

SUPERIOR COURT  
STAMFORD-NORWALK

DOCKET NO.: FST-CV-18-6034688-15 JUDICIAL DISTRICT SUPERIOR COURT

PEERLESS REALTY Inc.

2020 DEC -7: P 3

JUDICIAL DISTRICT OF  
STAMFORD/NORWALK  
AT STAMFORD

-v-

CITY OF STAMFORD, et al

DECEMBER 7, 2020

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

(Docket Entries: 109.00 110.00)

The Complaint

Plaintiff, Peerless Realty Inc., has filed a two count complaint against the City of Stamford and the Stamford Tax Assessor alleging, in count one, that the defendants have collected excess taxes resulting in financial damages to the plaintiff and seeks restitution, and in count two, that the defendants have been unjustly enriched.

The defendants assert that there exist no triable issues of fact with respect to these claims.

Findings of Fact

The court finds the following facts in connection with this motion. The facts are substantially drawn from affidavits submitted by the plaintiff in opposition to the motion for summary judgment, claims made in the plaintiff's opposition (Dkt. #10.00), and other uncontradicted facts established by the moving party and are not in dispute.

Plaintiff is the owner of real property known and described as 3 Hackett Circle, a three story converted mansion/apartment building containing 13 rental units within the City of Stamford. On or about August 13, 1976, three investors purchased the subject property. On or about July 22, 1981, the investors transferred their respective interests to Peerless Realty Inc. Ultimately, in 1995, one of the original investors, Edward Jordan, secured full ownership of Peerless and its assets, including the subject property.

109.03

At various times during its ownership of the subject property, Peerless investors secured appraisals of the subject property.

In or about October 2008, the City of Stamford transmitted to Peerless a Data Verification form in which it described the subject property and requested that Peerless verify the information the defendants had on file in their records which are used to assess property taxes. The form described the realty of the subject property as consisting of 50,000 square feet. The form asks the recipient to "review carefully and make any corrections necessary, sign the form, provide a day-time telephone number where you can be reached and RETURN THE COMPLETED FORM IN THE ENVELOPE PROVIDED . . ." The form also notifies the property owner that "the information listed may affect the valuation of the parcel."

Mr. Jordan, Peerless' sole owner, received, completed and returned the form in which he indicated that the property's heating fuel was gas and indicated that no renovations had been completed since October 1999. He signed the form, dated it "Nov 23, 2008" and listed his phone number. He otherwise made no other changes or corrections to the information contained in the form describing the subject property.

The Court takes judicial notice of the fact that 50,000 square feet converts to slightly less than 1.15 acres pursuant to the following formula.  $(50,000 \text{ ft. sqd.} \div 43.56 \approx 1.1478 \text{ acres})$  The Court further finds, therefore, that as of November 2008, the plaintiff was on ~~constructive notice that the City of Stamford had assessed the acreage of the subject property~~ at 1.15 and the plaintiff had accepted this assessment as accurate.

Also in 2008, Peerless secured a survey of the subject property which notified its principal investor, Mr. Jordan, that the subject property actually consisted of 0.88 acres. *See*, Dkt. #110.00, p 7, Plaintiff's Exhibits A and E. Accordingly, the Court finds that as of 2008,

the plaintiff was on actual notice that the City's assessed 1.15 acreage was inconsistent with the plaintiff's surveyed 0.88 acreage for the subject property. *Id.*

Approximately nine years later on July 25, 2017, Peerless conferred with a tax consultant, Ms. Rachell of Joseph C. Sansone Co., Business Tax Solutions, who informed Peerless that the City of Stamford mistakenly listed the subject property as consisting of 1.15 acres.

Before the summer of 2017, Mr. Jordan never went to the Stamford Tax Assessor's Office to review the City's field cards related to the subject property. Neither did he check the City's online Assessor's database prior to that time.

On August 3, 2017, Mr. Jordan met with Stamford's Tax Assessor, Gregory Stackpole, to discuss the "discrepancy" between the assessed 1.15 acreage and Peerless' 0.88 surveyed acreage. While Mr. Stackpole was responsive to his concerns, he informed Jordan that there was a statute which governed the refund of excess taxes paid to the City and that he could not refund any excess taxes paid more than three previous tax years. It was not clear how the error had arisen, but Mr. Stackpole agreed to change the field card to indicate the correct acreage and paperwork reflecting the correction came out after their meeting.

Mr. Jordan has presented no evidence that someone intentionally put down the wrong acreage for the property on the City's records.

~~Mr. Jordan is aware that all he needs to do to obtain a refund of excess taxes paid by~~  
Peerless for the 2014 and 2015 grand lists is to complete paperwork provided by the City. In early September 2017, Peerless received a two-page document from the City regarding the process for the refund of taxes. The first page asks the taxpayer to fill out an attached form and send it back to the City so that the request for a refund of property taxes can be processed.

Mr. Jordan, however, did not fill out the form and return it to the City. He felt that if he completed the form he may jeopardize Peerless' claim for the refund of excess taxes collected before the 2014 grand list.

On or about October 24, 2017, a letter from the plaintiff's attorney, Glen Canner, was hand delivered to the Tax Assessor which requested a refund of excess taxes collected on the subject property from 1993 until 2017. This was the first time a demand for refund of excess taxes collected was made to the city in writing.

Acting on behalf of the City's Tax Assessor, an Assistant Stamford Corporation Counsel responded to Attorney Canner's request. The City's Attorney informed Canner that his client is entitled to a refund of taxes for the prior three years, as permitted by General Statutes § 12-60, but that "any claim for a refund going back more than three years from the tax due date is time-barred under General Statutes § 12-60."

On or about January 17, 2018, the plaintiff commenced this action, seeking to obtain a refund of taxes going back to 1993. Dkt. #100.31 Peerless asserts in the First Count of its complaint that its demand for refund of excess taxes collected was denied and that as a result, it has suffered, and continued to suffer, damages. Complaint, First Count, Dkt. #100.31 It further asserts that the defendants, the City of Stamford and its Tax Assessor, Gregory Stackpole, have been unjustly enriched as a result of its overpayment of taxes. Complaint, Second Count, Dkt. #100.31

The defendants' response asserts six (6) special defenses. *Answer and Special Defenses, Docket No. 101.00*. With respect to to the First Count (ostensibly brought pursuant to Connecticut General Statutes § 12-129 and § 12-60), claiming a refund of excess taxes paid, the defendants assert three special defenses: 1) that the plaintiff failed to follow the

procedure set out in Connecticut General Statute § 12-60, *et seq.*, and is therefore, precluded from bringing this claim; 2) that the three year statute of limitations established by Connecticut General Statute §§ 12-60 and 12-129 precludes the bringing of a claim arising from a clerical mistake in the assessment of taxes more than three years from the date the tax was due; and/or 3) that tax payments made for which no timely application for refund was made under Connecticut General Statute § 12-129 remain property of the City. With respect to the unjust enrichment claim, the City asserts that the plaintiff is precluded from such a remedy because it failed to take advantage of the statutory remedy available to it for a refund of taxes in a timely manner and that it was negligent in so doing.

#### **Legal Standard**

Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment.” (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 524, 534-35, 51 A.3d 367 (2012).

#### **Count One – Application for Refund of Taxes pursuant to C.G.S. § 12-129**

“It is well ‘settled that a municipality, as a creation of the state, has no inherent powers of its own, and has only those powers expressly granted to it by the state or that are

necessary for it to discharge its duties and carry out its purposes.” *Wellswood Columbia, LLC v. Town of Hebron*, 295 Conn. 802, 814 (2010). (Internal citations omitted.)

Connecticut General Statute § 12-60, “Correction of clerical error in assessment” provides in relevant part as follows.

Any clerical omission or mistake in the assessment of taxes may be corrected according to the fact by the assessor or board of assessment appeals, not later than three years following the tax due date relative to which such omission or mistake occurred, and the tax shall be levied and collected according to such corrected assessment.

Further, Connecticut General Statute § 12-129, “Refund of excess payments” prescribes the sole manner in which the plaintiff was required to obtain a refund of excess tax payments after a certificate of correction has been issued by the City and provides in relevant part as follows.

Any person, firm or corporation . . . who, by reason of a clerical error on the part of the assessor . . . , pays a tax in excess of that which should have been assessed against his property, or who is entitled to a refund because of the issuance of a certificate of correction, may make application in writing to the collector of taxes for the refund of such amount. Such application shall be delivered or postmarked by the later of (1) three years from the date such tax was due . . .

A Section 12-60 claim is subject to the same three year statute of limitations as that provided by General Statute § 12-12. *See, National CSS, Inc. v. City of Stamford*, 195 Conn. 587, f.n. 9 (1985).<sup>1</sup> The *National CSS* Court explained the necessary public policy behind the statute of limitations provisions of applicable tax refund statutes as follows,

Public policy requires, furthermore, that this court not permit taxes collected or paid to be the subject of perpetual litigation, at any time, to suit the

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While the Court imputed into § 12-60 the then applicable six year statute of limitations provided by § 12-129, it is now a three year restriction. Notably, since *National CSS* was decided, § 12-60 has explicitly been amended to include its own three year statute of limitations. (*See P.A. 90-101.*)

convenience of the taxpayer. A taxpayer who has not sought redress in an appropriate manner is foreclosed from continuing litigation outside these statutes.

*Id.* at 597-98, internal citations omitted.

The following facts are not in dispute. For the 2014 grand list, the real property taxes were due on July 1, 2015; for the 2015 grand list, the real property taxes were due on July 1, 2016; and for the 2016 grand list, the real property taxes were due on July 1, 2017. Thus, three (3) years from the date the taxes were due for the 2014 grand list (7/1/15) was July 1, 2018, three (3) years from the date the taxes were due for the 2015 grand list (7/1/16) was July 1, 2019 and three (3) years from the date the taxes were due for the 2016 grand list (7/1/17) was July 1, 2020. The plaintiff first notified the Tax Assessor of the error in the square footage of its property in early August of 2017, see *Stackpole Affidavit, Exhibit B, ¶ 4*, which was more than three years after the taxes were due for the 2013 grand list (July 1, 2014). The first written application made to the tax collector for a refund was in a letter dated October 24, 2017. *Stackpole Affidavit, Exhibit B, ¶ 12.*

Under the express statutory provisions of General Statutes §§ 12-60 and 12-129, the plaintiff cannot recover a refund of any excess taxes paid more than three years after the taxes were due. Mr. Jordan has acknowledged that he already obtained a credit for the excess taxes paid for the 2016 grand list and that he need only fill out the required paperwork to obtain a refund of the excess taxes paid for the 2014 and 2015 grand lists. *Jordan Deposition, Exhibit A*, pp. 28, 29, 74 Peerless, therefore, has already received a refund for any and all excess tax payments permitted by the applicable statutes. Further, by operation of law, it is precluded from pursuing a claim for excess taxes paid prior to the 2014 grand list. See, *Evergreen Association, LLC v. Town of Clinton*, 51 Conn. L. Rptr. 905, 2011 WL 2739615, \*2, holding

for the same reasons that, “a claim for a refund of taxes under General Statutes § 2-129 is barred” for those years.

There being no remaining material issues of fact with respect to the First Count, summary judgment shall enter in the defendants’ favor.

**Count Two – Claim of Unjust Enrichment**

As set forth above, and amply supported by the plaintiff’s own allegations, Peerless was on actual notice as early as 2008 that the City’s 1.15 assessed acreage was inconsistent with Peerless’ surveyed 0.88 acreage. The Court finds that Peerless was, therefore, negligent in failing to address the discrepancy in a timely manner. Because Peerless was on actual notice of this discrepancy, it may not now shift the consequences of its negligence to the City. To hold otherwise would create an obligation on municipalities to enquire and ensure that real estate investors and property owners be fully cognizant of the relevance and significance of a myriad of circumstances existing on the property. In this particular case, moreover, the investor was fully on notice of the discrepancy. “Edward A. Pirro Jr.’s April 12, 2008 survey states that Hackett Circle West consists of .88 acres.” Dkt. #110.00, p. 7. The plaintiff offers to excuse its negligence stating that, “Edward Jordan – like most people – is not fluent in square foot to acreage conversion.” Dkt. #110.00, p. 7. Square footage and its relation to acreage, as well as a myriad other terms specific to real estate, however, are the *lingua franca* of real estate valuation and investing. It is the property owner and investor – not the municipality – who is in control of the property and is, therefore, in the best position to identify and resolve discrepancies between assessed and surveyed lot size.

In *Pitt v. Stamford*, 117 Conn. 388, 392 (1933), the Court held that, “[u]nder the settled general rule, if the plaintiff, with knowledge of the facts, paid the taxes voluntarily, he

could not recover them back even though they were in an amount in excess of what he should have been required to pay.” Here, by virtue of its 2008 survey of the subject property, Peerless had actual knowledge of the facts, paid the taxes voluntarily and may not now recover tax payments made in excess of what Peerless was required to pay.

Plaintiff also seeks to litigate further whether the discrepancy was due to a mistake or some other action by the City of Stamford which may excuse his failure to commence a timely claim for return of tax overpayments. However, in *Savings Bank of Rockville v. Wilcox*, 117 Conn. 196, 167 A.713, (1933), the Connecticut Supreme Court distinguished mistake from negligence. “Mistake as a basis for refunding taxes is a misapprehension or misunderstanding arising from ignorance, an essential prerequisite, and is distinguished from that inattention or absence of thought which are inherent in negligence, and is not such as results from inadvertence or negligence.” *Id.* Citing *Shenago Furnace Co. v. Township of Fairfield*, 229 Pa. 357, 78 A.937 (1911).

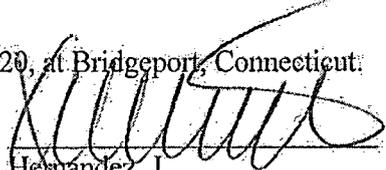
Where, as here, it is not disputed that Mr. Jordan received a form from the City in 2009 which plainly listed the wrong acreage/square footing for the subject property, he made changes to information contained therein, but failed to correct the acreage, the Court finds that Peerless was negligent in failing to correct the information in the City’s records. Further, having received tax bills in each of the succeeding years which also listed the wrong acreage, ~~he was regularly put on notice of the potential error and he could have reviewed and~~ challenged the City’s records at any time to ascertain whether the information contained thereon was correct. He did neither. Jordan Deposition, Exhibit A, pp. 32, 73.

Finally, as set forth above, the plaintiff failed to follow the procedures prescribed by General Statutes § 12-60 in a timely manner with regard to the excess taxes it paid for the grand lists prior to 2014 and is precluded from pursuing a claim of unjust enrichment.

There exist no material issues of fact with respect to Count Two. Summary Judgment is ordered:

WHEREFORE, for the reasons set forth above, the court finds that the plaintiff has failed to meet its burden of proof and directs that judgment enter in favor of the defendants as to each count of the complaint.

SO ORDERED, this 7<sup>th</sup> day of December, 2020, at Bridgeport, Connecticut:

  
Hernandez, J.

Decision entered in accordance with  
the foregoing 12/7/2020.  
Notice sent to all counsel of  
record 12/7/2020.

  
Jonathan Bubar (AC)