FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

J. L. BRANDEIS & SONS, INC., a Delaware corporation,

Plaintiff-Appellant,

vs.

ROBERT W. KNOX, Member and Chairman of the Board of Review of Pottawattamie County, Iowa, DUDLEY WILBUR, JAMES DALE BOLTON, JOE E. PAULSON and DAVE NEIMAN, Members of the Board of Review of Pottawattamie County, Iowa, ROBERT E. HASTINGS, County Assessor of POTTAWATTAMIE COUNTY, IOWA, the BOARD OF REVIEW OF POTTAWATTAMIE COUNTY, IOWA, and THE COUNTY OF POTTAWATTAMIE IOWA,

Defendants-Appellees.

Filed June 28, 1983

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2-68741

Appeal from Pottawattamie District Court - Glen M. McGee, Judge.

Plaintiff appeals from the trial court's order sustaining defendants' special appearance in this dispute over the valuation of plaintiff's commercial property. REVERSED AND REMANDED.

Dennis L. Ruben of Kutak, Rock & Huie, Omaha, Nebraska, for plaintiff-appellant.

Frank W. Pechacek, Jr., of Smith, Peterson, Beckman & Willson, Council Bluffs, Iowa, and Randy R. Ewing of the Smith Law Firm, Council Bluffs, Iowa, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell and Schlegel, JJ.

PER CURIAM

Plaintiff appeals from the trial court's order sustaining defendants' special appearance in this dispute over the valuation of plaintiff's commercial property. Plaintiff asserts that the court erred in determining that its protest was directed to defendant's assessment of January 1, 1979, and that the January 1, 1981, assessment was not properly protested since no written protest of that later assessment was timely filed and that, therefore, the court had no jurisdiction to hear plaintiff's appeal. We reverse and remand.

On May 5, 1981, the plaintiff filed a protest against the assessment of certain property of the plaintiff in Pottawattamie County. The written protest stated that the plaintiff "does hereby respectfully object to the assessment made against said real property as of January 1, 1979." At the hearing on the protest, a member of the board of review pointed out that the protest referred to the January, 1979, assessment and plaintiff's counsel responded that the date was used because he understood that the assessment had not been changed since 1979. The board indicated that the petition was acknowledged and that the plaintiff was discussing the 1981 assessment. The board issued a decision determining that the protest was directed at the 1979 assessment against the property and was untimely filed and that even if it had been timely, it would have been denied because the assessment was not erroneous. On June 1, 1981, the board adjourned.

On June 19, 1981, the plaintiff filed its petition in equity and petition for judicial review seeking district court review of the board of review's decision regarding the 1981 assessment of plaintiff's property. On July 2, 1981, the defendants filed a special appearance, challenging the court's jurisdiction over them on the basis that the plaintiff protested the 1979 assessment and the court had no jurisdiction to hear that matter. After a hearing, the court entered an order sustaining the special appearance as filed and dismissed the plaintiff's action.

On March 26, 1982, the plaintiff filed a motion for new trial and modification of decision. On May 18, 1982, the court entered an order overruling the plaintiff's motion. The court found that the plaintiff's protest petition clearly indicated that the plaintiff was objecting to the 1979 assessment made against the property in question. The court noted that at a hearing on the written protest, no application was made to the board to amend the petition and the board "did not accept any oral correction to the written petition which had been filed by Brandeis." The court concluded that the board did not consider or render any decision regarding the 1981 assessment but determined that the protest was untimely made in regard to the 1979 assessment and denied the protest on the basis it was untimely filed. The court concluded that since no written protest of the assessment was timely filed, the 1981 assessment was not properly protested and the court had no jurisdiction to hear the plaintiff's appeal. This appeal followed.

The method of contesting a property assessment is spelled out in Iowa Code § 441.37 (1981). That section provides in part:

> Any property owner or aggrieved taxpayer who is dissatisfied with his or her assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. . . . Said protest shall be in writing and signed by the one protesting or by his or her duly authorized agent.

Further appeal from the board of review to the district court is provided for in Iowa Code § 441.38 (1981):

> Appeals may be taken from the action of the board of review with reference to protests of assessment, to the district court of the county in which such board holds its sessions within twenty days after its adjournment. . . . Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the board of review and served as an original notice.

These statutory requirements are jurisdictional, but it is sufficient if the one protesting the assessment substantially complies with them. Cowles

Communications, Inc. v. Board of Review of Polk County, 266 N.W.2d 626, 631 (Iowa 1978).

Defendants assert that plaintiff failed to file a protest of the 1981 assessment, defendant Board of Review did not act upon any protest of the 1981 assessment and that, therefore, these two jurisdictional prerequisites were not substantially complied with. We disagree. Plaintiff filed its protest in May of 1981, challenging the assessment made against its property "as of January 1, 1979." The following preliminary exchange occurred at the hearing before the board of review on May 19, 1981:

> MR. KNOX: Okay. Thank you. You want to go ahead—do you have a copy of the petition?
>
> MR. SHOEMAKER: I do, yes.
>
> MR. KNOX: I notice that there's a problem on the way it is filled out.
>
> MR. SHOEMAKER: Uh-huh.
>
> MR. KNOX: Directing you to—well, right up here where it states the assessed valuation, you have January, 1979.
>
> MR. SHOEMAKER: Well, I understand from the county assessor's office that the assessment hasn't been changed since 1979 which is the reason I put it in that way.
>
> MR. KNOX: Let me ask our attorney. Is that—
>
> MR. PECHACEK: That would be the correct date.
>
> MR. KNOX: Then, I would ask that you—I realize your situation, the board will acknowledge the petition, it may be filled out incorrectly but we're currently discussing the January 1, 1981 assessment which is still $2,303,712.
>
> MR. SHOEMAKER: Right.
>
> MR. KNOX: Okay. (emphasis added)

Thus, it is clear that everyone involved knew that it was the 1981 assessment which was being discussed. The jurisdictional requirements of Iowa Code § 441.37 regarding appeal to the board of review do not include a statement of the precise date of the assessment being appealed. All that § 441.37 requires is a timely

protest which is in writing and is signed by the one protesting or by an authorized agent. These jurisdictional requirements were satisfied in this case.

Since the requirements of § 441.37 were satisfied, we find no cause to challenge the jurisdiction of the district court under § 441.38. The jurisdictional requirements of the latter section were summarized as follows:

> (a) a protest filed by the taxpayer; (b) acted upon by the Board; (c) appealed to the district court within 20 days of the Board's adjournment; (d) with written notice of the appeal; (e) served as an original notice; (f) upon the chairman or presiding officer of the Board.

Cowles, 266 N.W.2d at 631. Defendant challenges jurisdiction here only on the first two of these six elements. We have already determined that the record shows plaintiff filed a protest sufficient to comply with § 441.37. We also believe it is clear that the board of review acted on plaintiff's protest. The board's minutes of May 19, 1981, state: "[a]ssessor's office stated that protest not timely filed and protesting 1979 assessment, there is no error in assessment and if it had been timely filed would have been denied." (emphasis added). Thus, the board in effect made a determination of plaintiff's protest on its merits by indicating it would have been denied in any event. We deem this to be in substantial compliance with the requirement that the protest be "acted upon by the board."

We find no jurisdictional flaws in plaintiff's protest to the board of review and appeal to the district court. The trial court's order sustaining defendants' special appearance is reversed and the cause is remanded for further proceedings on plaintiff's appeal from the board's decision.

REVERSED AND REMANDED.