

DOCKET NO: DBDCV236046185S

SUPERIOR COURT

AMERICA PETROLEUM REALTY LLC  
V.  
CITY OF DANBURYJUDICIAL DISTRICT OF DANBURY  
AT DANBURY

11/21/2023

ORDER

## ORDER REGARDING:

06/29/2023 101.00 MOTION TO DISMISS PB 10-30

The foregoing, having been heard by the Court, is hereby:

## ORDER:

The defendant has filed a motion to dismiss for lack of subject matter jurisdiction the plaintiff's appeal from a ruling of the Board of Assessment Appeals of the City of Danbury. In its motion, the defendant contends that the plaintiff has failed to comply with General Statutes § 12-117a relative to appeals from rulings involving commercial property that is valued at over \$1,000,000. The statute, which was amended effective July 1, 2022, calls for the plaintiff to file an appraisal of the property with the court within 120 days of the filing of the appeal. General Statutes § 12-117a (a)(2). That statute also allows for an extension of the deadline for good cause. The plaintiff has filed an objection (#103) and the defendant a reply (#105). Oral argument was held on November 20, 2023.

In this instance the plaintiff filed its tax appeal on May 10, 2023. The property involved was valued in excess of \$1,000,000. Under the statute, an appraisal had to be filed with the court on or before September 7, 2023.

On June 29, 2023, long before the deadline for the filing of the appraisal, the defendant filed its motion asking the court to dismiss the matter if the plaintiff did not file an appraisal within 120 days. The motion at that point was premature as the deadline for the filing of the appraisal had not yet arrived. In effect, the motion sought relief for something that had not yet happened.

On September 5, 2023, the plaintiff moved to modify the September 7, 2023 deadline (i.e., it asked for an extension of time) which was granted on September 18, 2023 for an additional 60 days extending the deadline to November 4, 2023 for "good cause." See #106.01. The basis of the request was that there was a severe limitation on the availability of appraisers for commercial appraisals due to a high volume of requests around the state.

On November 8, 2023, four days after the deadline, the plaintiff filed with the court a disclosure of expert naming the appraiser. See #111. No appraisal was attached to the disclosure filed with the court. It was, however, attached to the copy of the disclosure sent to opposing counsel.

The defendant contends that the appeal must be dismissed because no appraisal was timely filed thereby depriving the court of jurisdiction pursuant to § 12-117a. The plaintiff argues that while no appraisal was filed with the court, the defendant is not prejudiced as the appraisal was attached to the disclosure of expert sent to the defendant and was in its possession before argument on the motion to dismiss.

The court notes that the motion filed by the defendant was done long before any issue had arisen relative to compliance with the statute and before any relief could be granted by the court. In effect, the motion was premature. Our courts do not countenance the filing of motions that seek resolution of a controversy that has yet to come to life. In other words, there was nothing justiciable at the time the motion was

filed. The fact that later circumstances may have fit the scenario anticipated by the motion does not validate the timing of the filing of the motion. While the plaintiff did not timely file its appraisal with the court, the proper procedure and remedy would have been for the defendant to file its motion upon or following the occurrence of a justiciable event.

Further, the court notes that prior to oral argument on the motion, the defendant had received the appraisal from the plaintiff. Therefore, there is no prejudice to the defendant from proceeding with the matter as it is fully informed of the claimed value of the property well in advance of any trial of the matter. It is an underlying principle of our courts that the preference is to have matters heard on the merits as opposed to having them decided on procedural grounds.

Lastly, the court notes that the defendant 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. It has the discretion not to do so, and the court elects to exercise its discretion in this instance to deny the motion given there is little prejudice to the defendant and our courts’ desire to have disputes heard on the merits as opposed to being dismissed on procedural grounds.

So ordered.

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Judge: DAN SHABAN

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