

TAX COURT OF NEW JERSEY



Kathi F. Fiamingo
Judge

153 Halsey Street, 8th Floor
P.O. Box 47025
Newark, New Jersey 07101
Tel: (973) 648-2921 Fax: (973) 648-2149

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

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Michael I. Schneck, Esq.
Schneck Law Group, LLC
301 South Livingston Avenue
Livingston, NJ 07039

Paul M. Elias, Esq.
Bittiger Elias & Triolo, P.C.
12 Route 17 North
Paramus, NJ 07652

Re: Meridia at Parkway, LLC v. Borough of Wallington
Docket No. 002205-2016

Counsel:

This is the court's decision on plaintiff's motion to dismiss the Answer and Counterclaim filed in this matter by the Borough of Wallington ("Borough") as untimely. The court finds that the Borough's pleadings were not timely filed and therefore the motion to dismiss is granted.

Meridia at Parkway, LLC ("plaintiff") timely filed its complaint for direct review of its tax assessment via eCourts on March 7, 2016.¹ Plaintiff's attorney certified in his proof of service, also dated March 7, 2016, that service was effected upon the Clerk and Tax Assessor of the Borough as well as the Administrator for the Bergen County Board of Taxation via ordinary mail

¹ See R. 1:32-2A providing for the establishment of approved electronic court systems and New Jersey Supreme Court Order dated January 21, 2015, approving the electronic filing system in the Tax Court of New Jersey and extending the relaxation of the New Jersey Rules of Court as they relate to the filing and service of documents through the electronic filing system for the Tax Court.

on March 7, 2016. The Borough filed its Answer and Counterclaim via eCourts on April 7, 2016. Plaintiff filed the within motion to dismiss on April 13, 2016.

The court considers plaintiff's motion as one for summary judgment. Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact challenged and the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995), our Supreme Court established the standard for summary judgment as follows:

[W]hen deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

"The express import of the Brill decision was to 'encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.'" Township of Howell v. Monmouth Cnty. Bd. of Taxation, 18 N.J. Tax 149, 153 (Tax 1999) (quoting Brill, supra, 142 N.J. at 541).

The court finds that there is no genuine issue of material fact. The facts are simple and straightforward and as stated above.

The Tax Court is a court of limited jurisdiction, defined by statute. McMahon v. City of Newark, 195 N.J. 526, 546 (2008) (citing N.J.S.A. 2B:13-2 and Union City Assocs. V. City of Union City, 115 N.J. 12, 23 (1989)). Failure of an appealing taxpayer or taxing district to file a timely appeal is a fatal jurisdictional defect. FMC Stores v. Borough of Morris Plains, 100 N.J.

418, 425 (1985). This is true even in the absence of harm to the municipality. Lawrenceville Garden Apartments v. Township of Lawrence, 14 N.J. Tax 285, 288 (App. Div. 1994). Similarly, the failure to file a timely counterclaim is a fatal jurisdictional flaw. F.M.C. Stores, supra, 100 N.J. Tax at 495.

This court's jurisdiction to review assessments on real property is established by N.J.S.A. 54:3-21, which provides in part:

[A] taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property . . . or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district . . . may on or before April 1 or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, . . . file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000.

* * *

If a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or taxing district shall have 20 days from the date of service of the . . . complaint to file a . . . counterclaim with the Tax Court.

In accordance with the statute, New Jersey Court Rule 8:4-3(a) provides that “[i]n a direct appeal of a local property tax matter pursuant to N.J.S.A. 54:3-21, a counterclaim may be filed within 20 days from the date of service of the complaint even if the counterclaim is filed after the deadline for filing the complaint provided by N.J.S.A. 54:3-21.”

Thus, where, as here, the assessment exceeds \$1,000,000, a taxing district may establish jurisdiction to challenge an assessment in one of two ways. First, the taxing district may file its own complaint on or before April 1st, or second, where a taxpayer files a complaint appealing its assessment, the taxing district may file a counterclaim within 20 days after the service of the complaint. In the event the taxpayer's complaint is filed on April 1 or on any of the 19 days preceding April 1, the deadline is extended so as to provide the taxing district with a full 20-day period within which to file a counterclaim. The statutory deadline relates to the claim of the taxing

district contesting an assessment, whether by direct complaint or by counterclaim. The only time such a claim may be brought beyond the April 1st deadline is if it is brought in a counterclaim to a complaint served on the taxing district on or after March 14, 2016.²

The Borough did not file its own complaint contesting the assessment on or before April 1, 2016. Instead, the Borough filed an Answer and Counterclaim to plaintiff's complaint on April 7, 2016. The timeliness of the counterclaim in this matter is wholly dependent on the date the complaint was filed and served.

Plaintiff's complaint was filed with the Court on March 7, 2016 and served on the assessor and the Borough Clerk via ordinary mail sent on March 7, 2016.³ R. 1:3-3 provides that when service is effected by ordinary mail, "and a rule . . . allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period." See Majestic Const. Co. v. Deptford Township, 14 N.J. Tax, 332 (Tax 1994). Thus the time within which the Borough was to take action, i.e. file an Answer and Counterclaim, was extended by 3 days to March 30, 2016. However, the Borough's Answer and Counterclaim were not filed until April 7, 2016, some 28 days after service of the complaint was effected and 6 days after the April 1st deadline of N.J.S.A. 54:3-21.

The Borough argues that the "plain and unambiguous" language of N.J.S.A. 54:3-21 is that the 20-day deadline for a counterclaim is only triggered where the complaint is filed on "April 1 or during the 19 days next preceding April 1" and since the plaintiff's complaint was filed prior to the date which was 19 days prior to April 1, the 20-day deadline cannot apply. Such an

² 20 days after March 14 is April 2.

³ R. 8:5-4(2) permits service upon the assessor and the Clerk of the taxing district either by leaving a copy with them or the person in charge of their office, or by mailing copies by ordinary mail.

interpretation is illogical and directly contrary to the holding in F.M.C. Stores Co. v. Borough of Morris Plains, supra, 100 N.J. 418 (1985).

The taxpayers in F.M.C. Stores timely filed appeals of their real property tax assessments. The municipalities⁴ failed to file their own appeals within the statutory timeframe or to file counterclaims prior to the statutory deadline for appeals. The Tax Court granted the municipalities' motions for leave to file late appeals and late answers and counterclaims. On appeal, the Appellate Division reversed, holding that the statutory deadline was a nonmodifiable jurisdictional requirement and rejecting the rationale that the doctrine of relaxable court rules was applicable or could overcome statutory deadline requirements. F.M.C. Stores Co. v. Borough of Morris Plains, 195 N.J. Super. 373, 381 (App. Div. 1984). The Supreme Court agreed with the Appellate Division's holding that because the right to appeal is prescribed by statute, taxing districts are required to comply with the time prescriptions for the filing of tax appeals, as with all other statutory requirements. F.M.C. Stores Co. v. Borough of Morris Plains, supra, 100 N.J. at 423–24.

It was in response to the Supreme Court's decision in F.M.C. Stores that the legislature amended N.J.S.A. 54:3-21 to include the last paragraph, which extends the deadline for a timely filed counterclaim when the complaint is filed on April 1 or within 19 days of April 1.

As noted by Judge Axelrad in Majestic Const. Co. v. Deptford Township, supra, 14 N.J. Tax at 336:

The last paragraph of N.J.S.A. 54:3-21, enacted in response to F.M.C. Stores Co v. Morris Plains Bor., supra, and implemented by R. 8:4-3(a), simply permits a counterclaim to be filed within 20 days after service notwithstanding the fact that the statutory deadline may have run for filing a property tax appeal. The rationale is to afford the responding party an equal amount of time to file a counterclaim in property tax appeals that are filed close to the April 1 deadline.

⁴ F.M.C. Stores involved the real property tax appeals arising out of the Township of Edison, and Morris Plains which were consolidated before the New Jersey Supreme Court.

To accept the Borough's position that the 20-day deadline to file counterclaims is only applicable to complaints filed on April 1 and within the 19 days preceding April 1 would defy logic and legal precedence. It is completely counter-intuitive to apply a more restrictive deadline to counterclaims filed in response to a later filed complaint than to those filed in response to a complaint filed in the earlier part of the appeal process. Moreover, such a reading contradicts the plain language of R. 8:4-3(a), which requires counterclaims to be filed within 20 days from the date of service of the complaint.

In summary, plaintiff's complaint was timely filed with the Tax Court on March 7, 2016 and service was effected on March 10, 2016. To be timely, any responsive pleading was required to be filed no later than March 30, 2016. R. 8:4-3(a). As the Answer and Counterclaim were not filed until April 7, 2016, they were untimely and must be dismissed.

Plaintiff's motion is therefore granted and Borough's Answer and Counterclaim are dismissed.

Very truly yours,

/s/ Kathi F. Fiamingo, J.T.C.