

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DIV " "

DOCKET NO. 613874
Section: 23

CADILLAC JACK OF NOLA, LLC and JOSEPH A. KUNSTLER, IN HIS INDIVIDUAL
CAPACITY AND IN HIS CAPACITY AS MEMBER, AGENT AND ATTORNEY IN FACT
FOR CADILLAC JACK OF NOLA, LLC COST OK \$ 164

VERSUS

JUL 26 2012 HDD/Me
DEPUTY CLERK OF COURT

THE CITY OF NEW ORLEANS
ERROL J. WILLIAMS IN HIS CAPACITY
AS THE ASSESSOR FOR THE CITY OF NEW ORLEANS; THE STATE OF LOUISIANA
THROUGH THE LOUISIANA STATE TAX COMMISSION; GOVERNOR BOBBY JINDAL
IN HIS CAPACITY AS GOVERNOR OF LOUISIANA;

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PETITION FOR DAMAGES, PARISH TAX RELIEF

THE PETITION OF Joseph A. Kunstler ("JAK"), in his individual capacity and in his
capacity as member, agent and attorney in fact for Cadillac Jack of NOLA, LLC. ("Cad. Jack")
Joseph A. Kunstler, a competent major, is a resident of the Parish of East Baton Rouge, State of
Louisiana, and Cadillac Jack of NOLA, LLC is a Louisiana LLC domiciled in the Parish of East
Baton Rouge, Louisiana with respect represents:

I.
MADE DEFENDANTS HEREIN ARE:

- a. **The City of New Orleans, Parish of Orleans**, (sometimes referred to as "the City" a
political subdivision of the State of Louisiana, domiciled in the Parish of Orleans,
State of Louisiana ("New Orleans");
 - b. **Errol J. Williams** in his capacity as assessor for the City/ Parish of Orleans
domiciled in the Parish of Orleans, State of Louisiana in this capacity ("Assessor");
 - c. **The State of Louisiana through the Louisiana Tax Commission**, domiciled in this
Parish and State ("Commission");
 - d. **Governor Bobby Jindal ("the Governor")** solely in his capacity of governor of the
State of Louisiana, "the State", whose office is located in this Parish and State.
- Plaintiffs plead for different relief from the governor, as will be detailed herein. The
State is not being accused of any intentional tort at this time. Plaintiff seeks an



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executive order to the City of New Orleans *enforcing state law* and forcing an accounting and refund of the Plaintiffs' tax bill account;

II.

Venue is proper in this Court pursuant La. C.C.P. Art. 42.

Liability Allegations

III.

The Defendants Assessor and the City are liable jointly, severally and in solido to Petitioners for the following reasons, to wit:

IV.

Cad. Jack and JAK have been damaged by the intentional misapplication and abuse of the Louisiana State Ad Valorem Tax laws as dictated by the Louisiana Constitution, the Louisiana Revised Statutes, and Louisiana Supreme Court case law interpreting the laws. The open violations had been conclusively declared *unconstitutional* by the Louisiana Supreme Court, prior to the damages claimed in this suit. **Said Supreme Court Ruling was in Litigation was against the City of New Orleans in the Fransen Case.**¹

V.

New Orleans is liable unto plaintiffs for intentional torts committed upon Plaintiffs the course of tax collection. Said torts include, but are not limited to the following:

1. Intentionally charging a usurious interest rate;
2. Acting under the color of law to charge said rates;
3. Creating a refund system which is unduly burdensome and cause time delays increasing the accrued interest;
4. Making the Plaintiffs, as it did all property owners, prove that they paid taxes despite the fact that the City's own records reflect that the taxes were paid, an undue hardship that caused more interest to accrue against the bill;
5. The requirements described in Number 4 herein were enforced against Plaintiffs despite of Defendant Commission's ruling;

¹ Fransen v. City of New Orleans, 2008-0076 (La. 7/1/08); 988 So. 2d 225.



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6. Using these illegal collection measures to charge excessive interest , thereby taking property from the Plaintiff by creating an illegal tax obligation;
7. Using these methods despite the La. Constitution, La. Revised Statutes, and case law in which New Orleans was a party which declared these collections illegal, and unconstitutional;
8. Any and all other acts that may be discovered in this matter leading directly to part or all of the Plaintiffs' Damages.

VI.

Defendant Assessor is liable unto plaintiff for the damage caused by its false assurances that the assessment was being considered by its office. The letters gave a false sense to the Plaintiff that the Ad Valorem tax owed on the below referenced property was being considered. The Assessor's assurances, along with the City's collection practices, created an illegal tax obligation and forced the property to tax sale, illegally depriving JAK of his property.

V.

Defendant Commission is liable to Plaintiff in that it failed to enforce its change order for the Tax year 2010. Further, it refused to review the Tax Collection procedures, as described above, upon applicant by the Plaintiff. Further, because Defendant Commission was advised as to the tortuous tax collection procedures employed by Defendant City, it had a duty to enforce any change orders it issued or should have issued in light of the sole evidence before it at hearing, which dated the appraisal as of 2007.

It is averred that as a Board of the State of Louisiana, the Commission has a duty to review taxing and collection procedures of any Parish. If the Board has actual or constructive knowledge of the Defendant City's tortuous abuse of power to collect excessive amounts of ad valorem taxes under the guise of illegal interest and allow other properties to be purchased at a fraction of the fair market value as a result thereof, it has a duty to issue an order to the Parish or refer the matter to the appropriate Louisiana State authority.

VI.

The Governor should have acted, through his various means to carry out his Executive Duties to enforce State Law, to enforce violations. Although these tax complaints were related to both the Defendant Commission and the Defendant City, the Governor's office was or should



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have been notified of the excessive local taxation tactics that directly caused the Plaintiffs' damages, for the periods set forth herein.

However, given that Plaintiff has no individual knowledge as to whether Governor's Office was not aware of these tax violations under color of local law, the *Plaintiff explicitly alleges only constructive knowledge on the part of the Governor's Office and does not allege intentional torts against the Governor herein.* The Governor should appear and show cause why he should not order refunds and/or credits against New Orleans tax bill 412103553 pursuant to applicable law.

Timeframes for Standing and Damages

VII.

For purposes of legal property Descriptions, Plaintiff hereby incorporates the Property Description as if copied *in extenso*.

On March 11, 2003, Cad. Jack purchased Units "5A-1" and "5B" of the Carol Condominium Complex together for the price of \$225,000.00. Cad. Jack owned the unit 5A-1 until August 23, 2010. At this time Unit 5A-1 ONLY was transferred to JAK (as an individual). The price for the transfer of 5A-1 to JAK was \$150,000.

VIII.

On September 28, 2011, Defendant Assessor agreed to a 2012 fair market evaluation for purposes of assessment of \$153,000. This was made applicable to the property as of 2007. In spite of the Assessor's agreement, the property was sold at tax sale which would have resulted in enough credit towards payment of the tax bill referenced herein; the City did not apply the credit and sold the Unit at a Tax Sale.

VIII.

Upon being presented the Tax Commission's decision along with the appraisal, the assessor who stood in place of Ms. Betty Jefferson until the Assessor's duties were consolidated by vote issued change orders, retroactive to 2007. The assessments were to be reduced, retroactively to \$153,000.00.

IX.

The subject unit, 5A-1, as described herein above was assigned tax bill number 412103553. Tax bill 412103553 was charged illegal interest as described above by, during



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relevant periods in this case. This is an intentional overcharging of Cad. Jack AND later, JAK in his individual capacity BY defendants, constituting intentional overcharging of both Plaintiffs.

X.

Cad. Jack, as mentioned above transferred the subject unit on 8/23/2012 to JAK.

Accordingly, the Plaintiffs' damages, and standing to sue for said damages are as follows:

1. Cad. Jack- 3/27/2003 through 8/22/2010- is entitled to refunds and credits due to intentional overcharging under the color of law against the subject tax bill. In light of the knowing and unlawful acts of the City alleged herein, Cad. Jack is entitled to a refund in the form of cash paid at the interest rates intentionally and illegally charged to collect the tax. Thus, Plaintiff will be made whole by receiving his refund with the same interest applied through the time tax sale.
2. 8/23/2010 and continuing: JAK is entitled to refunds and credits due to intentional overcharging under the color of law against the subject tax bill; in light of the knowing and unlawful acts of the City alleged herein, JAK is entitled to a refund in the form of cash paid at the interest rates intentionally and illegally charged to collect the tax. Thus, Plaintiff will be made whole by receiving his refund with the same interest applied when he surrendered it to tax sale. Further he is entitled to redemption of his property paid for by the city.

XI.

Cad Jack has been overly taxed on unit 5A-1 for each year prior to 2007 due to the aforementioned interest abuses. In addition, Cad. Jack was illegally charged interest in its tax bill until the transfer to JAK on 8/23/2010. Likewise, JAK was charged illegal interest from 8/23/2010 and continuing up until the tax sale.

Liability of the Assessor to JAK

XII

On September 28, 2011 Defendant Assessor agreed in writing to a 2012 assessment on the subject unit of \$153,000.00. Despite this agreement, no change order was issued by Defendant Assessor and the Property improperly went to Tax Sale and was purchased on October 23, 2011. Thus defendant JAK must pay the amount of the tax sale plus interest to redeem the property. ***The amount JAK is being charged to redeem this property is a direct***



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result of intentional and/or negligent failure by the Assessor to apply the agreed to change order which would have canceled the sale.

XIII.

Because of the representation of the Assessor resulting in a wrongful sale, the Assessor is individually, jointly and liable in solido to the Plaintiff in the amount

Plaintiffs JAK and Cad. Jack suffered damages as a result of the City over charging interest and requiring overly burdensome proof of payment for a refund or a credit on tax bill 412103553. Defendant City required a copy of any and all canceled checks used to satisfy past bills, in spite of the fact that the City's records reflect said payments. During the time it takes to locate said canceled checks, interest continues to accrue at the rates described above. It should be noted that an almost innumerable other property owners lost their property to tax sales and either paid or could not pay the usurious bill to redeem their property.

IXX.

Plaintiffs are damaged as follows:

1. JAK must pay an excessive amount to redeem the subject property;
 - a. Remedy: the City and/or the assessor should be forced to redeem the property at its own behalf of Petitioner JAK cost the amount ostensibly owed to redeem the property;
2. JAK and Cad. Jack were overcharged for taxes and interest during the periods they owned the property and were denied refunds/ tax credits which would have prevented the sale;
 - a. Remedy: the City should refund and credit all illegally charged funds paid by both Plaintiffs during their respective periods of ownership;
3. Because the overcharging was intentionally charged in violation of State Law, this malfeasance should result in payments of costs, attorney fees, and punitive damages by the City

XXI.



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The Relief sought from the Governor as a defendant is that he enforces the Laws of the State of Louisiana which have been flagrantly violated by the City of New Orleans, as outlined above. The relief is sought under Louisiana Constitution Article IV section 5 A:

- A. Executive Authority. --The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States and shall see that the laws are faithfully executed.”

WHEREFORE PLAINTIFF PRAYS, that this petition be deemed good and sufficient and that after due proceedings, there be Judgment in favor of Joseph A. Kunstler and Cadillac Jack of NOLA, LLC and against defendants:

- a. The City of New Orleans, Parish of Orleans, a political subdivision of the State of Louisiana, domiciled in the Parish of Orleans, State of Louisiana (“New Orleans”);
- b. Errol J. Williams in his capacity as assessor for the City/ Parish of Orleans domiciled in the Parish of Orleans, State of Louisiana in this capacity (Assessor);

Ordering them to credit the account for tax bill number 412103555 to reflect no taxes due; and that they pay attorney fees and punitive damages to the Plaintiffs in an amount deemed just in the premises

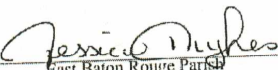
AND

That there be Judgment in favor of Joseph A. Kunstler and Cadillac Jack of NOLA, LLC and against defendants:

- a. The State of Louisiana through the Louisiana Tax Commission, domiciled in this Parish and State (“Commission”);
 - b. Governor Bobby Jindal (“the Governor”) solely in his capacity of governor of the State of Louisiana, “the State”, whose office is located in this Parish and State.
- Plaintiffs plead for different relief from the governor, as will be detailed herein. The State is not being accused of any intentional tort at this time. Plaintiff seeks an



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executive order to the City of New Orleans *enforcing state law* and forcing an accounting and refund of the Plaintiffs' tax bill account;

Ordering them to enforce State Law on Property Tax interest and ordering a credit be placed on the bill as Louisiana Law requires.

Respectfully submitted,

LAW OFFICE OF WILLIAM S. VINCENT, JR.

WILLIAM S. VINCENT, JR., LA BAR #: 13094
W. JARED VINCENT, LA BAR #: 27695
V. JACOB GARBIN, LA BAR # 27808
2018 PRYTANIA STREET
NEW ORLEANS, LOUISIANA 70130
(504) 522-3220 - Telephone
(504) 568-1408 - Facsimile

PLEASE SERVE:

State of Louisiana through the
Louisiana Tax Commission
5420 Corporate Blvd. Suite 107
Baton Rouge, Louisiana 70896

Mayor Mitchell J. Landrieu
City of New Orleans
1300 Perdido Street, Rm 2E04
New Orleans, Louisiana 70112

Orleans Parish Assessor's Office
Erroll G. Williams Assessor
New Orleans City Hall
1300 Perdido Street, Room 4E01
New Orleans, Louisiana 70112

Governor Bobby Jindal
Louisiana State Capital
900 North 3rd Street
Baton Rouge, Louisiana 70802

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- 03-PRISONER SUIT
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- 06-EVICTI
- 07-WORKMEN'S COMPENS
- 08-FINANCIAL REVIEW
- 09-PROPERTY RIGHTS
- 10-INJUNCTION MAN

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