) *Doc. Id No. 15 and 29*. Hudye was aware that the deadline to formally request an abatement for the property for the 2018 real estate tax year was November 1, 2020. *Id.* Hudye sent their abatement requests by Federal Express on October 28, 2020, with a

promised delivery date of Friday October 30, 2020. (*App. Ap. 0303-0304, 0208*) *Doc. Id Nos. 29 and 15*. Due to inclement weather the package was not delivered the City Assessor's office until the following Monday, November 2, 2020. *Id.*

[¶18] On November 9, 2020, Hudye received their original abatement applications along with a letter dated November 3, 2020, from Ryan Kamrowski, City Assessor. (*App. Ap. 0319*) *Doc. Id No. 34*. Said letter advised Hudye that the applications must be filed in duplicate with the City Auditor's Office and that because it was Hudye's intent to pursue the formal abatement process the 2018, 2019, and 2020 real estate tax year recommendations have been rescinded. *Id.*

[¶19] It is clear that Hudye relied on the City Assessor's office to view the property and provide a revised assessment of the property. It is undisputed that the City Assessor's office undertook the task of meeting with the parties, viewing the property, and promising to provide recommendation by early October. The City Assessor's office had previously been assessing the property including attributes such as paved roads- when it was in reality being utilized as agricultural real estate and that summer had been farmed by a cash rental tenant.

[¶20] Mr. Druse confirmed by email that he had been to the property and that the improvements were not there. (*App. Ap. 0319*) *Doc. Id No. 34*. Hudye had no reason to believe that there would not be a substantial change in value and that instead they should proceed with formally requesting an abatement. In fact the recommendation was made to reduce the true and taxable values of the parcels, but the email was not received by Hudye until the offer was rescinded in the Kamrowski letter of November 3, 2020. *Id.*

[¶21] Hudye's reliance was justifiable in that he had been communicating with the City and County for months regarding the need to review the assessed values. The City Assessor's office undertook the process and promised to make a recommendation which would be presumably consistent with actual fair market value. *Id.* Hudye did not delay in filing the requests for abatement for any other reason than that they were waiting to hear back from the City.

[¶22] When faced with the possibility of their right to request an abatement being extinguished by a statutory deadline and still not having heard back from the City, they sent the applications with a guaranteed delivery date of October 30, 2020. The winter storm in Minot on that day caused the abatement applications to be delayed until the next business day and they were not received until November 2, 2020, - the following business day after the deadline. (*App. Ap. 0303-0304, 0208*) *Id. Nos. 29 and 15.*

[¶23] In *RFM-TREI Jefferson Apartments*, this court opined that: "It is inequitable and unjust to assess property in excess of the true and full value. Whether the requests for abatement should have been granted can be answered with a single question statutorily required to be answered by the Board: were the assessments in excess of the true and full value?" ¶14. In this case we know that the assessments are in excess of the true and full value by the City Assessor's own admission and as such the City of Minot and Ward County should be estopped from affirming the assessed value for the 2018 real estate tax year.

[¶24] If this Court determines that the November 1, 2020, statutory deadline for abatement applications require strict compliance the only way to avoid this injustice would be to find that City of Minot and Ward County must be estopped from assessing the

property at \$10,594,000.00. A value that by their own admission is significantly higher than what their recommended adjusted value of \$5,462,540.00.

CONCLUSION

[¶25] The County Commissions failure to consider the Abatement applications was arbitrary, capricious, and unreasonable. Further the affirmation of the original assessment when the City Assessor admitted that the property had been significantly overvalued is unjust and an absurd result.

[¶26] Appellants respectfully request that the decisions of the County Commission relating to Applications for Abatement or Refund of Taxes relating the Subject Properties be reversed, and this matter remanded to the County Board for consideration of reduction the true and taxable value of the property based upon and within the scope of evidence before it.

Dated this 22nd day of December, 2021.

OLSON & BURNS P.C.

/s/ Jessica L. Merchant

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CERTIFICATE OF COMPLIANCE

[¶27] The undersigned, as attorney for Appellant Hudye Group LP and as the author of the above brief, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief contains no more than 12 pages.

Dated this 22nd day of December, 2021.

OLSON & BURNS P.C.

/s/ Jessica L. Merchant

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CERTIFICATE OF SERVICE

[1] I certify that on December 22, 2021, the following was filed:

REPLY Brief of Appellant

[2] The documents were filed electronically with the Supreme Clerk of Court through Odyssey® system for electronic service through Odyssey® on the following:

Mitchell Armstrong
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Jon Christian Lengowski
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[3] The above documents were duly served in accordance with the provisions of the North Dakota Rules of Appellate and Civil Procedure.

Dated this 22nd day of December, 2021.

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