

S.C. 230309 (DBD-CV23- 6046287-S)

BIG SKY PROPERTIES LLC,	:	SUPREME COURT
	:	
v.	:	STATE OF CONNECTICUT
	:	
CITY OF DANBURY	:	JUNE 25, 2024

**BIG SKY PROPERTIES LLC’S OPPOSITION TO DEFENDANT’S
APPLICATION FOR CERTIFICATION FOR A PUBLIC INTEREST APPEAL**

Pursuant to Practice Book §§ 66-2 and 83-1, Big Sky Properties LLC (“Big Sky Properties”) opposes the Defendant’s application for certification for a public interest appeal (the “Application”).¹

The Defendant-Applicant, City of Danbury (the “City”), seeks immediate review of the June 12, 2024 decision by the trial court, Shaban J., reopening the trial court’s March 12, 2024 judgment, allowing reargument, and denying the City’s motion to dismiss. This Court should deny the City’s Application because there is no unsettled question of law. General Statute §12-117a(a)(2) states that a court “*may dismiss*” a tax appeal if a plaintiff’s appraisal is not timely filed. Therefore, the answer to the City’s question of law – “Whether the Superior Court has jurisdiction over a tax appeal where a property owner fails to comply with GS §12-117a(a)(2) as amended by Public Act 22-146” – is found on the face of the statute. Because the trial court “may dismiss” a tax appeal if a plaintiff’s appraisal is not timely filed, there is no question that the trial court retains jurisdiction over the matter. Moreover, this Application does not present any issues of substantial public interest, and delay will not cause a substantial injustice.

The trial court’s June 12, 2024 order clearly explains that its March 12, 2024 order conflicted with that trial court’s prior decisions involving essentially identical fact

¹ The City’s Application requests permission to join this appeal with six others pursuant to Practice Book § 61.7. Big Sky Properties opposes this request because these additional cases are not factually identical to this matter. If the Court grants the City’s Application, Big Sky Properties requests briefing on the joinder issue.

patterns and in which the trial court held that there cannot be a loss of jurisdiction when the statute gives the court discretion to dismiss. This Application has no merit and should be denied.

I. BRIEF HISTORY OF THE CASE AND FACTUAL BASIS FOR BIG SKY PROPERTIES’S OPPOSITION

Big Sky Properties timely appealed its 2022 Grand List property tax assessment. As the City noted in its Application:

[General Statutes §12-117a(a)(2)] provides, in relevant part, that: “**the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real property that is the subject of the application.**” (Emphasis added by the City.)

Application of the City at 2. However, it appears that the City neglected to provide this Court with the last three sentences of General Statutes §12-117a(a)(2). Therefore, the entire section is provided below:

(2) For any application made on or after July 1, 2022, under subparagraph (B) of subdivision (1) of this subsection, if the assessed value of the real property that is the subject of such application is one million dollars or more and the application concerns the valuation of such real property, the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real property that is the subject of the application. Such appraisal shall be completed by an individual or a company licensed to perform real estate appraisals in the state. The court may extend the one-hundred-twenty-day period for good cause. **If such appraisal is not timely filed, the court *may* dismiss the application.** (Emphasis added)

C.G.S. § 12-117a(a)(2).

On July 12, 2023, more than two months prior to Big Sky Properties’s deadline to file its appraisal, Defendant filed a motion to dismiss arguing, “[u]nless and until Plaintiff [files an independent appraisal], Plaintiff has not proven statutory standing under General

Statutes §12-117a.” *Big Sky Properties v. City of Danbury*, DBD-CV23- 6046287-S [Entry No. 102.00 at 1]. Big Sky Properties’s appraisal deadline was ultimately extended by the court to November 15, 2023. Due to a miscommunication on counsel’s part, the appraisal was served on Defendant by the November 15, 2023 deadline but was not filed with the Court. Big Sky Properties objected to the City’s motion to dismiss and the trial court heard oral argument on February 20, 2024.

On, March 12, 2024, the trial court granted the City’s motion to dismiss, stating “in failing to [timely file the appraisal with the court] the court is without jurisdiction to hear the appeal.” [Entry No. 114.00 (Shaban, J.)]. Big Sky Properties timely filed a motion to open judgment and reargue. Oral argument was held on May 6, 2024.

On June 12, 2024, the trial court granted Big Sky Properties’s motion to open and reargue and denied the City’s motion to dismiss. The trial court explained that its March 12, 2024 order in this matter conflicted with decisions that the trial court entered on November 21, 2023 in two other matters with essentially identical fact patterns and issues and in which the City of Danbury was the defendant—*Danbury Gas Realty v. Danbury*, Superior Court, judicial district of Danbury, Docket No. CV-23-6046184-S (November 21, 2023, *Shaban, J.*) and *American Petroleum Realty v. Danbury*, Superior Court, judicial district of Danbury, Docket No. CV-23-6046185-S (November 21, 2023, *Shaban, J.*). See City’s Appendix A3.

Specifically, the trial court explained:

In both of those matters [*Danbury Gas Realty* and *American Petroleum Realty*], the court denied the motion to dismiss reasoning that although the plaintiff had failed to meet the deadline for the filing of the appraisal with the court, the defendant had received the appraisal from the plaintiff prior to oral argument on the motion to dismiss and therefore there was no prejudice to the defendant from proceeding with the matter as the defendant had been fully informed of the claimed value of the property well in advance of any trial of the matter. The court also referenced the long-held principle of our courts that its preference is to have matters

heard on the merits as opposed to having them decided on procedural grounds. **While the court certainly had the discretion to dismiss the matters, it elected not to do so given that a dismissal was not mandatory.** (Emphasis added).

See City's Appendix A3.

The trial court further explained:

Upon reflection and argument, the court considers the dismissal entered in the present matter to be inconsistent with the court's prior rulings on the same issue now before it ... **The court finds that the reasons underlying its prior decision in the *Danbury Gas Realty* and *American Petroleum Realty* matters denying the motions to dismiss and the inconsistency of the ruling in this matter dismissing the action constitutes a good and compelling reason to warrant the reopening of the judgment so that it may be heard on the merits. No real prejudice exists to the defendant as no trial dates had been set as of the date of dismissal and it fully retains its ability to challenge the claims of the plaintiff.** (Emphasis added).

See City's Appendix A4.

The City then filed the present Application. Each of the City's arguments is unavailing. This Application has no merit and should be denied.

II. LEGAL ARGUMENT

a. There Is No Legitimate Question Of Law Because GS §12-117a(a)(2) Is Clear On Its Face That A Trial Court Has Discretion To Dismiss A Tax Appeal If An Appraisal is Untimely Filed.

The City states, "[t]he legal issue presented in this case – whether a superior court has jurisdiction over a tax appeal where a property owner fails to timely file an appraisal as required by General Statutes §12-117a(a)." See Application at 3. However, as the City has certainly read in the very statute upon which its Application relies, "[i]f such

appraisal is not timely filed, the court may dismiss the [property tax appeal].” C.G.S. § 12-117a(a)(2). (Emphasis added). Under the plain language of the statute, a superior court has discretion to dismiss a property tax appeal if the property owner fails to timely file an appraisal. Given this language, it should go without saying that a superior court retains jurisdiction over that tax appeal if an appraisal is untimely filed.

If the legislature had intended that a court lose jurisdiction under these circumstances, it could have used the word “shall” or “must” instead of “may.” In fact, in May 2024, the legislature amended General Statute §12-117a(a)(2) and retained this discretionary language. *See* An Act Authorizing and Adjusting Bonds of the State and Concerning Provisions Related to State and Municipal Tax Administration, General Government and School Building Projects, Pub. Act No. 24-151, 108 (effective July 1, 2024), available at <https://www.cga.ct.gov/2024/ACT/PA/PDF/2024PA-00151-R00HB-05524-PA.PDF>. The amendment, which goes into effect on July 1, 2024 and applies to this matter, reads:

(2) For any application made on or after July 1, 2022, under subparagraph (B) of subdivision (1) of this subsection, if the assessed value of the real property that is the subject of such application is one million dollars or more and the application concerns the valuation of such real property, the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real property that is the subject of the application. Such appraisal shall be completed by an individual or a company licensed to perform real estate appraisals in the state. The court may extend the one-hundred-twenty-day period for good cause. If such appraisal is not timely filed, the court *may* dismiss the application, **except that for any application made on or after July 1, 2022, but prior to July 1, 2024, that was dismissed due to such appraisal having been submitted to the assessor of the town or city in which such real property is situated rather than the court, the applicant may make another application with the court, provided the**

applicant (A) had provided notice to the court of such submission to the assessor, and (B) makes such application not later than September 1, 2024.

See Pub. Act No. 24-151, 108 (effective July 1, 2024) (new statutory language in bold).

Therefore, under the plain language of the current statute and the statute as amended and effective July 1, 2024, a superior court has discretion to dismiss a property tax appeal if the property owner fails to timely file an appraisal. Moreover, if a property owner's tax appeal was filed after July 1, 2022 and was dismissed for failure to file an appraisal with the court, such parties have the opportunity to refile their tax appeal by September 1, 2024. The language of the statute is clear and on this argument alone, the City's Application fails.

b. The Trial Court's June 12, 2024 Decision Resolves Confusion, Is Consistent With Prior Decisions, And Presents No Issue Of Substantial Public Interest Or Risk That Delay May Work A Substantial Injustice

To be permitted, an Application for Certification to File a Public Interest Appeal must "[involve] a matter of substantial public interest and in which delay may work a substantial injustice." *Metro. Life ins. Co. v. Aetna Cas. & Sur. Co.*, 249 Conn. 36, 48 (1999) (quoting §52-265a). Because appeals granted under §52-265a are interlocutory and disrupt the "efficient operation of the judicial system," applications should be granted only in cases entailing both "significant ramifications affecting the public interest" and substantial injustice from delay that cannot be resolved through the normal channels of appellate review. *See Melia v. Hartford Fire Insurance Company*, 202 Conn. 252, 256-58 (1987). Cases in which such applications have been granted usually affect a significant number of people in a substantive and substantial way. *See, e.g. Halladay v. Commissioner of Correction*, 340 Conn. 52, 67 (August 5, 2021) (granting §52-265a relief in a case presenting urgent matters concerning the death penalty). There is no such substantial public interest in this matter.

Contrary to the City's suggestion, the trial court's June 12, 2024 order did not create confusion. *See* Application at 4. Rather, the June 12, 2024 order resolved confusion. General Statute §12-117a(a)(2) is clear that a court has discretion to dismiss a tax appeal if an appraisal is untimely filed. *Danbury Gas Realty* and *America Petroleum* reiterated this point to the City, and the trial court's June 12, 2024 follows those decisions.

The City also argues that the "June 12th decision does not explain why the March 12th jurisdictional analysis was wrong." Application at 4. However, the trial court's June 12 decision states "upon reflection and argument, the court considers the dismissal entered in the present matter to be inconsistent with the court's prior rulings on the same issue now before it." *See* City's Appendix at A4. Moreover, the trial court included a lengthy paragraph on its "prior rulings" in *Danbury Gas Realty* and *America Petroleum*. While the trial court could have copied and pasted its jurisdictional analysis from *Danbury Gas Realty* and *American Petroleum Realty* into its June 12 decision, because the defendant is identical in all three cases and the decisions are easy to access, that seems unnecessary. Specifically, the court in *Danbury Gas Realty* and *American Petroleum Realty* provided the following jurisdictional analysis:

Lastly, the court notes that the [City of Danbury] argues in its memorandum of law in support of its motion that the plaintiff must comply with the statute with respect to the filing of the appraisal and that the "[f]ailure to do so after the statutory time period has passed must result in a dismissal." See #102. This is not an accurate reading of § 12-117a (a)(2). The last sentence of that section of the statute reads: "If such appraisal is not timely filed, the court may dismiss the application." By use of the word "may" the court is not compelled to dismiss the matter. *America Petroleum Realty LLC v. Danbury*, Superior Court, judicial district of Danbury at Danbury, Docket No. DBD-CV-23-6046185-S (November 21, 2023, *Shaban, J.*).

Finally, the City argues that delay in adjudicating this issue "creates uncertainty about multiple tax appeals and the city's available resources." Application at 11-12. But

there is no uncertainty and it is clear that the City will have to defend this case. As discussed above, the statute gives a trial court discretion to dismiss an appeal. Additionally, even assuming, *arguendo*, that the trial court's March 12 decision was correct, the statute as amended allows BND Property to refile this tax appeal. Therefore, there are no issues of substantial public interest or potential for delay to work a substantial injustice.

CONCLUSION

The City of Danbury's Application for a Public Interest Appeal should be denied.

Respectfully submitted,

Big Sky Properties

By: /s/Michael D. Reiner (302819)

Michael D. Reiner
Greene Law, P.C.
11 Talcott Notch Road
Farmington, CT 06032
Tel: 860-985-9576
Juris No. 428354
MReiner@greenelawpc.com

CERTIFICATION

Pursuant to Practice Book §§ 62-7 and 66-3, I certify that this document does not contain any names or personal identifying information the disclosure of which is prohibited, that it complies with all applicable rules of appellate procedure, and that it contains 2,611 words. I further certify that, on June 25, 2024, a copy hereof was sent electronically to all counsel of record and that written consent for electronic delivery was received from all counsel of record who will immediately be served.

Proloy K. Das
FordHarrison LLP
CityPlace II
185 Asylum Street, Suite 820
Hartford, CT 06103
Tel: 860-740-1077
pdas@fordharrison.com

Danbury Superior Court
146 White Street
Danbury, CT 06810

/s/ Michael D. Reiner (302819)
Michael D. Reiner
Commissioner of the Superior Court