

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

IN THE MATTER OF ST. CLAIR
COUNTY, ILLINOIS,

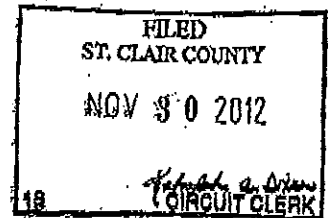
Plaintiff,

VS.

THE ILLINOIS DEPARTMENT OF
REVENUE, et al,

Defendant..)

No. 11-MR-213



INTRODUCTION

Before the Court is the meaning of a contract and its addendums between the United State of America (hereafter Government) and Scott Air Force Base Properties, LLC (hereafter SAFBP). The contract related to the construction of on-base housing for U.S. military personnel. SAFBP was to build and maintain the housing and sublease it to U.S. military personnel and their families. St. Clair County, Illinois reads this contract and its addendums to be a lease and therefore subject to local taxes. SAFBP argues the contract and its addendums actually give SAFBP only a license and not a leasehold interest.

This dispute involves the question of whether St. Clair County and other local taxing bodies could tax SAFBP's interests in the property as leasehold interests.

The Court has reviewed the contracts in question (hereafter referred to as the

parties to the agreement in question designated it a "lease" and not a "license". Scott Air Force Base Properties, LLC appreciated that a leasehold interest could be taxed and such property taxes could run into the millions of dollars. Nonetheless, the agreement does not contain a single paragraph or sentence explaining that the parties thereto understand the agreement not to be a lease as it is designated, but rather a license.

As between sophisticated parties, the courts should not be called upon to rewrite their contracts or to ignore the plain language of what they obligated themselves to so as to allow one to avoid tax liability. The Court respects the analysis of Judge Galvin, but in reading his recommendation that the agreement be construed as a license, one sees how much he struggles to make plain contractual terms mean something other than what they normally mean. This Court refuses to strain to find an alternative meaning to the plain language of the agreement. The Court accepts that what the parties to the agreement designate a lease and designate the parties as lessee and lessor was intended to be and is a lease.

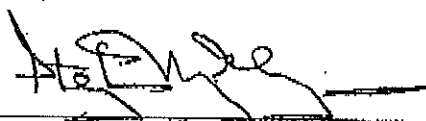
Judge Galvin places tremendous importance upon the fact that the United States Air Force made the housing units in question subject to its strict use guidelines as well as providing for immediate unilateral termination of the leases and cancellation of occupancy. Such requirements make sense for housing units maintained on a military base. However, given the plain language of the lease as

well as the fact that military families living in the leased properties would experience those units as their home and not as their hotel room, the constraints placed upon the military housing by the Government are not enough to transform the lease to a license.

The St. Clair County Assessor properly assessed the property in question as leasehold interests under Sec. 9-195 of the Property Tax Code.

It is hereby ordered that the July 18, 2011 decision of I.D.R. is reversed.

DATED: _____



Hon. Stephen P. McGlynn
Circuit Judge