



Marci W. Adkisson
Circuit Judge

Circuit Court of the State of Oregon

THIRTEENTH JUDICIAL DISTRICT
KLAMATH COUNTY COURTHOUSE
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July 23, 2007

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JUL 26 2007

Trial Division, Dept. of Justice
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RE: *Gavin Rajnus, LLC v State of Oregon*
Case No. 0603137CV

Dear Counsel:

This matter came before the Court on June 26, 2007, for arguments on the parties' Motions for Summary Judgment. The matter was taken under advisement. The Court has reviewed the record, arguments of counsel, and exhibits presented at the hearing.

Based upon the record, the Court makes the following findings:

1. The court has jurisdiction in this case pursuant to ORS 183.484.
2. The parties are not in dispute in regard to the facts of the case, thus this Court need only examine the legal aspect concerning the facts and determine if the agency correctly interpreted the law as applied in this case.
3. Gavin Rajnus, LLC, is the owner of the property in dispute and acquired the ownership in 1999. Gavin Rajnus, LLC, filed a Measure 37 claim in a timely manner.
4. Donald Rajnus, Sharon Rajnus, Gavin Rajnus, and Julie Rajnus are members of the LLC. The LLC is a successor in interest of the property from Donald and Sharon Rajnus. It is not disputed that Donald Rajnus had a property interest in the disputed property dating from 1969 until the transfer to the LLC in 1999. The purpose of the transfer of the property to the LLC was for estate planning purposes.
5. The claim submitted by the LLC was denied by the State because the LLC acquired the property after restrictive land use regulations were put in place, and therefore were not

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entitled to Measure 37 relief.

There are three primary issues to be resolved in this case:

1. The effect of the State in its Final Order stating that Gavin Rajnus, LLC, is a corporate entity.
2. Whether the LLC as a current owner has “family members” for purposes of Measure 37?
3. The effect of the failure to include a property description for Tax Lot 6001 in the deed dated April 8, 1999.

The first issue is easily disposed of as in the final order the State correctly states that Gavin Rajnus, LLC is a domestic limited liability company registered with the Secretary of State. The fact that they also described the LLC as a corporate entity is not material once the issue regarding the definition of “family member” is disposed of, as neither entity can have individual family members for purposes of Measure 37.

The second issue is whether the LLC, a business entity, can have “family members” as defined in ORS 197.352(11)(A). The statute clearly and unambiguously defines who is a family member. An LLC as a business entity cannot have any family member as described in the statute, except a legal entity owned by the LLC.

As a subissue, the Petitioner argues that Donald Rajnus is considered an owner under the statute and therefore, his interest (even though not in the form of an LLC) still applies to the real property and his acquisition date is the one to be used for the claim. An “owner” is defined in ORS 197.375(11)(c) as “the present owner of the property, or any interest therein.”

Donald Rajnus is not a named party to this case and has not made written demand as required by ORS 197.352(2) and thus not entitled to relief in this case. Even if written demand had been made, the ownership interest in an LLC pursuant to ORS 63.329 provides:

A membership interest is personal property. A member is not a co-owner of and has no interest in specific limited liability company property.

Clearly, only the owner or owners of property may be entitled to compensation or waiver under Measure 37. And in this case the owner/claimant is the LLC.

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The third issue is that in the Final Order the State stated that it did not appear that the 1999 deed included one of the parcels of land at issue in the claim (tax lot 6001). However, the State does appear to have considered the parcel because it stated “. . . this report considers tax lots 6001, 801, and 100 as the subject property.”

In conclusion, the LLC cannot have family members as defined by statute. The individual members of the LLC do not have individual interests in the property of the LLC and thus, the LLC cannot use their acquisition date for purposes of determining when the LC acquired the property. The other two issues raised by the Petitioner do not change the determination made by the State in its Final Order.

Petitioner’s Motion for Summary Judgment is denied. Respondent’s Motion for Summary Judgment is granted as the agency correctly interpreted and applied the law to this claim.

Ms. Hadlock may draft the appropriate form of Order.

Very truly yours,



MARCI W. ADKISSON
Circuit Judge

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