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OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

**RT PARTNERS, LP v. THE ALLEGHENY COUNTY OFFICE OF PROPERTY ASSESSMENT,
NORTH ALLEGHENY SCHOOL DISTRICT and MARSHALL TOWNSHIP, McVay, J.Page 159**

Declaratory Judgment—Real Estate Taxes—Property Assessment—Failure to Timely Appeal Assessment

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OPINIONS

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ASSESSMENT, NORTH ALLEGHENY SCHOOL DISTRICT and MARSHALL TOWNSHIP**

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CASE NO.: GD-21-004152. In the Court of Common Pleas of Allegheny County, Pennsylvania. McVay, J.—July 22, 2022.

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OPINION

FACTS AND PROCEDURAL HISTORY

The Plaintiff, RT Partners, LP ("RT"), commenced this action by filing a Complaint in Declaratory Judgment ("Complaint") on April 20, 2021, against the Defendants, the Allegheny County Office of Property Assessment ("ACOPA"), North Allegheny School District ("NASD"), and Marshall Township ("Marshall"). The complaint sought a declaratory judgment that (1) the ACOPA's real estate tax assessments of the Open Space Parcels were specifically precluded by 68 P.S. § 5105(b)(1) and (2) the School District and Marshall have no authority to collect real estate taxes levied pursuant to those real estate tax assessments. (Complaint, ¶ 16).

NASD and Marshall filed Preliminary Objections to RT's Complaint, which were argued before me on September 8, 2021. The main Preliminary Objection was a demurrer to RT's Claim for Declaratory Judgment, arguing that the complaint was improper as RT failed to timely appeal the 2019 tax assessment for the Open Space Parcels. I agreed and sustained the Preliminary Objections on September 9, 2021, which dismissed Marshall and NASD.

On October 7, 2021, RT filed an Application for Amendment of my September 9th Order of Court. I granted that Application on October 22, 2021, and amended my September 9, 2021, Order to include the language enumerated in 42 P.S. § 702(A). RT subsequently filed a Petition for Permission to Appeal from an Interlocutory Order on November 15, 2021. That was denied by the Commonwealth Court of Pennsylvania. I had filed an opinion on the first appeal on January 25, 2022, on essentially the same issue that remains substantially unchanged and is incorporated in the discussion below.

On April 25, 2022, ACOPA's Answer and New Matter was Stricken by Stipulation. ACOPA then filed the same Preliminary Objections as Marshall and NASD averring that RT's challenge to the 2019 assessment was untimely since an assessment appeal was never filed. I agreed and sustained ACOPA's Preliminary Objections on May 27, 2022. On June 16, 2022, RT appealed all three of my Orders sustaining Preliminary Objections for NASD, Marshall, and ACOPA resulting in the dismissal of the case.

Based on the foregoing opinion, and the persuasive holding in *Locust Lake Vill. Prop. Owners Ass'n, Inc. v. Monroe Cty. Bd. Of Assessment Appeals*, 940 A.2d 591, 596 (Pa. Commw. Ct. 2008), RT's Appeal from my September 9, 2021, and May 27, 2022, Orders should be denied.

DISCUSSION

1. RT Partners' Complaint in Declaratory Judgment is an untimely and improper appeal of the 2019 tax assessment of the Open Space Parcels.

I found the holding of *Locust Lake* to be persuasive in sustaining the demurrer here. In *Locust Lake*, the Property Owner's Association ("Association") filed an assessment appeal in 2003 for the 2004 tax year, alleging that 36 properties held by the Association were "common elements" and thus were entitled under the statute to a zero-tax assessment. The Board of Assessment found that 35 of 36 Parcels were "common elements" and gave them a zero-tax assessment. The Association then demanded a retrospective refund of taxes paid for those 35 properties from 2001-2003 under the Tax Refund Law.

The taxing authorities filed Preliminary Objections to the Associations request for a retrospective refund, arguing that to grant the Associations request under the Tax Refund Law would grant it an impermissible retrospective reassessment. Significantly, the taxing authorities argued that the Association could not receive a tax refund where it had failed to timely challenge the original assessment. The trial court agreed and sustained those Preliminary Objections. The Association then appealed to the Commonwealth Court.

The *Locust Lake* court analyzed the mechanics of an assessment appeal holding that it is the responsibility of the taxpayer to challenge an assessment in the year the assessment is issued in order to avoid the imposition of improper taxes. If no appeal is taken from the assessment of taxes within the time allowed by law, it becomes binding and conclusive and neither the common pleas nor an appellate court can afford any relief. This principle applies not only where the taxpayer challenges the amount of an assessment, but also where the taxpayer claims to be exempt from taxation. *Academy Plaza Associates, Ltd. v. Board of Revision of Taxes, City of Philadelphia*, 503 A.2d 1101, 1102-03 (Pa.Cmwlt. 1986) (noting that a court has no jurisdiction to resurrect the question of a real property tax exemption).

Ultimately, the *Locust Lake* court held that Section 704 of the Assessment Law provided the Association with a statutory remedy to contest the assessments on the 36 parcels in each year it sought a retrospective refund. In fact, the court noted that the Association used that mechanism to receive a zero-tax assessment for the 2004 tax year moving forward. Since the Association failed to timely challenge the tax assessments in years 2001 to 2003, those taxes were found to be conclusive and binding.

Applying the holding of *Locust Lake*, I cannot afford RT any relief because they did not timely appeal the tax assessments at issue here. RT has argued that *Locust Lake* is distinguishable because they are not challenging the amount of the assessment here, but instead are arguing the taxes are void because ACOPA were precluded by 68 P.S. § 5105(b)(1) from separately assessing the Open Space Parcels. I find this argument fails as it presents a distinction without a difference. While they aren't seeking a refund of those monies paid as impermissible taxes, they are nonetheless asking for a tax reassessment for those Open Space Parcels to zero.

CONCLUSION

Applying the holding of *Locust Lake* to the facts here, I find that RT is asking me to impermissibly allow them to appeal the tax assessment on the Open Space Parcels when they did not do so during the year of those tax assessments. Thus, sustaining the Preliminary Objections to RT's Complaint was proper and its appeal should be dismissed.

BY THE COURT:

/s/McVay, J.

Date: July 22, 2022