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WEST ORANGE NJ

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(732) 605-1000  
Attorney for Defendant, Total Renal Care, Inc.

	:	<b>TAX COURT OF NEW JERSEY</b>
TOWNSHIP OF WEST ORANGE,	:	
<i>Plaintiff,</i>	:	Docket No.: 000649-2020
v.	:	
GGFF MOUNT PLEASANT LLC AND TOTAL RENAL CARE, INC.,	:	<b>Civil Action</b>
<i>Defendant.</i>	:	<b>Answer and Counterclaim</b>
	:	(Local Property Tax)
	:	

The defendant, TOTAL RENAL CARE, INC (the "Defendant") by way of answer and counterclaim against the plaintiff, Township of West Orange (the "Plaintiff") says:

1. Admitted.
2. Defendant denies (a) that the assessment is less than the true or assessable value of the property and (b) Plaintiff is discriminated against by the assessment.
3. Admitted.

**SEPARATE DEFENSES**

**First Affirmative Defense**

The Complaint does not state a cause of action upon which relief can be granted.

**Second Affirmative Defense**

The Complaint is barred by the square corners doctrine.

Third Affirmative Defense

The Complaint violates due process.

Fourth Affirmative Defense

The Complaint violates equal protection.

Fifth Affirmative Defense

The Complaint violates the uniformity clause of the New Jersey Constitution.

Sixth Affirmative Defense

The Complaint is barred by public policy.

Seventh Affirmative Defense

The Plaintiff is estopped.

Eighth Affirmative Defense

The Plaintiff is prohibited from pursuing this matter due to unclean hands.

Ninth Affirmative Defense

The Plaintiff reserves its right to add additional affirmative defenses.

Tenth Affirmative Defense

The Plaintiff is barred by statute and case law from obtaining a judgment against the defendant.

Eleventh Affirmative Defense

The Plaintiff is barred by statute and case law from obtaining any lien against the subject property.

**COUNTERCLAIM**

**COUNT ONE**

1. Defendant is the taxpayer of the property shown on the local property tax case information statement(s) attached to the face of the counterclaim.
2. Defendant contests the action of the ESSEX County Board of Taxation with respect to the assessment(s), or the assessment(s) if a direct appeal, on the ground that the assessment(s) is/are in excess of the true or assessable value of the property.
3. This counterclaim pertains to -1- separately assessed parcel(s). (If the assessment of more than one separately assessed parcel is contested, each will be considered as a separate count of this counterclaim, and each must be shown on a separate local property tax case information statement attached to this counterclaim, except for condominium units. See note 2).
4. Are any prior years pending in the Tax Court for the same property  Yes  No  
If yes, list assessment year(s): 2016, 2017, 2018 and 2019.
5. Additional allegations, if any, are set forth in the attached Rider.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Reducing the said assessment(s) to its correct assessable value;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and
- e. Such other relief as may be appropriate.

**COUNT TWO**

6. Defendant repeats the preceding paragraphs as if set forth fully herein.
7. Defendant is discriminated against by application of Plaintiff's Chapter 123 ratio because the ratio of the assessed valuation of the subject property(ies) to its true value exceeds the upper limit of the common level classification range.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Reducing the said assessment(s) to the true common level of assessment;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and
- e. Such other relief as may be appropriate.

**COUNT THREE**

8. Defendant repeats the preceding paragraphs as if set forth fully herein.
9. Sales in the taxing district were designated incorrectly as usable sales or as non-usable sales in the sales-ratio study of the Director, Division of Taxation, for purposes of formulating Plaintiff's Chapter 123 ratio.
10. Due to these designations, Plaintiff's Chapter 123 ratio does not accurately reflect the common level of assessment in the municipality.
11. Defendant is discriminated against by application of Plaintiff's Chapter 123 ratio because it does not reflect the common level of assessment in the municipality.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Reducing the said assessment(s) to the current assessable value of the said property through the use of a ratio that reflects the true common level of assessment;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and
- e. Such other relief as may be appropriate.

**COUNT FOUR**

12. Defendant repeats the preceding paragraphs as if set forth fully herein.
13. Plaintiff did not authorize filing of the complaint by duly-authorized, government action in accordance with statutory procedures.

14. Prior to filing the complaint, Plaintiff did not conduct a study, collect data, or engage in any other process showing the subject property(ies) or properties in its class were under-assessed as a class of properties within the municipality.
15. Plaintiff's decision to file the complaint was impermissibly tainted by considerations which are contrary to public policy.
16. There is a general lack of uniformity in the Plaintiff-municipality.
17. Based on these factors, Plaintiff's filing of the complaint, a municipal exercise of power delegated by the Legislature, was arbitrary, capricious and unreasonable.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Dismissing the Complaint;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and
- e. Such other relief as may be appropriate.

#### COUNT FIVE

18. Defendant repeats the preceding paragraphs as if set forth fully herein.
19. The Uniformity Clause of the Constitution of the State of New Jersey, N.J. Const. art. VIII, § 1, ¶ 1, guarantees that property "shall be assessed for taxation under general laws and by uniform rules" and that "[a]ll real property assessed and taxed locally . . . shall be assessed according to the same standard of value."
20. By undertaking the acts described in Count Four of this Counterclaim, Plaintiff violated the Uniformity Clause of the New Jersey Constitution.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Dismissing the Complaint;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and

- e. Such other relief as may be appropriate.

**COUNT SIX**

21. Defendant repeats the preceding paragraphs as if set forth fully herein.
22. Due process is guaranteed by Article I, § 1 of the Constitution of the State of New Jersey, providing that "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness," which provision protects persons from government acts which are arbitrary, capricious or unreasonable or bear no relationship to legitimate public interests.
23. A deprivation of rights secured by Article I, § 1 of the New Jersey Constitution is redressed in accordance with the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.
24. By undertaking the acts described in Count Four of this Counterclaim, Plaintiff acting under color of law and pursuant to official policy, practice, or custom, violated the constitutional or property rights of Defendant.

WHEREFORE, the Defendant demands judgment against Plaintiff:

- a. Dismissing the Complaint;
- b. Costs;
- c. Reasonable attorney's fees;
- d. Interest; and
- e. Such other relief as may be appropriate.

**COUNT SEVEN**

25. Defendant repeats the preceding paragraphs as if set forth fully herein.
26. The Equal Protection Clause of the United States Constitution, amend. 14, guarantees that no State shall make or enforce any law which denies to any person within its jurisdiction the equal protection of the laws.
27. The Equal Protection Clause protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others in the same class, where the selection is arbitrary, capricious or unreasonable and does not rest upon some reasonable consideration.





**Tax Court of New Jersey**  
Case Information Statement (CIS-LP)

INSTRUCTIONS: To be attached to face of complaint (type or print)

Attorney Name (List your information if you are not represented by an attorney)

Attorney ID Number

Zipp & Tannenbaum, LLC

022131986

Street

E-mail Address

280 Raritan Center Parkway

generalmailtc@zipplaw.com

City

State

Zip

Telephone Number

Edison

NJ

08837

(732) 605-1000

**PART A. PLEASE CHECK ONE OF THE FOLLOWING CASE TYPES AND THE FILING FEE**

- |  |   |
|--|---|
| <input type="checkbox"/> Direct Appeal                         | <input type="checkbox"/> Added or Omitted Assessment              |
| <input type="checkbox"/> Appeal from County Tax Board Judgment | <input type="checkbox"/> Farmland Qualification                   |
| <input type="checkbox"/> Correction of Error                   | <input type="checkbox"/> Farmland Rollback                        |
| <input type="checkbox"/> Exemption                             | <input checked="" type="checkbox"/> Other – ANSWER & COUNTERCLAIM |

Is Case Hurricane Sandy related?     Yes     No

**NOTE:** In order to proceed in the Small Claims Division, the property at issue must be a class 2 property (1-4 family residence) or a class 3A farm residence or prior year's taxes were less than \$25,000. See *Rule 8:11-(2)*.

Check for Small Claims Division

Filing Fee Submitted

Check / other

Attorney Charge Account #

\$250.00

142909

**PART B. FILL IN THE FOLLOWING FOR ALL CASES**

1. Plaintiff TOWNSHIP OF WEST ORANGE		Defendant TOTAL RENAL CARE, INC.	
2. County ESSEX	Block 155	Lot 26	Unit C003A
3. Assessment year(s) in contest 2020			
4. Property Address 375 MT. PLEASANT AVENUE			
5. Property Type (check one)			
<input type="checkbox"/> 1-4 Family Residence (class 2)	<input type="checkbox"/> Business Personal Property	Percentage _____	
<input type="checkbox"/> Casino	<input checked="" type="checkbox"/> Commercial		
<input type="checkbox"/> Condominium	<input type="checkbox"/> Farm Residence (class 3A)		
<input type="checkbox"/> Farmland	<input type="checkbox"/> Hotel		
<input type="checkbox"/> Industrial	<input type="checkbox"/> Multi-Unit Residential (over 4 Units)		
<input type="checkbox"/> Nursing Home	<input type="checkbox"/> Pipeline		
<input type="checkbox"/> Senior Citizen/Veteran Deduction	<input type="checkbox"/> Tax Exempt		
<input type="checkbox"/> Vacant Land	<input type="checkbox"/> Vacant land used as part of a 1-4 family residence		
<input type="checkbox"/> Other _____			

6. Is plaintiff the  
 Owner                       Tenant                       Contract Purchaser

Court Appointed Rent Receiver     Municipality     Other \_\_\_\_\_

7. Is an exemption claimed?  
 Yes                       No                       Type \_\_\_\_\_

If more than one assessed property is included in the complaint, are they contiguous and in common ownership?  
 Yes                       No

Attach individual Case Information Statements for each separately assessed parcel. If multiple condominium units, attach the Condominium / Multiple Assessment Schedule.

**PART C. FILL IN THE FOLLOWING FOR ALL CASE TYPES EXCEPT FARMLAND ROLLBACK**

Assessment for the year set forth in No. 3 above			
Original Assessment		County Tax Board Assessment	
Land	\$ 641,000	Land	Direct
Improvements	\$2,409,600	Improvements	Appeal
Exemption	\$0	Exemption	_____
<b>Total</b>	<b>\$3,050,600</b>	<b>Total</b>	<b>\$ _____</b>

**PART D. FILL IN THE FOLLOWING ONLY FOR FARMLAND ROLLBACK**

Year	Non Qualified Assessed Value	Qualified Assessed Value	Assessment Subject to Rollback
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____

**PART E. FILL IN THE FOLLOWING:**

**FOR ADDED ASSESSMENT ONLY**

Said property is the subject of an added assessment for the assessment year \_\_\_\_\_ as follows:

Original Assessment		County Tax Board Judgment	
Improvements	\$ _____	Improvements	\$ _____
Prorated Assessment	\$ _____	Prorated Assessments	\$ _____
for _____ months		for _____ months	

**FOR OMITTED OR OMITTED/ADDED ASSESSMENT ONLY**

Said property is the subject of an added assessment for the assessment year \_\_\_\_\_ as follows:

Original Assessment		County Tax Board Judgment	
Land	\$ _____	Land	\$ _____
Improvements	\$ _____	Improvements	\$ _____
Prorated Assessments	\$ _____	Prorated Assessments	\$ _____
for _____ months		for _____ months	

Do you or your client have any needs under the Americans with Disabilities Act?                       Yes                       No

If yes, please identify any requirements or accommodations you may require.

Will an interpreter be needed?                       Yes                       No                      If yes, for what language \_\_\_\_\_

**PLEASE NOTE:** Only an interpreter registered with the Administrative Office of the Courts may be used during a court proceeding.

I certify that confidential personal identifiers have been removed from documents now submitted to the court, and will be removed from all documents submitted in the future in accordance with Rule 1:38-7(b).

March 2, 2020  
 Dated

\_\_\_\_\_  
 Signed Peter J. Zipp

Make Filing Fee checks payable to: **Treasurer, State of New Jersey**  
**Mailing Address: Tax Court Management Office, P.O. Box 972, Trenton, NJ 08625-0971**

### PROOF OF SERVICE

1. On March 2, 2020, I, the undersigned, served on the Clerk of the municipality referenced in the within Answer & Counterclaim, or the person in charge of the office, by ordinary mail in accordance with *Rule 8:5-4*, a copy of the within Answer & Counterclaim.
  
2. On March 2, 2020, I, the undersigned, served on the Assessor of the municipality referenced in the within Answer & Counterclaim, or the person in charge of the office, by ordinary mail in accordance with *Rule 8:5-4*, a copy of the within Answer & Counterclaim.
  
3. On March 2, 2020, I, the undersigned, served on the Administrator of the County Board of Taxation referenced in the within Answer & Counterclaim, or the person in charge of the office, by eCourt and/or ordinary mail in accordance with *Rule 8:5-4*, a copy of the within Answer & Counterclaim.
  
4. On March 2, 2020, I, the undersigned, served on the Attorney of the Municipality referenced in the within Answer & Counterclaim, or the person in charge of the office, by eCourt and/or ordinary mail in accordance with *Rule 8:5-4*, a copy of the within Answer & Counterclaim.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 2, 2020

*Donna Recine*

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Donna Recine