

STATE OF MINNESOTA
COUNTY OF GOODHUE
Red Wing Port Authority,

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Plaintiff, **FINDINGS AND ORDER RELEASING
BOND**

v.

OSEMI, Inc.,

Court file no. 25-CV-11-2279

Defendant.

The above-captioned came before the Honorable Lawrence F. Clark, Judge of the Goodhue County District Court, on Plaintiff's request to have the appeal bond released and moneys delivered to Plaintiff. By letter, Defendant objected to Plaintiff's request.

The Court, having heard the evidence and arguments of the parties, and upon all the files and records in this proceeding, makes the following:

FINDINGS

1. Defendant filed an appeal bond in the amount of \$500.00 for the costs of the appeal and an additional \$1,000.00 to secure additional rent and damages that might accrue during the pendency of the appeal.
2. An appellant wishing to remain in possession of contested property during an appeal must post a bond securing, "all rent and other damages due to the party excluded from possession during the pendency of the appeal will be paid." Minn. Stat. § 504B.371 subd. 3(3).
3. The Court previously determined that Plaintiff would experience a loss of \$61.00 per month for the property while the appeal was pending. Eleven months elapsed between the filing of the appeal and the Court of Appeals' decision. Plaintiff therefore incurred an additional \$671.00 in damages.

Filed

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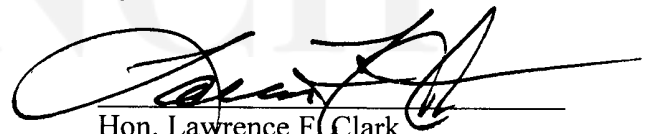
4. Plaintiff claims that as a result of Defendant's continued, unlawful possession of the subject property during the pendency of the appeal, it was forced to pay \$15,222.00 of property taxes. It claims it would have been exempt from the taxes had the property remained vacant. It therefore requests that the full value of the bond be released, since the taxes it incurred are greater than the value of the bond.
5. Plaintiff did not establish the tax obligation of the property before the appeal. It has not demonstrated with either evidence or legal argument that Defendant caused it to pay the taxes it claims. Moreover, it cannot show that it is "due" reimbursement for the taxes. *See* Minn. Stat. § 504B.371 subd. 3(3). It was paid rent for the property and the property was not in fact vacant. Plaintiff did not satisfy the conditions for tax exemption, and cannot show that it lost rent payments it was owed other than what the Court established.
6. The Court should release only the amount of damages and costs Plaintiff has established are due it. The Court should release \$1,171.00 of the bond to Plaintiff.

ORDER

1. The Court Administrator shall pay \$1,171.00 of the bond deposited with the Court over to Plaintiff Red Wing Port Authority. The remainder shall be returned to Defendant.

Date: October 30, 2012

By the Court:


Hon. Lawrence F. Clark
Judge of District Court