

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



R.J. Hughes Justice Complex
P.O. Box 975
Trenton, New Jersey 08625-0975
(609) 292-8108 Fax: (609) 984-0805

August 21, 2015

Joel M. Meyers, Esq.
37 Beach Road
Monmouth Beach, New Jersey 07750

Richard A. Rafanello, Esq.
Shain, Schaffer & Rafanello, P.C.
150 Morristown Road, Suite 105
Bernardsville, New Jersey 07924

Re: Somerset Group Hospitality, LLC v. Township of Franklin
Docket No. 005377-2015

Dear Counsel:

This letter constitutes the court's opinion with respect to defendant's motion to dismiss the Complaint pursuant to N.J.S.A. 54:3-27 for failure to pay the taxes and municipal charges due with respect to the subject property. For the reasons explained more fully below, defendant's motion is denied.

*

I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law on defendant's motion. The findings of fact are based on the certifications and exhibits submitted by the parties on the motion.

Plaintiff Somerset Group Hospitality, LLC owns real property in defendant Franklin Township, Somerset County. The parcel is designated in the records of the municipality as Block 530.04, Lot 1.01 and is commonly known as 60 Cottontail Lane.

On March 26, 2015, plaintiff initiated a direct appeal of the \$6,000,000 tax year 2015 assessment on the subject through the filing of a Complaint in this court.

On May 29, 2015, the municipality moved pursuant to N.J.S.A. 54:3-27 to dismiss the Complaint for failure to pay local property taxes and municipal charges on the subject property. The original return date of the motion was June 26, 2015. The return date of the motion was thereafter adjourned to July 10, 2015.

At the time that the municipality made its motion, there was an outstanding balance of \$38,152.16 in local property taxes and interest on the subject property. Of that amount \$3,622.16 related to the local property taxes due for the first quarter of 2015. The remainder related to the local property taxes due for the second quarter of 2015.

On June 12, 2015, prior to the first return date of the motion, plaintiff made a \$10,000 payment towards its outstanding local property taxes. The municipality does not dispute that the payment satisfied plaintiff's first quarter 2015 local property taxes. Plaintiff established a monthly payment arrangement from a cash account to pay the remainder of its local property tax liability.

On June 22, 2015, plaintiff opposed the municipality's motion, arguing that it satisfied N.J.S.A. 54:3-27 prior to the return date of the motion.

On July 1, 2015, the municipality filed a reply brief in further support of its motion. While acknowledging that plaintiff paid its outstanding first quarter 2015 local property taxes prior to the return date of the motion, the municipality argues that in order to maintain a challenge to the tax year 2015 assessment on the property, plaintiff must pay all taxes due for tax year 2015, including second quarter 2015 taxes, and continue to pay all taxes due during the pendency of the appeal.

II. Conclusions of Law

The controlling statute is N.J.S.A. 54:3-27, which provides as follows:

[a] taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the total of all taxes and municipal charges due, up to and including the first quarter of the taxes and municipal charges assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66.

Under N.J.S.A. 54:3-27 “up to and including to the first quarter of the taxes . . . for the current year” refers to the first quarter of the tax year under appeal. In this case this equates to the first quarter of 2015, the year under review.¹

“Because the right of appeal in the Tax Court is statutory, the appellant must comply with all applicable statutory requirements for the Tax Court to entertain the appeal.” Dover-Chester Assocs. v. Township of Randolph, 419 N.J. Super. 184, 190 (App. Div.), certif. denied, 208 N.J. 338 (2011)(citing General Trading Co. v. Director, Div. of Taxation, 83 N.J. 122, 127 (1980); Royal Bradley Assocs. v. Borough of Bradley Beach, 252 N.J. Super. 401, 403-04 (App. Div.

¹ Pursuant to N.J.S.A. 54:4-66, local property taxes are due in four installments – on the first day of February, May, August and November in each year.

1991)). “N.J.S.A. 54:3-27 applies to direct appeals to the Tax Court and initial appeals to a county board of taxation” Dover-Chester Assocs., *supra*, 419 N.J. Super. at 188 (App. Div.). Plaintiff filed a direct appeal with this court from the tax year 2015 assessment on its property.

N.J.S.A. 54:3-27, like N.J.S.A. 54:51A-1(b), which applies to appeals to this court from Judgments of the county boards of taxation, were enacted to ensure the uninterrupted flow of revenue to the municipality. Sun Pipe Line Co. v. Township of West Deptford, 25 N.J. Tax 466, 475 (Tax 2010). “The purpose of the tax payment requirement is to protect the municipality’s interest in receiving timely payment of taxes to provide the revenue necessary for governmental operations.” Dover-Chester, *supra*, 419 N.J. Super. at 201 (citing J.L. Muscarelle, Inc. v. Township of Saddle Brook, 14 N.J. Tax 453, 457 (Tax 1995)). “When the flow of revenue is interrupted, the burden of an appealing taxpayer’s unpaid taxes is shifted to the other taxpayers in the district and reflected in the reserve for uncollected taxes.” Ibid.

Unlike N.J.S.A. 54:51A-1(b), however, which requires that taxes on the subject property be paid at the time that the Complaint is filed, N.J.S.A. 54:3-27 “does not specify when such payment must be made.” Id. at 189. “Because no deadline for payment is specified in N.J.S.A. 54:3-27, the tax payment requirement has been interpreted to permit the delinquent taxpayer to survive a motion to dismiss by paying the taxes due by the return date of the motion.” Id. at 199 (citing Lecross Assoc. v. City Partners, 168 N.J. Super. 96, 99-100 (App. Div.), certif. denied, 81 N.J. 294 (1979); Stewart v. Township of Hamilton, 7 N.J. Tax 368, 378 (Tax 1984)). The Appellate Division did not disturb these precedents in its decision in Dover-Chester.

The record contains undisputed evidence that by the return date of the municipality’s motion all local property taxes and municipal charges for the subject property up to and

including the first quarter 2015 installment had been paid. Plaintiff, therefore, satisfied N.J.S.A. 54:3-27, as it has been interpreted by the Appellate Division.

The municipality argues that this court should interpret N.J.S.A. 54:3-27 to require the taxpayer both to pay its second quarter 2015 installment prior to the return date of the municipality's motion and to require the taxpayer to continue to remain current on all local property tax payments during the pendency of its appeal. There is no support for this position in the text of N.J.S.A. 54:3-27 or the controlling legal precedents interpreting the statute.

As noted above, the Appellate Division has held that a taxpayer in a direct appeal may avoid dismissal of its Complaint by paying before the return date of a motion to dismiss all taxes and municipal charges up to and including the first quarter of the year under review. Judge Crabtree plainly stated the obligations of this court in such circumstances. "Trial courts are free to disagree with appellate opinions; they are not free to disobey." Tuition Plan v. Director, Div. of Taxation, 4 N.J. Tax 470, 485 (Tax 1982)(citing Reinauer Realty Corp. v. Borough of Paramus, 34 N.J. 406 (1962); Dunham's & Co. v. Dzurinko, 125 N.J. Super. 296 (App. Div. 1973)). Accord Weir v. Market Transition Facility, 318 N.J. Super. 436, 448 (App. Div.)(“The trial court may disagree with our published decisions but it is obligated to comply with the procedures we mandate within them.”), certif. denied, 160 N.J. 477 (1999).

This court's citation of the holding in Tuition Plan should not be interpreted as an expression of its disagreement with the Appellate Division. The language of N.J.S.A. 54:3-27 could not be more clear. Statutory construction begins with consideration of the statute's plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25

(1996)(quotations omitted). “[T]he best approach to the meaning of a tax statute is to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated.” Public Serv. Elec. & Gas Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977)(quotations omitted).

The Legislature expressly provided that in order to maintain a direct appeal to this court from a local property tax assessment, a taxpayer must pay “no less than the total of all taxes and municipal charges due, up to and including the first quarter of the taxes and municipal charges assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66.” N.J.S.A. 54:3-27. Nothing in this language suggests that a direct appeal of a tax assessment can be dismissed because of the taxpayer’s failure to pay taxes and municipal charges due after the first quarter of the tax year under review.

The municipality makes several policy arguments supporting the notion that a direct tax appeal should be subject to dismissal for the taxpayer’s failure to remain current on its local property taxes. These arguments would more appropriately be made by the municipality to the elected branches of government in support of a revision of N.J.S.A. 54:3-27. This court cannot rewrite the statute.

The municipality’s motion is, therefore, denied.

Very truly yours,

/s/ Hon. Patrick DeAlmeida, P.J.T.C.