

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MAG Enterprises, Inc., :  
Appellant :  
v. : No. 1076 C.D. 2009  
City of Philadelphia : Submitted: December 24, 2009

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: April 13, 2010

MAG Enterprises, Inc. (Mag) appeals from an order of the Court of Common Pleas of Philadelphia County (Trial Court) which granted the Preliminary Objections of the City of Philadelphia (City), and dismissed Mag’s Complaint for Declaratory Judgment. We affirm.

Mag is licensed to conduct business in Pennsylvania, with its principal place of business located within the City. Following Mag’s failure to file amusement, liquor and business privilege tax returns in the years 2002, 2003, and 2004, the City, through its Department of Revenue (Department) issued a tax assessment for those years, in addition to a tax assessment for the business

privilege tax for 2005. Notice of the assessment was mailed to Mag on March 14, 2007.

In August 2007 Mag requested a re-audit of the matter, which was denied by the Department by letter dated August 6, 2007. The Department's letter informed Mag that it would need to seek address of its request through the appeals process via petition to the Tax Review Board (Board), the period for which ran sixty days from the date of the original audit bill. On September 10, 2007, Mag filed a petition with the Board seeking review of the assessment bill, which petition was returned as a defective filing due to Mag's failure to indicate the bill's date, and its failure to include a copy of the bill. In the wake of Mag's continuing failure to make tax payment arrangements in the matter, the Prothonotary of the Trial Court entered a tax lien against Mag in the amount of \$188,940.80, and the City notified Mag of its intention to revoke its business privilege license.

Mag subsequently filed in the Trial Court a Motion for Injunctive Relief seeking an order enjoining the City from revoking Mag's license and/or from issuing a cease operations order. On December 26, 2007, Mag again filed petitions for review with the Board, which it sought to have heard *nunc pro tunc*. Thereafter, the parties agreed to a withdrawal of Mag's Motion for Injunctive Relief, and of the City's Notice of Intention to Revoke Business License, pending resolution of Mag's petitions to the Board. Subsequently, the Board denied Mag's petitions as untimely.

On November 14, 2008, Mag filed in the Trial Court a Complaint for Declaratory Relief (Complaint), asserting a dispute as to the amount of liability,

and asserting over-assessment for certain of the taxes at issue. On January 20, 2009, the City filed the Preliminary Objections (Objections) at issue herein, asserting that the Trial Court lacked subject matter jurisdiction, that the Complaint fails to state a cause of action for which relief may be granted, and that the City is entitled to judgment as a matter of law. Mag timely answered the City's Objections.

In part relevant to the instant appeal, the Trial Court concluded that Mag had failed to follow the established procedures pursuant to the Philadelphia Code (Code) for the review of tax assessments. Citing Mag's failure to timely pursue the administrative remedies provided for within the Code, the Trial Court concluded that it lacked jurisdiction in the matter, granted the City's Objections, and dismissed Mag's Complaint. Mag now appeals from the Trial Court's April 22, 2009, order.

Our scope of review from a trial court's order sustaining preliminary objections and dismissing a complaint is limited to determining whether the trial court committed legal error or abused its discretion. Higby Development, LLC v. Sartor, 954 A.2d 77 (Pa. Cmwlth. 2008) (citations omitted). When reviewing the dismissal of an action on preliminary objections, we must accept as true all well-pled facts set forth in the complaint as well as all inferences reasonably deducible therefrom. Id.

Mag presents one issue for review: whether the Trial Court erred in granting the City's Objections based upon a lack of jurisdiction. Mag argues that the Trial Court did indeed have subject matter jurisdiction over Mag's Complaint.

Mag founds its argument to this Court on the timing of the City's entry of a judgment against it. Mag argues that on the date that the City caused the judgment to be entered against it in this matter, namely on September 10, 2007, no administrative remedies against that judgment existed, and any prior administrative remedies were "in essence exhausted for [Mag]." Further, Mag argues that given the judgment entered against it, any administrative remedies that it may have attempted to utilize "would have been fruitless," in light of the entry of judgment. Mag's argument, however, misapprehends on the most basic level the administrative remedies available to it of which it flatly failed to avail itself, and its argument amounts to an attempt to circumvent the timely appeal requirement under the Code that it unquestionably failed to meet.

Section 19-1702(1) of the Code provides that the Board is empowered to hear every petition of review of all decisions or determinations related to unpaid taxes or claims collectible by the Department, including claims regarding tax or interest or penalties thereon. It is long established in our jurisprudence that the Board, as an administrative agency within the Department, has exclusive jurisdiction over local tax liability disputes, and provides an administrative remedy for resolution thereof. Krug v. City of Philadelphia, 620 A.2d 46 (Pa. Cmwlth. 1993). Additionally, it is axiomatic that where an administrative remedy is statutorily prescribed, a court of equity or of law is without jurisdiction to entertain the action. Lilian v. Commonwealth, 467 Pa. 15, 354 A.2d 250 (1976).

In its brief to this Court, Mag expressly incorporates the factual and procedural history as articulated by the Trial Court in its opinion. Based upon that history, the Trial Court aptly and concisely stated:

In the present case, [Mag] failed to follow the established procedures under the Code for review of tax assessments. Initially, a petition for review of a tax assessment must be filed with the Board “within sixty days after mailing of a notice of such decision or determination to the petitioner.” *Philadelphia Code §19-1702(1)*. Here, the original notice of assessment was mailed to [Mag] on March 14, 2007. [Mag] did not appeal that assessment to the Board. It was not until December 26, 2007 that [Mag] filed petitions for review of the tax assessments *nunc pro tunc* with the Board, which were subsequently denied as untimely. Upon receipt of that denial [Mag] could have requested a rehearing before the Board but failed to do so. Furthermore, under the Code [Mag] could have appealed to the [Trial Court], provided the appeal was filed within thirty days of the Board’s decision. *Philadelphia Code §19-1706*. However, after the Board rejected [Mag’s] petitions as untimely, [Mag] again failed to follow the procedures established under the Code and did not appeal the Board’s decision to the [Trial Court].

Trial Court Opinion at 4-5. In addition to its application of the undisputed facts regarding the timing of Mag’s actions in this matter, the Trial Court accurately cited, in its opinion as excerpted above, the proper Code sections applicable to the timing of Mag’s administrative remedies in this case. Thusly, we agree, and the Trial Court did not err in dismissing Mag’s Complaint. Lilian; Krug.

Notwithstanding our disposition of this matter as noted above, we further emphasize that Mag’s reliance upon the filing of its Complaint in this matter, seeking declaratory relief, was itself a procedurally fatal error of equivalent

dispositive magnitude to Mag's failure to abide by the simple administrative remedial dictates of the Code. Section 7541(c)(2) of the Declaratory Judgments Act (Act), 42 Pa.C.S. §7541(c)(2), excludes declaratory relief in cases where the proceeding is within the exclusive jurisdiction of a tribunal other than a court. Given the Code's plain provisions for exclusive jurisdiction over local tax liability disputes, Mag's Complaint in this matter is precluded by the very Act under which it has sought relief.

According, we affirm.

---

JAMES R. KELLEY, Senior Judge

