

STATE OF MINNESOTA

TAX COURT

COUNTY OF HENNEPIN

REGULAR DIVISION

Inland Edinburgh Festival, LLC,

**ORDER DENYING NOTICE
TO REMOVE JUDICIAL OFFICER**

Petitioner,

vs.

File Nos. 27-CV-16-03081
27-CV-16-03083

County of Hennepin,

Respondent.

Filed: January 10, 2018

These matters came before The Honorable Joanne H. Turner on petitioner's Notice to Remove Judicial Officer.

Thomas R. Wilhelmy and Christopher A. Stafford, Fredrikson & Byron, P.A., represent petitioner Inland Edinburgh Festival, LLC.

Jane N.B. Holzer and Deborah I. Russell, Assistant Hennepin County Attorneys, represent respondent Hennepin County.

Based upon all the files, records, and proceedings herein, the court now makes the following:

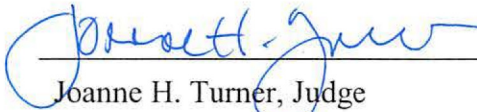
ORDER

Petitioner's Notice to Remove Judicial Officer is denied.

IT IS SO ORDERED.

BY THE COURT:




Joanne H. Turner, Judge
MINNESOTA TAX COURT

DATED: January 10, 2018

MEMORANDUM

Petitioner Inland Edinburgh Festival, LLC, seeks to remove Judge Turner from these cases under Minn. R. Civ. P. 63.03. Because Judge Turner has presided at a motion in these cases, and because petitioner had notice of Judge Turner's assignment more than ten days before it filed its Notice to Remove, petitioner's Notice to Remove is denied.

These are property tax appeals concerning a shopping center and its grocery store tenant. In March 2016, Inland filed two Notices of Motion and Motion for Consolidation of Trials. One motion sought to consolidate two files pertaining to the grocery store parcel: file 27-CV-16-3081 (taxes payable in 2016) and file 27-CV-15-7965 (taxes payable in 2015).¹ The other motion sought to consolidate two files pertaining to the shopping center itself: file 27-CV-16-3083 (taxes payable

¹ Pet'r's Notice Mot. Mot. Consol. Trials (filed Mar. 16, 2016) (Court File Nos. 27-CV-15-7965 & 27-CV-16-3081 (Grocery Anchor)).

in 2016) and file 27-CV-15-7966 (taxes payable in 2015).² Petitioner scheduled the two motions to be heard *before Judge Turner* in a single hearing to be held on March 30, 2016.³

The County opposed petitioner’s motion for consolidation, claiming in each case that the parties (through a different attorney previously representing Inland) had “negotiated a multi-year settlement agreement governing the Subject Properties, which included Petitioner’s agreement not to file petitions for the January 2, 2014 (Pay 2015) assessment.”⁴ Inland’s reply memorandum denied that it had agreed to settle the 2014 assessment and claimed it was unaware of any such agreement.⁵ In response, the County scheduled a hearing for a motion to enforce the alleged settlement agreement, to be heard by Judge Turner on May 3, 2016.

Judge Turner heard Inland’s motion for consolidation on March 30. At the conclusion of argument, counsel for Inland indicated he intended to present testimony at the May 3 hearing on the County’s motion to enforce the settlement agreement. Without ruling on the motion for consolidation, Judge Turner filed an order in the four affected matters—including files 27-CV-16-3081 and 27-CV-16-3083—setting deadlines for the identification of witnesses and exhibits to be offered at the hearing. Scheduling Order (filed Apr. 4, 2016). Eventually, Inland

² Pet’r’s Notice Mot. Mot. Consol. Trials (filed Mar. 16, 2016) (Court File Nos. 27-CV-15-7966 & 27-CV-16-3083 (Shopping Center)).

³ Pet’r’s Notice Mot. Mot. Consol. Trials (27-CV-15-7965 & 27-CV-16-3081) (“The motion shall be heard by Judge Joanne H. Turner of the Tax Court via telephonic conference”); Pet’r’s Notice Mot. Mot. Consol. Trials (27-CV-15-7966 & 27-CV-16-3083) (“The motion shall be heard by Judge Joanne H. Turner of the Tax Court via conference call”).

⁴ Resp’t’s Mem. Law Opp’n Pet’r’s Mots. Consol. Trial 1 (filed Mar. 25, 2016).

⁵ Reply Mem. Law Support Mot. Consol. Trials (filed Mar. 28, 2016).

dismissed its petitions in files 27-CV-15-7965 and 27-CV-15-7966, the County withdrew its motion, and the hearing scheduled for May 3 was cancelled.⁶

The proceedings in files 27-CV-16-3081 and 27-CV-16-3083 continued. In February 2017, the court filed its standard scheduling order in each case, setting deadlines for the completion of discovery and the service and filing of various pretrial submissions, including expert appraisals.

On December 1, 2017, counsel for Hennepin County sought a hearing date and time for contemplated motions in files 27-CV-16-3081 and 27-CV-16-3083, seeking in each case “an exemption from the requirement that [the County] file an appraisal report on the December 11, 2017 exchange date.”⁷ A hearing on the County’s motion was scheduled for January 11, 2018.

On January 9, 2018, counsel for Inland asked the court administrator which judge would preside over the January 11 hearing.⁸ The court administrator notified Inland’s counsel that Judge Turner would preside.⁹ Counsel for Inland immediately filed a Notice to Remove Judge Turner,

⁶ E-mail from Jane Holzer to Lisa Pister (Apr. 26, 2016) (on file with the Minnesota Tax Court). *See also* Letter from Thomas R. Wilhelmy to Hon. Joanne H. Turner (Apr. 14, 2016) (on file with the Minnesota Tax Court) (indicating Inland Edinburgh would dismiss its appeals in files 27-CV-15-7965 and 27-CV-15-7966 and its “appreciat[ion] that the Court and the County have also invested their significant time and efforts into this matter.”).

⁷ Resp’t’s Notice Mot. Mot. Mem. Proposed Order 2 (filed Dec. 29, 2017).

⁸ E-mail from Christopher Stafford to Lisa Pister (Jan. 9, 2018) (on file with the Minnesota Tax Court).

⁹ E-mail from Lisa Pister to Christopher Stafford (Jan. 9, 2018) (on file with the Minnesota Tax Court).

claiming that the administrator's January 9 e-mail was its first notice that Judge Turner was assigned to the files.¹⁰

The tax court is subject to the Minnesota Rules of Civil Procedure "where practicable." Minn. Stat. § 271.06, subd. 6 (2016). Rule 63.03, Minn. R. Civ. P., allows a party to file a notice to remove the assigned judge "within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing." Importantly, though, "[n]o such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice." *Id.* Judge Turner presided at a motion in these matters on March 30, 2016, of which Inland not only had notice but participated. Therefore no notice to remove is permitted under Rule 63.03. In addition, because Inland has had notice of Judge Turner's assignment to these files for nearly two years, its Notice to Remove is untimely. Consequently, for two reasons, Inland Edinburgh's Notice to Remove Judicial Officer is denied.

J.H.T.

¹⁰ Not. Remove Judicial Officer (filed Jan. 9, 2018) ("Petitioner's attorneys received the Notice of Judicial Assignment in this action by e-mail on January 9, 2018.").