

IN THE COURT OF APPEALS OF IOWA

No. 9-938 / 09-0654
Filed December 30, 2009

**KRUPP PLACE 1 CO-OP, INC., and
KRUPP PLACE 2 CO-OP, INC.,**
Plaintiffs-Appellees,

vs.

**BOARD OF REVIEW OF
JASPER COUNTY, IOWA,**
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Dale B. Hagen,
Judge.

Appeal from the district court ruling that plaintiffs' rental properties should
be classified as residential instead of commercial. **AFFIRMED.**

Steve Johnson, County Attorney, and Michael Jacobsen, Assistant County
Attorney, Newton, for appellant.

James Nervig of Brick Gentry, P.C., West Des Moines, and Craig Hastings
of Hastings & Gartin, L.L.P., Ames, for appellees.

Considered by Sackett, C.J., Vaitheswaran and Danilson, JJ.

SACKETT, C.J.

The Jasper County Board of Review (Board) appeals from the district court's ruling on the plaintiffs' combined motions that concluded "the plaintiffs' rental properties should be classified as residential multiple housing cooperatives" under Iowa Code chapter 499A (2007). We affirm.

BACKGROUND. The plaintiffs are two multiple housing cooperatives organized in November of 2007 under Iowa Code chapter 499A. In March of 2008 the Jasper County Assessor notified the plaintiffs of the 2008 property tax assessment, classifying the properties as commercial. In May, plaintiffs filed an objection, contending the properties were misclassified as commercial, but should properly be classified as residential under Iowa Code section 441.21(11). The Board adjusted the value of the properties because it determined they were assessed for more than the market value, but maintained the properties' classification as commercial.

In June, plaintiffs filed a petition on appeal in district court, seeking to have the properties reclassified as residential. The parties filed a joint stipulation of undisputed material facts, which the district court adopted as its findings of fact in its February of 2009 ruling on appeal. The court concluded the plaintiffs complied with the requirements of Iowa Code chapter 499A in creating the cooperatives. "However, . . . although they did comply with the letter of the law in forming their cooperatives, they did not abide by the 'spirit of the law' and the corporate entities shall be disregarded." Many of the conclusions of the court cited a lack of proof the cooperatives were actually operating as true multiple

housing cooperatives instead of standard rental properties. The court ultimately concluded:

In light of the evidence and the purpose of housing cooperatives, the court disregards the plaintiffs' organization under chapter 499A and instead treats the apartment buildings by their true nature—a commercial apartment building. The properties were properly assessed as commercial and the plaintiffs' appeal is denied.

The plaintiffs filed combined motions under Iowa Rules of Civil Procedure 1.904 (reconsider) and 1.1004 (new trial) and offered other documents, which the court admitted into evidence, that addressed the court's lack-of-proof concerns in its ruling. At the March hearing on the combined motions, the court admitted the additional evidence from the plaintiffs. In its April ruling, the court denied the motion for new trial, noting: "All the information the court needs to reconsider its previous ruling is found in the exhibit and a new trial would be a waste of judicial resources."

The court then addressed the motion for reconsideration. It concluded:

In light of the new evidence provided by the plaintiffs and admitted by the court, it is apparent the plaintiffs' rental properties were improperly classified and the appeal should be granted, rather than dismissed as was done in the prior ruling. The plaintiffs followed all proper corporate formalities and the multiple housing cooperatives were set up exactly as prescribed by Iowa law. The absence of the evidence [that] is now before the court had previously raised questions about the propriety of such cooperatives. However, now that the court has seen this evidence it is assured the plaintiffs' rental properties should be classified as residential multiple housing cooperatives under the Iowa Code. The February 10th, 2009 ruling shall be so modified.

The Board appeals, contending the court erred in ruling the properties should be classified as residential, because the plaintiffs "are operating as a

commercial enterprise and should be classified as commercial property for tax assessment purposes.”

SCOPE OF REVIEW. Appeals from decisions of local boards of review are heard in equity. Iowa Code § 441.39. Our review would ordinarily be de novo. Iowa R. App. P. 6.907; *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009). “Here, however, the parties have stipulated to the facts. Thus our review is really limited to the correction of error, if any, in the court’s application of pertinent statutes.” *City of Newton v. Bd. of Review*, 532 N.W.2d 771, 772 (Iowa 1995).

MERITS. Iowa Code section 499A.1 provides, in relevant part: “Any two or more persons of full age, a majority of whom are citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a cooperative basis.” For tax valuation and assessment, section 441.21(11) provides: “[A]s used in this section, ‘*residential property*’ includes all land and buildings of multiple housing cooperatives organized under chapter 499A.” The Iowa Administrative Code reinforces this classification:

Residential real estate. Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. . . . Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, *multiple housing cooperatives organized under Iowa Code chapter 499A . . . , shall be considered residential real estate.*

Iowa Admin. Code r. 701-71.1(4) (emphasis added).

It is clear the legislature classified “all land and buildings of multiple housing cooperatives organized under chapter 499A” as “residential property.” A cooperative “has the right to purchase real estate for the purpose of erecting, owning, and operating apartment houses or apartment buildings.” Iowa Code § 499A.11. Chapter 499A contains no requirement that the property be occupied by the members. In fact, section 499A.14 implies that members might not occupy an apartment as a residence, because it limits the homestead tax credit to “each member occupying an apartment as a residence,” while requiring “each member” to pay a proportionate share of the property tax owed by the cooperative.

Section 499A.11 specifies the relationship between the cooperative and its members is “a legal relationship of landlord and tenant.” There is no prohibition in chapter 499A against members subleasing their apartments. The proprietary leases issued by the cooperative in this case specifically provide for subleases if the lessor or a majority of the lessor’s directors approve in writing. The leases also specify that the cooperative may demand rent from subtenants if a lessee defaults in paying the rent due, clearly indicating that subleasing is possible.

From the evidence in the record, the district court concluded, “The plaintiffs followed all proper corporate formalities and the multiple housing cooperatives were set up exactly as prescribed by Iowa law.” From our review of the record and the applicable law, we determine the district court correctly applied the law as set forth in the code and the administrative code.

The Board urges us to “look to the actual operation of the cooperative in classifying the property for tax purposes.” See *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 255-57 (Iowa 2000) (applying the “actual use” test to determine if the property was “used solely for the appropriate objects of the charitable institution”). In *Carroll*, the issue was whether certain property qualified for a charitable tax exemption. We determine the actual use test does not apply to the circumstances before us. Even if we were to consider the actual use of the property owned by the cooperative, the statute specifies the purpose of cooperatives as “erecting, owning, and operating apartment houses or apartment buildings.” Iowa Code § 499A.11. That is exactly what the cooperatives before us are doing.

The Board also urges us to pierce the corporate veil, alleging the cooperative is operated as a fraud or sham. Although the district court initially determined the cooperatives complied with the letter but not the spirit of the law, that determination was based on the perceived lack of compliance with routine corporate operation as required in chapter 499A. See, e.g., Iowa Code §§ 499A.2A (bylaws), .3A (meetings of members), .11 (certificates of ownership and proprietary leases). Once the court was presented with evidence of careful adherence to the requirements of chapter 499A, it changed its ruling. We determine the district court correctly applied the law to the facts before it, once it had all the facts.

We conclude the property owned by the cooperatives in the case before us must be classified as residential property for taxation purposes under Iowa

Code section 441.21(11) and Iowa Administrative Code rule 701-71.1(4).

Because the district court correctly applied the law, we affirm its ruling.

AFFIRMED.

Danilson, J., dissents.

DANILSON, J. (dissenting)

I respectfully dissent. The fact that the corporations and cooperatives were established as prescribed by Iowa law does not permit circumscribing the intent of the law. Our supreme court has stated:

The rental of multiunit dwellings is generally regarded as an income or profit-oriented enterprise. We, like other jurisdictions, have recognized the commercial nature of apartment complexes and their resulting commercial classification for tax purposes.

City of Newton v. Bd. of Review, 532 N.W.2d 771, 773 (Iowa 1995) (internal citations omitted). Here, the parties stipulated that Krupp Place 1 and Krupp Place 2 are both buildings each containing twenty-four apartment units. The only members of each cooperative are Larry Krupp and Connie Krupp. Our supreme court has previously concluded that transforming a mere tenancy to cooperative ownership may not be sufficient to merit preferential property tax treatment. *Id.* at 774. In interpreting Iowa Code section 499A.14, our supreme court has stated:

A “cooperative” is generally defined as a multiunit dwelling in which each resident has (1) an interest in the entity owning the building, and (2) a lease entitling the member to occupy a particular apartment within the building. It is a vehicle for the common ownership of property, a means of enabling the occupants—as members of the cooperative—to own, manage, and operate the apartment without anyone profiting therefrom.

Id. (internal citations omitted). Our supreme court has found no merit in the contention that an apartment complex was transformed into a cooperative by the issuance of ownership certificates to the member-tenants where the members were not granted any actual ownership or management rights. *Id.*

In this action, the tenants lack even a pseudo ownership certificate and only the two members, Larry Krupp and Connie Krupp, manage and own the forty-eight apartment units. Under these stipulated facts, no legitimate claim can exist that Krupp Place 1 and Krupp Place 2 are “cooperatives” and deserve residential property status for tax purposes.