

FILED
06-22-2018
Clerk of Circuit Court
Brown County, WI
2018CV000640

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

BROWN COUNTY,
Plaintiff,

vs.

Declaratory Judgment
Case No. : 18-CV-640
Case Code: 30701

BROWN COUNTY TAXPAYERS ASSOCIATION
and FRANK BENNETT,

Defendants/Counterclaimants/Third-Party Plaintiffs,

vs.

RICHARD CHANDLER, Secretary
Wisconsin Department of Revenue,

Third-Party Defendant.

**BROWN COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES TO
COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

Plaintiff, Brown County, by its attorneys von Briesen & Roper, s.c., hereby answers the Counterclaim of Defendants/Counterclaimants/Third-Party Defendants, Brown County Taxpayers Association ("BCTA") and Frank Bennett ("Bennett") (collectively, "Defendants"), as follows:

COUNTERCLAIM AND THIRD-PARTY COMPLAINT

1. Answering paragraph 1, admits that Defendants seek to declare void and unenforceable Brown County's recently enacted sales and use tax, denies that the tax is void and unenforceable and denies the remaining allegations in said paragraph.

The Parties

2. Answering paragraph 2, admits.
3. Answering paragraph 3, admits Exhibit A is attached and speaks for itself.
4. Answering paragraph 4, denies the Sales Tax is unlawful and lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations and therefore denies same.
5. Answering paragraph 5, denies the Sales Tax is unlawful and lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations and therefore denies same.
6. Answering paragraph 6, admits.
7. Answering paragraph 7, lacks knowledge or information sufficient to form a belief as to the truth or accuracy of said allegations and therefore denies same.

Jurisdiction and Venue

Plaintiff realleges and incorporates herein its answers to paragraphs 1 through 7.

8. Answering paragraph 8, admits that Defendants seek a declaration under Wis. Stat. § 806.04, alleges that the allegation calls for a legal conclusion to which no response is required. If a response is required, denies the Sales Tax is void and unenforceable.
9. Answering paragraph 9, admits clauses (a) and (b), denies clause (c), and admits clause (d). Affirmatively allege the County Sales Tax is not void and unenforceable.
10. Answering paragraph 10, admits that Defendants served a Notice of Claim on March 2, 2018, affirmatively alleges the Notice of Claim speaks for itself, and denies the remaining allegations.
11. Answering paragraph 11, admits.
12. Answering paragraph 12, admits.

Statement of Facts

Plaintiff realleges and incorporates herein its answers to paragraphs 1 through 12.

13. Answering paragraph 13, admits.

14. Answering paragraph 14, admits the Ordinance was enacted on May 17, 2017 and denies the remainder of the first sentence as it calls for a legal conclusion to which no answer is required. If an answer is required, denies the remaining allegations in said sentence as to the January 1, 2018 date. As to the last two sentences in said paragraph, admits that the exhibits were attached and affirmatively allege said documents speak for themselves.

15. Answering paragraph 15, admits.

16. Answering paragraph 16, admits.

17. Answering paragraph 17, admits.

18. Answering paragraph 18, denies the first sentence in said paragraph and affirmatively alleges Brown County followed all required procedures in 2017 to issue its 2018 budget. Answering the second sentence in said paragraph, admits Exhibit D was attached to the Complaint and affirmatively alleges the document speaks for itself.

19. Answering paragraph 19, admits.

20. Answering paragraph 20, admits.

21. Answering paragraph 21, admits as to the amounts cited by Plaintiffs, and affirmatively alleges that such amounts are for certain capital projects to be funded by the revenue from the sales and use tax.

22. Answering paragraph 22, admits.

23. Answering paragraph 23, admits.

24. Answering paragraph 24, admits.

CAUSES OF ACTION

First Cause of Action for Declaratory Judgment – Violation of Wis. Stat. § 77.70

Plaintiff realleges and incorporates herein its answers to paragraphs 1 through 24.

25. Answering paragraph 25, admits.

26. Answering paragraph 26, admits that Wis. Stat. § 66.0621(3m) provides an exception allowing sales and use tax revenues for certain purposes, and denies the remaining allegations as they call for a legal conclusion.

27. Answering paragraph 27, denies.

28. Answering paragraph 28, denies.

29. Answering paragraph 29, denies.

30. Answering paragraph 30, denies.

31. Answering paragraph 31, admits Attorney General James Doyle issued a formal opinion, OAG 1-98, that an accurate copy of that opinion is attached, and denies the remaining allegations.

32. Answering paragraph 32, alleges the allegations in this paragraph call for a legal conclusion which does not require a response. If a response is required, denies plaintiffs' legal analysis and interpretation of the Attorney General's opinion and puts the plaintiffs to their strict burden of proof.

33. Answering paragraph 33, admits that Plaintiffs disagree with the Attorney General's interpretation, denies the remaining allegations.

34. Answering paragraph 34, denies.

35. Answering paragraph 35, admits that OAG 1-98 occurred before the enactment of levy limits by the Wisconsin legislature, that counties were not subject to levy limits until 2006,

and the date of enactment of Wis. Stat. 66.062, and denies the remaining allegations as they call for a legal conclusion.

36. Answering paragraph 36, admits that a part of the statute is cited and alleges the remaining allegations in this paragraph call for a legal conclusion which does not require a response. If a response is required, denies the entirety of the paragraph as it relates to the theories and allegations set forth by plaintiffs and puts the plaintiffs to their strict burden of proof.

37. Answering paragraph 37, denies.

38. Answering paragraph 38, denies.

39. Answering paragraph 39, admits Brown County intends to fund certain capital projects over the next six years with the County Sales Tax and denies the remaining allegations.

40. Answering paragraph 40, admits Brown County's 2017 and 2018 levy limits, and denies the remainder of the allegations of said paragraph.

41. Answering paragraph 41, denies.

42. Answering paragraph 42, denies.

43. Answering paragraph 43, denies.

44. Answering paragraph 44, denies.

45. Answering paragraph 45, denies.

46. Answering paragraph 46, denies.

47. Answering paragraph 47, denies.

48. Answering paragraph 48, denies.

AFFIRMATIVE DEFENSES

AS FOR ITS AFFIRMATIVE DEFENSES, Brown County alleges and states as follows:

1. Defendants fail to state a claim, in whole or in part, upon which relief may be granted.
2. Defendants cannot prove the harm required to proceed with their requested relief.
3. Defendants have failed to meet the elements necessary to obtain injunctive relief.
4. Upon information and belief, Plaintiff may have immunity from the claims asserted by the Defendants.
5. Defendants' claim for permanent injunctive relief may be barred, in part or whole, by Wis. Stat. § 77.59 which provides an adequate remedy at law should Defendants prevail.
6. Permanent injunctive relief, if any, can only be prospective in nature.
7. Defendants' claims may be barred, in part or whole, on the grounds they are not real parties in interest as related to taxes already paid into the Wisconsin Department of Revenue.
8. Plaintiff reserves the right to add additional affirmative defenses on the grounds that discovery has just commenced.

WHEREFORE, Brown County seeks the following relief:

- (a) Dismissal of the counterclaim with prejudice;
- (b) Award of Brown County's costs and fees; and
- (c) Such other and further relief as the Court deems reasonable and necessary.

Dated at Milwaukee, Wisconsin, this 22nd day of June, 2018.

By: Electronically signed by Andrew T. Phillips

Andrew T. Phillips, SBN 1022232
Steven L. Nelson, SBN 1009779
Smitha Chintamaneni, SBN 1047047

Attorneys for Plaintiff, Brown County

MAILING ADDRESS:

411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

PH: (414) 287-1570 (ATP)
(414) 287-1463 (SLN)
(414) 287-1515 (SC)

FAX: (414) 276-6281

Email: aphillips@vonbriesen.com
snelson@vonbriesen.com
schintam@vonbriesen.com

31188263_1.DOCX