TAX COURT OF NEW JERSEY

Joshua D. Novin
Judge

153 Halsey Street,
Gibralter Building, 12th Floor
Newark, New Jersey 07101
P.O. Box 47025
Tel: (973) 645-4280 Fax: (973) 645-4283

NOT FOR PUBLICATION WITHOUT THE APPROVAL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

February 29, 2016

Mr. Glen Chiger
430 Magnolia Ave.
Hillsdale, New Jersey 07642

Neil A. Tortora, Esq.
Morrison Mahoney, LLC
Waterview Plaza
2001 US Highway 46
Parsippany, New Jersey 07054

Re: Glen Chiger v. Hillsdale Borough
Docket No. 010056-2014

Dear Mr. Chiger and Mr. Tortora:

This letter constitutes the court's opinion on defendant's motion for summary judgment seeking dismissal of plaintiff's Correction of Errors Complaint for want of jurisdiction under N.J.S.A. 54:51A-7. For the reasons explained more fully below, defendant's motion is granted.

I. Procedural History and Findings of Fact

Plaintiff, Glen Chiger ("plaintiff") is the owner of the single-family dwelling located at 430 Magnolia Avenue, in the Borough of Hillsdale, County of Bergen and State of New Jersey (the "subject property"). The subject property is designated as Block 1621, Lot 12 on the tax map of the Borough of Hillsdale ("defendant").

In 2007, and again in 2013, defendant engaged Realty Appraisal Company ("RAC") to perform a municipal-wide revaluation of all real property in the taxing district. During the

municipal-wide revaluations, RAC relayed certain data and information to defendant about the subject property, including its gross living area. Following each municipal-wide revaluation, defendant conducted an informal hearing process with its citizens to allow them to review their local property tax assessment information to ensure accuracy. Plaintiff did not partake in either the 2007 or 2013 informal hearing process.

For the 2013 tax year the subject property was assessed as follows:

Land:	$247,500
Improvement:	$222,800
Total:	$470,300

Plaintiff did not file an appeal challenging the 2013 tax year local property tax assessment for the subject property. However, sometime prior to finalization of defendant's 2014 tax year roll, plaintiff claimed the subject property's record card contained an overstatement of gross living area. In response to plaintiff's allegation, defendant's assessor conducted an inspection of the subject property and discovered what he categorized as a "mis-measurement in the square footage" of the gross living area. The error apparently arose from deeming a section of the residential structure as 1.5 stories instead of 1 story. After inspecting the subject property, defendant's assessor amended the property record card for the 2014 tax year. For the 2014 tax year the subject property was assessed as follows:

Land:	$247,500
Improvement:	$187,000
Total:	$434,500

On July 3, 2014, plaintiff filed a Complaint with the Tax Court under the Correction of Errors statute, N.J.S.A. 54:51A-7. Plaintiff alleges, in part, that he has lived in the subject property for "19½ years [and] I just found out that the square footage of my home is actually less by approx. 12% of what I am paying on all these years…" Thus, plaintiff seeks relief from the court to "collect payments for [the] overpay[ment]" of taxes on the subject property.

On June 5, 2015, defendant filed a motion for summary judgment seeking dismissal of plaintiff's Complaint for want of jurisdiction, under N.J.S.A. 54:51A-7. Defendant offers four arguments in support of its motion for summary judgment: (1) plaintiff has not submitted an affidavit, as required under N.J.S.A. 54:51A-7, verifying the fact(s) which caused the alleged error or mistake; (2) the alleged error complained of by plaintiff, "has already been corrected by the Assessor" and therefore, plaintiff "has failed to set forth a correctable error"; (3) the measurement of improvements is subjective, permitting assessors to include or exclude "minor projections"; and (4) the inclusion or exclusion of areas in a residential structure from the computation of gross living area involves an exercise of judgment and discretion by the assessor, thereby excluding alleged deviations from redress under the Corrections of Errors statute.

No timely opposition to defendant's motion for summary judgment was received by the court from plaintiff. However, the court granted plaintiff five adjournments of the motion to afford him the opportunity to consult with or obtain legal counsel and submit opposition. No appearance was entered by counsel on behalf of plaintiff.

Following the fifth adjournment of defendant's motion, the court scheduled this matter for oral argument on November 19, 2015. Upon conclusion of oral argument, the court afforded plaintiff and defendant an opportunity to submit supplemental briefs and certifications addressing issues raised by the court during oral argument. Both plaintiff and defendant submitted supplemental briefs to the court.

In his post-oral argument brief, plaintiff argues that defendant committed a mathematical error and mistakenly overestimated the size of his home. Thus, plaintiff contends he is entitled to "fair compensation" for the "mis-measurement in the square footage".

II. Conclusions of Law

a. 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 that there is no genuine issue as to any material fact challenged and that the [moving] party is entitled to a judgment or order as a matter of law." Alpha I, Inc. v. Director, Division of Taxation, 19 N.J. Tax 53, 56 (Tax 2000) (citing R. 4:46-2). R. 4:46-2 outlines the circumstances under which a motion for summary judgment should be granted:

> if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.

In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 536 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)), our Supreme Court adopted the federal approach to resolving motions for summary judgment, in which "the essence of the inquiry [is] whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." In conducting this inquiry, the trial court must engage in a "kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials." Id. at 536. The standard established by our Supreme Court in Brill is as follows:

> [W]hen deciding a motion for summary judgment under R. 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 material 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 fact finder to resolve the alleged disputed issue in favor of the non-moving party.

In considering all of the material evidence before it with which to determine if there is a genuine issue of material fact, the court must view most favorably those items presented to it by the party opposing the motion and all doubts are to be resolved against the movant. Ruvolo v. American Gas Co., 39 N.J. 490, 491 (1963). The moving party bears the burden "to exclude any reasonable doubt as to the existence of any genuine issue of material fact" with respect to the claims being asserted. United Advertising Corp. v. Metuchen, 35 N.J. 193, 196 (1961). "By its plain language, R. 4:46-2 dictates that a court should deny a summary judgment motion only where a party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Brill, supra, 142 N.J. at 529. When the party opposing the motion merely presents "facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious," then an otherwise meritorious application for summary judgment should not be defeated. Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954). Hence, "when the evidence is so one-sided that one party must prevail as a matter of law…the trial court should not hesitate to grant summary judgment." Brill, supra, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., supra, 477 U.S. at 252).

In applying these standards to the instant motion, the court concludes that no genuine issue as to any material fact challenged exists regarding the nature of relief being sought under plaintiff's Complaint. Thus, this matter is ripe for summary judgment.

b. Correction of Errors

The Correction of Errors statute stands as a marked departure from the standard tax appeal process authorized under N.J.S.A. 54:3-21, and is designed to remedy typographical, clerical and mechanical errors in local property tax assessments. The statute affords a party a

period for seeking relief long after the deadline for pursuing a standard local property tax appeal has expired. The statute provides, in part, that:

> [t]he tax court may, upon the filing of a complaint at any time during the tax year or within the next 3 years thereafter, by a property owner, a municipality or a county board of taxation, enter judgment to correct typographical errors, errors in transposing, and mistakes in tax assessments, provided that such complaint shall set forth the facts causing and constituting the error or errors and mistake or mistakes, or either thereof sought to be corrected and that such facts be verified by affidavits submitted by the plaintiff. The tax court shall not consider under this section any complaint relating to matters of valuation involving an assessor's opinion or judgment.
>
> [N.J.S.A. 54:51A-7.]

In 1979, a number of substantive changes were made to the Correction of Errors statute to: (i) impose limitations on the time period within which relief must be sought to "during the tax year or within the ensuing three years"; (ii) eliminate the requirement that a majority of the municipal governing body consent to correction of the error; (iii) "extend[ed] the right of appeal to municipalities and county boards"; (iv) "confer[red] jurisdiction" on the Tax Court to hear matters brought under the statute; (v) limit "the type of errors that could be corrected…to typographical errors, errors in transposing, and mistakes in tax assessments"; and (vi) deny relief under the statute, if the cause of action sought to "challenge valuations that involved the opinion or judgment of the assessor." Hovbilt, Inc. v. Township of Howell, 138 N.J. 598, 604-605 (1994).

Historically, the Tax Court endorsed a narrow interpretation of the Correction of Errors statute, given the need to ensure predictability and finality in local property taxation. Thus, the court applied a more restrictive approach to the statute, concluding that correctable mistakes were limited to "typographical, transpositional, clerical, mathematical, mechanical, or other

related administrative errors." Van Winkle v. Rutherford Borough, 12 N.J. Tax 290, 293 (Tax 1992) (citing H.K.G.W. Corp. v. East Brunswick Township, 8 N.J. Tax 454, 458-460 (Tax 1986), aff'd 9 N.J. Tax 91 (App. Div. 1987); McElwee v. Ocean City, 7 N.J. Tax 355, 362 (Tax 1985)).

However, in 1994 our Supreme Court recognized the Correction of Errors statute's "capacity to grant relief in cases involving unquestionable tax-assessment mistakes need not be so narrowly construed." Hovbilt, Inc., supra, 138 N.J. at 617. The Court endorsed a more moderate interpretation of the statute, observing that in enacting the revisions to N.J.S.A. 54:51A-7, the Legislature's "only express qualification of the judiciary's power to correct mistakes in tax assessments" was to limit the "authorization to the correction of mistakes that are indisputable and not subject to debate about whether the assessment to be corrected resulted from an assessor's exercise of discretion." Hovbilt, Inc., supra, 138 N.J. at 617-18. Thus, the Court introduced a two-prong test for relief under N.J.S.A. 54:51A-7. First, the alleged mistake in assessment must be "indisputable, and cannot plausibly be explained on the basis of an exercise in judgment or discretion by the assessor or his or her staff." Id. at 618. Second, the "correct assessment must readily be inferable or subject to ready calculation on the basis of the assessment mistake for which correction is authorized." Id. at 618-19.

In sum, assessments which are subject to correction under the statutory scheme include those "caused by errors concerning undebatable physical attributes of the land or structures." Id. at 618. However, concluding that the physical features of real property, or the improvements erected thereon, are imprecise or inaccurate is not sufficient to merit application of the statute. The correct local property tax assessment must also be "readily inferable or subject to ready calculation" and "not subject to debate about whether the assessment to be corrected resulted

from an assessor's exercise of discretion". 303, Inc. v. City of North Wildwood, 21 N.J. Tax 376, 383 (Tax 2004) (citing Hovbilt, Inc., supra, 138 N.J. at 617-18).

Defendant asserts plaintiff is not entitled to relief under the Correction of Errors statute because plaintiff "has not submitted any Affidavits as required by N.J.S.A. 54:51A-7." A taxpayer, municipality or county board of taxation seeking relief under the Correction of Errors statute is required to set forth in their complaint:

> …the facts causing and constituting the error or errors and mistake or mistakes, or either thereof sought to be corrected and that such facts be verified by affidavits submitted by the plaintiff.
>
> [N.J.S.A. 54:51A-7.]

The Legislature's mandate that the correctable error be verified and supported by an affidavit stems from the fact that the Correction of Errors is a clear departure from the customary local property tax appeal process. To ensure that a "timely correction of administrative errors" could be processed "avoiding the need for a formal appeal" the Legislature sought to streamline rectification of errors and simultaneously ensure that defendants received a concise factual statement supporting the claim being asserted. Hovbilt, Inc., supra, 138 N.J. at 605 (quoting Senate Revenue, Finance and Appropriations Committee, Statement to Senate Bill No. 1103, at 2 (September 18, 1978)). This mindset mirrors New Jersey's well-settled notice pleading requirement, mandating that all pleadings contain "a statement of facts on which a claim is based, showing that the pleader is entitled to relief, and a demand for judgment for [that] relief." R. 4:5-2. A complaint and pleadings "must fairly apprise the adverse party of the claims and issues to be raised at trial." Spring Motors Distributors, Inc. v. Ford Motor Co., 191 N.J. Super. 22, 29 (App. Div. 1983), aff'd in part and rev'd in part on other grounds, 98 N.J. 555 (1985).

Here, plaintiff's Case Information Statement, Complaint and the documents attached to the Complaint provide reasonable and adequate notice to defendant of the nature of the relief being sought and the factual basis supporting such claim for relief. In the body of the Complaint, plaintiff alleges:

> I just found out that the square footage of my home is actually less by approx.. 12% of what I am paying on all these years - my local tax assessor also came out to measure & make all necessary corrections going forward from this point on…Pls find all documentation necessary & changes made by local town/Hillsdale tax assessor – all enclosed.

Annexed to plaintiff's Complaint is an electronic mail message dated June 24, 2014 from defendant's tax assessor. In the electronic mail message defendant's tax assessor writes, in part:

> [m]is-measurements of improvements is not uncommon, especially during a revaluation of all properties in a municipality. For purposes of this discussion, especially when considering a correction of error appeal, I believe that it is important to qualify this as a mis-measurement as opposed to an error…Upon you contacting my office, we scheduled an appointment where I visited your property and re-measured the house at which point I did discover a mis-measurement.

Thus, the court is satisfied that the specificity of plaintiff's duly signed Complaint identifying the facts giving rise to the relief sought, along with the attached electronic mail message of defendant's assessor satisfies the aim and intent of the affidavit requirement under the Correction of Errors statute.

Defendant next posits that because the alleged deviation in the gross living area of the subject property "has already been corrected by the Assessor", plaintiff "has failed to set forth a correctable error" in the Complaint warranting relief under the statute. However, defendant misconstrues the scope of relief which a taxpayer, municipal body or county board of taxation is entitled under the Correction of Errors statute. The statute permits a complainant to institute a

cause of action "at any time during the tax year or (emphasis added) within the next 3 years thereafter…to correct typographical errors, errors in transposing, and mistakes in tax assessments…" N.J.S.A. 54:51A-7. The statute does not require that the error complained of persist on the date of filing the complaint, rather the statute limits the scope of relief afforded to a complainant to the tax year the complaint is filed and the preceding three tax years.

In reviewing a motion to dismiss a complaint under R. 4:6-2, "all the facts and all the reasonable inferences and implications therefrom are to be considered most strongly in favor of the plaintiff since the remedy sought by the defendant is a drastic one." City of Jersey City v. Hague, 18 N.J. 584, 587-88 (1955). "The test for determining the adequacy of a [complaint] is whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). The court is required to consider the allegations contained in the complaint as true, Nostrame v. Santiago, 213 N.J. 109, 113 (2013), "without regard to the ability of the plaintiff to prove those facts." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). See also Stoddard v. Rutgers, 24 N.J. Tax 187, 193-194 (Tax 2008). Thus, such motions "should be granted in only the rarest of instances." Printing Mart-Morristown, supra, 116 N.J. at 772.

Notwithstanding whether the alleged error has been corrected, when an aggrieved party asserts an indisputable mistake to the local property tax assessment, identifying the facts giving rise to the claim and submits an affidavit or analogous verification; and the mistake cannot plausibly be explained on the basis of an exercise of judgment or discretion, then a claim for relief has been alleged under N.J.S.A. 54:51A-7. To say that an aggrieved taxpayer, municipality or county board of taxation has not asserted a cause of action under the Correction

of Errors statute simply because the alleged error was corrected, would be at odds with relief the Legislature afforded under the statute.

However, that is not to say that the court possesses jurisdiction over the entirety of plaintiff's alleged cause of action. The Tax Court is a "court of limited jurisdiction." McMahon v. City of Newark, 195 N.J. 526, 542-543 (2008). The court's "jurisdiction is constrained by the language of its enabling statutes." Prime Accounting Dept. v. Township of Carney's Point, 212 N.J. 493, 505 (2013). The statutory jurisdiction conferred on the court is expressed, in part, as the authority "to review actions or regulations with respect to a tax matter of…[a] county of municipal official…" N.J.S.A. 2B:13-2. However, strict compliance with filing deadlines is a condition precedent to conferring jurisdiction on the court. As our Supreme Court has expressed, the "failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 424-25 (1985). Taxpayers are required to "file timely…appeals and that they are barred from relief if they fail to do so." Hackensack City v. Bergen County, 24 N.J. Tax 390, 401 (App. Div. 2009) (quoting Horrobin v. Director, Division of Taxation, 1 N.J. Tax 213, 216 (Tax 1979)). See also Mayfair Holding Corp. v. North Bergen Township, 4 N.J. Tax 38, 41 (Tax 1982). A "strict adherence to statutory time limitations is essential in tax matters, borne of the exigencies of taxation and the administration of local government." F.M.C. Stores Co., supra, 100 N.J. at 424-25 (citing Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). Hence, a complaint filed after the statutory deadline will result in dismissal of the appeal. Regent Care Ctr. v. City of Hackensack, 18 N.J. Tax 320, 324 (Tax 1999) (concluding that the failure to file a timely appeal is "a fatal jurisdictional defect requiring dismissal of the complaint.")

Because the Correction of Errors statute stands as a departure from the standard tax appeal process, our legislature has mandated time limitations within which a cause of action must be initiated. The statute requires an aggrieved party seeking "to correct typographical errors, errors in transposing, and mistakes in tax assessments…" to institute an action "any time during the tax year or within the next 3 years thereafter…" N.J.S.A. 54:51A-7. Thus, the Correction of Errors statute limits an aggrieved party's relief to the tax year a Complaint is filed and the preceding 3 tax years.

The court's strict adherence to procedural requirements is fashioned to serve the underlying policy goals of accurate municipal budgeting. In the area of taxation "statutes of limitation and limitation periods play a vital role. Legislative policy has consistently followed the salutary principle that proceedings concerning tax assessments and governmental fiscal matters be brought expeditiously within established time periods." L.S. Village, Inc. v. Lawrence Township, 8 N.J. Tax 287 (Law Div. 1985), aff'd, 8 N.J. Tax 327 (App. Div. 1986).

Here, plaintiff's Complaint seeks to "collect payments for [the] overpay[ment]" of real estate taxes on the subject property for the preceding "19 ½ years". However, the scope of relief sought by plaintiff extends beyond the limits of relief which is afforded under the Correction of Errors statute. Thus, if the court had concluded the alleged errors were "self-evident and non-discretionary", Hovbilt, Inc., supra, 138 N.J. at 618, plaintiff's 19½ years of relief would be barred under the applicable limitations period and plaintiff's relief would be limited to only the 2011, 2012 and 2013 tax years.

Defendant next contends the measurement of improvements erected on real property involves the exercise of judgment and discretion by the tax assessor. Thus, defendant argues the

relief sought by plaintiff is outside the scope of relief which can be remedied under N.J.S.A. 54:51A-7.

In support of its argument, defendant relies upon Manczak v. Township of Dover, 2 N.J. Tax 529 (Tax 1981) and Farmingdale Realty Company v. Borough of Farmingdale, 55 N.J. 103 (1969), two cases decided before our Supreme Court's pivotal decision in Hovbilt, Inc., supra. Manczak, supra, involved the erroneous assessment of a single-family dwelling, based upon an incorrect assumption that the dwelling contained a basement. There, the taxpayer did not file appeals challenging the inaccurate assessments. Instead, the taxpayer filed a complaint, under the Correction of Errors statute, seeking to correct the assessment for the current and preceding seven years. In rejecting the parties consent order, the court concluded that an assessor's use of "incorrect data…is not a mistake to be remedied" under the Correction of Errors statute. The court concluded that such an error involved the "assessor's opinion or judgment" and, in applying the ejusdem generis rule of statutory construction, was not a correctable error under the statutory provisions. Id. at 535.

Farmingdale Realty Company, supra, involved a matter brought by a taxpayer under N.J.S.A. 54:4-54 seeking a refund of taxes paid as the result of a duplicate tax assessment on property belonging to the taxpayer and the taxpayer's president. In reversing the decisions of the lower courts denying the taxpayer relief, our Supreme Court concluded that "it seems clear to us that a simple and expeditious remedy, without the rigamarole [sic] of a formal appeal to the county board, has been provided by N.J.S.A. 54:4-54 for the correction of the kind of clerical mistakes…which are discovered after the tax list and duplicate have left the assessor's hands…" Farmingdale Realty Company, supra, 55 N.J. at 110-111. Although Farmingdale Realty Company, supra, did not involve application or interpretation of the Correction of Errors statute,

defendant's counsel relies upon dicta in the Court's opinion which states that where the mistake is related to "an error in the description of the property, as for example its size or the nature of the building thereon, which resulted in an incorrect assessment. Such mistakes go essentially to valuation and are remediable by appeal to the county board." Id. at 110.

In further support of its argument that the measurement of improvements is subjective, defendant relies upon the Real Property Appraisal Manual for New Jersey Assessors (3rd ed. 2002). The manual instructs an assessor to follow certain protocols in measuring residential structures. In measuring a residential structure, the assessor is directed to perform the following tasks:

> The front of each building is measured first, starting with the right front corner, then proceeding around each building in clockwise direction to the place of beginning. Measurements are taken along the exterior surface of the ground floor. They should be taken directly on the walls and not from minor projections (emphasis added). Measurements should be read to the nearest foot. Building dimensions are entered on the outline sketch so that each dimension can be read.
>
> [Id. at I-65.]

Thus, defendant reasons that because the determination whether a projection is minor involves an exercise of the assessor's judgment and discretion, the resulting inclusion or exclusion of a projection from structure's gross living area measurements involves matters outside the scope of N.J.S.A. 54:51A-7.

Here, the subject property was assessed for the 2011, 2012 and 2013 tax years as consisting of 1,960 square feet of gross living area, and for the 2014 tax year as having 1,860 square feet of gross living area. Following re-inspection of the subject property in late 2013, the assessor concluded that the finished and habitable areas of the residential structure should not

include a "second floor half story".[1] Except for the changes made to account for the unfinished "second floor half story", the exterior footprint measurements on the 2014 tax year property record card for the subject property remained unchanged.

However, defendant has offered no plausible explanation how an unfinished "second floor half story" constitutes a "minor projection" over which the assessor has exercised his judgment and discretion. The court's review of the footprint of the structure's drawings contained on the 2013 property record card and 2014 property record card reveal that they remained essentially unchanged. Thus, the court discerns no discretionary action on the assessor's part which would have accounted for the categorization of the "second floor half story" as a "minor projection."

Accordingly, the court turns its attention to defendant's final contention, the inclusion or exclusion of areas in residential structures from gross living area calculations are within the sound discretion of an assessor. Although the definition of gross living area deviates slightly from jurisdiction to jurisdiction, such term has generally been defined as:

> [t]otal area of finished, above-grade residential space; calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space.
>
> [Appraisal Institute, The Dictionary of Real Estate Appraisal 91 (5th ed 2010).]

Therefore, defendant argues, in arriving at the conclusion that an area of a residential structure constitutes gross living area - finished, habitable and above-grade living space, a measure of subjective opinion and judgment must be exercised by the assessor.

[1] Handwritten notes contained on the subject property's 2007 and 2013 property record card contain statements that Section A was valued as a "finished second floor half story – it is actually unfinished."

Our local property tax assessments are not defined solely by quantitative calculations, such as square footage, frontage, and lot size, but are developed based on qualitative considerations as well, including the quality of improvements, fixtures and topography. Assessors must exercise skill, knowledge and diligence based on years of experience and an interpretation of constitutional, statutory and legal principles to fashion local property tax assessments. When faced with the prospect of arriving at assessments for similarly situated residential properties, bearing disparate degrees of gross living area, an assessor must employ both subjective and objective considerations. Stated differently, the process of evaluating the data and information upon which a local property tax assessment is premised is not quantifiable by mathematical formula and cannot be readily inferred.

Assessors are trained to discern what areas of a residential structure constitute gross living area by visually inspecting and evaluating the space, drawing upon their knowledge and experience, and focusing upon unique or distinguishing features and characteristics. Throughout the assessment process, an assessor is weighing and considering basic real property appraisal principles, as well as governmental, economic, market, social and geographical influences on the value of real estate.[2] At the very heart of the assessment process is a subjective analysis, during which time an assessor reconciles the qualitative and quantitative features of a property. The assessor forms an opinion or opinions about the property, while consciously and unconsciously considering the backdrop of his or her experiences, professional training, and personal beliefs.

[2] The basic appraisal principles and the various outside influences on real estate values are included in the curriculum content which encompasses the minimum education required by the Appraisers Qualification Board for real property appraisers to obtain a state license or certification. The Appraiser Qualifications Board, The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria, The Appraisal Foundation (2008)

Undeniably, the public concern for an unbiased, fair and accurate expression of a property's true market value highlights the very duty that certified tax assessors have been entrusted with.

Here, the error alleged, was a "mis-measurement" of the gross living area in the subject property. The physical act of measuring a residential structure may not require the exercise of judgment and discretion, thereby rendering any resulting errors "self-evident". However, before embarking on the measurement of gross living area, an initial determination must be made of the scope and boundaries of living area. It is the resolution of this central and fundamental inquiry that is subjective and discretionary, requiring observation and analysis of physical attributes, critical reasoning, and formation of a thesis grounded on experience. In determining what constitutes livable area, an assessor possesses the autonomy to include or exclude areas within a dwelling that, in the assessor's opinion and judgment, satisfy the broad criteria of living area. Thus, the calculation of the local property tax assessment on the subject property was not the sum of a mathematical formula, but rather the result of application of critical analysis, culminating in a valuation process that strives for accuracy, while admittedly being based on personal observations and experience. Application of these subjective protocols are not the type of indisputable and objective mistake which Hovbilt, Inc., supra, requires to warrant relief. See Id. at 617-618.

The conclusion that an error is readily apparent or "self-evident" will not, standing alone, warrant relief under the Correction of Errors statutory scheme. Our Supreme Court has stated that in order for an error to be correctable under the Correction of Errors statute, the correction must be "self-evident and non-discretionary." Hovbilt, Inc., supra, 138 N.J. at 618. Thus, the error must satisfy both prongs of the Hovbilt, Inc., analysis to be correctable. When correction of an alleged error requires an assessor to exercise a measure of judgment and discretion in

computing a tax assessment, the error is not correctable under N.J.S.A. 54:51A-7. See 303, Inc., supra, 21 N.J. Tax at 387.

Thus, the court concludes that resolution of the principal question in this matter, what areas of a residential structure contribute to calculation of the gross livable area, requires a degree of subjective analysis and discretion. For instance, had defendant's assessor concluded after conducting a re-inspection of the subject property that, in his opinion, some portion or all of the "second floor half story" comprised gross living area, then plaintiff's sole remedy would have been limited to the standard tax appeal process authorized under N.J.S.A. 54:3-21. Moreover, the revised 2014 tax year local property tax assessment was not arrived at by substitution of figures in an algebraic formula, rather it was derived from personal observations, experience and consideration of the quantitative and qualitative features of the subject property.

Therefore, an assessor must exercise judgment and opinion in order to quantify the revised local property tax assessment on the subject property, rendering it anything but non-discretionary. Thus, plaintiff has failed to set forth a correctable error warranting relief under N.J.S.A. 54:51A-7.

III. Conclusion

The errors alleged in plaintiff's Complaint involved an exercise of the assessor's discretion, opinion or judgment and therefore, are not correctable under N.J.S.A. 54:51A-7. For the foregoing reasons, the court grants defendant's motion for summary judgment. An Order will be entered dismissing plaintiff's Complaint.

Very truly yours,

Hon. Joshua D. Novin, J.T.C.