MSK Properties, LLC, Sole Member v. City of Hartford

Superior Court at New Britain
No. HHB-CV-15-6029158-S
Memorandum Filed July 3, 2017

Civil Procedure – Standing – Misc. Cases – Sole Member of a Single-member LLC Has Standing to Prosecute a Real Estate Tax Assessment Appeal on Behalf of the LLC.

Taxation – Real Property – Assessment Appeals – Sole Member of a Single-member LLC Has Standing to Prosecute a Real Estate Tax Assessment Appeal on Behalf of the LLC. The sole member of a single-member limited liability company has standing to prosecute a real estate tax assessment appeal on behalf of the LLC even though the LLC is the record owner of the property. The opinion relies on the cumulative effect of four factors to reach this conclusion: (1) the appeal can be reasonably construed as having been brought by the sole member on the LLC's behalf; (2) if the appeal were construed as having been brought by the wrong party the error could be cured by substituting the proper party; (3) any economic benefit obtained by a grant of relief from the assessment will eventually accrue to the named member; and (4) allowing the appeal to continue would serve the public policy that disputes should be resolved on their merits whenever possible. The opinion draws a distinction between allowing a regular civil action to be prosecuted by a sole member rather than the LLC, a result which would be contrary to the Appellate Court's 2013 holding in *Padawer v. Yur*, and a tax appeal in which the ultimately liable party will be the LLC's sole member.

Taxation – Real Property – Assessment Appeals – Party Who Purchases Rental Property Has Standing to Appeal an Outstanding Penalty Imposed for the Seller's Late Filing with the Assessor of an Annual Statement of Rental Income and Expense. A party who purchases rental real property subject to a penalty assessment as a result of the seller's late filing of an annual income and expense report has standing to appeal the penalty under CGS §12-117a and CGS §12-119, even though the purchaser did not participate in the assessment appeal and was not a property owner at the time the penalty was imposed. Note that the issue presented is not whether a party that purchases property while an assessment appeal is pending has standing to continue to prosecute the appeal, an issue which apparently has not been ruled on by either the Supreme or the Appellate Court, but rather whether a purchaser has standing to appeal the imposition of a penalty for failing to submit an annual report of income and expenses.

Taxation – Real Property – Assessment Appeals – Ten Percent Penalty for the Late Filing of a Statement of Income and Expenses Relating to Rental Property May Be Imposed Even for a Filing Made Only One Day Late. The statutory 10% penalty for failing to timely file with a town tax assessor a report of income and expenses for rental property, CGS §12-63c (requiring that a statement of income and expense information applicable to rental property be filed not

later than June 1 of each year and imposing a penalty in the form of a 10% increase in assessed value for any late filing), may be imposed for a filing made only one day late. Furthermore, the full penalty may be imposed for any late filing regardless of prejudice to the assessor. The language of the opinion strongly supports a rule that imposition of the penalty is *mandatory*, even for a one-day delay, but the opinion does not quite expressly make that holding.

Taxation – Real Property – Assessment Appeals – Imposition of a Tax Penalty for a Late Filing Cannot Be Challenged on a Theory of Unjust Enrichment, Regardless of How Brief the Delay May Have Been. The imposition of a tax penalty for a late filing cannot be challenged on a theory of unjust enrichment, regardless of how brief the delay may have been.

Huddleston, Sheila A., J. The plaintiff, MSK Properties, LLC (MSK), brought this tax appeal to challenge penalties imposed by the defendant City of Hartford (city) on the 2013 grand list. It alleges that it is the sole member of twenty-eight separate limited liability companies, each of which owns a single rental property in Hartford. MSK claims that the city improperly imposed a ten percent penalty on the assessment of the properties based on the fact that the prior owners of the properties filed their 2012 income and expense reports, required under General Statutes §12-63c, one day late. It further alleges that the city was unjustly enriched by the excessive taxes MSK paid on behalf of all of the limited liability companies because of the ten percent penalty. As relief, MSK asks that "the valuation of this property on the Assessment Date be reduced to 70% of its true and actual value." The city denies that the penalties were improperly imposed and asserts that the appeals were not brought during the time permitted by law for assessments on the 2013 grand list. For the reasons stated below, the court concludes that the penalties were properly imposed and the plaintiff is not aggrieved. The appeal is therefore dismissed.

FACTS AND PROCEDURAL HISTORY

In a fifty-seven-count complaint, MSK brought this appeal as sole member of twenty-eight limited liability companies, which are named in the caption of the summons and complaint.[(1)] Twenty-eight counts (the odd-numbered counts one through fifty-five) assert a claim pursuant to General Statutes §12-117a on behalf of each of the limited liability companies of which MSK is a member. Twenty-eight counts (the even-numbered counts two through fifty-six) assert a claim pursuant to General Statutes §12-119 on behalf of each of the limited liability companies. Except for the identification of the limited liability company, the particular parcel identification, and the valuation and assessment placed on the particular parcel, each odd-numbered count from one through fifty-five is identical to every other odd-numbered count one through fifty-five, and each even-numbered count is identical to every other even-numbered count. The fifty-seventh count asserts a claim of unjust enrichment.

More particularly, count one is captioned "As to C.G.S. Section 12-117a—As to 109 Adelaide Street, LLC, 109 Adelaide Street, Hartford, CT." It alleges in essence as follows.

(1) On the assessment date of October 1, 2013, 109 Adelaide Street, LLC was the "tenant"[(2)] of property located at 109 Adelaide Street in Hartford. (2) The city's assessor valued the property at

a fair market value of $703,857 and an assessed value of $492,700. (3) The assessor determined that all properties should be liable for taxation at seventy percent of their true and actual valuation.[3] (4) The valuation of the subject property, however, is not that percentage of its true and actual value because a ten percent penalty was assessed for failure to submit income and expense reports. Said reports were filed timely and the penalty should not have been assessed. (5) The applicant timely appealed to the city's board of assessment appeals but the board refused to hold a hearing. The board claimed that notice was properly sent on February 3, 2014, but notice was never received and was sent to the incorrect address.

The odd-numbered counts three through fifty-five make identical factual allegations regarding each of the other properties at issue, substituting only the name and location of each subsequent limited liability company and the particular valuation for each property.

Count two is captioned "As to C.G.S. Section 12-119—As to 109 Adelaide Street, LLC, 109 Adelaide Street, Hartford, CT." It alleges in essence as follows: (1) On the assessment date of October 1, 2013, 109 Adelaide Street, LLC was the "owner" of property located at 109 Adelaide Street in Hartford. (2) On that date, the property was assessed with a fair market value of $703,857 and an assessed value of $492,700. (3) The assessors determined that all properties should be liable for taxation at seventy percent of their true and actual value. (4) The valuation of this property as placed by the assessor was not that percentage of its true and actual value but was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property.

The even-numbered counts four through fifty-six make identical allegations as to each of the other properties at issue, changing only the name of the limited liability company, the property address, and the specific valuations at issue.

In count fifty-seven, MSK alleges that it paid the ten percent penalty through the real property tax bills on the October 1, 2013 grand list for each of the respective properties. It further alleges that the benefit received by the city from the overpayment of the ten percent penalty, without any consideration to MSK for the same, came at MSK's detriment as it lost the use and enjoyment of said monies. It alleges, finally, that the city was unjustly enriched from the benefit of the overpayment, to MSK's detriment. It claims damages in the amount to be determined at trial.

As claimed relief for all counts, MSK "prays that the valuation of this property on the assessment date be reduced to seventy percent of its true and actual value."

In its answer, the city admitted, in the odd-numbered counts one through fifty-five, that the assessor determined that all properties should be liable at seventy percent of their true and actual values, and further admitted that a ten percent penalty was applied to the assessment of each of the subject properties for failure to submit income and expense reports. It denied that the reports were timely filed and denied that the valuation of the property was "grossly excessive, disproportionate and unlawful." As to all other allegations in each of the odd-numbered counts, it claimed insufficient knowledge and left MSK to its proof.

In response to the even-numbered counts two through fifty-six, the city admitted that the assessors determined that all properties should be liable for taxation at seventy percent of their true and actual values. It denied that the valuation placed on each of the properties was manifestly excessive. It claimed insufficient knowledge as to all other allegations and left MSK to its proof.

In response to the unjust enrichment claim in count fifty-seven, the city admitted that MSK paid the ten percent penalty on all the subject properties. It denied that the payment constituted an overpayment and denied that the city was unjustly enriched thereby. It stated that the claim for damages "states a legal conclusion to which no response is required."

The city also asserted, as a special defense to counts one through fifty-six, that the claims are time-barred pursuant to General Statutes §§12-117a and 12-119.

On October 10, 2016, the parties filed a joint stipulation of facts, as follows:

1. On April 23, 2015 Plaintiff brought an Appeal from the Board of Assessment Appeals regarding the 10% penalty assessed on the 2013 Grand List for 28 various properties owned by Plaintiff as sole member.

2. Prior owners filed the 2012 Income and Expense Reports with the City of Hartford and the reports are stamped by the City after 4 p.m. on June 4, 2013, except for the property located at 33 Imlay Street, Hartford, CT which was stamped at 1:33 p.m. on June 4, 2013.

3. The Income and Expense Reports are dated May 31, 2013. They were due to the Assessor on June 3, 2013, as June 1 and 2 of 2013 were a Saturday and Sunday, respectively.

4. A penalty has been applied to the various properties.

5. The notices were sent to the prior owners for the various properties at the following addresses:

891 West Blvd, Hartford, CT 06105-4154; 67 Prospect Ave, West Hartford, CT 06106-2981; and 67 Prospect Ave., Suite 301A, West Hartford, CT 06106-2981.

6. Prior owners lost the properties through foreclosure on or about April 29, 2014. The properties were then sold to the Plaintiff on or about June 24, 2014.

7. Plaintiff was unaware of the 10% penalty until such time as they received notice for the taxes owed on the 2014 Grand List, which prompted Plaintiff to file this action.

Thereafter, on November 15, 2016, the parties filed a supplemental stipulation of facts, which stated as follows:

1. By notice dated February 3, 2014, the City of Hartford notified the prior owners of the imposition of the 10% penalty pursuant to C.G.S. §12-53c(d). Copies of said notices are attached hereto as exhibits 1 through 24.

2. No notices were sent for the properties located [at] 69 Ward Place; 554 Wethersfield Avenue; 89 South Whitney Street; and 621 Farmington Avenue.

Despite paragraph 1 of the supplemental stipulation, the notices attached as exhibits one through twenty-four to the supplemental stipulation do not state that a ten percent penalty was applied. Instead, each notice identifies the parcel at issue, states the 2012 and 2013 grand list fair market values for that parcel, and states the 2012 and 2013 grand list assessed values for that parcel. Immediately below the reported values, the notice states: "In accordance with Section 12-55 of the State of Connecticut General Statutes you are hereby notified of the new assessment for the 2013 Grand List. Pursuant to Public Act 2011-212, apartment properties—now four units or more—are assessed at 60 percent of value, up from 55 percent last year."

Both MSK and the city filed pretrial briefs. In its pretrial brief, MSK argued essentially two points. First, it argued that the ten percent penalty should not have been applied based on the fact that the income and expense statements were filed only one day late. Second, it argued that the appeal is timely because the city failed to give adequate notice of the penalty to the prior owners, thus depriving them of the opportunity to appeal the penalty.

With respect to the first issue, MSK argued that the apparent purpose of General Statutes §12-63c is to ensure that the city obtains the information it needs to perform an income capitalization appraisal of a subject property, and that the city in fact had such information only one day after it was supposed to receive it. In its view, to impose a ten percent penalty, the city would have to establish that its ability to perform the requisite analysis was prejudiced by a filing of a report only one day after its due date.

In response, the city filed a pretrial brief in which it argued that the plain language of §12-63c required it to impose the ten percent penalty when an income and expense report is filed later than allowed by statute, even if the report is filed only one day late. It also argued that all counts under §§12-117a and 12-119 were untimely, and the unjust enrichment count was untenable as a matter of law.

The parties appeared for trial on January 23, 2017. They had submitted a joint stipulation of facts and a supplemental stipulation of facts and intended to present argument about the facts as stipulated or otherwise admitted. At that time, however, the court questioned whether MSK had standing to bring the action in its own right. The court cited *Padawer v. Yur,* 142 Conn.App. 812, 817-18, 66 A.3d 931, cert. denied, 310 Conn. 927, 78 A.3d 145 (2013), which held that the sole member of a limited liability company lacked standing to bring a claim based on a wrong to the limited liability company. Based on *Padawer,* the court was concerned about its subject matter jurisdiction over the appeal.

MSK's counsel stated that he and the city's counsel had agreed that he could bring one case to deal with all twenty-eight properties. Acknowledging that subject matter jurisdiction cannot be conferred by agreement of the parties, he then offered to move to substitute the individual limited liability companies as plaintiffs. At the end of the trial, the court directed the parties to file post-trial briefs on the issue of subject matter jurisdiction. MSK filed its post-trial brief on February 14, 2017, and the city filed its brief on February 28, 2017.

In their post-trial briefs, neither MSK nor the city addressed the ruling in *Padawer* or addressed the statutory authority for suits by or on behalf of limited liability companies. Instead, MSK argued that if the court believes that MSK is not the proper party, MSK should be allowed to move to substitute the individual limited liability companies pursuant to *Fairfield Merrittview Ltd. Partnership v. Norwalk,* 320 Conn. 535, 133 A.3d 140 (2016). In that case, the Supreme Court held that the Appellate Court should not have ordered the dismissal of a tax appeal originally brought in the name of a limited partnership on the ground that the limited partnership had transferred the property to a related limited liability company before the date of the assessment and therefore had no standing to bring the appeal. The Supreme Court concluded that the limited partnership had amended its complaint and added the limited liability company as a party plaintiff shortly after bringing the appeal, and that the substitution of the proper party plaintiff cured any jurisdictional defect.

In response, the city argued that this case is different from *Fairfield Merrittview* because the limited liability companies were not the owners of the properties when the tax penalties were assessed. That is, the city contends that both MSK and the limited liability companies lack standing because they did not own the properties when the penalty was assessed. The city did not, however, cite any authority for the proposition that a successor in interest who is bound to pay the taxes at issue lacks standing simply because it acquired property after an assessment date. MSK did not reply to the city's argument.

DISCUSSION
I

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . As a general matter, one party has no standing to raise another's rights." (Citation omitted; internal quotation marks omitted.) *Fairfield Merrittview Ltd. Partnership v. Norwalk, supra*, 320 Conn. 547-48. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) *Id.*, 548. "The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." (Internal quotation marks omitted.) *Richardson v. Commissioner of Correction,* 298 Conn. 690, 696, 6 A.3d 52 (2010).

Two issues relating to standing are now before the court. The court raised the issue of MSK's standing, as "sole member" to bring the action in its own name for injury to the limited liability companies that actually own the properties in question. The city then raised the issue of the standing of successors in interest to appeal when they were not the owners of the properties when the penalties were imposed. The court will address each issue in turn.

A

The first question is whether MSK, as the sole member of the limited liability companies that currently own the properties, can bring a tax appeal to redress the alleged wrong to the limited liability companies. As a general rule, "[s]uits may be brought by or against a limited liability company in its own name." General Statutes §34-186. A "suit on behalf of the limited liability company may be brought in the name of the limited liability company by: (1) Any member or members of a limited liability company . . ." General Statutes §34-187(a). The question is more complicated with respect to taxes, however. "[A limited liability company] is a distinct type of business entity that allows its owners to take advantage of the pass-through tax treatment afforded to partnerships while also providing them with limited liability protections common to corporations." *Styslinger v. Brewster Park, LLC,* 321 Conn. 312, 317, 138 A.3d 257 (2016). Pursuant to General Statutes §34-113, "[a] limited liability company formed under sections 34-100 to 34-242, inclusive . . . shall be treated, for purposes of taxes imposed by the laws of the state or any political subdivision thereof, in accordance with the classification for federal tax purposes." Under federal tax law, a single-member limited liability company may be a "disregarded entity," with its tax liabilities accruing to its sole member, or it may be treated as a corporation, depending on the type of tax involved and the election of the limited liability company. See Department of the Treasury, Internal Revenue Services, Publication 3402 (Rev. June 2016), Taxation of Limited Liability Companies.

The court raised the issue of MSK's standing to sue in its own name based on its reading of *Padawer v. Yur, supra*, 142 Conn.App. 812. In that case, the Appellate Court ordered the dismissal of a case brought by an individual to recover damages for the defendant's alleged breach of an agreement with a limited liability company, of which the plaintiff was the sole member. The Appellate Court held as follows: "A limited liability company is a distinct legal entity whose existence is separate from its members . . . [It] has the power to sue or to be sued in its own name; see General Statutes §§34-124(b) and 34-186; or may be a party to an action brought in its name by a member or manager . . . A member or manager, however, may not sue in an individual capacity to recover for an injury based on a wrong to the limited liability company . . . [A] member or manager of a limited liability company is not a proper party to a proceeding by or against a limited liability company solely by reason of being a member or manager of the limited liability company, except where the object of the proceeding is to enforce a member's or manager's right against or liability to the limited liability company or as otherwise provided in an operating agreement . . ." (Citations omitted; internal quotation marks omitted.) *Id.*, 817-18.

In this case, after further review of the complaint, the limited liability company statutes, and the relevant case law, the court concludes that *Padawer* does not compel the dismissal of this case. The court reaches this conclusion for four reasons. First, the appeal is ambiguously framed. It names MSK "as sole member of" the limited liability companies that are individually named in the appeal and in the citation." The appeal reasonably can be construed to have been brought either by MSK in its own right or by MSK on behalf of the limited liability companies of which it is the sole member. Second, if the complaint is construed to be brought in the name of the wrong party, substitution of the proper party under General Statutes §52-109, as construed in *Fairfield Merrittview Ltd. Partnership v. Norwalk, supra*, 320 Conn. 535, would be permitted and would avoid dismissal of the case. Third, the relief sought is that the properties be assessed at their proper value. If such relief were granted, it would accrue to the benefit of the party liable

to pay the taxes on the property. Fourth, it is the policy of the courts to resolve disputes on their merits whenever possible. In service of that policy, standing is "not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Internal quotation marks omitted.) *Fairfield Merrittview Ltd. Partnership v. Norwalk, supra*, 320 Conn. 548. Moreover, under our jurisprudence, "pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Asylum Hill Problem Solving Revitalization Assn. v. King,* 277 Conn. 238, 246, 890 A.2d 522 (2006).

In light of the principles articulated above, the court construes each count of the appeal to have been brought by MSK on behalf of the party legally liable to pay the tax penalties at issue. This is how the parties construed the appeal, and it is not an unreasonable construction.

B

In response to the court's order to brief the question of standing, the city did not claim that MSK lacked standing because of its status as sole member of the limited liability companies that own the properties at issue. Rather, it argued that neither MSK nor the limited liability companies have standing because none of them owned the properties at issue when the penalties were imposed on the October 1, 2013 grand list. It is undisputed that the properties were acquired in June 2014, after the interests of the prior owners were foreclosed.

The court has found few cases that address this issue. At least two trial court decisions, however, have rejected arguments similar to that made by the defendant. In *Corner Block Development, LLC v. New Haven,* Superior Court, judicial district of New Haven, Docket No. CV-12-6030527 (December 18, 2012, Fischer, J.) (55 Conn. L. Rptr. 221), the court considered whether an appeal brought pursuant to General Statutes §12-117a should be dismissed because the plaintiff in that case had acquired title to the property at issue after a prior owner had taken an appeal to the board of assessment appeals. In moving to dismiss, the defendant alleged that the plaintiff was neither the owner of the property at the time of assessment nor was it liable to pay the taxes for the year at issue. The trial court concluded that the plaintiff nevertheless had a direct and substantial interest in the issue of whether the property was properly assessed before it acquired the property because subsequent assessments would be based on the valuation at issue in the appeal. In reaching that conclusion, the court relied upon *SG Stamford, LLC v. Stamford,* Superior Court, judicial district of Stamford-Norwalk, Docket No. CV 08-4014088 (September 22, 2009, Tierney, J.T.R.), (48 Conn. L. Rptr. 499). In *SG Stamford, LLC,* the appealing property owner had purchased the property at issue after its prior owner had applied to the board of assessment appeals, which elected not to hold a hearing, but before the time for appealing from the board's decision had run. The trial court concluded that neither §12-117a nor §12-119 is intended to preclude an appeal by an owner that is liable to pay the taxes on the property, even if that owner did not acquire the property until after the assessment date.

This court agrees with the analysis in *Corner Block Development, supra*, and *SG Stamford, LLC, supra*. General Statutes §12-117a broadly provides, in relevant part, that "[a]ny person . . .

claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals . . . 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 . . . to the superior court . . ." MSK alleges that it is aggrieved because it paid an unlawfully imposed tax penalty. The court concludes that this allegation presents a colorable claim of aggrievement, sufficient at least to withstand a motion to dismiss. Similarly, General Statutes §12-119 provides in relevant part: "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 . . . may . . . make application for relief to the superior court . . ." Section 12-119 allows "the owner" to bring an appeal; it does not limit it to the "owner as of the date of the assessment." It would make no sense to do so. The statute is intended to protect the right of owners who are bound to pay the allegedly illegal or manifestly excessive tax. MSK has alleged that it paid such an illegally imposed tax. The court concludes that it is not precluded from appealing on the ground that it was not the owner of the property when the penalty at issue was first imposed.

II

The court next turns to the merits of MSK's claim. It argues that (1) the income and expense lists were essentially timely because they were filed only one day late, and (2) the city has not shown that it was prejudiced by the late filing.

It is undisputed that the income and expense reports were filed late. Although they were dated May 31, 2013, they were not filed until June 4, 2013, one day after the deadline of June 3, 2013. There is no evidence as to how the reports were delivered to the city—whether in person, by United States mail, or by some other delivery service, and there is no claim that they should be deemed timely because they were dated May 31, 2013.

The question, then, is a question of statutory construction. As with any such question, the court must begin with the text of the provisions at issue. See General Statutes §1-2z. General Statutes §12-63c(a) provides in relevant part: "In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor . . . may require in the conduct of any appraisal of such property pursuant to the capitalization of net income method, as provided in section 12-63b, that the owner of such property annually submit to the assessor not later than the first day of June . . . the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property . . . Upon determination that there is good cause, the assessor may grant an extension of not more than thirty days to submit such information, if the owner of such property files a request for an extension with the assessor not later than May first." General Statutes §12-63c(d) provides in relevant part: "Any owner of such real property required to submit information to the assessor in accordance with subsection (a) of this section for any assessment year, who fails to submit such information as required under subsection (a) or who submits information in incomplete or false form with intent to defraud, shall be subject to a penalty equal to a ten percent increase in the assessed value of such property for such assessment year."

MSK argues that the prior owners did not fail to submit the required reports, but merely filed them a day late. In support of its argument, it relies upon *PJM & Associates, LC v. Bridgeport,* 292 Conn. 125, 143, 971 A.2d 24 (2009) (*PJM*). In *PJM,* the plaintiffs had failed to comply with the assessor's request to file income and expense reports for their properties by June 1, 2004, allegedly because they had never received the assessor's request. The trial court held that the assessor lacked authority to require the income and expense reports in a year that was not a revaluation year. On appeal, the Supreme Court reversed, holding that under the plain language of the statute, the assessor was authorized to require owners of rental properties to submit income and expense reports annually, regardless of whether it was a revaluation year.[(4)] It then considered various alternate grounds for affirmance asserted by the plaintiffs. One of the alternate grounds was a claim that §12-63c(d) evidenced an intent to impose a penalty only when a taxpayer acted with "intent to defraud." *PJM & Associates, LC v. Bridgeport, supra*, 292 Conn. 141-42. The court rejected that claim with the following comments, on which MSK now relies: "Section 12-63c(d) is divided into two distinct parts, each of which begins with the word 'who,' and each of which defines the circumstances under which the penalty may be imposed. Under the first part of the statute, a penalty may be imposed if the required information never reaches the assessor because the property owner does not provide the information or make it available. Under the second part, a penalty may be imposed if the property owner submits incomplete or false information. The phrase 'with intent to defraud' applies to the second part of the statute because it directly follows the statute's reference to the submission of the information in 'incomplete or false form . . ." *Id.*, 142.

As a separate ground for affirming the trial court's judgment, the plaintiffs in *PJM* also argued that the penalties bore no rational relationship to the offense and created a substantially greater burden on higher value properties than on lower value properties. The Supreme Court rejected this argument as well, observing: "The purpose of the penalty in the present case is to compel the submission of information to assist the assessor in performing his duties. The fact that some property owners are subject to a higher penalty than others is not unreasonable. Because the tax obligation and the potential loss of revenue due to an incorrect assessment are greater when a property is more valuable, it is reasonable to impose higher penalties on the owners of such properties. Finally, with respect to the magnitude of the penalty, we have stated that penalty provisions in taxing statutes are quite common and . . . such provisions, though often attacked as confiscatory, are almost always upheld by the courts." (Internal quotation marks omitted.) *PJM & Associates, LC v. Bridgeport, supra*, 292 Conn. 145. The court continued: "In *Hartford Fire Ins. Co. v. Brown,* 164 Conn. 497, 325 A.2d 228 (1973), for example, this court upheld the validity of a statute which resulted in a penalty of $320,000 for a tax payment that was made one or two days late." (Internal quotation marks omitted.) *PJM & Associates, LC v. Bridgeport, supra*, 292 Conn. 145.

Relying on the above-quoted portions of *PJM,* MSK argues that "the statute is clear that the penalty is to be imposed when the forms are not filed. It does not allow the imposition of the penalty when it is filed a day late as the intent of the statute is to allow the municipality to have the necessary information. In this case, the City did have all the information necessary and required prior to the City imposing the penalty . . . There is no debate that the information was submitted and the assessor was able to perform his duties with the information submitted. Therefore, there was no grounds for the imposition of this penalty." Pl. Br., pp. 2-3. This is the

extent of the plaintiff's analysis of the statutory language and purpose. The rest of its brief is devoted to an argument that the appeal was timely because notice was not properly given.

The plaintiff's argument regarding the intent of the legislature is not persuasive because it ignores relevant portions of the statutory language. First, subsection (d) provides that "[a]ny owner . . . who fails to submit information to the assessor *as required under said subsection (a)* . . . shall be subject to a penalty equal to a ten percent increase in the assessed value of such property for such assessment year." (Emphasis added.) Subsection (a), in turn, requires the submission of the information "not later than the first day of June." Subsection (a) also provides that, "[u]pon a determination of good cause, the assessor may grant an extension of not more than thirty days to submit such information, if the owner of such property files a request for an extension with the assessor not later than May first." The plain language of subsection (a) makes it clear that the June first deadline is a firm deadline that may be extended *only* if a request for an extension is filed by May first and good cause for the extension is found. There is no claim here that a request for an extension was filed or granted.

MSK's reliance on *PJM* is misplaced. The court's statement in that case that the penalty is imposed under the first part of §12-63c(d) "if the required information never reaches the assessor" was addressed to a factual situation in which the plaintiffs had entirely failed to file the requested information. It was not addressed to a situation in which the information was submitted later than the June first deadline without a validly granted extension. The court therefore had no cause to discuss the imposition of a penalty based on an untimely filing.

Moreover, the court's citation, in *PJM,* to *Hartford Fire Ins. Co. v. Brown, supra*, 164 Conn. 497, is telling. In that case, the plaintiffs were three related insurance companies. They placed a check for a tax payment in the amount of $3,203,056.12, together with their tax returns, into a pink self-addressed envelope provided by the state tax commissioner. The tax payment was due on March 1, 1971, and the plaintiffs placed it in the mail on February 26, 1971. The pink envelope containing the tax payment, however, was inadvertently enclosed in a bulk mail envelope addressed to its general agent in New Jersey. The pink envelope was redeposited in the mail in New Jersey but postmarked March 2, 1971. On March 3, before the pink envelope was received by the tax commissioner, the secretary of the plaintiffs' corporation hand-delivered a duplicate check for the amount of the taxes. Because the tax payment was received by the state two days after the deadline, the tax commissioner imposed a penalty of ten percent, totaling $320,305.62, and interest of $24,022.92. The plaintiffs sought equitable relief from the court, arguing that the mistake was inadvertent and the penalties were unconstitutionally excessive and discriminatory. The court disagreed, holding that "the obligation to pay the tax is one imposed by statutes duly enacted by the General Assembly, and the delinquency date is determined under the terms of [those statutes]." *Hartford Fire Ins. Co. v. Brown, supra*, 164 Conn. 505. It agreed with a decision of a California court which, in similar circumstances, had held "the statute fixes the date of payment and states the exact amount and nature of the penalty and . . . (the court is) convinced that in such a case the law is the measure of the rights of all the parties involved, the state and the taxpayer." (Citation omitted; internal quotation marks omitted.) *Id.*

In light of *PJM* and its reliance on *Hartford Fire Ins. Co. v. Brown,* and in light of General Statutes §1-2z, the court concludes that §12-63c(d) means what it says. A taxpayer who fails to

file the required income and expense information by June first, without a previously granted extension based on reasonable cause, is subject to the ten percent penalty. However draconian the result may seem, any other construction of the statute would ignore its plain language. It would also introduce an element of subjectivity into the statute, as municipal tax assessors would have to determine whether a delay of one day, or fifteen days, or thirty-two days, or fifty-nine days would require the imposition of a penalty. Such subjectivity could easily lead to claims that the taxing statutes were being applied in a discriminatory manner.

Because the court concludes that the penalty was properly assessed, it need not consider whether the appeal was timely brought under General Statutes §§12-117a or 12-119. Nor does it need to consider which of those statutes might provide relief, since no relief is warranted.

The claim of unjust enrichment also fails. "Unjust enrichment applies wherever justice requires compensation to be given for property or services rendered under a contract, and no remedy is available by an action on the contract . . ." (Internal quotation marks omitted.) *Vertex, Inc. v. Waterbury,* 278 Conn. 557, 573, 898 A.2d 178 (2006). But the relationship between a taxpayer and a taxing authority is "not one of debtor and creditor nor is it regulated by a prior agreement, as between individuals." *Hartford Fire Ins. Co. v. Brown, supra*, 164 Conn. 505. Rather, the duty to submit information, like the duty to pay taxes, is a statutory duty imposed by the legislature. MSK took title to the properties at issue subject to the taxes owed by the prior owners, and it was properly required to pay the penalties included in those taxes.

CONCLUSION

The ten percent penalty was properly imposed for failure to file the income and expense reports required by General Statutes §12-63c(a) in the time required by that provision. Accordingly, MSK's claims fail on all counts. Judgment may enter for the defendant city.

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[1]The following limited liability companies are named in the caption of the appeal and in the caption of the citation: 109 Adelaide Street, LLC; 173 Ashley Street, LLC; 887 Asylum Street, LLC; 145 Barker Place, LLC; 65 Bulkeley Avenue, LLC; 963 Capitol Avenue, LLC; 137 Evergreen Avenue, LLC; 621 Farmington Avenue, LLC; 84 Forest Street, LLC; 416 Franklin Avenue, LLC; Gillett Street, LLC; 30 Gillett Street, LLC; Gillett Street, LLC a/k/a 31 Gillett Street, LLC; 26 Hughes Street, LLC; 27 Huntington Street, LLC; 33 Imlay Street, LLC; 777 Maple Avenue, LLC; 23 Marshall Street, LLC; 27 Marshall Street, LLC; 7 May Street, LLC; 90-116 Sherbrooke Avenue, LLC; 207 Sigourney Street, LLC; 89 South Whitney Street, LLC; 34 Vernon Street, LLC; 69 Ward Place, LLC; 554 Wethersfield Avenue, LLC; 399 Zion Street, LLC; and 411 Zion Street, LLC.

[2]The odd-numbered counts allege that the relevant limited liability company was the "tenant" of the property in 2013, while the even-numbered counts allege that the relevant limited liability company was the "owner" of the property. No explanation was given for the discrepancy, and no allegation was made that any limited liability company, as "tenant," was a party to a lease that

required it to pay the real property taxes. The parties stipulated, however, that the plaintiff "owned" the properties as sole member. See Joint Stipulation of Facts, ¶1.

[3]In Hartford in 2013, apartment properties were assessed at sixty percent of their true and actual value, not seventy percent as alleged in the complaint, pursuant to Public Acts 2011, No. 11-212. See Supplemental Stipulation of Facts, Exhibit 1.

[4]The *PJM* appeal was argued in the Supreme Court on November 18, 2008, and decided on June 16, 2009. While it was under deliberation in the Supreme Court, the legislature amended General Statutes §12-63c(a) to make clear that an assessor could require income and expense reports annually whether or not the town was conducting a revaluation. See Public Acts 2009, No. 09-196, §3.