

1620 HAWTHORNE, LTD.	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
vs.	§	
	§	
MONTROSE MANAGEMENT DISTRICT, ET	§	HARRIS COUNTY, TEXAS
AL.	§	
<i>Defendants.</i>	§	
	§	
	§	333RD JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Honorable Court held a bench trial on this matter on May 23, 2016. As a result of the bench trial, the Court enters the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

1. The purpose of the Montrose Management District (“MMD”) is to provide services and improvements to all property owners within the improvement district by assessing solely the owners of the commercial properties contained within its boundaries.
2. The property subject to MMD assessments was the land and improvements of the commercial property owners within the boundaries of the District. Properties exempt from the assessments were single-family detached residential, duplexes, triplexes, quadraplexes, condominiums, municipalities, counties, other political subdivisions, entities exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, public utilities, and recreational property or scenic use property the meets the requirements of Section 375.163, Texas Local Government Code.

¹ Any finding of fact that should be construed as a conclusion of law is adopted as such, and vice-versa.

3. Thus, only a subset percentage of the actual owners of real property within the MMD will bear the brunt of the assessment that benefits everyone.
4. MMD has no legal authority whatsoever to assess any property owners other than commercial property owners.
5. Section 3878.204(2) of the Texas Special District Local Laws Code empowered that entity to assess or finance a service or improvement project so long as a petition of “at least 25 owners of real property in the district that will be subject to the assessment, if more than 25 persons own real property subject to the assessment in the district according to the most recent certified tax appraisal roll for Harris County” (the “Assessment Petition”).
6. The Assessment Petition was signed by 26 owners of real property located within the MMD, including Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.
7. MMD’s Assessment Roll, which is attached as Exhibit G to the Hearing Examiner’s Report, did not list the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.
8. MMD’s Order, dated January 10, 2011, approved the Assessment Roll which did not include the real properties of Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.
9. On January 10, 2011, MMD levied seven annual assessments for the years 2010 through 2017 solely against all real properties shown on the Assessment Roll.
10. MMD’s Order, dated January 10, 2011, did not levy any assessments for the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter.
11. MMD did not levy any assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter prior to the summer of 2012.
12. MMD did not levy any assessments on other real properties owned by persons or entities that received a residential homestead exemption until 2015.

13. MMD did not attempt to retroactively assess any other real properties owned by persons or entities which were assessed in 2015.

14. MMD did not levy any assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter in calendar years 2010 and 2011.

15. No assessments were paid by Bailey E. Moore, Mitchmore Living Trust, or Michael M. Carter during calendar years 2010 or 2011.

16. Bailey E. Moore's real property has a HCAD number of 044-184-000-0055. At the time MMD levied seven annual assessments for the years 2010 through 2017, Bailey Moore's real property was a residential property. MMD did not include this real property on the Assessment Roll because it was listed as residential property.

17. Mitchmore Living Trust's real property has a HCAD number of 054-234-000-0015. At the time MMD levied seven annual assessments for the years 2010 through 2017, Randy Mitchmore operated a dental business from this property, but he also claimed a residential homestead exemption. MMD did not include this property on the Assessment Roll because of the residential homestead exemption on the real property.

18. Michael M. Carter's real property has a HCAD number of 054-234-000-0012. At the time MMD levied seven annual assessments for the years 2010 through 2017, Michael Carter operated a funeral business from this property, but he also claimed a residential homestead exemption. MMD did not include this property on the Assessment Roll because of the residential homestead exemption on the real property.

19. In its Order dated January 10, 2011, MMD authorized itself to supplement its Assessment Roll in years 2011 through 2017 by adding new improvements or substantially rehabilitated improvements (collectively, "Improvements") under construction on January 1, 2010, or constructed in the District after January 1, 2010.

20. In its Order dated January 10, 2011, MMD also authorized itself to levy assessments in years 2011 through 2017 on new improvements or substantially rehabilitated improvements (collectively, "Improvements") under construction on January 1, 2010, or constructed in the District after January 1, 2010.

21. No Improvements have been made to real property owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.
22. No Improvements have been made to real property owned by any persons or entities that were assessed in 2015 and listed on the Supplemental Assessment Roll.
23. MMD did not levy any assessments on any real properties not included in the Assessment Roll in its Order dated January 10, 2011.
24. MMD did not levy any assessments on any real properties not included in the Assessment Roll in any Order subsequent to MMD's Order dated January 10, 2011.
25. In the summer of 2012, MMD attempted to retroactively assess real property owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter, for 2010 and 2011. Those retroactive assessments were paid in the summer of 2012 by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter.
26. Although there were other properties owned within the District containing a residential homestead exemption which included commercial activities, MMD did not attempt to assess any of those other properties in the summer of 2012, and did not attempt to retroactively assess those properties.
27. MMD has assessed and collected \$6,589,092.70, the entirety of which derived its legal authority from the Assessment Petition.

CONCLUSIONS OF LAW

After conducting a final trial on the merits, the Court concludes as follows:

1. The assessments paid by owners of real property within the District were not made voluntarily, but were paid under duress.
2. Failure to pay assessments when due could subject delinquent payers to interest, penalties, additional penalties, liens, costs and attorneys' fees.

3. The West Montrose Management District's Assessment Petition was not in compliance with state law and the total amount of the assessment is void as a matter of law.

4. Irrespective of whether MMD had the legal authority to levy assessments on the real properties owned by Bailey E. Moore, Mitchmore Living Trust, and Michael M. Carter, the fact remains that MMD did not do so. That being the case, MMD failed to obtain an Assessment Petition whereby at least 25 signers met the requirement that their properties "will be subject" to the assessments imposed. Accordingly, none of the levied assessments were valid and are void as a matter of law.

5. MMD must reimburse its unlawful assessment to those who paid them.

Signed and entered on this _____ day of _____, 2016.

Signed 
11/28/2016

Judge Presiding

Unofficial Copy Office of Chris Daniel District Clerk