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2021 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

In re Kinder Morgan Sacroc, LP
2021 WL 5994365 (Tex. App. – Eastland, December 17, 2021, no pet.) (not reported)

Issues: Writs of mandamus

This is yet another chapter in the ongoing saga of a lawyer who convinced several taxing units to hire him to try to get more tax money from Kinder Morgan. After an unsuccessful challenge in Scurry County, he sued the appraisal district and Kinder Morgan on behalf of several taxing units. The district asked the trial court to disqualify the lawyer on the grounds that his contract with the taxing units was an illegal tax-ferret contract. The trial judge denied the district's motion. The district then sought a writ of mandamus from the court of appeals.

The court of appeals refused to issue the writ of mandamus. The higher court did not decide whether the lawyer's contract was valid. Instead, it ruled that even if the contract was void, the district would have to challenge the trial judge's ruling through an ordinary appeal. A writ of mandamus was not a necessary or appropriate remedy.

Duncan House Charitable Corp. v. Harris County Appraisal District
2021 WL 5831399 (Tex. App. – Houston [14th Dist.], December 9, 2021, no pet. hist.) (not reported)

Issues: Exemption applications; exhaustion of remedies

Duncan applied for a charitable exemption in 2017, but the appraisal district denied the application. Duncan did not file another application in 2018, but it did protest the fact that it wasn't receiving the exemption. The opinion isn't clear, but apparently the ARB denied the protest. Duncan filed suit against the district. The district filed a plea to the jurisdiction, claiming that Duncan's failure to file an exemption application in 2018 deprived the trial court of jurisdiction to consider the case. The trial court dismissed the case and Duncan appealed.

The court of appeals affirmed the dismissal of the case. The higher court reasoned that Duncan's failure to file an application meant that "neither the Appraisal Review Board nor the trial court had jurisdiction to grant a charitable exemption . . . for 2018."

Editor's Comment: In a technical sense, the court's reasoning is mistaken. Section 11.43 of the Tax Code says that a property owner's failure to file a required application means that the owner may not receive the exemption. But it does not say that the property owner may not file a protest or file an appeal to a court. The ARB actually had jurisdiction to consider the protest, and the trial court had jurisdiction to consider the appeal. But both should have ruled against Duncan on the merits of its exemption claim because it hadn't filed the necessary application.

The Apostolic Church America, Inc. v. Harris County
2021 WL 5829092 (Tex. App. – Houston [1st Dist.], December 9, 2021, no pet.) (not reported)

Issues: Appeal of a tax master's recommendation

Taxing units sued the church for delinquent taxes. The trial judge referred the case to a tax master, who conducted a hearing. The master did not make a decision at the time of the hearing. Instead, she gave the parties time to file additional briefs. Twenty-two days later the master sent a report to the trial judge recommending that the judge enter a judgement for the taxing units. The report noted that the church could appeal the master's recommendation to the trial judge. But the master did not send a copy of her report to the church's lawyer, and the church did not act to appeal the master's recommendation. About three weeks later, the judge signed a judgment following the master's recommendation. The district clerk notified the church's lawyer about the judgment with an e-mail that referred to the master's earlier report. That was the first notice that the lawyer had about the report. The church raised the lack of notice in a motion for new trial, which was overruled by operation of law when the trial judge didn't act on it. The church appealed.

The court of appeals reversed the judgement and sent the case back to the trial court. The court of appeals explained that under §33.72 of the Tax Code, a party is entitled to notice of a the right to appeal a master's recommendation. That notice must be given in open court or my first-class mail. The party then has ten days to appeal the master's recommendation and seek a trial de novo in the court. The trial judge should not act on the master's recommendation during that ten-day period. No such notice was given to the church, so the church had no opportunity to appeal to the trial court. The trial judge erred by signing a judgement under those circumstances. The court of appeals rejected an argument from the taxing units to the effect that it didn't matter that the church had no opportunity to appeal because it would have lost anyway. The higher court explained that it could not predetermine the outcome of an appeal that had not happened.

Holcim (US) Inc. v. Ellis County Appraisal District
642 S.W.3d 840 (Tex. App. – Texarkana, November 18, 2021, no pet.)

Issues: Exhaustion of remedies

Holcim filed a protest but failed to appear for its ARB hearing. On the day of the hearing, there was some communication between Holcim and the ARB. A representative of Holcim said that an affidavit had been mailed to the ARB. But the ARB didn't have any affidavit, and the board dismissed the protest. More than two weeks later Holcim e-mailed and then wrote the ARB asking for a new hearing. Again, it blamed the postal service for not delivering the affidavit on time. The ARB did not schedule a new hearing. Holcim sued the appraisal district, asking the trial court to determine the value of Holcim's property. The district responded with a plea to the jurisdiction. The trial court dismissed the case, and Holcim appealed.

The court of appeals affirmed the dismissal of the case. The higher court explained that a property owner must appear for its ARB hearing. If the owner fails to appear and has a valid reason, it can act within four days of the missed hearing and request a new hearing under §41.45(e-1) of the Tax Code, but Holcim hadn't done that. Holcim asked the trial court to determine the value of its property even though the ARB had never considered that issue. Section 42.01 may sometimes allow a property owner to appeal a jurisdictional determination by an ARB, but that is not what Holcim tried to do. It wanted the trial court to determine the value of its property. Section 42.231 may allow a court to refer a protest back to an ARB. That statute applies where the ARB determined the protest, but it later appeared that the property owner had not exhausted its administrative remedies. In this case, however, the ARB had never *determined* the protest. Instead, it had *dismissed* the protest.

Klein Independent School District v. Northwood Lighting Corp.
2021 WL 4736469 (Tex. App. – Houston [14th Dist.], October 12, 2021, no pet.) (not reported)

Issues: Tax warrants

In 2019, taxing units sought a tax warrant to collect delinquent 2013-2018 taxes on Northwood's personal property. The trial court issued the tax warrant. Northwood then responded and sought a declaratory judgment and an injunction to prevent the taxing units from following through with the sale of its property. Northwood pointed out that the statute of limitations barred a suit for the 2013 and 2014 personal-property taxes. It claimed that the statute of limitations made the tax warrant completely void because two years of taxes were covered by limitations. The trial court issued a temporary restraining order against the taxing units and set a hearing on Northwood's claim for a temporary injunction. At that second hearing, the trial court denied the taxing units' delinquent-tax claims, dissolved the tax warrant, and ordered the taxing units to release Northwood's property. The court even awarded attorneys' fees to Northwood. The Taxing units appealed.

The court of appeals reversed the trial court's order. The higher court explained that the purpose of a temporary injunction is to preserve the status quo until the issues in a lawsuit can be decided. A trial court should not decide the rights and liabilities of the parties in the contest of a temporary-injunction hearing. It should not issue a final judgment in response to a temporary-injunction hearing. The court of appeals sent the case back to the trial court for further proceedings.

In re Tate
2021 WL 4467604 (Bankr. W.D. Texas, September 29, 2021)

Issues: Tax sales; bankruptcy

Tate's homestead was sold by the sheriff pursuant to a delinquent-tax judgment from a state court. W7 bought the property at the tax sale. Tate then filed a Chapter 13 bankruptcy petition. Tate proposed a plan that would treat the homestead as his property and treat W7 as a lienholder. Under the proposed plan, Tate would pay off W7 over five years. That would end W7's rights in the property. W7 responded that it was not a creditor or a lienholder whose claims could be modified in bankruptcy. It was the owner of the property, and Tate was not. The bankruptcy court ruled for W7. The court explained that under §34.01 of the Tax Code, W7 held "good and perfect title" to the property, subject only to Tate's right to redeem it. A bankruptcy plan could not change redemption deadlines or procedures.

In re Reed
2021 WL 4395821 (Bankr. W.D. Texas, September 24, 2021)

In re Griego
2021 WL 4839891 (Bankr. W.D. Texas, October 14, 2021)

Issues: Transferred Tax liens; bankruptcy

These bankruptcy cases involve the same question. In each case a property owner took out a property-tax loan on his/her homestead and gave the lender a promissory note and a dee of trust. The tax liens were transferred to the lender. The homeowner then filed a Chapter 13 bankruptcy petition. In each case the lender was fully repaid under the bankruptcy plan. But there was a controversy about the lender's right to recover costs and attorneys' fees. The lender argued that it was entitled to recover all costs and fees because it held a "statutory lien" on the homestead property. The bankruptcy trustee argued that the lender had a "security interest," which under bankruptcy rules, would limit the recoverable costs and fees. In each case, the bankruptcy court ruled for the lender. The lender had the right to fully recover its costs and fees just as though the lien were still held by the taxing units.

Sundial Owner's [sic] Association, Inc. v. Nueces County Appraisal District
2021 WL 4095177 (Tex. App. – Corpus Christi-Edinberg, September 9, 2021, no pet. hist.) (not reported)

Issues: Tax payment during appeal

Sundial owned several units in a condominium complex that had been seriously damaged by Hurricane Harvey. Following an unsuccessful protest, Sundial sued the appraisal district to challenge the 2019 appraised values of the condos. But Sundial did not pay any taxes. The district moved for the dismissal of the case arguing that Sundial should have at least paid the taxes on the undisputed values of the condos. The district provided records from the TAC showing that no payments had been made. Sundial admitted that it had made no payments but argued that the improvements had no value at all because they were so badly damaged. The trial court ruled for the district and dismissed the case. Sundial appealed.

The court of appeals affirmed the trial court's dismissal of the case. The higher court reasoned that even if Sundial was right about the improvements, it could not reasonably deny that the land associated with each condo had some value. Sundial's evidence, an affidavit from a realtor, addressed the improvements only, not the land. Sundial should have paid at least the taxes associated with the land values. When it failed to do so, the trial court lost jurisdiction over the case.

Kinder Morgan Sacroc LP v. Scurry County
2021 WL 3672605 (Tex. App. – Estland, August 19, 2021, no pet.) (not reported)

Issues: Taxing Unit challenges; SLAPP suits

This opinion follows upon the Supreme Court's opinion in the same case. That opinion from February 4, 2021 is summarized below. Recall that the taxing units sued Kinder Morgan alleging that the 2019 appraisals of its minerals were void because of fraud on Kinder Morgan's part. The taxing units claimed that because the existing appraisals were void, the minerals could be reappraised at higher values. Kinder Morgan claimed that the taxing units' suit violated the Texas Citizens Participation Act (TCPA). The taxing units claimed that their suit fell under an exception to the TCPA. That exception allows suits based on common-law fraud claims. The trial court ruled for the taxing units on that question and refused to dismiss the case. Kinder Morgan appealed.

The court of appeals reversed the trial court's ruling. The higher court explained that even though the taxing units alleged fraud on the part of Kinder Morgan, their claims were based on the Tax Code and not on common law fraud. Their claims did not come under the common-law-fraud exception to the TCPA. The court of appeals sent the case back to the trial court for further proceedings.

Harris County Appraisal District v. McDonald
2021 WL 3556215 (Tex. App. – Houston [1st Dist.], August 12, 2021, no pet.) (not reported)

Issues: Agreements between property owners and appraisal districts

In 2017, a company called 1615 Tabor met informally with the appraisal district and agreed on an appraised value for its real property. The agreement was in writing and stated that it was "final and not subject to further protest or appeal." 1615 Tabor then sold the property to McDonald. McDonald filed a motion with the ARB under §25.25(c) of the Tax Code alleging that the appraisal was the result of a clerical error. The alleged clerical error apparently had something to do with city ordinances. The ARB denied the motion and McDonald took his claims to court in a suit against the appraisal district. The district argued that the case should be dismissed as a result of its agreement with the former owner. When the trial court refused to dismiss the case, the district filed an interlocutory appeal.

The court of appeals reversed the trial court and dismissed the case. The court of appeals explained that the district was immune from suit. The Tax Code contains some exceptions to that immunity, but it does not allow a court to review or overturn an agreement between the district and a property owner. McDonald's clerical-error motion concerned the same alleged error that was dealt with in the agreement. Thus, the courts had no jurisdiction to consider the motion.

Having explained that the courts had no jurisdiction to consider McDonald's clerical-error motion, the court of appeals next moved on to consider McDonald's clerical-error motion. It concluded that there was no clerical error. McDonald was not alleging a mathematical error; he was claiming that additional factors should be considered in relation to the value of the property.

Editor's Comment: If the ARB was made aware of the agreement, the ARB should not have heard or determined McDonald's motion at all. It should have just dismissed the motion. The opinion does not explain why the ARB denied the motion.

Rushmore Loan Management Services, LLC v. Harris County
2021 WL 3501704 (tex. App. – Houston [1st Dist.], August 10, 2021, no pet.) (to be published)

Issues: Excess proceeds following tax sale

Taxing units sued Kalantzakis for delinquent taxes. Lienholders, including HUD were also named as defendants. Shortly before the tax sale, HUD assigned its lien to a company represented by Rushmore. The tax sale on November 7, 2017 resulted in substantial excess proceeds. Kalantzakis, the taxing units, and a former holder of another lien petitioned the trial court for the release of the proceeds. On February 9, 2018, the court held a hearing on their petitions. On the same day, Rushmore filed its own petition for excess proceeds, but did not set its petition for a hearing. On February 26, 2018, the trial court entered an order releasing the excess proceeds to Kalantzakis, the taxing units and the other lienholder. On October 16, 2018, Rushmore filed a motion to vacate the award of excess proceed to Kalantzakis, claiming that it had a higher priority claim to the money. Rushmore's motion was heard several months later by a master. The master

recommended denying Rushmore's motion. The trial court followed that recommendation and issued an order denying Rushmore's motion on September 13, 2019. Rushmore appealed.

The court of appeals determined that it had no jurisdiction to hear Rushmore's attempted appeal. The higher court explained that normally a party can appeal only a final judgment, not a post-judgment order. A limited exception to that rule is found in §34.04(e) of the Tax Code. A party can appeal a post judgment order ***releasing*** excess proceeds. But there is no right to appeal an order ***denying*** a claim for excess proceeds. Rushmore could have appealed the trial court's February 26, 2018 order releasing excess proceeds even though the order did not dispose of all claims. But Rushmore did not act in time. The September 13, 2019 order did not award any excess proceeds and was therefore not appealable. Neither was the master's report. The court of appeals dismissed Rushmore's attempted appeal.

Harris County Appraisal Review Board v. Cyngita Properties, Inc.
2021 WL 3196528 (Tex. App. – Corpus Christi-Edinburg, July 29, 2021, no pet.) (not reported)

Issues: Suing an ARB

Cyngita filed a 2019 protest concerning its property. The ARB sent a notice of its hearing, but Cyngita's agent did not appear. Eight days later, Cyngita filed a "Request to Set Aside Hearing Dismissal" asking the ARB to reinstate the protest and schedule a new hearing. The ARB replied with a letter explaining that Cyngita's protest was dismissed as a result of its failure to appear and stating that there would not be another hearing. Sixty-six days later, Cyngita sued the ARB and the appraisal district. It claimed that it could sue the ARB under §41.45(f) of the Tax Code because the ARB had denied it a hearing to which it was entitled. The ARB responded that §41.45(f) did not apply and that it was immune from the suit. When the ARB's plea to the jurisdiction was denied by the trial court, the ARB filed an interlocutory appeal.

The court of appeals overruled the trial court and dismissed the suit against the ARB. The court of appeals explained that §41.45(f) did not apply because the ARB had not denied Cyngita a hearing. The ARB had scheduled a hearing and notified Cyngita. After missing the hearing, Cyngita might have invoked §41.45(e-1) within the following four days and claimed that there was good cause for its agent missing the hearing, but it didn't do that. It filed its written request ***eight*** days after missing the hearing. Because §41.45(f) did not apply, there was no waiver of the ARB's immunity. Cygnita could not sue it.

The ARB also claimed that Cygnita's claims against the district should be dismissed. The court of appeals declined to do that because the district had not filed a plea to the jurisdiction or joined in the ARB's appeal. Under those circumstances, the court could not do anything for the district.

Delta County Appraisal District v. PPF Gin & Warehouse, LLC

632 S.W.3d 637 (Tex. App. – Texarkana, July 29, 2021, pet. denied)

Issues: Exemption for farm and ranch equipment

PPF grew and harvested cotton. When the cotton was ready, PPF used harvesting equipment to gather the bolls into modules, which were left in the field. Then, trucks called module trucks would pick up the modules and transport them to a gin. The trucks were equipped with special equipment to accomplish their task. Thay were not used for any other purpose. In 2018 and 2019, PPF claimed that the module trucks were exempt from taxation under §11.161 of the Tax Code as machinery and equipment items used in the production of farm or ranch products. The appraisal district denied the exemption. After unsuccessful protests, PPF sued the district. The trial court entered a summary judgment for PPF and the district appealed.

The court of appeals affirmed the trial court's judgment exempting PPF's module trucks. The higher court noted that Art. VIII, §19a of the Texas Constitution creates a tax exemption for, "implements of husbandry that are used in the production of farm or ranch products." The court read the history behind that provision to indicate that machinery and equipment were included in the exemption. The court also discussed the history of §11.161, which was amended in 2005 to state that machinery and equipment items could qualify for the exemption, "regardless of their primary design." According to the court, the "production" of farm and ranch products included "every stage of production from the cultivation of the cotton plants to the point that the cotton on those plants became available for sale in a form that [was] useable by others." Removing modules from the field was related to production of a farm product. The fact the trucks were also used to transport the modules, did not disqualify them from the exemption.

Bank of Texas NA v. Collin Central Appraisal District
2021 WL 2548711 (Tex. App. – Dallas, June 22, 2021, no pet.) (not reported)

Issues: Evidence of value

Following an unsuccessful protest, the bank filed suit to contest the appraised values of two of its branch bank buildings. The bank had appraisals from a team of two appraisers. The appraisal district moved to exclude the appraisals and to prevent the appraisers from testifying to their opinions of value. The trial court concluded that the appraisals were unreliable and granted the district's motion. The bank's lawyers asked the trial judge for an opportunity to present the testimony of the appraisers so that it would be included in the record for an appeal. The judge included the appraisers' reports, their resumes, and summaries of their contemplated testimony, but she did not allow the appraisers to testify in a question-and-answer format. Because the bank had no evidence to present, the court entered a directed verdict for the district. The bank appealed.

The court of appeals affirmed the decisions of the trial court. The higher court explained that the expert testimony of an appraiser is subject to the same scrutiny that applies to other types of experts. The appraiser's testimony must be relevant, reliable, and based

on a reliable foundation. The court noted that the bank's appraisers had relied on the income approach, but their estimates of income and expenses were based on office buildings and retail buildings, not branch banks. They offered no explanation for that approach. There was a big analytical gap between the data that the appraisers relied on and their conclusions. Their opinions were not reliable, and the trial court did not abuse its discretion by excluding their testimony. Any error by the trial court in not allowing the bank to make a question-and-answer record of the appraisers' testimony was harmless and did not affect the outcome of the case or the bank's ability to appeal. The court of appeals also rejected the bank's complaints concerning the trial court's findings of fact and conclusions of law. The trial court's findings were supported by the record, and the additional findings requested by the bank would have been immaterial.

Harris County Appraisal District v. 4085 Westheimer Holdings, Ltd.
2021 WL 2424927 (Tex. App. – Houston [1st Dist.], June 15, 2021, no pet.) (not reported)

Issues: Tax payment during appeal

A property owner sued the appraisal district to appeal an ARB order concerning the 2019 appraisal of a shopping center. In March of 2020, the district filed a plea to the jurisdiction urging the trial court to dismiss the case because the owner had not paid any 2019 taxes. The district also filed records from the tax assessor-collector, including Certified Delinquent Tax Statement Detail sheets showing that no taxes had been paid. The district included copies of e-mails in which its lawyers had asked the owner's lawyers whether there were any records of taxes being paid. The owner's lawyers did not respond to the e-mails. The owner responded to the plea to the jurisdiction by saying that it had "confirmed with its accountants" that taxes had been paid. The owner also included screen shots of the tax assessor-collector's "Search Delinquent Accounts" website saying that there was no data available concerning the shopping center. The owner also claimed that the COVID-19 pandemic had it made it difficult to get information about paying the taxes. The owner requested that the district's plea to the jurisdiction be removed from the docket. The trial court never ruled on the owner's request, but it did deny the district's plea to the jurisdiction. The district filed an interlocutory appeal.

The court of appeals reversed the trial court and dismissed the case. The higher court explained that the district's evidence was sufficient to establish that the owner did not pay the taxes. The owner attempted to raise objections to the district's evidence, but those objections had not been raised or acted upon in the trial court. The district's evidence was sufficient to shift the burden of proof, but the owner failed present any competent evidence. It was not enough to plead that the accountants had paid the taxes. The statement on the "Search Delinquent Accounts" website to the effect that there was no data available did not indicate one way or another whether any tax payment had been made. The owner's claim that the district's plea to the jurisdiction should not be heard because of difficulties presented by the pandemic was not presented to the trial court as a motion for continuance. It was not considered or acted upon by the trial court, so the court of appeals did not consider it.

Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District
624 S.W.3d 535 (Tex., June 11, 2021)

Issues: Public property exemptions

A private, for-profit LLC owned a building and leased it to a supermarket chain, which, in turn, subleased it to Odyssey. Odyssey ran an open-enrollment charter school there. In the sublease, Odyssey contracted to pay the taxes on the building. Odyssey claimed that the building should be exempt as public property. Its exemption claim was denied by the appraisal district, the ARB, the trial court, and the court of appeals. At each level, the exemption was denied because Odyssey did not own the property. Undaunted, Odyssey asked the Texas Supreme Court to take the case, and the high Court agreed.

The Supreme Court upheld the rulings of the lower courts. The Court discussed in minute detail the two constitutional provisions related to tax exemptions for public property. Art. XI, §9 exempts property of local governments "owned and held only for public purposes . . . and all other property devoted exclusively to the use and benefit of the public . . .." Art. VIII, §2 allows the legislature to adopt exemptions for "public property used for public purposes." The Court has long interpreted both provisions to require that property be owned, at least equitably, by a governmental entity. This opinion maintains that interpretation. The Court acknowledged that §12.128 of the Education Code purports to say that property leased to a charter school is "considered to be public property for all purposes." But the Constitution does not allow the legislature to give an exemption by simply deeming the public to be the owner of property that it does not actually own. The legislature cannot change facts.

The Court noted that Art. VIII, §2 also allows an exemption for property owned by private parties but used for school purposes. But that provision has always been interpreted to require that the same party own and operate the school. In this case, the operator of the school, Odyssey, did not own the property.

Three justices wrote a dissenting opinion asserting that the constitutional public-property exemptions do not require property to be owned by a governmental entity.

Editor's Comment: The legislature has long sought to do what the Supreme Court says that it cannot do, i.e., exempt property leased to charter schools without giving the voters a chance to vote on a proposed constitutional amendment. This year, the legislature tried again when it passed House Bill 3610. As a result of this opinion, it seems unlikely that courts will apply the new bill to exempt such property.

Fort Bend Central Appraisal District v. American Furniture Warehouse Co.
630 S.W.3d 530 (Tex. App. – Houston [1st Dist.], June 3, 2021, no pet.)

Issues: Delivery of notice to property owner

American Furniture Warehouse (AFW) filed an unsuccessful protest with the ARB and then sued the appraisal district. The district filed a plea to the jurisdiction, arguing that the suit was filed too late, more than sixty days after AFW received notice of the ARB's order. In order to prove the date on which AFW received the ARB's order, the district offered the affidavit of one of its employees and several attached exhibits. AFW raised objections to the district's evidence but offered no evidence of its own. The trail court sustained those objections and refused to dismiss the case. The district appealed.

The court of appeals reversed the trial court's ruling. The higher court ruled that the district's evidence was admissible and that the case should be dismissed. Specifically, the affidavit from the district's employee included a copy of AFW's appointment-of-agent form directing that notices be sent to AFW's agent at a particular address. Also attached were the notice of the ARB's order and a USPS Certified Mail Receipt & Proof of Delivery. The identifying numbers, addresses, and property descriptions on the documents all matched. The affidavit explained that the employee had used the Track & Confirm feature on the USPS website to confirm when the notice was delivered to AFW. The court of appeals explained that the evidence was admissible. The Texas Rules of Evidence prohibit many types of hearsay, but Rule 803 includes an exception for public records. A record of a public office is not hearsay if: (1) the record sets out the office's activities and (2) the opponent of the evidence fails to show any reason why it is not trustworthy. The USPS records satisfied those requirements. The USPS records were self-authenticating official publications, i.e., no additional evidence was required to show what they were. The district's evidence was sufficient to show when the notice was delivered to AFW, and AFD has no evidence to contradict it. FEW filed its suit sixty-one days after receiving the notice, and that was too late.

In re DEK-M Nationwide, Ltd.
627 S.W.3d 353 (Tex. App. – Houston [14th Dist.], May 20, 2021, no pet.)

Issues: Tax sales

In 2010, the Appraisal district, acting as a collector for the taxing units, sued Willis for delinquent taxes on royalty interests. While the suit was pending, Willis gave KDEPC liens on the royalty interests to secure a debt that he owed to that company. In late 2010, a judgment for the district was entered in the delinquent-tax case. The trial court entered an order of sale in early 2013. At about the same time, KDEPC foreclosed its liens on the royalty interests and sold them to a related business, DEK-M. That sale did not affect the tax liens on the property.

The sheriff sold the royalty interests in a tax sale, and the deeds were recorded in April 2013. The deeds conveyed all the rights that Willis had in the properties when the delinquent tax suit was filed. KDEPC successfully claimed the excess proceeds from the sale. In March 2014, KDEPC and DEK-M filed a post-judgment motion in the delinquent tax case asking the trial court to void its judgment and the tax sale. They amended that motion in March of 2015. There may have been some kind of hearing on their motion in May of 2015, but there was no record of the hearing.

While all this was going on (roughly 2014-2018), DEK-M filed a separate suit (the title suit) against the district and the tax-sale buyers. The district and the buyers raised the defense of res judicata and argued successfully that DEK-M could not relitigate the delinquent-tax issues in a separate suit. DEK-M failed in several appeals.

In 2019, KDEPC and DEK-M filed a "bill of review" in the original delinquent tax suit and revived their motion to set aside the tax sale. The district and the buyers responded with a motion for summary judgment, which was granted by the trial court. KFEPC and DEK-M went to the court of appeals with something that might have been either an appeal or a petition for a writ of mandamus.

The court of appeals decided that it was dealing with a mandamus proceeding. A party can only appeal a final judgment. KDEPC and DEK-M were not challenging the final judgment in the delinquent tax case; they were challenging a post-judgment order of the trial court. Such a challenge can be raised only through mandamus. The court next dismissed KDEPC and its claims for lack of standing. KDEPC did not claim any interest in the royalty interests at the time of the tax sale or after the sale.

The court of appeals next explained that DEK-M's challenge to the tax sale and the delinquent tax suit was barred by res judicata because the identical claims had been litigated in the separate title suit. The district and the buyers never agreed that DEK-M could split its claims into two lawsuits. There was no issue of material fact related to the trial court's summary judgment. Even the record was unclear concerning the trial court's hearing on DEK-M post-judgment amended motion, it was clear that the trial court had denied that motion. Issues concerning royalty payments were not before the court of appeals because he trial court had not issued any orders concerning those payments. The higher court also declined to consider other issues that DEK-M had not raised in the trial court. The court of appeals affirmed the summary judgment for the district and the buyers.

Harris County Appraisal District v. Braun
625 S.W.3d 622 (Tex. App – Houston [14th Dist.], May 6, 2021, no pet.)

Issues: Exhaustion of Remedies

Braun was the co-owner of a home along with her husband and her mother. The property was not her mother's principal residence, so the homestead exemptions had to be prorated under §11.41 of the Tax Code. The appraisal district treated Braun and her husband as a single owner and reduced the applicable exemptions by one-half. Braun claimed that the district's decision was an unconstitutional discrimination against married people. Instead of filing a protest, however, she simply sued the district. She sought a declaratory judgment and claimed damages under 42 U.S.C. §1983, a federal statute that allows governments and their officers to be sued over constitutional violations. She later added a claim under Chapter 42 of the Tax Code. The appraisal district asked the trial

judge to dismiss the case because Braun had not taken her claims to the ARB in a protest. When the trial judge refused to dismiss the case, the district appealed.

The court of appeals reversed the trial judge's decision and dismissed the case. The higher court discussed the principle of comity, the respect that states and the federal government show for each other's laws. The federal statute should not be applied to invalidate state or local taxes if state law provides a "plain, adequate, and complete" remedy. The Texas Tax Code provides adequate procedures and remedies for property owners with complaints about taxes, i.e., the ARB protest process.

Further, the Tax Code makes the protest process the *exclusive* means through which a property owner can challenge a tax appraisal. A declaratory judgment is generally not available as an alternative. Some court opinions have recognized an exception if a property owner's claim is purely legal or constitutional. But Braun was not raising a pure question of law; she was seeking to have tax assessments set aside. Other courts have ruled that a property owner can sue a public official who acts ultra vires, i.e., without any legal authority. Braun, however, had not sued a public official. Even if she had sued the chief appraiser, she could not have prevailed because chief appraisers have the legal authority to determine exemption applications. She could not get a declaratory judgment.

Her only remaining claim was the one under Chapter 42, and the trial court had no jurisdiction over that because Braun had not been through the protest process.

Livermore Hotel Group LLC v Cameron Appraisal District
2021 WL 1799791 (Tex. App. – Corpus Christi-Edinburg, May 6, 2021, pet denied) (not reported)

Issues: Discovery on appeal

Livermore sued the appraisal district in an appeal of an ARB order. Livermore refused, again and again, to respond to discovery requests from the district. The story is long and complicated, but it led to the trial court awarding the district $3,600 in attorneys' fees and dismissing Livermore's case as a result of its discovery abuse. Livermore appealed the award of attorneys' fees.

Livermore argued that the Tax Code did not allow the award of attorneys' fees. The court of appeals rejected that argument. The higher court explained that the award of attorneys' fees was allowed by Rule 215 of the Texas Rules of Civil Procedure. Nothing in the Tax Code prohibited or limited an award of attorneys' fees under Rule 215. The court of appeals affirmed the trial court's order.

Ovation Services, LLC v. Richard
624 S.W.3d 610 (Tex. App. -- Tyler, March 31, 2021, no pet.)

Issues: Delinquent tax suits; tax lien transfers

In 2009, a property tax lender called Community Tax Relief (CTR) paid delinquent taxes on property belonging to York and acquired the tax lien. In 2011, CTR conveyed the lien to MLS, which recorded a record of the conveyance. According to the County's public records, MLS held the lien in 2013 when taxing units sued York for subsequent years' taxes. MLS was named as a defendant and served in the delinquent tax suit, but it didn't answer. The court entered a judgment and ordered a tax sale. Richard bought it at that sale. At about the same time documents were filed purporting to convey the lien once owned by CTR to different parties. There was no public record reflecting that any of those entities had ever acquired the lien from MLS. The taxing units and Richard didn't know about their documents. A few months after Richard bought the property at the tax sale, Ovation sued him claiming to be a loan servicer for the actual holder of the transferred lien. Ovation sued to attack the delinquent tax suit and the resulting tax sale. While Ovation's suit was pending, MLS executed documents purporting to transfer the lien to a company in that second group of parties, the group that previously had no recorded link to MLS. MLS's documents purported to be retroactive to a time before the delinquent tax suit. They were not recorded. Richard moved for a summary judgment, which was granted by the trial court. Ovation appealed.

The court of appeals affirmed the summary judgment for Richard. The court of appeals explained that when the taxing units filed the delinquent tax suit, they were required to name and serve the holder of the transferred tax lien as reflected in the public records. That was MLS. The taxing units were under no obligation to sue the other parties that might have secretly acquired the lien from MLS without filing anything in the public records. Ovation did not have any due process right to notice of the delinquent tax suit because it was not the record holder of the transferred lien. When MLS failed to appear in the delinquent tax suit and a judgment was entered, it extinguished the transferred tax lien. The judgment did not use the word "extinguished," bit it was clear that the lien was lost. The tax sale was valid, and it cut off the transferred lien claimed by Ovation.

Cameron Appraisal District v. Alfaro
2021 WL 1134315 (Tex. App. – Corpus Christi-Edinburg, March 25, 2021, no pet.) (not reported)

Issues: Exhaustion of remedies

In 2012, Serra bought real property at a tax sale. The opinion from the court of appeals does not say who owned the property before the tax sale or who the defendants were. In 2016, Alfaro, claiming to be the real owner of the property, sued Serra, the appraisal district, the taxing units, and their collection lawyers. She claimed that the district had wrongfully split accounts for the property and that nobody had given her notice of the tax sale. She said that shortly before the tax sale, the district had told her that all taxes on the property were paid. The district responded with a plea to the jurisdiction pointing out that Alfaro had never taken her complaints before the ARB. When the trial court refused to dismiss the case, the district appealed.

The court of appeals sided with the district and dismissed the case. The higher court explained that Alfaro could have taken her claims concerning appraisal errors and failure to give her notice to the ARB in a protest, but she didn't. Her failure to exhaust the remedies that could been provided by the ARB meant that the trial court had no jurisdiction over her claims.

NMF Partnership v. City of Dallas
2021 WL 1015862 (Tex. App. – Dallas, March 17, 2021, pet. denied) (not reported)

Issues: Contesting tax sales

In 1991, taxing units sued NMF for delinquent taxes. The suit led to a judgment and tax sale in 1995. At the sale, the property was struck off to the taxing units. More than a year later, in 1996, the trial court, apparently acting on a motion from the taxing units, issued an order declaring the tax sale void. Ten years after that, NMF filed a new suit seeking a declaration to the effect that the earlier post-judgment order voiding the tax sale was itself void. That is, NMF sought to uphold the validity of the tax sale at which it had lost its property. The trial court ruled against NMF, and NMF appealed.

The court of appeals ruled for NMF and declared the 1996 post-judgment order void. The court of appeals explained that a trial court ordinarily retains plenary jurisdiction over a case for only thirty days after it enters a judgment. The trial court had lost its jurisdiction long before it issued the order voiding the tax sale. There are some exceptions to this general rule, but none of them applied to this case. Thus, the trial court's 1996 post-judgment order was void, and the tax sale was never undone.

Collin Central Appraisal District v. Garland Housing Finance Corporation
2021 WL 711478 (Tex. App. – Dallas, February 22, 2021, pet. denied) (not reported).

Issues: Housing finance corporation exemption

Garland Housing Finance Corporation (GHFC) owned the land under a Plano apartment complex and leased the land to a related entity, which owned the complex. They sought an exemption for the property under the Texas Housing Finance Corporations Act. The exemption was denied by the appraisal district, and the property owners' protest was denied by the ARB. The owners appealed and the trial court entered a summary judgment granting them the exemption. The district appealed.

The court of appeals affirmed the summary judgment. The court explained that the case turned on the interpretation of the tax exemption in §394.002 of the Act. A completely nonsensical sentence in that law refers to the approval of an exemption by a city council in a city with more than 20,000 people. The district argued that this exemption should not be allowed because it had never been approved by the Plano City Council. The court disagreed and interpreted the law not to require council approval unless the property owner's own documents required council approval. GHFC's documents did not require council approval. The property, therefore, qualified for the exemption.

Kinder Morgan Sacroc, LP v. Scurry County
2021 WL 1705212 (Tex., February 4, 2021)

Issues: Challenges; SLAPP suits

Taxing units filed a challenge concerning mineral values. When the ARB denied the challenge, the taxing units appealed, filing their lawsuit against the appraisal district and property owner, Kinder Morgan. In an amended petition filed a few weeks later, the taxing units focused on Kinder Morgan and alleged that minerals owned by Kinder Morgan had been omitted from appraisal rolls for several years. Later, they filed a second amended petition alleging that Kinder Morgan had defrauded the district in order to avoid taxes. Kinder Morgan responded with a motion asking the trial court to dismiss the case under the Texas Citizens Participation Act (TCPA), which generally prohibits suits based on a party exercising its constitutionally protected freedoms. Kinder Morgan alleged that it was being sued for having sought advantageous appraisals from the district. The trial court ruled that Kinder Morgan's motion under the TCPA was filed too late and refused to dismiss the case. The court of appeals reached the same conclusion. Then the Texas Supreme Court agreed to consider the timeliness of Kinder Morgan's motion.

The high Court explained that a motion to dismiss a case under the TCPA must ordinarily be filed within sixty days after the case is first filed. Kinder Morgan's motion was filed more than sixty days after the taxing units filed their original petition. But a plaintiff's amended pleading can restart the sixty-day period. That is what happened when the taxing units filed their second amended petition alleging for the first time that Kinder Morgan had committed fraud. Those new essential facts gave Kinder Morgan an additional sixty days in which to file its motion under the TCPA. The motion was filed during that period, and it was therefore timely.

Kinder Morgan also argued that the taxing units' suit was a complete nullity because of the contingent-fee contract that they had with their lawyer. Under Chapter 2254 of the Government Code, a local government must get the attorney general's approval for a contingent-fee contract with a lawyer, and the taxing units had not done that. Kinder Morgan argued that the appeal was the result of a void contingent-fee agreement, and it was therefore void itself. That meant that the taxing units had never really filed their suit to appeal the ARB's order. The Supreme Court disagreed. The Court did not decide whether the taxing units' contract with their lawyer was legal. Instead, the Court ruled that even if the contract was illegal, the taxing units had acted in good faith and their appeal was not void. It might be defective but not void, and the taxing units should have the opportunity to correct a defect if one existed. The Supreme Court sent the case back to the trial court for further proceedings.

San Augustine County Appraisal District v. Chambers
618 S.W.3d 398 (Tex. App. – Tyler, January 21, 2021, pet. denied)

Issues: Mineral appraisals

Chambers owned land in Shelby County. He leased the minerals and retained a royalty interest. The mineral interest in Chambers's land were unitized with mineral interests in San Augustine County. The San Augustine County Appraisal District determined that the unitization gave Chambers an interest in minerals in San Augustine County. Chambers protested the SACAD's appraisal unsuccessfully, then took his claims to court. In 2017, the court of appeals determined that the lease did not give Chambers any interest in San Augustine County minerals. The lease expressly prohibited the cross-conveyance of interests. The court of appeals sent the case back to the trial court. There, the SACAD argued that despite the language of the lease, Chambers had acquired minerals in the county. At least there were equitable principles that should keep him from denying ownership. But the trial court entered summary judgment for Chambers, and the District appealed.

The court of appeals affirmed the trial court's judgment for Chambers. The higher court explained that mineral interests can be pooled without any cross conveyance. Chambers had signed division orders and accepted royalties from the pooled units, but that did not change his lease, which prohibited any cross-conveyance. Division orders do not transfer title to minerals. Chambers had not waived the terms of the lease or ratified any cross-conveyance. He was not estopped from relying on the lease. In the court's words, "No Texas statute provides for taxation of minerals outside the boundaries of the taxing unit merely by virtue of the fact that they are included in a production unit pursuant to a pooling agreement. No statute provides that pooling results in a cross-conveyance."