Property Tax and Valuation Topics

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# Winter 2013

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## Court Rejects Two Bites at the Tax Appeal Apple

Chase Parkway Professional Building Associates brought a tax appeal against the City of Waterbury challenging the value of its property on the City's October 1, 2007 Grand List.

The City asked the Superior Court to dismiss the action because Chase had filed a tax appeal for a prior year which ended in a settlement endorsed by a court judgment. The City argued that Chase could not bring another tax appeal until the next revaluation. Chase countered that the first tax appeal was brought only to challenge a penalty assessment and that "the assessed value of the property was neither actually litigated nor necessarily determined" in that case.

Review of the record in the prior case indeed indicated that Chase's focus was exclusively on the penalty assessment and that the settlement with the City resulted in the elimination of the penalty. Nevertheless, the Superior Court noted that by eliminating the penalty a new reduced *value* was accepted by the court. As a result, the first court reset the assessment, even though the market value and assessment of the property were not dealt with in the prior case. Consequently, the Superior Court ruled that Chase was prevented from pursuing a pure valuation appeal the second time around.

While this ruling can be seen as technical application of the "one bite at the apple" rule, it does suggest that Connecticut trial courts' tolerance for two assessment appeals for the same property in one revaluation cycle for any reason is virtually non-existent.

*Chase Parkway Professional Building Associates, LLP v. City of Waterbury*, Docket No. CV-126014412 (November 21, 2012).

Please contact Laura B. Cardillo, Esq. at (860) 424-4309 or lcardillo@pullcom.com; or Elliott B. Pollack, Esq. at (860) 424-4340 or ebpollack@pullcom.com if you have any questions about this case.

## Construction in Progress Can be Assessed

In past issues, the editors of *Property Valuation Topics* alerted readers to somewhat surprising 2009 and 2011 Superior Court decisions. These courts held that Connecticut assessors did not have the right to place incomplete construction on the assessment rolls based on the value of the construction in progress as of the October 1 valuation date.

Public Act 12-157 reversed these decisions by providing that "improvements that are partially completed or under construction" are liable for the payment of municipal taxes "based on the assessed value of such partially completed new construction as of October first of the assessment year."

Interestingly, the legislation was effective October 1, 2012, thereby leaving open for resolution by the Supreme Court the New Britain Tax Court's decision in *Kasica v. Town of Columbia* which denied the Columbia assessor his partial assessment. (The 2009 case was settled.)

The editors of *Property Valuation Topics* will climb very far out on their perch to predict the Supreme Court will overturn the *Kasica* ruling, in as much as the statutes in effect when Kasica was decided clearly stated that "every interest in real estate" not otherwise exempted was subject to assessment.

Tiffany K. Spinella, Esq. at (860) 424-4360 or tspinella@pullcom.com can answer questions about this topic.

## Tax Appeal and Tax Lien Foreclosure Intersect -- Again

Ross & Roberts, Inc. owned a commercial parcel of real estate in Stratford but failed to pay real estate property taxes assessed on the Town's October 1, 2008 and 2009 Grand Lists. Together with applicable penalties, these taxes reached a total of almost $161,000 at the end of 2010. Apparently, the company took

the position that the building portion of the assessment was improper because approximately 70% of the structure had been demolished prior to October 1, 2009.

However, not surprisingly, the Town of Stratford, being most interested in collecting tax revenue, filed a tax lien foreclosure action on February 8, 2011. The owner's response, in part, was that the levy was improper for the reasons stated above.

Is a defense based on an improper assessment acceptable in a tax lien foreclosure case? Other Connecticut courts have held that it is not. What distinguished the owner's position here from prior decisions was that it had filed a tax appeal against the two assessments which were the basis of Stratford's foreclosure action and which were pending when the foreclosure commenced.

Hold on, the Town argued. There is a specific provision in Connecticut's tax appeal statute which states: "The pendency of [a tax appeal] shall not suspend an action by such town or city to collect not more than . . . 90% of such tax with respect to any real property . . . upon which such appeal is taken. Stratford argued, understandably, that a tax lien foreclosure action fell within the provisions of this rule. A Superior Court rejected this claim. The statutory prohibition referred to by the Town applies only to an action to collect the taxes due – not to foreclose a tax lien. It would be inequitable, Judge Sybil V. Richards ruled, to allow the foreclosure to proceed. Courts strive to achieve fairness in foreclosure actions. The special defense filed by the owner was allowed to remain in the case.

This ruling is problematic and requires definitive examination by the Connecticut Supreme Court. On the one hand, while it could be said that the Town of Stratford jumped the gun by commencing a foreclosure action, the refusal of property owners to pay any portion of taxes due, not to mention the minimum statutory 90% mentioned earlier, during the pendency of a tax appeal could impose serious financial hardship on Connecticut municipalities. Withholding *any* payment with at least temporary immunity from a tax lien foreclosure action could enable unscrupulous property owners to achieve advantageous tax appeal settlements against cash-starved towns.

On the other hand, the fact that courts commonly award very little judgment interest on tax refunds might motivate property owners to withhold tax payments, a large portion of which they expect to be refunded. Not mentioned in Judge Richards's opinion is the staggering interest cost assumed by a property owner in deciding to withhold any tax dollars – currently payable at 18% annually.

*Town of Stratford v. Ross & Roberts, Inc.*, Docket No. CV-11-6016716, Superior Court Judicial District of Fairfield (August 9, 2012).

For further information, please contact Gregory F. Servodidio, Esq. at (860) 424-4332 or gservodidio@pullcom.com.

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## Attorney Notes

Property Valuation Department chair Elliott B. Pollack addressed the problems associated with the identification and isolation of intangibles in local *ad valorem* taxation at the 43rd annual meeting of the Council on State Taxation in Orlando on October 25.

Pullman & Comley's Real Estate, Property Valuation, Environmental and Energy attorneys presented an afternoon seminar on February 12 at The Norwalk Inn that provided practical perspectives on realizing a property's potential and capitalizing on the opportunities available in the current economic and regulatory environments. To read more about the event, please click here.

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