Marketing Drive, LLC v. City of Norwalk

FSTCV084014423S

Decided: September 17, 2010

MEMORANDUM OF DECISION

The matter before the court is an application of Marketing Drive, LLC (the "Applicant") brought pursuant to Conn. Gen.Stat. § 12-117a, constituted an appeal from the doings of the Board of Assessment Appeals of the City of Norwalk ("Board"). The Applicant claims that the Assessor of the City of Norwalk ("Assessor"), on the assessment dates for 2007 and 2008, overvalued the personal property of the Applicant located at 800 Connecticut Avenue in Norwalk by not assessing it at 70% of its true and actual value as of the two assessment dates for those years. After appealing the assessment for 2007 to the Board (Conn.Gen.Stat. § 12-111) with no relief, the Applicant appealed to this court (Conn.Gen.Stat. § 117a). Similarly, the Applicant appealed to the Board for the 2008 assessment and after similar results, amended this appeal to the court to include the 2008 assessment (Conn.Gen.Stat. § 117a). The Applicant prays that the personal property assessment for those years be reduced accordingly.

The Applicant occupies some 34,000 square feet of office space at 800 Connecticut Avenue in Norwalk pursuant to a sublease with The Interpublic Group of Companies, Inc. dated as of April 13, 2007 and expiring on April 30, 2012, with a tenant's option to renew for five years (sublease, Ex. 1). The sublandlord is a tenant under a lease agreement with National Office Partners, LLP, dated November 10, 2004 ("Lease," Ex. 2). The use permitted by the lease and sublease is for general and executive offices. According to the sublease, the sublandlord was not required to make any alterations, improvements, installations, or repairs to prepare the sublet premises for subtenant's (Applicants') occupancy, except for the construction of a demising wall between the sublet premises and the remainder of the rental space in the building. Sublease, Ex. 1, Section 6.1. Any alterations, installations, improvements, additions or other physical changes in, on, or about the sublet premises required the prior written consent of the landlord and sublandlord, and was to be performed by the Applicant at its sole cost and expense. Sublease, Ex. 1, section 7.1.

All persons liable to pay personal property taxes in a town are required "to bring in a declaration of the taxable personal property belonging to them on the first day of October . in each year." Conn. Gen.Stat. § 12-40. The declaration must be filed "on or before the first day of November, or on or before the extended filing date as granted by the Assessor pursuant to § 12-42." Conn. Gen.Stat. § 12-41(d). The Assessor may grant an extension of not more than 45 days to file the declaration. Conn. Gen.Stat. § 12-42.

The claim of the Applicant is that the Assessor, and the Board, overvalued the personal property of the Applicant, and should not have assessed the leasehold improvements of the Applicant because they had become a part of the real estate and should have been taxed to the owner of the building.

The defendant initially raised an issue claiming that § 12-117a under which this case is brought, is the improper statute for issues herein because they do not involve the valuation of the property.[1] According to the defendant, the correct statute under which the Applicant should have appealed is § 12-119.[2] The court finds that § 12-117a is a proper statute for deciding the issues in this case, including the value of the Applicant's personal property as well as whether the leasehold improvements installed by the Applicant have value as personal property or, rather, have become a part of the real estate.[3]

PART 1 2007 ASSESSMENT YEAR

The court will address the issues raised in the 2007 and 2008 Assessment Years separately. The Applicant filed its personal property declaration for 2007 (Ex. A) on November 1, 2007, in a timely fashion

pursuant to statute. Conn. Gen.Stat. § 12-41. It listed the total depreciated value as $1,957,588. No request for extension of time was made. Based on the Applicant's declaration, the Assessor assessed the property at $1,370,311, being 70% of the Applicant's figure for value. The Applicant then appealed to the Board claiming lower values for furniture, pictures and equipment ($320,885 rather than the declared amount $325,048), electronic data processing equipment ($202,283 rather than $341,002), and $0.00 for leasehold improvements (rather than $1,284,429 declared on November 1, 2007). The Board made no changes in the assessment and this appeal followed.

As to the furniture and fixtures and the electronic data equipment, the Applicant had made no request for an extension of time to present corrected or different values, and none was granted.

The Applicant had no basis to seek to have the Board place different values on those items than those declared by the Applicant timely on November 1, 2007. J.C. Penney Corporation v. Town of Manchester, 291 Conn. 838, 970 A.2 704, (2009).

As to the leasehold improvements, the Application argues that these do not constitute personal property at all, but have become real property and should have been taxed as such to the owner of the building, and not to the Applicant as personal property. It falls to the court to determine whether the leasehold improvements are personal property or part of the realty.

"To constitute a fixture, it is essential that an article should not only be annexed to the freehold, but that it should clearly appear from an inspection of the property itself, taking into consideration the character of the annexation, the nature and the adoption of the article annexed to the uses and purposes to which (the realty) was appropriated at the time the annexation was made, and the relation of the party making it to the property in question, that a permanent ascension to the freehold was intended to be made by the annexation of the article." Waterbury Petroleum Prod. v. Canaan Oil and Fuel, 193 Conn. 508, 215, 216, 477 A.2d 988 (1984). The test focuses on the objectively manifested intent of the annexer as of the date when the property is attached. "The intent sought is not the subjective intent or undisclosed purposes of the annexer, but the intent manifested by his actions." Id., 216. The question of intent is a question of fact. Id. 216, 217.

"Section 12-117a . provides a method by which an owner of property may directly call in question the valuation placed by assessors on his property . the trial court performs a two step function. The burden in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board and that his property has been over assessed . " J.C. Penney Corporation v. Town of Manchester, 291 Conn. 838, 844, 970 A.2 704 (2009).

The Applicant apparently claims the exhaustive list of alterations performed when it took possession of the space constitute leasehold improvements and are not personal property. (Ex. 5.) The Applicant has never presented evidence of a separate list of personal property, including leasehold improvements, to the Assessor, the Board, or to the court, nor does it claim there is such a list. Transcript p. 99. Likewise, there is nothing in the evidence to show the value of any specific item claimed to have been annexed to the real estate. There is testimony from the Applicant and its representatives as to what items it is now intended that the Applicant will remove at the expiration of the sublease and which will remain on the premises. However, the sublease (Ex. 1) requires the Applicant to pay for all alterations made in the premises; sublease, paragraph 7.1, and upon expiration of the sublease to restore the premises to the same conditions they were in on the commencement day of the sublease vacant and in broom-clean condition. Sublease, section 7.3 and 6.3. The sublandlord has the right to waive the restoration. Sublease, section 7.3. Thus it did not "clearly appear that any specific article was intended to be annexed at the time the annexation was made." Waterbury Petroleum Product v. Canaan Oil and Fuel, supra, 193 Conn. 216. The lease itself (Ex. 2), to which the sublease is subject, informs us that no final intent was objectively manifested when the alterations were made. There were options on both parties' parts as to how they would treat the alterations at lease end. Self-serving testimony as to

what the Applicant intends to remove when the lease expires, and what the sublandlord is likely to want left on the premises, cannot satisfy the definition of fixtures. There was no inspection of the property by the Assessor, the Board, or the court (none having been requested). There is no list of, nor evidence of the value of, any article being claimed as a fixture, but simply a list of alterations with a net depreciated value of $1,284,429. [See Ex. A, Line # 24 Other (incl. Leasehold improvements); Ex. 51. There is no separate list of leasehold improvements. Testimony of Margaret Baim, Applicant's financial director; transcript p. 88, lines 6 through 20.

As a result, the Assessor refused to accept $0.00 as the Applicant's value of leasehold improvements. He simply had insufficient information about the items of leasehold improvements the Applicant claimed as fixtures and thus not taxable as personal property; nor did the Board have such information. "It is well settled that "[i]t is the duty of each taxpayer, as a personal obligation, to file with the assessors a list of his taxable property and furnish the facts upon which valuations may be based . If he fails to do so, the assessors are only required to act upon the best information [they] can obtain . and the taxpayer cannot justly complain if the assessors, acting in good faith, make an error in judgment in listing and valuing his property." (Emphasis in original; internal quotation marks omitted.) Xerox Corp. v. Board of Tax Review, 240 Conn. 192, 205, 690 A.2d 389 (1997). (Citations omitted; internal quotation marks omitted); J.C. Penney Corporation v. Town of Manchester, supra, 291 Conn. 845. As a matter of law and policy, it is not incumbent upon an Assessor to utilize his power to make up for a taxpayer's reporting shortfalls in the first instance. Such a system would be unworkable. Id., 846. Similarly, there was no evidence presented to the court regarding the value of any fixture claimed to have been annexed to the realty.
The court finds that the Applicant has failed to prove it has, in fact, been aggrieved by the action of the Board in failing to decide its property was overvalued or overassessed. Conn. Gen.Stat. § 12-117a; J.C. Penney Corporation v. Town of Manchester, supra, 291 Conn. 844.

PART 2 ASSESSMENT YEAR 2008
In the assessment year 2008, the Applicant filed a timely declaration of personal property, once again placing $0.00 value on the alterations made in 2007, and declaring $651,690 as the net depreciated value of its personal property on October 1, 2008. No extension of time to file was requested or granted. Again, no information was supplied to the Assessor explaining which articles were fixtures and thus annexed to the freehold, and which were personal property. No value was placed on the claimed fixtures, no inspections made, and the assessor thus correctly carried the 2007 assessment of leasehold improvements, from the preceding assessment year of 2007.[4] If the taxpayer fails to furnish the facts upon which valuations may be based, the assessors are only required to act upon the best information they can obtain. J.C. Penney Corporation v. Town of Manchester, supra, 291 Conn. 845.

The Applicant claims that the Assessor was aware of the appeal to the Superior Court of the 2007 assessment when he filed the 2008 assessment. This fact is of no moment, given that the complaint in the case provides no additional information to the defendant concerning fixtures versus personal property.

In the 2008 assessment the Assessor used the value figure of the Applicant's declaration (Ex.B) in calculating the assessment for furniture and fixtures (# 16), electronics data processing equipment (# 20) and average monthly supplies (# 23). Testimony of Kenneth A. Joyce, Transcript pp. 117, 118, 119. There is also no notation of a disposition of assets on the declaration or attached to it. Id. Transcript, 117.

The court finds that the Applicant has not carried its burden of proof that it has been aggrieved by the actions of the Board in failing to decide that its property was overvalued or overassessed. Conn. Gen.Stat. § 12-117a; J.C. Penney Corporation v. Town of Manchester, supra, 291 Conn. 844.

CONCLUSION

Having found that the applicant is not aggrieved under Conn. Gen.Stat. § 12-117a, its appeal is dismissed.

THE COURT
D'ANDREA, J.T.R.
FOOTNOTES
1. FN1. Conn. Gen.Stat. § 12-117a reads in pertinent part as follows: "Any person, including any lessee of real property whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom, with respect to the assessment list for the assessment year commencing October 1, 1989, October 1, 1990, October 1, 1991, October 1, 1992, October 1, 1993, October 1, 1994 or October 1, 1995, and with respect to the assessment list for assessment years thereafter, to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action."

2. FN2. Conn. Gen.Stat. § 12-119 reads in pertinent part as follows: "When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof or any lessee thereof whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, . "

3. FN3. The qualification for appealing under 12-117a is that the applicant must be aggrieved by the actions of the board. Conn. Gen.Stat. § 12-117a. The court does not address the question whether an appeal under Conn. Gen.Stat. § 12-119 may have also been appropriate under the facts of this case.

4. FN4. But with a reduced depreciation percentage.
D'Andrea, Frank H., J.T.R.