Property Tax and Valuation Topics

PULLMAN & COMLEY

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In this Winter 2014 Issue:

New Property Owner Can Appeal Tax Assessment

The owner of Blackacre sells his property to a buyer. On the date of the closing, a petition to the local Board of Assessment Appeals is pending. When the Board issues its decision, owner no longer holds title to Blackacre.

The municipality moves to dismiss the buyer's Superior Court tax appeal on the grounds that she did not own the property either on the October 1 assessment date, on the day the petition was filed with the Board of Assessment Appeals, or on the day the appeal was heard by the Board of Assessment Appeals. The fact that she acquired title after the date of the Board of Assessment Appeals hearing disqualifies her from filing a Superior Court case, the City asserted. The City also argued that the buyer should have notified the Board of Assessment Appeals that she had acquired title to the property.

Not true, held a New Haven Superior Court. "[A] subsequent owner of property has a specific personal and legal interest in the issue of whether the property is properly valued prior to its (acquisition of) ownership . . . . Consequently, a subsequent owner has "a direct and substantial issue in the subject matter of the appeal . . ."

This ruling avoided what the court stated what would otherwise have been an "absurd" result.

*Corner Block Develop*ment, *LLC v. City of New Haven,* Docket No. CV-12-6030527 (December 18, 2012).

Contact Elliott B. Pollack at 860-424-4340 or ebpollack@pullcom.com if you have questions about this case.

The Battle of the "Unreasonable" Appraisals

In what appears to have been a fairly routine foreclosure action, the foreclosing lender sought a deficiency judgment because it claimed that the market value of the foreclosed property was less than the amount of the debt.

The parties were at odds about the market value of the property and a substantial deficiency judgment was ordered by the court. Afterwards, the foreclosing lender sought an additional award for attorney's fees and appraiser's fees that it incurred to obtain the deficiency judgment. The former property owner retorted that no additional fees should be awarded by the court because the lender's appraisals were too low. As a result, he asserted he had to retain his own appraiser, incurring additional costs himself.

(The foreclosing mortgagee's appraiser valued the property at $765,000; the property owner's appraiser asserted the value was $1.3 million.)

Sitting in the Hartford Superior Court Judicial District, Judge Robert F. Vacchelli dismissed the debtor's argument because his appraiser had concluded at a value so much higher than the court's ultimate finding of $993,000. The court found that foreclosing lender's "request for additional attorney's fees and appraiser's fees (to be) reasonable in all respects" and awarded the amounts requested.

Monumental Realty, Inc. v. Michael Guarco, Docket No. CV-11 5035859 (April 2, 2013).

Gregory F. Servodidio at 860-424-4332 or gservodidio@pullcom.com can reply to questions about this case.

Tax Collectors and Tax Appeals: Filing a Tax Lien is Not a Collection Action

Connecticut law permits a commercial property owner to avoid collection action by the local tax collector if at least 90 percent of the taxes due on a property valued more than $500,000 is paid. A Haddam property owner pursuing a tax appeal paid the required minimum to the tax collector during the pendency of its appeal. However, understandably concerned about the ultimate collectability of the balance due, the tax

collector filed a tax lien certificate against the property to protect his position.

Crying foul, the property owner sued the tax collector for "slander of title" arguing that "the town had no right to take any action regarding the claimed balance due, including filing a tax lien."

The mere filing of a tax lien is not a collection action, held Superior Court Judge Edward S. Domnarski, sitting in the Middletown Judicial District. Even though the tax collector threatened to take action while the tax appeal was pending, he never did so.

The Superior Court's decision in this case tracks conventional understanding that a tax collector is not powerless to properly secure her town's position during the pendency of a tax appeal. Property owners who wish to pay less than the full tax due must take into account any damaging effect of the tax lien which will likely be filed before a tax appeal is finally resolved.

Touchstone Development Associates, LLC v. Town of Haddam, Superior Court, Judicial District of Middletown, Docket number CV-12-6007605 (July 8, 2013)

For further information, please contact Laura B. Cardillo at 860-424-4309 or at Lcardillo@pullcom.com.

Limitations on Assessment Claims

A Bridgeport property owner faced a tax lien foreclosure action. In response, it asserted that a 2002 stipulated judgment, also involving a tax lien foreclosure action, conclusively established its tax obligations to the City and that the new foreclosure action was based on a violation by the City of certain assessment agreements contained in the 2002 stipulated judgment.

After the trial court dismissed the claim, the property owner appealed. It challenged the trial court's decision that it should have exercised its rights under the Connecticut statutes to institute a tax appeal rather than to raise the claims in a tax lien foreclosure case.

A central claim made by the property owner was that the City had not granted it the exemption it claimed it was entitled to in the 2002 judgment. It asserted it was entitled to raise the issue in the foreclosure action.

Not so, held the Connecticut Appellate Court. Any action by an assessor, whether in complying with a court judgment dealing with assessments, or otherwise, should be pursued via statutory administrative and judicial tax appeal remedies.

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Whether the City was complying with the 2002 judgment concerning assessments “should have been submitted to the administrative . . . process . . . ., " the court ruled.

The lesson in this case is that it will be quite an unusual occurrence for a Connecticut court to allow any assessment issue to be raised outside the statutory remedies available for property owners to challenge Connecticut assessors’ actions.

City of Bridgeport v. White Eagle’s Society of Brotherly Help, Inc., Docket No. AC 33977 (February 12, 2013).

Tiffany K. Spinella at 860-424-4360 or tspinella@pullcom.com is familiar with the issues raised in this ruling.