

AUG 02, 2022 02:42 PM


Cathelene Robinson, Clerk
Fulton County Superior Court

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAMES CHRENCIK)	
And)	
KELLY KENNETT,)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
ARTHUR FERDINAND, individually and)	
In his official capacity as Fulton County)	
Tax Commissioner,)	
And)	
FULTON COUNTY BOARD OF)	
ASSESSORS,)	
And)	
CITY OF ALTANTA,)	
)	
Defendants)	

VERIFIED COMPLAINT

1. Plaintiffs bring this action in mandamus and for declaratory relief to redress the unfair and unconstitutional real property ad valorem taxation exemption being afforded to the Atlanta Botanical Garden, Inc.
2. Plaintiff James Chrencik is a natural person who is a citizen of the United States and a resident of and real property owner in the City of Atlanta, DeKalb County, Georgia.
3. Plaintiff Kelly Kennett is a natural person who is a citizen of the United States and a resident of and real property owner in Fulton County, Georgia.
4. Chrencik and Kennett pay *ad valorem* taxes on their real property in Atlanta and Fulton County, respectively.

5. Defendant Fulton Board of Assessors is responsible for maintaining records of Fulton County real property owners, real property valuations, and ad valorem tax exemptions, and providing such records to Defendant Arthur Ferdinand.
6. Defendant Arthur Ferdinand is responsible for billing and collecting real property ad valorem taxes in Fulton County, using information provided by Fulton County Board of Assessors.
7. Defendant Arthur Ferdinand bills and collects real property ad valorem taxes on behalf of the City of Atlanta.
8. Defendant City of Atlanta is a city organized under the laws of the State of Georgia.
9. Third Party Atlanta Botanical Garden, Inc. (“ABG”) is a non-profit corporation organized under the laws of the state of Georgia.
10. ABG leases real property (the “Property”) from the City of Atlanta within Piedmont Park in the City of Atlanta, Fulton County, Georgia.
11. ABG uses the Property to operate a botanical garden.
12. Under the lease documents between the City of Atlanta and ABG, Atlanta has conveyed the Property to ABG as an estate for years.
13. Estates for years are taxable to the lessee, not the lessor or owner in fee, of the real property.
14. Despite the fact that estates for years are taxable, the lease documents also provide that ABG will not pay ad valorem taxes on the Property.
15. The Board of Assessors classifies the Property as “exempt” from taxation.
16. This exemption fails to take into account that the Property is an estate for years in the hands of ABG and therefore subject to taxation.
17. The Property has been assigned a parcel ID of 17 0055 LL0140.

18. The current valuation of the Property set by the Board of Assessors is \$313,053,700.
19. The current Fulton County millage rate is 9.33 mills.
20. The current City of Atlanta millage rate is 7.84 mills.
21. The current Atlanta Public Schools millage rate is 20.74 mills.
22. The current combined Fulton County, City of Atlanta, and Atlanta Public Schools millage rate is 37.91 mills.
23. The taxes that ought to be imposed on the Property, based on current millage rates, are \$11,867,865.77.
24. Instead of paying nearly \$12M, ABG pays no ad valorem taxes on the Property at all, on account of Defendants' granting of the exemption and resultant failure to impose, bill, and collect taxes.
25. Art. 7, § 2, ¶ I of the Georgia Constitution provides, "Except as authorized in or pursuant to this Constitution, all laws exempting property from ad valorem taxation are void...."
26. There are no provisions in the Constitution exempting the Property from ad valorem taxation.
27. Art. 7, § 2, ¶ II of the Georgia Constitution provides that exemptions must be approved by 2/3 of the members of each house of the General Assembly and by a majority of the electors in the state.
28. No exemptions applicable to the Property have been approved by 2/3 of the members of each house of the General Assembly and by a majority of the electors in the state.
29. A contract between a city and an entity not to impose and collect ad valorem taxes on the entity's property is illegal and void. *Tarver v. Mayor*, 134 Ga.462, 67 S.E.929, 931 (1910).

30. As a result of ABG's not paying taxes on the Property, the tax bills to the rest of the property owners in Fulton County and the City of Atlanta, including Plaintiffs, are higher than they otherwise would be.

31. Both Plaintiffs pay more than their fair share of taxes because of the exemption.

Count I – Violation of Ga. Const. Art. 7, § 2, ¶ I; Sovereign Immunity Waived Under Ga. Const. Art. 1, § 2, ¶ 5

32. To the extent the ABG/City of Atlanta Lease Documents purport to create a contractual exemption from ad valorem taxes, the City of Atlanta has violated the State Constitution and those Lease Documents and are void.

33. Plaintiff James Chrencik seeks a declaration against the City of Atlanta that the Lease Documents are void to the extent they purport to confer such an exemption from City of Atlanta *ad valorem* taxes.

34. Plaintiff Kelly Kennett seeks a declaration against the City of Atlanta that the Lease Documents are void to the extent they purport to confer such an exemption from Fulton County *ad valorem* taxes.

35. Each Plaintiff seeks an injunction against the City of Atlanta to enforce declaratory relief awarded to him.

36. To the extent the City of Atlanta has passed an ordinance, resolution, or other act that purports to exempt ABG from taxation, such ordinance, resolution, or other act is in violation of the State Constitution and is void.

37. Plaintiff James Chrencik seeks a declaration against the City of Atlanta that any such ordinance, resolution or other act is void to the extent it purports to confer such exemption from the City Atlanta *ad valorem* taxes.

38. Plaintiff Kelly Kennett seeks a declaration against the City of Atlanta that any such ordinance, resolution, or other act is void to the extent it purports to confer such exemption from Fulton County *ad valorem* taxes.

39. Each Plaintiff seeks an injunction against the City of Atlanta to enforce declaratory relief awarded to him.

Count II-Obligation to Impose and Collect Taxes

40. Defendant Fulton County Board of Assessors has an obligation under O.C.G.A. § 48-5-299 to maintain records showing that the Property is not exempt from taxation while it is an estate for years in the hands of ABG.

41. On January 31, 2022, the Court of Appeals ruled that the Property is an estate for years in the hands of ABG, thus conclusively establishing that fact.

42. Despite this ruling, the Board of Assessors continues to treat the Property as exempt in the hands of ABG.

43. By failing to perform that obligation, the Fulton County Board of Assessors' failure results in higher taxes being imposed on and collected from Plaintiffs.

44. The Board of Assessors has failed to perform a legal obligation or has acted with a gross abuse of discretion.

45. Defendant Arthur Ferdinand has an obligation to impose and collect taxes on the Property from ABG, both for Fulton County and for the City of Atlanta.

46. By failing to impose and collect such taxes, Ferdinand's inaction results in higher taxes being imposed on and collected from Plaintiffs.

47. Plaintiffs seek a writ of mandamus, requiring Defendant Fulton County Board of Assessors to maintain records that accurately and appropriately do not reflect an exemption on the Property in the hands of ABG.

48. Plaintiffs seek a writ of mandamus, requiring Defendant Ferdinand to impose and collect taxes on the Property from ABG both on behalf of Fulton County and on behalf of the City of Atlanta.

49. Plaintiffs demand a jury to try this case, and any other relief the Court deems proper.

50.

Relief Demanded

Plaintiffs demand:

1. A declaration against Defendant City of Atlanta that the lease documents between ABG and Atlanta are void to the extent they purport to provide an exemption from *ad valorem* taxation on the Property for ABG.
2. A declaration against the City of Atlanta, Fulton County, and Arthur Ferdinand that any ordinances, resolutions, or other acts of the City of Atlanta are void to the extent they purport to provide an exemption from *ad valorem* taxation on the Property for ABG.
3. A declaration against City of Atlanta, Fulton County, and Arthur Ferdinand in his individual capacity that ABG's interest in the Property is an estate for years and subject to *ad valorem taxation* against ABG.
4. A writ of mandamus against Arthur Ferdinand in his official capacity requiring Arthur Ferdinand to bill and collect *ad valorem* taxes on the Property for the City of Atlanta and Fulton County.

5. An injunction against the City of Atlanta and Fulton County prohibiting them from applying an exemption from ad valorem taxes on the Property for ABG.
6. Attorney's fees and costs.
7. Any other relief the Court deems proper.

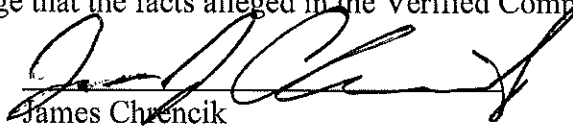
/s/ John R. Monroe

John R. Monroe,
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Dawsonville, GA 30534
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State Bar No. 516193


VERIFICATION

James Chrencik on oath states as follows:

1. I am at least 18 years of age and otherwise competent to make this verification.
2. I know of my own knowledge that the facts alleged in the Verified Complaint are true.


James Chrencik

The above-named James Chrencik personally appeared before me on the 29th day of July
2022 and subscribed to and swore to this Verification in DeKalb County,
Georgia.



Notary Public
My commission expires October 1 2024

