

Wilton Campus 1691, LLC v. Town of Wilton

Superior Court at New Britain
No. HHB CV 156030508S
Memorandum Filed July 12, 2017

Taxes – Sanctions – Penalties – Tax Assessor's Duty to Impose Assessment Penalties Before the List Is Finalized Is Mandatory Rather than Discretionary, and an Improper Deferral Until After Finalization Will Delay Penalty Assessments Until the Following Grand List.

The assessment statutes require that an assessor impose and include in the grand list any assessed penalties "prior to taking and subscribing to the oath upon the grand list," CGS §12-55, an action which must occur "on or before the thirty-first day of January of each year." This opinion holds that this duty to impose and incorporate penalties before a grand list is finalized is mandatory rather than discretionary. The opinion holds that the taxpayer in this case is not required to pay a penalty for filing a late property tax appeal which was formally imposed after the grand list had been finalized. The taxpayer's remedy, however, is not the voiding of the penalty, as requested, but rather merely the deferral of any imposition of the penalty until the next grand list.

Aronson, Arnold W., J.T.R. The plaintiffs in these six consolidated actions are all related entities, each of which owns and, at all relevant times, has owned commercial properties which operate together as a retail shopping center located in the town of Wilton (town). The sole issue in this real estate tax appeal is whether the plaintiffs complied with the provisions of General Statutes §12-63c(a) by furnishing to the town's assessor a form containing the income and expenses (I&E) related to the subject property not later than June 1, 2014. Failure to comply with this statute incurs a penalty of 10% of the assessed value of the real estate for the Grand List in issue. See General Statutes §12-63c(d).

The parties have entered into stipulations in all the consolidated cases. The language of each stipulation is similar.⁽¹⁾ For example, the stipulation in *Wilton River Park 1688, LLC v. Wilton*, CV 166034627 (see Docket Entry #107, hereinafter Stip.), provides as follows:

1. On or before April 15, 2014, [the town's assessor] requested from Wilton River Park 1688, LLC ("Plaintiff") an annual [I&E] report for the year 2013 for the real property located at 5 River Road ("the Property"), and provided to Plaintiff the forms for such [I&E] report.
2. As of April 15, 2014, and since that date, Plaintiff has been the owner of the Property. Plaintiff was also the owner of the property on October 1, 2014.

3. Pursuant to . . . §12-63c(a),⁽²⁾ Wilton River Park 1688, LLC was required to submit its 2013 [I&E] report to the Assessor on or before June 1, 2014.

4. Wilton River Park 1688, LLC provided the Assessor with its 2013 [I&E] report for the Property, together with its cover letter dated May 30, 2014 (the "Letter"), by [FedEx] overnight mail sent on June 2, 2014. A copy of the Letter is attached as Exhibit A. A copy of the [FedEx] matter is attached as Exhibit B.

5. The Assessor received Wilton River Park 1688, LLC's 2013 [I&E] report for the Property on the form provided by the Assessor on June 3, 2014. See Exhibit B.

The parties acknowledge that the town's assessor waited approximately three months after he signed the town's Grand List for October 1, 2014 to assess the penalties provided for in §12-63c(d). It has been the assessor's practice for over 20 years to delay the imposition of the penalty until after the signing of the Grand List.

The plaintiffs argue that 1) the assessor was required to impose the 10% penalty (provided for in §12-63c(d)) prior to the signing of the Grand List for October 1, 2014, and 2) the assessor's failure to do so vitiated the penalty. The parties further stipulated that the assessor "did not include a late filing penalty on Wilton River Park 1688, LLC at the time he took an oath on the 2014 Grand List on or before January 31, 2015." (Stip. ¶9.)

The parties stipulated that the assessor delayed imposing the statutory penalty because it was his long-standing practice "to assess retroactively pursuant to . . . §12-60, any late filing penalties under . . . §12-63c(d)⁽³⁾ [until] after signing the Grand List for a given year." (Stip. ¶10.)

Pursuant to the assessor's practice to retroactively impose the subject penalty, "[o]n April 29, 2015, the Assessor issued a Certificate of Change for the Property for the 2014 Grand List and sent it to Plaintiff's last known address on that date." (Stip. ¶11.)

The town argues that there is no merit to the plaintiffs' claim that the assessor did not have the authority to delay the imposition of the penalty beyond the finalizing of the Grand List for October 1, 2014. As previously noted in the stipulations, the assessor retroactively imposed the penalties on the plaintiffs three months following the finalizing of the Grand List of October 1, 2014 pursuant to the authority provided for in §12-60.⁽⁴⁾ However, §12-60 refers only to clerical errors, not errors of substance. See *National CSS, Inc. v. Stamford*, 195 Conn. 587, 595-96, 489 A.2d 1034 (1985). Since the assessor intentionally delayed the imposition of the penalty, this was by no means a clerical error.

In the process of the valuation of municipal real estate, General Statutes §12-55(b)⁽⁵⁾ provides that "[p]rior to taking and subscribing to the oath upon the grand list, the assessor . . . shall equalize the assessment of property in the town, if necessary, and make any assessment omitted by mistake or required by law. The assessor . . . may increase or decrease the valuation of any property as reflected in the last preceding grand list . . ."

Of particular significance here is the requirement that the assessor, "[p]rior to taking and subscribing to the oath upon the grand list," make any assessment "required by law." In this case, §12-63c(d) requires that a property owner who fails to timely submit I&E information (when provided with a form by the assessor as stated in 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." In other words, §12-55(b) calls upon the assessor, where required by law, to impose the penalty prior to finalizing the Grand List. The act of imposing the 10% penalty was not discretionary on the part of the assessor; it was mandatory. See *Chamber of Commerce of Greater Waterbury, Inc. v. Murphy*, 179 Conn. 712, 718-19, 427 A.2d 866 (1980).⁽⁶⁾

The issue raised by the plaintiffs is whether the assessor, in imposing the penalty required by §12-63c(d), is obligated to do so prior to finalizing the Grand List for October 1, 2014.

As noted in *PJM & Associates, LC v. Bridgeport*, 292 Conn. 125, 138, 971 A.2d 24 (2009), "[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant."

"[W]hen a court interprets [a statute], it cannot change the inherent meaning of words or supply additional terms to change the meaning of the provision at issue . . . ([c]ourts must interpret statutes as they are written . . . and cannot, by judicial construction, read into them provisions which are not clearly stated . . .)." (Citations omitted; internal quotation marks omitted.) *Id.*

It is clear that the penalty should have been imposed prior to the assessor signing the completion of the Grand List. As recited in §12-55(b), "[p]rior to taking and subscribing to the oath upon the grand list, the assessor shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law." The "required by law" in this case is the requirement that a 10% penalty be applied for late filing. Since this penalty is a legislative requirement, the assessor is acting in a ministerial capacity. Therefore, the assessor is obligated to add the 10% penalty prior to the signing of the Grand List.

Compliance with §12-55(b) is imperative because a late filing of the Grand List by the assessor reduces the time given to the property owner to appeal to the board of assessment appeals for relief from the action of the assessor. See *Wysocki v. Ellington*, 109 Conn.App. 287, 299, 951 A.2d 598 (2008) ("[I]n the context of statutes relating to property tax assessment, when the statutory provision is for the benefit and protection of the individual taxpayer . . . the provision is mandatory . . . If the provision is mandatory it must be followed or the assessment will be invalid . . . All provisions designed to give [the taxpayer] an opportunity of a review of the assessment, whether by the assessors themselves or on appeal from their conclusions, are exclusively in his interest" (internal quotation marks omitted)).

The assessor's delay in imposing the 10% penalty deprived the plaintiffs of the opportunity to appeal the penalty for a period of three months following the assessor's signing of the Grand List

for October 1, 2014. As noted in General Statutes §12-111, the plaintiffs are required to challenge the action of the assessor by filing an appeal to the board of assessment appeals "in writing, on or before February twentieth." The imposition of the penalty by the assessor on January 31, 2015 left the plaintiffs with twenty days to take their appeals instead of three months. Since §12-111 is for the benefit of a taxpayer, the shortening of the appeal period by three months violates the provisions of §12-55(b). See *Wysocki v. Ellington*, 109 Conn.App. 299.

Although the plaintiffs seek to avoid the 10% penalty for failure to comply with §12-55(b), the only redress for the assessor's failure to comply with the provisions of §12-55(b) is to postpone the right of the plaintiffs to appeal the action of the assessor until the succeeding Grand List. See §12-55(c): "If any such assessment increase notice is sent later than the time period prescribed in this subsection, such increase shall become effective on the next succeeding grand list."

The penalty prescribed for in §12-63c(d) makes no provision for the removal of the 10% penalty imposed by the legislature, regardless of the action taken by the assessor.

Accordingly, judgment may enter in favor of the defendant on all the consolidated appeals, without costs to any party.

¹In order to be concise, the court will employ the language of the stipulation for *Wilton River Park 1688, LLC v. Wilton*, CV 166034627, throughout the memorandum of decision.

²General Statutes §12-63c(a) provides as follows: "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 [§]12-63b, that the owner of such property annually submit to the assessor not later than the first day of June, on a form provided by the assessor . . . the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property . . ."

³General Statutes §12-63c(d) provides, in relevant part, as follows: "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 said 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 per cent increase in the assessed value of such property for such assessment year."

⁴General Statutes §12-60 provides for the correction of a clerical error in an assessment as follows: "Any clerical omission or mistake in the assessment of taxes may be corrected according to the fact by the assessors . . . 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 . . ."

⁵General Statutes §12-55(b) provides, in relevant part, as follows: "Prior to taking and subscribing to the oath upon the grand list, the assessor . . . shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law. The assessor . . . may increase or decrease the valuation of any property as reflected in the last-preceding grand list, or the valuation as stated in any personal property declaration or report received pursuant to this chapter. In each case of any increase in the valuation of a property above the valuation of such property in the last-preceding grand list, or the valuation, if any, stated by the person filing such declaration or report, the assessor . . . shall mail a written notice of assessment increase to the last-known address of the owner of the property the valuation of which has increased. All such notices shall be subject to the provisions of subsection (c) of this section . . ."

⁶"The distinction between ministerial and discretionary acts . . . have long ago been delineated by this court in *State ex rel. Foote v. Bartholomew*, 103 Conn. 607, 615, 132 A. 30 [(1925)]. [W]hile . . . one exercising discretion, or authority, may be compelled to act and to proceed to the performance of his duty, he cannot be controlled in his judgment or compelled to exercise his discretion in a particular manner by means of this writ [of mandamus] . . . In other words, officers whose duty it is to value and assess property may be compelled by mandamus to proceed in the discharge of their duties and make an assessment, but the court would not undertake to give directions as to the valuation that ought to be placed upon the property to be assessed." (Internal quotation marks omitted.) *Chamber of Commerce of Greater Waterbury, Inc. v. Murphy*, *supra*, 179 Conn. 718.