IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Breezewood Enterprises, Inc., a Pennsylvania Corporation, Appellant	:	
v.	:	
Bedford County, Pennsylvania, Michael J. Herline, Bedford County Commissioner, Chairman, Steven K. Howsare, Bedford County Commissioner, Vice Chairman, Gary W. Ebersole, Bedford County Commissioner, Secretary, and Melissa Stultz, Bedford County Chief Assessment Officer	:	No. 2179 C.D. 2010 Argued: June 6, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE JOHNNY J. BUTLER, Judge (P.)
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: December 30, 2011

Breezewood Enterprises, Inc. (Breezewood) appeals from an order of the Court of Common Pleas of Bedford County (common pleas court) that sustained the preliminary objections of Bedford County, Michael J. Herline, Bedford County Commissioner Chairman, Steven K. Howsare, Bedford County Commissioner Vice Chairman, Gary W. Ebersole, Bedford County Chairman Secretary, and Melissa Stultz, Bedford County Chief Executive Officer (collectively, County) and dismissed Breezewood's Complaint in Action for Declaratory Relief (Complaint).

The County, through its Board of Commissioners and Assessment Office (Assessment Board), conducted a county-wide real property tax assessment which was to be effective for the year 2010. Tyler Technologies CLT Division was engaged to complete the property valuation to determine market values for all properties in the County using 2009 as the base year for assessment purposes and assess all properties at 100% of its market value, the established predetermined ratio for the County.

At meetings held in September and October 2009, the Assessment Board divided the land into different categories, and fixed a per acre market value for each one. Specifically, the Assessment Board determined that: (1) the market value of the first acre of land with a home upon it was $12,500 per acre, provided that the property had sewage and water utilities; (2) the market value of all farmland in the County was $1,000 per acre; all wetlands in the County were $300 per acre; and all mountain land in the County was $400 per acre; (3) the market value of all forest land in the County was $1,000 per acre; (4) a twenty-five percent (25%) economic discount factor would be applied to the market value of all individual homes and mobile homes in the County; and (5) a thirty-five percent (35%) predetermined ratio would be applied to all properties located in the following municipalities: Saxton Borough, Coaldale Borough, Hopewell Borough, Hyndman Borough, Liberty Township, Broadtop Township, and Hopewell Township.

At the December 22, 2009, weekly meeting of the Assessment Board, the Assessment Board approved the adjustments made to properties during the 2009 assessments appeal process for the 2010 year and accepted the certification of the 2010 assessment values. The Assessment Board mailed notices of

reassessment to all taxpayers in January 2010 to reflect those valuations and taxpayers were afforded an opportunity to appeal. Bedford County Commissioner's Weekly Meeting Minutes, December 22, 2009, at 3; Reproduced Record (R.R.) at 37a.

The "Official Notices of Assessment" sent to Breezewood stated that Breezewood's four commercial parcels, which were located in East Providence Township, were assessed at "100% of Market Value for Tax Year 2010" computed "using a Base Valuation Date of July 1, 2008," which resulted in "no change from the prior assessment." See Official Notices of Assessment and Appeal Forms; R.R. at 60a-83a. The assessed values of Breezewood's parcels were $328,800, $3,060,200, $2,767,200 and $173,600.

On February 5, 2005, Breezewood (and a "related taxpayer") filed in the common pleas court "Petitions for Appeal from Action of the Bedford County Board of Assessment and Revision of Taxes." Supplemental Reproduced Record (S.R.R.) at 2a-4a. Breezewood asserted that the Assessment Board over-assessed its properties and requested the common pleas court to decrease its 2010 real estate tax assessment. See e.g. Petition for Appeal from Action of the Bedford County Board of Assessment and Revision of Taxes, Paragraph 5 and Wherefore Clause at 2-3; S.R.R. at 23a-24a.

On the same day Breezewood also filed "Special Assessment Appeals" with the Assessment Board from the Official Notices of Assessment. See Assessment Appeals filed with Bedford County Board of Assessment & Revision of Taxes; S.R.R. at 60a-83a.

On March 16, 2010, Breezewood filed a five-count Complaint for Declaratory Relief in the common pleas court. Breezewood alleged that the County "arbitrarily" assessed numerous categories of real property during a county-wide reassessment "irrespective of the actual market values." Complaint for Declaratory Relief, March 16, 2010 (Complaint), Paragraph 12 at 5; R.R. at 7a.

In each Count, Breezewood alleged that as "as a taxpayer," it was "directly affected" and "aggrieved" by the County's taxing scheme of assessment which was arbitrary and not based upon market value.

Breezewood's main contention which formed the basis for each Count was that the Assessment Board "arbitrarily assessed the value of certain properties irrespective of the actual value of such properties." See e.g., Complaint, Paragraph 12 at 5; R.R. at 7a. Breezewood cited a number of examples which included setting the market value of the first acre of land with a home on it at $12,500 per acre provided that the property had sewage and water utilities. Breezewood also alleged that the Assessment Board arbitrarily established the market value of all farmland in the County at $1,000 per acre, and all wetlands at $300 per acre. Mountain ground land was arbitrarily assessed at $400 per acre.

Breezewood further asserted that the Assessment Board arbitrarily established a twenty-five percent "economic factor discount" on the market value of all residences, but not on all parcels of property as mandated by the Pennsylvania Constitution. Breezewood further alleged that Assessment Board arbitrarily set the pre-determined ratio at thirty-five percent only for properties located in select designated municipalities. Breezewood averred that all the property in the County was a single class which requires uniform treatment.

Breezewood asserted that the County failed to apply the established pre-determined ratio uniformly in determining assessed values and, thus, it was constitutionally invalid.

Breezewood sought a declaration that the County's adoption of these arbitrary values and ratios violated the Uniformity Clause of the Pennsylvania Constitution[1] (Count I); the General County Assessment Law[2], 72 P.S. §§5020.101-602, (Count II); the Fourth to Eighth Class County Assessment Law (Assessment Law),[3] 72 P.S. §§5453.101-5453-706, (Count III); the Equal Protection Clause and Due Process Clause of the United States Constitution[4] (Counts IV-V). Breezewood requested a refund of all taxes and requested that the common pleas court declare the entire Bedford County tax assessment, as performed, invalid.

On March 12, 2010, the County filed preliminarily objections in the nature of a demurrer pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4). The County asserted, *inter alia*, that Breezewood failed to state the material facts necessary to invoke the common pleas court's equity jurisdiction because it had an adequate remedy at law. The County argued that an exception to the "exhaustion

[1] PA. Const. Art. VII, §1 ("All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.")

[2] Act of May 22, 1933, P.L. 853, as amended.

[3] Act of May 21, 1943, P.L. 571, as amended. The provisions of the Assessment Law were repealed by the Act of October 10, 2010, P.L. 895, effective January 1, 2011.

[4] U.S. Const. Art. XIV, §1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.")

of remedies rule" has been recognized in rare cases, where the taxpayer advances a "frontal attack on the underlying taxing statute" that raises substantial constitutional issues. The County argued that Breezewood's grievance here boiled down to an assertion that its properties were "over-assessed." Thus, the statutory appeal process set forth in Section 701 of the Assessment Law, 72 P.S. §5453.701[5], could offer relief.

Breezewood counter-argued that the appeal process set forth in the Assessment Law was "unavailable" and, therefore, it constituted an inadequate remedy at law. Breezewood argued that it "could not find relief through filing an assessment appeal" and that "a challenge to the constitutionality of a tax assessment, as applied, may be properly brought in state court, rather than through the administrative appeal process." Brief in Opposition to Preliminary Objections, May 28, 2010, at 10-11; R.R. at 60a-61a.

On March 31, 2010, upon the Board's unopposed Motion to Stay, the common pleas court granted a stay of Breezewood's Appeals that were pending in the common pleas court, due to the pendency of Breezewood's declaratory judgment action. Order of Court, March 31, 2010, at 1; S.R.R. at 20a.

On September 7, 2010, after considering briefs and oral argument, the common pleas court agreed with the County that although Breezewood couched its

[5] The repealed provisions of Section 701 of the Assessment Law, 72 P.S. §5453.701, are now found in Sections 8815, 8844, and 8848 of the Consolidated County Assessment Law, 53 Pa.C.S. § §8815, 8844, 8848.

Complaint in terms of constitutional violations, the crux of its Complaint was really that it was "over-assessed." The common pleas court noted that in addition to failing to describe *how* it was affected, Breezewood failed to establish through its averments that there was any systemic inequality in the assessment system adopted by the Assessment Board, other than to vaguely state, without specificity, that *it* alone was aggrieved. Because the Assessment Law provided Breezewood with an adequate remedy at law, the common pleas court declined to exercise equitable jurisdiction, sustained the County's preliminary objections and dismissed the Complaint with prejudice.

On October 7, 2010, Breezewood appealed[6] to this Court and alleged that the common pleas court erred in finding that there was an adequate remedy at law because: (1) the time to file a statutory appeal expired before the assessments were approved; (2) equity jurisdiction is not restricted to class actions or actions involving multiple plaintiffs; and (3) equity jurisdiction is not limited to "frontal" attacks on the constitutionality of a taxing statute, but extends to attacks on the constitutionality of a taxing statute "as applied" in cases such as the present one.

[6] "In reviewing preliminary objections in the nature of a demurrer, all material facts averred in the complaint, and all reasonable inferences that can be drawn from them, are admitted as true." Association of Settlement Companies v. Department of Banking, 977 A.2d 1257, 1261 (Pa. Cmwlth. 2009), citing Vattimo v. Lower Bucks Hospital, Inc., 502 Pa. 241, 244, 465 A.2d 1231, 1232 (1983). "The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it." Vattimo, 502 Pa. at 244, 465 A.2d at 1232-33.

Bedford County School District v. Bedford County

As a preliminary matter, this Court will address an issue that was brought to this Court's attention after the instant appeal was filed, which involves similar constitutional and uniformity challenges to the county-wide tax assessment by Bedford County.

Specifically, Breezewood requested, and was granted, permission by this Court to supplement the record and briefs to include information about a similar case pending in the common pleas at *Bedford County School District v. Bedford County, et al*, Court of Common Pleas of Bedford County, Pennsylvania, Civil Action No. 1141 of 2010. (hereinafter "School District case"). Breezewood asserted that "the same trial judge who issued the order on appeal had issued a contrary order in [this] strikingly similar case." Breezewood's Second Application for Leave to Supplement Record, July 5, 2011, at 1.[7]

The case to which Breezewood refers is a Complaint for Declaratory Relief, Mandamus and Injunctive Relief filed by the School District of Bedford against the County on August 27, 2010, in which the School District raised constitutional and uniformity challenges to the County's 2010 assessment system. The School District estimated that as a result of the assessment the certified value

[7] A court may take judicial notice of pleadings in other, proceedings where appropriate. Lycoming County v. Pa. Labor Relations Bd., 943 A.2d 333, 335 n. 8 (Pa. Cmwth. 2007). See also Krenzel v. Southeastern Pa. Transp. Auth., 840 A.2d 450,454 n. 6 (Pa. Cmwth. 2003) ("Judicial notice can be taken of pleadings and judgments in other proceedings where appropriate.").

of all the property in Bedford Area School District, upon which the School District set its millage rate in June of 2010, was lowered by as much as $32,000,000.

The common pleas court found that it was not sufficiently clear that the County's tax assessments complied with the cited statutory and constitutional provisions. The common pleas court stated that it "cannot conclude without a doubt that [the County's] position is meritorious." Common Pleas Court Order, December 20, 2010, at 5; Second Supplemental Reproduced Record at 81a. The common pleas court also found that the School District's legal remedy was inadequate because the School District would be required to intervene in a multitude of statutory appeals and that would result in a multitude of duplicative lawsuits, in contrast to an action in equity which would provide a global resolution.

On March 22, 2011, the common pleas court entered an order preliminarily enjoining the County from changing assessed valuations on real estate in any manner other than through a timely appeal filed with the Assessment Board or common pleas court, and issuing any change of valuation notices or refund notices as a result of any internal or administrative review.

Prior to the non-jury trial which was scheduled for July 12, 2011, the parties settled the dispute and entered into a Joint Stipulation of Facts. First, the County specifically ***denied*** "that it improperly conducted and implemented the 2010 reassessment." Joint Stipulation, Paragraph 9, at 2; Third Supplemental Reproduced Record (Thrd.R.R.) at 3a. However, the County agreed not to make any further changes in assessed values "outside of the formal appeal process."

Joint Stipulation, Paragraph 10, at 2; Thrd.R.R. at 3a. The County agreed that "it will conduct a countywide revision of assessment for all real estate within the County of Bedford for use in the 2013 tax year." Joint Stipulation, Paragraph 13, at 3; Thrd.R.R. at 4a. The parties agreed that "the countywide revision of assessment will be based upon current fair market value, and will not consider the land values and the predetermined ratio and discounts enacted by the Commissioners as described in … the School District's Complaint." Joint Stipulation, Paragraph 18, at 3-4; Thrd.R.R. at 4a-5a.

On September 6, 2011, the common pleas court signed a Consent Order which approved the settlement and converted the preliminary injunction entered on March 22, 2011, to a permanent injunction.

According to Breezewood, the School District's Complaint is essentially identical to its Complaint because the School District presented the same constitutional and uniformity attacks on the County's tax assessment system raised by Breezewood. Breezewood also finds compelling the fact that the common pleas court ***overruled*** the County's preliminary objections to the School District's Complaint December 20, 2010. Breezewood also contends that under the terms of the settlement with the School District, the County agreed "to abandon the arbitrary valuation assessments that Breezewood Enterprises is challenging in the instant action." Breezewood believes that "the settlement in the School District Case is extraordinarily significant for the instant action." Breezewood's Third Application for Leave to Supplement Record, September 28, 2011, at 2.

This Court is not convinced that the proceedings in the School District Case determine this Court's review of the present controversy. The question before this Court is whether Breezewood, based on the allegations of *its* Complaint, successfully stated a cause of action which invoked the common pleas court's equitable jurisdiction. To decide that question, this Court must focus on the averments of *Breezewood's* Complaint, not the one filed by the School District. Although there are similarities, the circumstances were not identical. This is not surprising because Breezewood is an individual property taxpayer and the school district is a taxing jurisdiction with an interest at stake in each and every property assessed.

The common pleas court perceptibly recognized the differences when it analyzed whether the School District had an adequate remedy at law. According to the School District's Complaint, the properties of many taxpayers, for the reasons stated, were under-assessed and that resulted in a $32 million revenue loss for the School District. Aside from a global resolution in a court of equity, the only way for the School District to challenge those individual assessments would have been for the School District to either intervene in individual appeals or appeal the assessments of those taxpayers it believed were under-assessed.

In that situation, the common pleas court agreed that the School District did not have an adequate remedy at law due to the inevitability of a multitude of duplicative lawsuits. Merely because the common pleas court found that *the School District's* legal remedy was, therefore, inadequate, does not mean that conclusion necessarily applies equally to Breezewood. Whether a taxpayer has an adequate legal remedy must be determined on a case by case basis.

This Court does not conclude the two rulings by the common pleas court are inconsistent. Simply stated, the common pleas court found that the School District successfully demonstrated that its legal remedy was inadequate while Breezewood did not.

With regard to the School District-County settlement, this Court finds that this event, also, does not compel reversal of the common pleas court's dismissal of Breezewood's Complaint for Declaratory Judgment. The tax year at issue in the present controversy is the 2010 Tax year. Other than to agree not to make any "further" changes to assessments, the County did not retrospectively invalidate the 2010 assessments. Moreover, in settling the controversy with the School District, the County did not concede or admit that its assessment system was invalid. While the County's agreement to change the system in the future, seemingly, may lead one to assume the County was open to the idea of revising its forthcoming taxing scheme, it has no relevance to whether Breezewood has an adequate remedy at law, which is the issue before this Court.

Breezewood's Appeal

This Court will now turn to the original, substantive issues raised in Breezewood's appeal which involve whether Breezewood had an adequate statutory remedy.

It is well settled that a court of equity should not exercise jurisdiction to address a claim for which there is an adequate statutory remedy. In the context of challenges to a tax assessment, equity jurisdiction for declaratory judgment is

precluded unless the taxpayer (1) lacks an adequate remedy through the statutory appeal processes set forth in Section 701 of the Assessment Law, 72 P.S. §5453.701, and (2) raises a substantial constitutional issue. What is required to confer jurisdiction on an equity court is the *existence* of a substantial question of constitutionality, and *not a mere allegation*. Borough of Green Tree v. Board of Property Assessment, 459 Pa. 268, 328 A.2d 819 (1974).

I.
Was the Remedy Provided in the Assessment Law Inadequate Because the Time to Appeal the Valuation Changes Expired By the Time The County Made the Changes?

Section 701(b) of the Assessment Law, 72 P.S. §5453.701(b), provides that any person aggrieved by any assessment, whether or not the value was changed since the preceding annual assessment, may appeal to the Assessment Board for relief before the first day of September.

Breezewood argues that the remedy provided in Section 701(b) of the Assessment Law, 72 P.S. §5453.701(b), was "unavailable" because the time to appeal the valuation changes at issue had expired by the time the County made the changes. Breezewood contends that the actions taken by the Assessment Board occurred in late September and October 2009, after the statutory time to appeal those valuation changes elapsed on September 1, 2009. This Court finds this argument to be without merit.

The Assessment Law provides taxpayers, aggrieved by an assessment, with several opportunities throughout the year to appeal to the Assessment Board, depending on the time or type of assessment made.

For example, under Section 601 of the Assessment Law, 72 P.S. §5453.601[8], the Chief Assessor in a Sixth Class County, such as Bedford County, must prepare and submit to the Board of Assessment and Review (Assessment Board) an assessment roll on or before July 1st of each year. The Assessment Board, in turn, must open the assessment roll to public inspection. Any person desiring to appeal from any assessment shall file an appeal with the Assessment Board, on or before September 1st.

Another example is found in Section 701(a) of the Assessment Law, 72 P.S. §5453.701(a)[9], which provides that the Assessment Board must notify taxpayers of any changes from those fixed in the preceding assessment roll by July 15. The taxpayer (and taxing district) is given the opportunity to appeal from an assessment that was "changed" within forty days from the date of the notice.

The Assessment Board may make changes to the assessment roll at *any time in the year* as long as the proper notice requirements are complied with. Section 701(a.1) of the Assessment Law, 72 P.S. §5453.701(a.1).

[8] The repealed provisions of Section 601 of the Assessment Law, 72 P.S. §5453.601, are now found in Section 8841 of the Consolidated County Assessment Law, 53 Pa.C.S. §8841.

[9] Added by October 5, 1978, P.L. 1138.

Where, as here, a taxing authority reassesses property after the statutory appeal deadline, appellate rights are not lost and an appeal may properly proceed before the Assessment Board as expressly provided by Section 701(c) of the Assessment Law, 72 P.S. § 5453.701(c):

> (c) Notwithstanding any other provisions of this act when any county proposes to institute a county-wide revision of assessments upon real property, the following notice requirements and appeal process shall be followed:
>
> (1) All property owners shall be notified by first class mail at their last known address of the value of the new assessment and the value of their old assessment.
>
> (2) All property owners shall have the right to appeal any new assessment value within thirty days of receipt of notice …. (emphasis added).

Thus, contrary to Breezewood's contention, the County's decision to establish the valuations after September 1, 2009, neither rendered the statutory appeal process inadequate nor divested Breezewood of any appellate rights.

In fact, as noted above, the record reveals that although the September 1, 2009, deadline set forth in Section 701(b) of the Assessment Law, 72 P.S. § 5453.701(b), passed, Breezewood was able to, and did, appeal the assessments under Section 701(c) of the Assessment Law, 72 P.S. §5453.701(c). Counsel for Breezewood admitted on the record that Breezewood appealed its tax assessments to the Assessment Board. Hearing Transcript, August 23, 2010, at 11; R.R. at 122a.

Because Breezewood was afforded an opportunity to appeal its 2010 assessment, and did avail itself of that opportunity, this Court must reject Breezewood's contention that an adequate remedy was unavailable because the assessments were completed after September 1, 2009.

Alternatively, Breezewood argues that statutory appeal process might be inadequate because the Assessment Board has "failed" to schedule hearings on Breezewood's Assessment Appeals. Breezewood is "concerned" that, in the event its Complaint is dismissed and the Stay lifted, the County "might attempt to take advantage of the [Assessment] Board's failure to address the appeals filed by Breezewood" and that the "County could argue that the common pleas court has no jurisdiction to hear Breezewood's appeals because the [Assessment] Board has not ruled upon them." Breezewood's Reply Brief at 2. Breezewood argues, therefore, this statutory remedy may not be available.

This Court is unconvinced. When Breezewood challenged the assessments on February 5, 2010, it simultaneously appealed to the common pleas court, even though those individual appeals were pending before the Assessment Board. Breezewood appealed to the common pleas court from the assessments before the Board could schedule hearings. For whatever reason, Breezewood chose to appeal its assessments to the common pleas court before the Board ruled on them. *If* the statutory remedy turns out to be inadequate because of the

concerns raised by Breezewood[10], it was because of Breezewood's legal strategy, not because of any legal "unavailability."[11]

II.

Beattie v. Allegheny County

Next, Breezewood contends that the Supreme Court has expanded the types of cases in which a court can exercise equity jurisdiction when a party challenges the constitutionality of a tax assessment.

Generally, the exercise of equity jurisdiction is limited to situations where a party makes a "frontal attack" on the constitutionality of a taxing statute itself, for example, the Third to Eighth Class Assessment Law. Conversely, when a constitutional attack is brought, not against the taxing statute, but against its "application," the Assessment Board is the proper authority to hear the challenge. Borough of Green Tree. These latter cases have been referred to by courts as "as applied" cases.

Here, Breezewood does not challenge the constitutionality of a taxing statute. Rather, it challenges the County's *application* of the taxing statute to it, as being unconstitutional. Breezewood argues that since our Supreme Court's

[10] In any event, Breezewood's concern appears to be unfounded as the County specifically states on page 8 of its Brief: "Breezewood's appeal of the January 2010 tax assessment incorporating the Valuations can proceed once this case is properly dismissed and the stay is lifted."

[11] A statutory remedy is inadequate only if it either: (1) does not allow adjudication of the issue raised by the petitioner; or (2) allows irreparable harm to occur to the petitioners during the pursuit of the statutory remedy. Smolow v. Com., Dept. of Revenue, 547 A.2d 478 (Pa. Cmwlth. 1988), aff'd, 521 Pa. 534, 557 A.2d 1063 (1989).

holding in Beattie v. Allegheny County, 589 Pa. 113, 907 A.2d 519 (2006), taxpayers may now bring "as applied" cases in state court rather than through the administrative process.

Contrary to Breezewood's interpretation, this Court does not agree that Beattie was meant to be that far-reaching.

In Beattie, the Pennsylvania Supreme Court addressed whether equity jurisdiction may be properly exercised where a taxing statute is not facially challenged but challenged "as applied," and where the challengers did not exhaust administrative remedies. There, a class of taxpayers challenged Allegheny County's assessment system for over-assessing lower-value properties and under-assessing higher-value properties.

Specifically, the taxpayers alleged that there were systemic flaws in Allegheny County's Computer Assisted Mass Appraisal (CAMA) system, including the exclusion of property sales for less than $10,000, disproportionate weight assigned to quantitative factors such as a home's square footage and number of bedrooms, and the dividing of the county into 1800 neighborhoods. Id. at 116, 907 A.2d at 521. The taxpayers also alleged that the assessments resulted in a price differential of more than 1.03 percent which violated the Allegheny County Assessment Ordinance. Taxpayers sought equity relief, in the nature of mandamus, to (1) order Allegheny County to lower their assessments in accordance with what they considered to be the true values of their properties; and (2) require Allegheny County to revise its mass reassessments and reapply the

CAMA system so that it did not result in under-valuation of high-end properties and over-valuation of low-end properties.

Allegheny County filed preliminary objections and asserted that the taxpayers may challenge their assessments through a statutory appeal to the Allegheny County Board of Property Assessment Appeals and Review. The Court of Common Pleas of Allegheny County dismissed the complaint because it lacked specificity and because the taxpayers had an adequate remedy at law which precluded the court's equity jurisdiction. A divided, *en banc*, panel of this Court affirmed.

On appeal, the Supreme Court recognized that there are times when inequalities are strongly suspected to be pervasive and the general taxing picture to be non-uniform so that a court may exercise equitable jurisdiction, even in the absence of a facial challenge. The Supreme Court held that where relying solely on the statutory administrative appeal mechanism would result in a multiplicity of duplicative lawsuits and, in contrast, an action in equity would provide a tidy global resolution, the legal remedy should be deemed inadequate. Id. at 129, 907 A.2d at 529.

Here, Breezewood argues that, like the taxpayers in Beattie, it too has challenged "the manner in which the taxing statute was applied." That is, the market value determinations by the County were "arbitrary and had a discriminatory effect on numerous classes of properties." Brief in Opposition to Preliminary Objections, May 28, 2010, at 11; R.R. at 61a. Breezewood argues that under Beattie, equitable jurisdiction is now recognized as an acceptable means to obtain relief for "as applied" challenges. This Court must disagree.

Unlike the class-action suit filed in Beattie, there is nothing to suggest that Breezewood's reliance on the available statutory administrative appeal mechanism would result in a multiplicity of duplicative lawsuits, or unnecessarily burden property owners or the judicial system, or that an action in equity would provide a more efficient solution. As the common pleas court pointed out, no other actions of this nature have been filed by taxpayers. Clearly then not many taxpayers have challenged the January 2010 assessments.

Breezewood nevertheless contends that where the validity or constitutionality of a county-wide tax assessment is at issue, equity jurisdiction and declaratory relief are not limited to class actions. Breezewood argues that the trial court erred when it focused on the fact that the action was brought by a single taxpayer, and that no other actions of this nature have been brought by other taxpayers. Breezewood contends that the fact that its Complaint for Declaratory Judgment was brought by only one taxpayer neither prevents the exercise of equity jurisdiction, nor precludes the court from granting the declaratory relief sought.

Breezewood relies on City of Lancaster v. County of Lancaster, 599 A.2d 289 (Pa. Cmwlth. 1991), a case which Breezewood contends "did not involve a plaintiff class." Breezewood's Brief at 12.

Although Lancaster did not involve a class-action, it did involve a request for relief which, if granted, had the potential to impact tens of thousands of assessments. In Lancaster, five municipalities within the County of Lancaster (Lancaster) and seven taxpayers (collectively "plaintiffs") sought declaratory,

equitable and mandamus relief challenging Lancaster's method of determining property assessments.

Lancaster had reassessed selected properties, singled out ten of Lancaster's sixty taxing districts by using a different method of assessment on properties in those districts, and made unsubstantiated wholesale adjustments to grade and depreciation factors to certain properties. Plaintiffs alleged that the methods used violated the uniformity requirement of the State Constitution and the equalization objectives of Section 7(d) of the Third Class County Assessment Law, 72 P.S. §5348(d).[12]

On the issue of whether mandamus relief was proper, Lancaster argued that the statutory appeals process provided adequate remedies to the aggrieved municipalities and taxpayers. Plaintiffs, on the other hand, argued that the inequality created by Lancaster County's reevaluations had pervaded the entire taxing scheme. This Court agreed and observed "[t]o force every aggrieved taxpayer to assume the task of appealing, when the larger question can be expeditiously and efficiently resolved in a single action, would be unnecessarily burdensome on both property owners and the judicial system." Lancaster, 599 A.2d at 300.

[12] Act of June 26, 1931, P.L. 1379, as amended. The repealed provisions of Section 7(d) of the Third Class County Assessment Law, 72 P.S. §5348(d) are now found in Sections 8841 and 8842 of the Consolidated County Assessment Law, 53 Pa.C.S. §8841, 8842.

Breezewood alleges that a class action suit or one brought by multiple plaintiffs is unnecessary to award equity relief in a tax assessment matter. Breezewood argues that here, as in Lancaster, the statutory remedy is inadequate because separate appeals by each individual taxpayer in the County would result in a multiplicity of duplicative lawsuits. Breezewood contends that allowing this lawsuit to proceed will provide "a neat, comprehensive resolution to the question of whether the Commissioners' actions were valid and constitutional." Breezewood's Brief at 15. This argument misses the mark.

Unlike the relief requested in Lancaster, the relief requested in Breezewood's Complaint is specific to Breezewood. Lancaster involved the complaints of *five different municipalities*, and seven taxpayers, when combined potentially involved *tens of thousands* of tax appeals. Clearly, because the "plaintiffs" there had alleged an inequality which pervaded the entire taxing scheme, the proper means to handle all of those potential appeals "expeditiously and effectively" was through that single action. Lancaster, 599 A.2d at 300.

Here, Breezewood was the sole plaintiff. **Although Breezewood asked for a judicial declaration that the County's method of assessment was unconstitutional and it requested a refund of all taxes paid, Breezewood did not have standing to seek refunds for other taxpayers and it did not aver that any other taxpayer, besides itself, was aggrieved by the County's method of assessment.** An action such as Breezewood's which seeks individualized relief is precisely what the statutory appeal procedure set forth in the Assessment Law is designed to address. Jordon v. Fayette County Bd. Of Assessment, 782 A.2d 642

(Pa. Cmwlth. 2001) (when a constitutional attack is brought against the application of a tax statute, the board of assessment appeals for the County is the proper authority to hear the challenge).

Although Breezewood may have alleged the County's taxing scheme resulted in unequal tax treatment, the fact remains that this controversy failed to rise to the level necessary to invoke equity. Breezewood failed to demonstrate that it could not obtain relief *via* the statutory appeal process in the Assessment Law. The common pleas court properly dismissed the complaint because assuming equity jurisdiction over the matter was not necessary to avoid a "multiplicity of duplicative lawsuits" or to increase the efficiency of the legal process, as in Lancaster. This is not a situation where exercising equity jurisdiction will save judicial resources or eliminate the need for the Assessment Board to conduct tens of thousands of tax appeals. There simply were not multiple tax assessments before the common pleas court. There was one.[13]

Conclusion

This Court finds that Breezewood has failed to exhaust its statutory remedy of an appeal under Section 701 of the Fourth to Eighth Class County Assessment Law, 72 P.S. §5453.701. Breezewood may not circumvent this process to present its uniformity challenge in the common pleas court's equitable jurisdiction. The common pleas court properly determined that Breezewood had

[13] Because this Court finds that Breezewood has an adequate statutory remedy, it need not address the second prong which is whether Breezewood has stated a substantial constitutional question.

an adequate statutory remedy and, as a result, it would have been inappropriate for the common pleas court to exercise equity jurisdiction.

The order of the common pleas court which dismissed Breezewood's Complaint for Declaratory Judgment with prejudice is affirmed.

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BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Breezewood Enterprises, Inc., a Pennsylvania Corporation, Appellant	:	
v.	:	
Bedford County, Pennsylvania, Michael J. Herline, Bedford County Commissioner, Chairman, Steven K. Howsare, Bedford County Commissioner, Vice Chairman, Gary W. Ebersole, Bedford County Commissioner, Secretary, and Melissa Stultz, Bedford County Chief Assessment Officer	:	No. 2179 C.D. 2010

O R D E R

AND NOW, this 30th day of December, 2011, the Order of the Court of Common Pleas of Bedford County in the above-captioned matter is hereby affirmed.

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BERNARD L. McGINLEY, Judge