

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

AT&T WIRELESS SERVICES OF OREGON,)
INC.,)
)
Plaintiff,) TC-MD 021070E
)
v.)
)
JACKSON COUNTY ASSESSOR,)
)
Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant's Motion to Dismiss, filed on September 13, 2002. Defendant requests that the court dismiss Plaintiff's Complaint claiming: (1) Plaintiff is not a proper party to the appeal because Medford Cellular Telephone Company, Inc. (Medford Cellular), rather than Plaintiff, is the lessee of the subject property, (2) Plaintiff lacks standing to appeal because it is not aggrieved by the increased assessment, (3) Plaintiff failed to timely file its appeal, and (4) Plaintiff failed to serve a copy of the Complaint on the owner of the property. Plaintiff submitted its Response to Defendant's Motion to Dismiss on November 20, 2002.

STATEMENT OF FACTS

Plaintiff is the parent corporation of Medford Cellular, which leases a small portion of land owned by KOPE Radio, Inc. (KOPE).¹ "Plaintiff constructed and maintains facilities and equipment on the subject property for the transmission and reception of radio communication signals." (Ptf's Compl at 2.) As a result of the improvements to the real property, Defendant determined it should add value to the tax roll through the omitted property process. On August 9, 2001, Defendant sent the owner, KOPE, a Notice of Tax

¹ The property is identified in Defendant's records as Account 1-047162-0.

Roll Correction wherein Defendant advised KOPE it had added value to the roll for tax years 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000, and 2000-2001. KOPE did not appeal that notice.

Plaintiff subsequently became aware that many of the improvements related to its communication sites were being added to the tax roll through the omitted property process. Defendant had sent the correction notices to the owners of the real property, rather than Plaintiff, or Medford Cellular, as lessee. On December 5, 2001, Plaintiff's attorney sent Defendant a letter requesting information about all changes related to its sites. (Ptf's Compl, Ex 3.) Two days later, Defendant emailed a response indicating the following for the subject property: "1-047162-0 KOPE property, ommitted [sic], infor to be mailed 12/10/01." (Ptf's Compl, Ex 4.) According to Plaintiff, it never received the promised information for the subject account. As a result, on July 8, 2002, Plaintiff sent another letter to Defendant requesting information on tax roll corrections related to its communication sites. (Ptf's Compl, Ex 5.) Plaintiff received a copy of the subject property's Notice of Tax Roll Correction on July 20, 2002. It mailed an appeal to this court on August 8, 2002.

Defendant argues the case should be dismissed claiming: (1) Plaintiff has no interest in the property because Medford Cellular, rather than Plaintiff, is the lessee of the site; (2) KOPE, rather than Plaintiff, is responsible for the tax and, therefore, Plaintiff is not aggrieved by Defendant's action and may not maintain an action in this court; (3) Plaintiff failed to timely appeal within 90 days from the date the roll was corrected, as required by ORS 311.223(4);² and (4) Plaintiff failed to serve KOPE with a copy of the Complaint.

///

² All references to the Oregon Revised Statutes (ORS) are to 1999.

///

ANALYSIS

The first question the court must answer is which appeals statute applies to this case. Defendant argues ORS 311.223(4) applies because it sets forth the process for appealing from an omitted property assessment. Plaintiff insists ORS 305.275 applies because it did not have an opportunity to participate in the omitted process and it never received a copy of the Notice of Tax Roll Correction.

ORS 311.223(4) provides, in pertinent part:

“(4) Any person aggrieved by an assessment made under ORS 311.216 to 311.232 may appeal to the tax court within 90 days after the correction of the roll by giving notice to the assessor or the Department of Revenue, whichever is applicable, and otherwise proceeding in the manner provided for appeals from the board of property tax appeals.”

(Emphasis added.)

ORS 305.275 provides, in pertinent part:

“(1) Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

“(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

“* * * * *

“(C) A county assessor or other county official * * *

“(b) The act, omission, order or determination must affect the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property. As used in this paragraph, an interest that obligates the person to pay taxes includes a contract, lease or other intervening instrumentality.

“(c) There is no other statutory right of appeal for the grievance.”

The two statutes set forth different provisions for standing and both have different

time limitations. For example, ORS 311.223(4) provides that “any person aggrieved” may appeal whereas subparagraph (a) of ORS 305.275(1) provides that the appealing party must be “aggrieved by and affected by an act” of the assessor and subparagraph (1)(b) of the statute provides the act must “affect the property of the person making the appeal or property for which the person making the appeal holds an interest” obligating that person to pay the property tax. Furthermore, ORS 311.223(4) provides that an appeal to this court must be made “within 90 days after the correction of the roll.” In contrast, ORS 305.280(1) provides that appeals under ORS 305.275 must be made “within 90 days after the act * * * becomes actually known to the person” making the appeal.

When reviewing the two provisions, it is clear to the court that ORS 311.223(4) applies to this appeal rather than ORS 305.275 and ORS 305.280. The legislature set forth a process for assessors to use when retroactively adding omitted property value to the tax roll. That procedure is set forth in ORS 311.216 to 311.232. As part of the process, the legislature provided a specific appeals provision to apply to persons wanting to challenge the assessor’s action. Plaintiff claims that process does not apply to its appeal because Plaintiff is not the owner and, therefore, it was not given an opportunity to participate in the process. ORS 311.223(4), however, provides that “any person” aggrieved by an assessment made under the omitted property statutes may appeal. The statute is not exclusive to owners of the property. The language is broad and intended to cover “any person” that wants to challenge the assessor’s action.

Further support for the court’s conclusion that ORS 311.223(4) applies to Plaintiff’s appeal is found in ORS 305.275(1)(c), which provides that an appeal is allowed under ORS 305.275 only if “[t]here is no other statutory right of appeal for the grievance.” Clearly there is another statutory right of appeal for appealing from an omitted property

assessment and that is found in ORS 311.223(4). Plaintiff, therefore, is precluded from using the appeal provision of ORS 305.275(1) to support its appeal. The court will look to ORS 311.223(4) to determine whether Plaintiff has standing and whether its appeal is timely.

A. *Proper Plaintiff*

Defendant first claims the case should be dismissed because, according to Defendant, Plaintiff is not a proper party to the appeal. Defendant claims Plaintiff is neither the owner or lessee of the subject property and, as a result, has no responsibility for the property tax. Defendant notes that, pursuant to the lease agreement, Medford Cellular is the lessee of the subject property. Plaintiff argues that it is a 96.37 percent owner of Medford Cellular and that Medford Cellular's "primary function is to meet certain FCC requirements" and that it "is not an operating entity." (Ptf's Resp at 3.) Plaintiff further argues that, "[i]n keeping with its organizational structure and arrangements with Medford Cellular, plaintiff is responsible for making all payments under the subject lease * * * ." (*Id.*)

The parties have presented the court with differing characterizations of Plaintiff's role with regard to the subject property. Those differences present a factual dispute that would typically require a hearing. The court, however, finds the case is dispositive on another issue presented by Defendant, which is discussed below. As a result, the court finds it is not necessary to hold a hearing to determine Plaintiff's relationship to Medford Cellular or its responsibility for the increased assessment.

B. *Standing*

Defendant further claims Plaintiff's appeal must be dismissed because Plaintiff is not aggrieved by the increased assessment, arguing Plaintiff is not obligated to pay the property tax. ORS 311.223(4) provides that "any person aggrieved by an assessment"

made under the omitted property statutes may appeal. Plaintiff acknowledges it does not directly pay taxes on the subject property. Plaintiff argues, however, that it pays the increased tax indirectly through increased rents, as provided for in the lease agreement. The lease with KOPE provides that “Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Property or the Tower which is directly attributable to Tenant’s use of the Property o[r] the Tower * * * .” (Ptf’s Resp, Ex 1 at 5.)

As noted above, pursuant to the lease agreement, Medford Cellular, rather than Plaintiff, is the lessee of the subject property. Assuming, without deciding, that Plaintiff is responsible for the increased tax assessment, it would be “aggrieved” by the assessment because rents would increase in direct relation to the increased tax. Again, however, the court does not find it necessary to hold a hearing to resolve the factual dispute regarding Plaintiff’s responsibility for the increased assessment because the court finds the case dispositive on a different issue.

C. *Timely Appeal*

Defendant further argues that the case should be dismissed because Plaintiff did not timely appeal to this court. As noted, Defendant relies on the limitations period set forth in ORS 311.223(4) and Plaintiff relies on the time limit set forth in ORS 305.280(1). As discussed above, it is the court’s conclusion that ORS 311.223(4) applies to Plaintiff’s appeal. That statute requires an appeal be made to this court “within 90 days after the correction of the roll.” Defendant corrected the roll on August 9, 2001. Plaintiff did not file its appeal until August 8, 2002. The court finds, therefore, that Plaintiff has failed to timely appeal the correction.

Plaintiff argues that it had requested Defendant provide it with information on assessments related to its communication sites but that Defendant was not forthcoming

with the information. Plaintiff's first information request for the subject site, however, did not occur until December 5, 2001. The appeal period had already expired by the time Plaintiff requested the information. Plaintiff further complains that it is unfairly prejudiced because it lacked an opportunity to participate in the omitted property process. KOPE, however, is the owner of the property and KOPE did not request that Defendant include Plaintiff in the process. Any problems with Plaintiff's lack of timely notification is a result of its relationship with KOPE, not Defendant.

CONCLUSION

It is the court's conclusion that Plaintiff failed to timely appeal Defendant's action within 90 days of the correction as required by ORS 311.223(4). As a consequence, the court finds Plaintiff's appeal should be dismissed.³ Now, therefore,

IT IS THE DECISION OF THE COURT that the above-entitled matter be dismissed.

Dated this _____ day of May, 2003.

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON MAY 22, 2003. THE COURT FILED THIS DOCUMENT ON MAY 22, 2003.

³ It is for this reason the court does not address Defendant's fourth argument for dismissal.