2015 IL App (3d) 140547-U

Order filed July 20, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE CHRYSLER GROUP, LLC,	)	Petition for Review of Orders of the
	)	Illinois Property Tax Appeal Board
Petitioner-Appellant,	)	dated August 28, 2012 and June 20,
	)	2014
v.	)	
	)	
THE PROPERTY TAX APPEAL BOARD, and THE WILL COUNTY BOARD OF REVIEW,	)	No. PTB 10-00543
	)	Appeal from a Decision of the
Repondents-Appellees.	)	Illinois Property Tax Appeal Board

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner is entitled to the preferential tax treatment set forth in section 10-30 of the Property Tax Code (35 ILCS 200/10-30 (West 2012)), where it purchased unplatted land and recorded a valid plat pursuant to the Plat Act (765 ILCS 205/0.01 *et seq.* (West 2012)).

¶ 2 Petitioner, Chrysler Group, LLC, purchased vacant farmland from the Roman Catholic Diocese of Joliet, Illinois. Prior to the closing date, petitioner prepared a plat of survey (plat); petitioner's representative requested that J. Peter Sartain, Bishop of Joliet, sign the plat.

Petitioner did not record the plat until after closing. The following tax year, the tax assessor changed the classification of the land from vacant raw land or farmland to improved residential lots. Petitioner protested, arguing that the preferential tax treatment, pursuant to section 10-30 of the Property Tax Code (Code) (35 ILCS 200/10-30) (West 2012)), applied where it purchased vacant land and subsequently platted such land. The Property Tax Appeal Board (PTAB) denied petitioner relief, finding that the Diocese platted the land. Therefore, petitioner purchased platted land and was not entitled to the preferential tax treatment set forth in section 10-30 of the Code (35 ILCS 200/10-30 (West 2012)).

¶ 3 Petitioner appeals, arguing that it is entitled to the developer's exemption set forth in section 10-30 of the Code (35 ILCS 200/10-30 (West 2012)). Specifically, petitioner argues that: (1) the General Assembly enacted section 10-30 to protect developers such as petitioner; and (2) petitioner substantially complied with the Plat Act (Act) (765 ILCS 205/0.01 *et seq.* (West 2012)). For the following reasons, we set aside PTAB's administrative decision.

¶ 4 BACKGROUND

¶ 5 The Diocese owned a parcel of land consisting of approximately 16.977 acres, located within the Channahon Town Center Unit 2A, Channahon Township, Will County, Illinois (subject property). The Diocese was a tax-exempt entity. The assessor testified that had the Diocese paid taxes, Will County would have assessed the subject property as vacant raw land or farmland. In 2006, the Diocese and petitioner entered into negotiations for the sale of the subject property. Petitioner intended to purchase the property in order to develop it for residential use.

¶ 6 On January 2, 2007, Bishop Sartain signed a trustee's deed conveying the subject property from the Diocese to petitioner. Petitioner prepared a plat. On January 8, 2007, Marlon Ekhoff, petitioner's managing partner and representative, requested that Bishop Sartain sign the

plat; Bishop Sartain did so. Subsequently, on January 29, 2007, the parties closed on the sale and petitioner purchased the subject property for $920,454. Petitioner filed the plat on January 31, 2007. The Will County recorder's office numbered the document 2007018482. On the same day, petitioner also filed the deed. The recorder's office numbered the deed document 2007018483. The recorded deed referenced the plat recorded as document number 2007018482. Subsequently, the recorder's office voided the subject's property parcel identification number (PIN) and issued new PINs for the subdivided parcels.

¶ 7 In 2008, the Will County assessor changed the subject property's classification from vacant raw land or farmland to improved residential lots. Petitioner appealed the assessment, seeking relief pursuant to section 10-30. It argued that it was entitled to maintain the 2007 assessed valuation while the subject property remained undeveloped; the subject property was vacant at the time it recorded the plat in 2007. Petitioner's representative, Marlon Ekhoff, testified that he asked the bishop to sign the plat. Petitioner intended to build residential homes on the subject property. Nye, the Diocese's representative, testified that the Diocese never intended to develop the property.

¶ 8 The Will County Board of Review (Review Board) responded that the developer's relief set forth in section 10-30 concerns who owned the property at the time of platting, not who intended to develop the land. Both parties agreed that petitioner owned the property at the time it recorded the plat. However, petitioner did not comply with the Act and thus did not meet the requirements set forth in section 10-30; petitioner never signed the plat.

¶ 9 PTAB found that petitioner owned the property at the time it recorded the plat, but Bishop Sartain signed the plat as opposed to petitioner. The subject property was not platted and

subdivided in accordance with the Act, which requires the owner of land acknowledge the plat. Thus, the subject property was ineligible for the preferential tax assessment under section 10-30.

¶ 10 In 2010, petitioner also protested the subject property's tax assessment. After the Review Board found that petitioner was not entitled to relief under section 10-30, petitioner appealed to PTAB. PTAB consolidated all the pertinent PINs into one docket number. Pursuant to the parties' agreement, the record from the 2008 assessment appeal was incorporated into the record of the 2010 assessment appeal. Petitioner argued that despite its failure to sign the plat, it substantially complied with section 10-30 and the Act; thus it was entitled to the preferential tax treatment. Petitioner's failure to sign the plat was a clerical error.

¶ 11 Richard F. Vane, a senior engineer with M. Gingrich Gereaux & Associates (MGGA), testified on behalf of petitioner. Vane coordinated the engineering and the plat work performed by MGGA's surveyors. He instructed Robert F. Sluis, MGGA's principal surveyor, to file a certificate of correction to change the listed owner on the plat from the Diocese to petitioner. Sluis prepared and filed a certificate of correction to the plat on February 19, 2013. Vane testified that based on his experience, the recorder's office regularly accepts certificates of correction. Will County does not consider such a certificate to be a new plat. Instead, certificates of correction correct spelling mistakes and errors in property descriptions and revise ownership information.

¶ 12 On cross-examination, Vane testified that he was unaware of: another certificate of correction that changed the name of the owner; any authority that would allow a recorder to refuse a certificate of correction; any authority providing that a certificate of correction is a valid means to correct a plat; or another time when a certificate of correction was submitted six years after the initial recording of the plat.

¶ 13 Petitioner also submitted a letter, authored by Nye, stating that petitioner was the developer of the subject property, not the Diocese. Petitioner argued that it was the owner of the subject property at the time it recorded the deed and plat. The fact that it filed the deed simultaneously with the plat established that petitioner owned the subject property. Petitioner further argued that every public agency treated the plat as valid and that multiple parties relied upon the validity of the plat. Finally, plats can be amended and nothing requires strict compliance with either section 10-30 or the Act.

¶ 14 The Review Board countered that the erroneous signature was more than a "mere typo;" the plat listed the Diocese as the owner of the subject property. The plat was not valid where the actual owner never acknowledged it. The Review Board also argued that the owner of the plat cannot be retroactively corrected by filing a certificate of correction six years after petitioner recorded the plat. Therefore, the plat was invalid where the actual owner did not acknowledge the actual owner.

¶ 15 PTAB denied petitioner's claim, finding that the Diocese, not petitioner, platted and subdivided the property. Thus, petitioner purchased platted land. The preferential tax treatment pursuant to section 10-30 does not apply after there has been an initial sale of platted land. PTAB noted that petitioner failed to provide any case law authorizing the filing of a certificate of correction to correct the owner's name. Petitioner failed to present evidence to otherwise challenge the correctness of the assessment and no change was justified.

¶ 16 Petitioner appeals. We set aside PTAB's determination that petitioner was not entitled to the preferential tax treatment pursuant to section 10-30.

¶ 17 ANALYSIS

¶ 18 Petitioner argues that it is entitled to the developer's exemption where it owned the land at the time it recorded the plat and was an intended beneficiary. Respondent argues that petitioner purchased platted land; section 10-30 unambiguously terminates the preferential tax treatment following an initial sale of platted land.

¶ 19 We review *de novo* PTAB's denial of petitioner's request for relief under section 10-30; it found that the Diocese platted the subject property. *Sycamore Community Unit School District No. 427 v. Property Tax Appeal Board*, 2014 IL App (2d) 130055, ¶ 27 (an agency's conclusion of law is subject to *de novo* review).

¶ 20 Section 10-30, also known as the developer's exemption, in relevant part, states:

> "(a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property, if:
>
> (1) The property is platted and subdivided in accordance with the Plat Act;
>
> (2) The platting occurs after January 1, 1978;
>
> (3) At the time of platting the property is in excess of 5 acres; and
>
> (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60.
>
> (b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be

> determined each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting.
>
> (c) ***[U]pon the initial sale of any platted lot, including a platted lot which is vacant: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section." 35 ILCS 200/10-30 (West 2012).

¶ 21 When interpreting a statute, we must determine and give effect to the General Assembly's intent. *Petersen v. Wallach*, 198 Ill. 2d 439, 444 (2002); *Stinson v. Chicago Board of Election Commissioners*, 407 Ill. App. 3d 874, 876 (2011); *Carroll v. Paddock*, 199 Ill. 2d 16, 22 (2002). Where the statutory language is unambiguous, we will enforce the law as written and not look beyond the language of the statute. *Petersen*, 198 Ill. 2d at 445; *Stinson*, 407 Ill. App. 3d at 876; *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421-22 (2002). We must strictly construe provisions granting preferential tax treatment. *People ex rel. Kassabaum v. Hopkins*, 106 Ill. 2d 473, 477 (1985). However, even strict construction does not require that we give absurd meaning to a statute.

¶ 22 We find the statutory language of section 10-30 unambiguous. It clearly states an initial sale of platted land, even if vacant, terminates the developer's exemption. The first issue we must address is whether an initial sale of platted land occurred.

¶ 23 In order to be a statutory plat, the plat must comply with the Act, which, in relevant part, states:

> "The plat must be completed, a statement from a Registered Land Surveyor attached and acknowledged by the owner of the land, or his attorney duly authorized, in the same manner as deeds of land are required to be acknowledged. ***
>
> * * *
>
> The statement of the Registered Land Surveyor and of acknowledgment, together with the plat, must be recorded by the Land Surveyor who prepared the plat, or a person designated by that Land Surveyor, or upon the death, incapacity, or absence of that Land Surveyor, by the owner of the land or his or her representative, in the recorder's office of the county in which the land is situated ***." 765 ILCS 205/2 (West 2012).

Here, at the time of closing, the plat was not recorded. Therefore, as of closing, the plat did not constitute a statutory plat.

¶ 24 "However, if a legal owner of property makes a plat, but does not record or acknowledge the plat until after he has conveyed the legal title, any dedication is a common law dedication if the subsequent owners acted on and recognized the plat." *Kuney v. Zoning Board of Appeals of the City of De Kalb*, 162 Ill. App. 3d 854, 859 (1987) (citing *McMahon v. Borland*, 262 Ill. 358,

373-74 (1914)). In order to constitute a common law plat: (1) the party must have intended to donate land to public use; (2) the public accepted the donation; and (3) unequivocal evidence of the first two requirements. *Kuney*, 162 Ill. App. 3d at 859. In *Kuney*, the court found a statutory plat did not exist; the person who filed the plat did not own the entire property described in the plat. However, the court found that a common law existed where the actual owners intended to leave green space open for public use, and evidence established that the public accepted the dedication. Here, neither the Diocese nor petitioner intended to donate land for public use. The Diocese intended to sell the land to petitioner; petitioner intended to develop the land for residential use. Therefore, no common law plat existed prior to closing.

¶ 25 We accordingly find that at the time of closing, the plat did not constitute a statutory plat or a common law plat. Ergo, petitioner did not purchase platted land. Also, from a commonsense, factual standpoint, the property was not platted at sale. It was an unimproved, vacant piece of property.

¶ 26 Next, we must determine whether petitioner platted the land in accordance with the Act; section 10-30 of the Code requires petitioner to comply with the Act. Again, the Act requires that: (1) the owner of land acknowledge the plat; and (2) the plat and statement of acknowledgment be recorded. 765 ILCS 205/2 (West 2012).

¶ 27 The Diocese owned the land when petitioner prepared the plat. The bishop signed the plat on January 8, 2007, pursuant to the request of petitioner's representative. Ownership of the property did not transfer from the Diocese to petitioner until the parties closed on the transaction on January 29, 2007. At the time the plat was signed, the owner of land did acknowledge the plat. Petitioner did not own the land at the time the plat was signed and thus could not have signed the plat under the Act. As mentioned above, the plat was not a statutory plat when it was

signed. 765 ILCS 205/2 (West 2012). However, petitioner recorded the plat on January 31, 2007, thereby satisfying the requirements detailed in the Act. 765 ILCS 205/2 (West 2012) ("The statement of the Registered Land Surveyor and of acknowledgment, together with the plat, must be recorded***."). Therefore, the plat constituted a statutory plat as of January 31, 2007.

¶ 28 Moreover, the parties' intentions are clear; the Diocese never intended to develop the land. Petitioner purchased the subject property with the intention of developing it for residential use. Petitioner filed the deed and plat on the same day, further showing its intention to plat the land. Furthermore, Will County assessed the property as if it were platted and improved. Therefore, the parties acknowledge that a plat exists. PTAB cannot allow the county to tax the subject property as improved platted land while at the same time claim that no plat existed.

¶ 29 Petitioner had the plat signed by the owner; however, it was the wrong owner. A single mistake in having the wrong person sign the plat should not lead to the drastic consequences resulting here. Petitioner made every effort to comply with the Act; it simply had the wrong person sign the plat. We believe that agreement with PTAB would, on the facts of this case, defeat the clear legislative intent.

¶ 30 Based on our finding that petitioner did not purchased platted land and that it complied with the Act, petitioner is entitled to relief set forth in section 10-30. We set aside PTAB's decision and remand this cause for further proceedings consistent with this order.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the administrative judgment of PTAB is set aside.

¶ 33 Set aside.