

TAX COURT OF NEW JERSEY

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JUDGE



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RE: KENNETH FIELDS, et al v. TRUSTEES of PRINCETON UNIVERSITY, et al;
Docket Nos.: 005904-2014, 007556-2015, & 007672-2016

Dear Counsel:

The issue concerning court fees in the above matters arose during oral argument on a motion to dismiss brought by defendants, Trustees of Princeton University and Princeton University (the Princeton University defendants), which was heard on February 5, 2016, and is part of the record of court's proceedings on that date. In denying the motion, the court was satisfied that plaintiffs' complaints challenging the Princeton University defendants' property tax exemption *in toto*, was sufficient notice to apprise said defendants as to what was being challenged. The court observed, however, that pursuant to the past

practice of the Tax Court Management Office, the court's fees should have been calculated based on the specific number of parcels whose exempt status was being challenged.

Accordingly, the court directed defendant, Princeton Municipality (formerly Borough) to confirm the specific number of exempt parcels owned by the Princeton University defendants for each of the tax years at issue. A Certification of Tax Exempt Properties dated March 9, 2016, certified by Neal Snyder, Tax Assessor of Princeton, was provided to the court, which contains a list of all the properties owned by the Princeton University defendants for tax years 2014, 2015, and 2016.¹

Pursuant to the direction of the court, the Tax Court Management Office issued Deficiency Notices to plaintiffs dated April 12, 2016 and April 14, 2016 indicating, among other things, that plaintiffs were deficient in the collective amount (for all three tax years at issue) of \$25,450 in court fees pursuant to R. 8:12(c)(1)², and demanding payment within ten days of the dates of the notices or face Administrative Dismissal of the complaints.

During the aforementioned court proceedings of February 5, 2016, on the record, the court indicated that it would entertain argument for and against the waiver or modification of said fees (then to be determined), once the Deficiency Notices had been served. The court's order of April 18, 2016 stayed plaintiffs' time to comply with the Deficiency Notices until May 31, 2016, and set forth the timing of written submissions and argument on the issue of the additional court fees. Plaintiffs' papers argue against the additional fees, while the submission of the Princeton University defendants supports the

¹ According to the Tax Court Deficiency Notices dated April 12 and April 14, 2016 issued at the court's direction, there were 169 additional parcels for tax year 2014, and 170 additional parcels for tax years 2015 and 2016.

² \$8,700 + \$8,750 + \$8,750 minus \$750 fees paid = \$25,450.

fees. Defendant Princeton Municipality takes no position on the issue. No party requested oral argument, and left the matter to be decided on the papers. This opinion letter shall constitute the court's decision on the issue.

Fees associated with the costs of legal proceedings is hardly a new concept.³ New Jersey's laws provide our Supreme Court with the authority to establish and revise court fees through the Rules of Court. Specifically, N.J.S.A. 2B:1-7 provides that:

- a. *The Supreme Court, subject to the limitations set forth in subsection b. of this section, may adopt Rules of Court to revise or supplement filing fees and other statutory fees payable to the court for the sole purpose of funding:*
 - (1) the development, maintenance and administration of a Statewide Pretrial Services Program;
 - (2) the development, maintenance and administration of a Statewide digital e-court information system; and
 - (3) the provision to the poor of legal assistance in civil matters by Legal Services of New Jersey and its affiliates.
- b. All existing filing fees and other statutory fees payable to the court on the effective date [Aug. 11, 2014] of this section shall not be increased or supplemented more than \$50 in the aggregate for each fee beginning on the effective date of this section.
- c. As used in sections 12 through 19 of P.L.2014, c.31 (C.2B:1-7 through C.2B:1-13):
“Digital e-court information system” shall mean a Statewide integrated system that includes but is not limited to electronic filing, electronic service of process, electronic document management, electronic case management, electronic financial management, and public access to digital court records; and “Pretrial Services Program” shall mean the pretrial services program established pursuant to section 11 of P.L.2014, c.31 (C.2A:162-25).

[Id., emphasis added.]

³ See, e.g. An ACT to erect and establish Courts in Several Counties in this Province, for the Trial of Small Causes, 22 Geo. II Chap. 100 (1750); and An ACT to erect and establish Courts in Several Counties in this Colony, for the Trial of Small Causes, 1 Geo. III Chap. 152 §18 (1760).

R. 1:43 (Filing and Other Fees Established Pursuant to N.J.S.A. 2B:1-7), generally sets forth fees for all New Jersey courts (including the Tax Court). However, R. 8:12 more specifically sets forth the fees for the Tax Court as follows:

- (a) *General.* A fee of \$ 250 payable to the Treasurer, State of New Jersey shall be collected by the Tax Court on the filing of a complaint or counterclaim, and a fee of \$50 payable to the Treasurer, State of New Jersey shall be collected by the Tax Court on the filing of any motion, except as hereinafter provided.
- (b) *Small Claims.* A fee of \$ 50 payable to the Treasurer, State of New Jersey shall be collected by the Tax Court on the filing of a complaint or counterclaim when the case is alleged to be within the small claims jurisdiction pursuant to Rule 8:11. The small claims fee shall promptly be supplemented, whenever notice is given by the court that the matter is not within the small claims jurisdiction, so that the total fee paid is as set forth in paragraph (a) of this rule.
- (c) *Multiple Causes of Action in a Single Complaint or Counterclaim.*
 - (1) *Real Property in Common Ownership.* If a complaint or counterclaim *in an action to review a real property tax assessment* includes more than one separately assessed parcel of property in common ownership pursuant to Rule 8:3-5(a)(2), (3) and (4), the filing fee shall be \$ 250 for the first separately assessed parcel of property included in the complaint and \$50 for each additional separately assessed parcel of property of said property owner included in the complaint.
 - (2) *Condominiums.*
 - (i) *Condominiums in Common Ownership.* As permitted by Rule 8:3-5(a)(4), when properties are in the same ownership and part of the same master deed, if a complaint or counterclaim *in an action to review a real property tax assessment* includes more than one parcel of real property separately assessed pursuant to the provisions of N.J.S.A. 46:8A-26 (Horizontal Property Act) or N.J.S.A. 46:8B-19(Condominium Act), the filing fee shall be \$ 250 for the first separately

assessed parcel of property of the property owner and \$ 50 for each additional separately assessed parcel of property of said property owner included in the complaint, or if all of the parcels of the property owner are within the jurisdiction of the small claims division, \$ 50 for the first separately assessed parcel of property of the property owner and \$ 10 for each additional separately assessed parcel of property of said property owner included in the complaint.

(ii) Condominiums in Separate Ownership. Pursuant to Rule 8:3-5(a)(4), when property has been assessed separately pursuant to the provisions of N.J.S.A. 46:8A-26 (Horizontal Property Act) or N.J.S.A. 46:8B-19 (Condominium Act), separately assessed properties that are not in common ownership may not be combined in one complaint or counterclaim. The filing fee for each such complaint or counterclaim shall be \$ 250 or if such complaint or counterclaim is within the jurisdiction of the small claims division, the filing fee shall be \$ 50.

(3) State Taxes. If a complaint in an action to review a state tax, such as sales tax, gross income tax, corporation business tax or others, includes more than one separate state tax pursuant to Rule 8:3-5(b), the filing fee shall be \$ 250 for the first separate state tax and \$ 50 for each additional state tax included in the complaint.

(4) Small Claims. If a matter is within the small claims jurisdiction the filing fee shall be \$ 50 for the first state tax or separately assessed parcel of property and \$ 10 for each additional state tax or separately assessed contiguous parcel of property having the same ownership included in the complaint.

(d) Matters Exempt from Fee.

(1) *No fee shall be paid upon the filing of a complaint within the small claims jurisdiction in an action where the sole issue is eligibility for*

any homestead credit, rebate, or refund program administered by the Division of Taxation or a *senior citizen's or veteran's exemption or deduction.*

[Id., emphasis added.]

In the pending 2011 companion case⁴ to the present matters, plaintiffs were charged \$1,150 in filing fees based upon their challenge to tax exemptions granted to twenty specific parcels owned by the Princeton University defendants.⁵ It was specifically due to how the fees were calculated in this earlier case that compelled the court to alert the Tax Court Management Office of the actual number of parcels at issue in the *in toto* exemption challenges in the present matters, and direct the issuance of Deficiency Notices consistent with the earlier fee calculation practice. When the fee issue arose during the court proceedings of February 5, 2016, plaintiffs' counsel anticipated the magnitude of the additional fees, and expressed concern as to his clients' ability to pay the increased fees and their ability to continue with these matters. This challenge to the additional fees ensued.

In Monroe Tp., Appeal of, 16 N.J. Tax 261 (Tax 1996), the Tax Court upheld \$59,750 in filing fees required to be paid by Monroe Township for “two complaints *challenging* a total of 2,390 separate condominium *assessments* for 1996 in two condominium complexes.” Id. at 263, emphasis added. Compounding filing fees “*in an action to review a real property tax assessment*” of multiple condominium units is specifically provided for in R. 8:12(c)(2) – although the fee rates have changed since 1996. The court finds, however, that the holding in Monroe Tp. is clearly distinguishable from the present matters based on the plain language of the Court Rules.⁶

⁴ Estate of Eleanor J. Lewis et al v. Trustees of Princeton University et al, Docket No. 010656-2011.

⁵ In response to the Tax Court's Deficiency Notice dated July 1, 2011, plaintiffs' counsel (by letter of July 7, 2011) enclosed “[a]n additional check in the amount of \$50;” making the total filing fees \$1,150 for the twenty parcels (i.e. \$200 for the first parcel and \$50 for each additional parcel, based upon the Tax Court's fee schedule at that time.)

⁶ Distinguish also Princeton Campus Club v. Princeton Boro, 4 N.J. Tax 632 (Tax 1982) (where each lot was in separate ownership, requiring separate complaints and separate filing fees challenging the assessment for each lot. R. 8:12(a)). In the present matters, there

The compounding court fees provided for under R. 8:12(c)(1) & (2) for “Multiple Causes of Action in a Single Complaint or Counterclaim” only apply, by the specific language of the rule, “*in an action to review a real property tax assessment.*” Id., emphasis added. In the present matters, the citizen plaintiffs’ challenge to the granting of property tax exemption to approximately 170 parcels owned by the Princeton University defendants under N.J.S.A. 54:4-3.6, simply does not constitute “*an action to review a real property tax assessment*” within the plain meaning of R. 8:12(c). This court has previously determined in these matters that “[t]here is . . . a clear difference between the process for valuation assessments and that of exemption determinations. . . . [T]he determination of an exemption is more properly one of statutory and case law determination . . .” Fields v. Princeton University, 28 N.J. Tax 574, 582-83 (Tax 2015).

Assuming *arguendo*, that the state tax provision of R. 8:12(c)(3) applies to the present matters, the filing fees would be limited to \$250 per complaint since the complaint only concerns the exemption statute (N.J.S.A. 54:4-3.6), and does not include “more than one separate state tax pursuant to Rule 8:3-5(b).” R. 8:12(c)(3).

The compounding fees under the small claims provision of R. 8:12(c)(4) are also not applicable here. The present matters simply don’t meet the small claims classification set forth in R. 8:3-4(d)(1) and (2).

There is a minimum filing fee of \$250 per complaint in the Tax Court pursuant to R. 8:12(a). The Court Rules with regard to court fees, however, do not specifically address exemption cases. Under R. 8:12(d), however, there are two types of exemption cases that are specifically “Exempt from Fee”, namely “*a senior citizen's or veteran's exemption or deduction.*” Id. Clearly then, all other exemption cases require at least the minimum \$250 per complaint filing fee.

It is understandable how the Court Rules concerning filing fees, given the unusual circumstances of these matters, can lead to some confusion during administrative processing. The Tax Court has never seen any actions like these before – private citizens challenging the decision of a local Tax Assessor in granting exempt status to certain

are no assessment challenges and all parcels are in the common ownership of the Princeton University defendants.

properties owned by a not-for-profit University with extensive land holdings. Typically it is the municipality proper making such a challenge; and, there is more commonly just one property, or perhaps just a few properties at issue, where even if the fees were calculated per parcel, they would not add up to any significant amount.

R. 1:13-2 provides for the waiver of fees for indigent persons. In the present matters, however, there is no representation that the plaintiffs are in fact indigent and would qualify for a waiver under said rule. Still, their papers allege that the “plaintiffs cannot pay [the additional \$25,450] fee, the imposition of which will result in their inability to proceed with these important actions,” reiterating essentially the same representation made on the record by plaintiffs’ counsel during argument on February 5, 2016. The precise economic conditions of the plaintiffs in these matters, notwithstanding, the court finds that \$25,450 in court costs is a lot to pay for anybody, and would prohibit access to the courts for most.⁷

According to New Jersey’s Chief Justice Rabner,

Justice must, by definition, be available to everyone.

Our system of justice requires that all court users have equal access to services and equal treatment from judicial and administrative bodies. The New Jersey Judiciary has a strong reputation for the quality of our jurisprudence and the efficiency of our administration. We also have been leaders in developing policies and programs that improve the access and fairness of our courts.

[NEW JERSEY COURTS, SUPREME COURT ADVISORY COMMITTEE ON ACCESS AND FAIRNESS, ENSURING AN OPEN

⁷ It was reported in an article in the *Town Topics* on April 6, 2016, that a number of residents of the Witherspoon-Jackson neighborhood of defendant, Municipality of Princeton were joined as plaintiffs in the 2016 exemption suit. According to the article, “Witherspoon-Jackson is home to many African American residents, some of whom inherited their houses from family members who moved there in the 1930s after being forced to relocate from the area that is now Palmer Square. As a result of the 2010 Princeton property tax revaluation, many residents have faced tax rates that are beyond their means.” See Anne Levin, *Witherspoon-Jackson Joins Lawsuit Against University Over Payments of Taxes*, TOWN TOPICS (Apr. 6, 2016), available at <http://www.towntopics.com>, last visited May 31, 2016. See also Hannah Waxman, *23 town residents join tax-exemption lawsuit against U.*, DAILY PRINCETONIAN (Apr. 6, 2016), available at <http://dailyprincetonian.com>, last visited May 31, 2016; and Anna Merriman, *24 more residents challenge Princeton U.’s tax exempt status*, NJ.COM (April 6, 2016), available at <http://www.nj.com>, last visited May 31, 2016.

DOOR TO JUSTICE, 2014 REPORT ON THE ACCESS AND FAIRNESS – PUBLIC SURVEY (2014), p. 2, *available at* <https://www.judiciary.state.nj.us/reports/af2014/report.pdf> (last visited May 31, 2016).]

Indeed, part of the very first tenet of the New Jersey Courts Vision Statement is to “[p]rovide equal access to a fair and effective system of justice for all *without excess cost* . . .”⁸ Furthermore, the Appellate Division has held that “the public policy of promoting access to courts cannot be thwarted by cost.” *Zehl v. City of Elizabeth Bd. Of Educ.*, 426 N.J. Super. 129, 141 (App. Div. 2012).⁹ See also Carl Reynolds and Jeff Hall, *2011-2012 Policy Paper, Courts Are Not Revenue Centers*, COSCA, p. 8 (“the financial burden of using the courts, excessive fees or miscellaneous charges tend to exclude citizens . . . [and] can effectively deny [the] middle economic income group . . . the right of equal access to the court system. . . [W]hile fees may be appropriate, they cannot serve as a bar to judicial relief.”); and see David A. Baer, *Justice for the Small Man: A modern Municipal Court in Operation*, THE CENTURY ILLUSTRATED MONTHLY MAGAZINE, Vol. XC, New Series: Vol. LXVIII, May to October, 1915, p. 144, (“prohibitive court costs . . . which to the rich man were little more than a mere annoyance, to the poor man became a tragedy.”)¹⁰

The concern over access to our courts and court costs must not be taken lightly. Some legal systems, in fact, deliberately attempt to block access to courts through

⁸ See <http://www.judiciary.state.nj.us/mission.html>, emphasis added; last visited May 31, 2016. See also Washington Court Rules, general Rule 34 (providing for “a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant’s ability to secure access to judicial relief from a judicial officer . . .”), *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr34; last visited May 31, 2016.

⁹ While the issue in *Zehl* involved the cost of a discovery master, this court is satisfied the reasoning in that case is applicable in, and pertinent to, these tax exemption cases.

¹⁰ Consider further, Justice Steven Rares, Federal Court of Australia, A paper presented to the Competition Law Conference: Competition, Fairness and the Courts (May 24, 2014), point 83, (“Where the government in many cases will be the defendant, its imposition of prohibitive Court fees may . . . make government decisions virtually unchallengeable by ordinary citizens . . .”); *available at* <http://www.fedcourt.gov.au/publications/judges-speeches/justice-rares-j-20140524>; last visited May 31, 2016.

excessive legal fees. For example, “there is no shortage of access to justice challenges in Cambodia [where] government uses law to . . . [impose] *prohibitive court fees*.”¹¹

Neither New Jersey nor other American courts have directly addressed the issue of non-indigent litigants, as here, who may still find it difficult, if not impossible, to afford high court fees. Guidance on this issue, however, can be gleaned from the reasoning of the Supreme Court of Canada in a recent decision, where it found excessive court fees in British Columbia unconstitutional under Canada’s Constitution. For the majority of the Court, Canada’s Chief Justice McLachlin wrote:

Levying hearing fees is a permissible exercise of [British Columbia’s] jurisdiction . . . however, that power is not unlimited. . . Measures that prevent people from coming to the courts to have those issues resolved are at odds with this basic judicial function. Therefore, hearing fees that deny people access to the courts infringe the core jurisdiction of the . . . courts and impermissibly impinge on [Canada’s Constitution].

Hearing fees are unconstitutional when they deprive litigants of access to the . . . courts. That point is reached when the hearing fees . . . cause undue hardship to the litigant who seeks the adjudication of the . . . court. . . . *[P]roviding exemptions only to the truly impoverished may set the access bar too high. A fee that is so high that it requires litigants who are not impoverished to sacrifice reasonable expenses in order to bring a claim may, absent adequate exemptions, be unconstitutional because it subjects litigants to undue hardship, thereby effectively preventing access to the courts. . . . [H]earing fees must be coupled with an exemption that allows judges to waive the fees for people who cannot, by reason of their financial situation, bring non-frivolous or non-vexatious litigation to court. . . . [H]earing fees must be set at an amount such that anyone who is not impoverished can afford them.*

[Trial Lawyers Association of British Columbia v. British Columbia (Att’y Gen.)(2014), 3 S.C.R. 31 (Can.), emphasis added]

¹¹ See Siena Anstis, *Access to Justice in Cambodia: The Experience of Grassroots Networks in Lands Right Issues*, 2012, emphasis added, available at <https://ma2j.wordpress.com/2012/06/17/access-to-justice-in-cambodia-theexperience-of-grassroots-networks-in-lands-rights-issues/>.

This court is satisfied that access to our courts is a right guaranteed to all citizens regardless of their economic situation. In the present matters, there have been numerous motions to dismiss the complaints, which have all been denied. In fact, this court previously determined that the plaintiffs’ “right to appeal a tax exemption granted to another party in the taxing district is firmly established within the provisions of N.J.S.A. 54:3-21.” Fields v. Princeton University, *supra*, at 586-87. The potential now for these suits to abruptly end, not based upon law or the determination of the facts, but rather based upon undue hardship caused by excessive court fees, would not only be a *travesty of justice*, but also would be wholly inconsistent with the Vision Statement of New Jersey’s judicial system, and New Jersey’s limited case law on the issue.

Accordingly, for the reasons expressed herein, the court finds that the Rules of Court do not support the compounding fee provisions in exemption challenges that are applicable to “*an action to review a real property tax assessment*” based upon the plain and unambiguous language of R. 8:12(c). Furthermore, justice requires that court fees must never be the basis to deny anyone access to the courts regardless of his or her economic situation.¹² The Deficiency Notices of April 12 and 14, 2016 are hereby vacated; the filing fees previously paid by plaintiffs in these matters are deemed to satisfy the filing fees required by the Rules of Court.

The court’s Order consistent with this letter opinion has been uploaded to *eCourts*.

Very truly yours,

Vito L. Bianco, acting P.J.T.C.

Hon. Vito L. Bianco, acting P.J.T.C. for these matters

VLB/KYY:tms

Encl.

¹² The court observes that the ruling here is equally beneficial to the Princeton University defendants and other similarly situated not-for-profit entities that may have numerous tax exempt land holdings within a single taxing district. Such entities would also not be subject to compounding court fees should they challenge the denial of exemptions to multiple properties within the taxing district.