IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Oak Leaf Investors, Ltd.,	:	
Appellant	:	
	:	
v.	:	
	:	
Ruscombmanor Township,	:	No. 191 C.D. 2011
Berks County, Pennsylvania	:	Argued: September 13, 2011

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER FILED: October 12, 2011

Oak Leaf Investors, Ltd. (Oak Leaf) appeals from the January 21, 2011 order of the Court of Common Pleas of Berks County (trial court) granting the Motion for Summary Judgment filed by Ruscombmanor Township (Township), denying the Cross-Motion for Summary Judgment filed by Oak Leaf, and dismissing the matter with prejudice. There are three issues before the Court: (1) whether the amusement tax is a *de facto* fire tax, and is, therefore, not taxable as an amusement tax; (2) whether the tax is being collected illegally; and (3) whether the tax is unconstitutional as applied to Oak Leaf. For the reasons set forth below, we affirm the trial court's order.

Oak Leaf owns and operates Golden Oaks Golf Club, the only golf club/amusement in the Township. On January 9, 1997, the Township enacted an ordinance which imposed a tax on the admission price to all amusements within the

Township. Each year, the Township deposits the amusement tax funds collected into specific accounts known as the Fire Truck Fund and the Fire Equipment Fund.

On September 15, 2009, Oak Leaf filed suit against the Township requesting the trial court to determine the constitutionality and the legality of the ordinance as applied to Oak Leaf. Specifically, the suit alleged that the ordinance is a *de facto* fire tax. On April 30, 2010, the Township filed a Motion for Summary Judgment. On May 5, 2010, Oak Leaf filed a Cross-Motion for Summary Judgment. On January 21, 2011, the trial court granted the Township's motion and denied Oak Leaf's cross-motion. Oak Leaf appealed to this Court.[1]

Oak leaf argues that the amusement tax is a *de facto* fire tax, and, therefore, not taxable as an amusement tax. Specifically, Oak Leaf contends that there is no dispute that the Township intended to use the money collected from Oak Leaf exclusively for fire protective services, and in fact, the money has not been used for any other purpose, thus it is a *de facto* fire tax. We disagree.

Section 301.1(a) of the Local Tax Enabling Act (LTEA),[2] states in relevant part: "The duly constituted authorities of . . . townships of the second class . . . may, in their discretion, by ordinance or resolution, for general revenue purposes, levy, assess and collect or provide for the levying, assessment and collection of such

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[1] The standard of review is clear in cases involving a grant of summary judgment:

> the trial court's order will be reversed only where it is established the court committed an error of law or clearly abused its discretion. Summary judgment is appropriate only in those cases where the record clearly demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Yount v. Dep't of Corrs., 600 Pa. 418, 423, 966 A.2d 1115, 1118 (2009) (citation omitted).

[2] Act of December 31, 1965, P.L. 1257, *as amended,* 53 P.S. § 6924.301.1(a).

taxes as they shall determine . . . ." In addition, Section 1803(a) of the Second Class Township Code (SCTC), 53 P.S. § 66803(a),[3] states:

> The board of supervisors may appropriate moneys for the use of the township or to fire companies located in the township for the operation and maintenance of fire companies, for the purchase and maintenance of fire apparatus, for the construction, repair and maintenance of fire company houses, for training of fire company personnel and, as set forth in this section, for fire training schools or centers in order to secure fire protection for the inhabitants of the township. The fire companies shall submit to the board of supervisors an annual report of the use of the appropriated moneys for each completed year of the township before any further payments may be made to the fire companies for the current year.

The LTEA makes it clear that funds derived from an amusement tax are general funds. The Board of Supervisors of the Township, in its discretion, directed that the money collected be deposited into the Fire Truck Fund and/or Fire Equipment Fund accounts. Both Township owned accounts contain general funds belonging to the Township, thus a deposit into these accounts does not amount to an appropriation to the fire company. The LTEA gives the Township the authority to collect the tax, and the SCTC gives the Board of Supervisors the discretion to use the tax for the benefit of the fire company. Accordingly, the amusement tax is not a *de facto* fire tax.

Oak Leaf next argues that the tax is being collected illegally. Specifically, Oak Leaf contends that a statute already exists giving the Township authority for fire taxes, thus the amusement tax ordinance should be set aside for violation of state law. We disagree.

Section 301.1(a) of the LTEA provides that townships of the second class "*may, in their discretion*" collect taxes "for general revenue purposes" from

[3] Act of May 1, 1933, P.L. 103, *as amended*, added by Section 1 of the Act of November 9, 1995, P.L. 350, 53 P.S. § 66803(a).

amusements. (Emphasis added). Section 3205(a)(4) of the SCTC, 53 P.S. § 68205(a)(4) provides that the board of supervisors "*may* . . . *levy taxes* upon all real property" for purposes of fire protective services. (Emphasis added). There is no conflict in the statutes. Rather, the legislature has given townships of the second class great discretion when it comes to taxation. Under the first statute, it can collect taxes from amusements for general purposes, i.e., for any legitimate purpose, and under the second, it is specified that the Township may collect taxes from real property for fire services. The Township chose to collect a tax from amusements for fire services. As established above, the Township had the authority to collect the tax for general purposes, and the discretion to use it for fire protective services, or any other legitimate purpose, pursuant to the LTEA. Accordingly, the tax is not being collected illegally.

Lastly, Oak Leaf argues that the tax is unconstitutional as applied to Oak Leaf. Specifically, Oak Leaf contends that the Township has violated the U.S. Constitution and the Pennsylvania Constitution by treating similarly situated persons, i.e., property owners, differently. It further contends that the Township has chosen to create a tax to fund the fire company and apply the tax to a single taxpayer. We disagree.

> Although the Uniformity Clause and Equal Protection Clause do not require absolute equality and perfect uniformity in taxation, the legislature cannot treat similarly situated taxpayers differently. Where the validity of a tax classification is challenged, 'the test is whether the classification is based upon some legitimate distinction between the classes that provides a non-arbitrary and 'reasonable and just' basis for the difference in treatment.' In other words, '[w]hen there exists no legitimate distinction between the classes, and, thus, the tax scheme imposes substantially unequal tax burdens upon persons otherwise similarly situated, the tax is unconstitutional.'

DelGaizo v. Commonwealth, 8 A.3d 429, 433 (Pa. Cmwlth. 2010) (citations omitted). As this Court has already determined:

> The fact that only one member of a class is liable for a tax because only that member engages in a taxable activity, or even because it is the sole member of its class does not, in and of itself, invalidate a tax. The mere fact that a local tax is imposed upon one person or business does not make the tax illegal or unconstitutional.

Susquehanna Coal Co. v. Mount Carmel Area Sch. Dist., 798 A.2d 321, 323 (Pa. Cmwlth. 2002).

Here, there is no disparity in treatment among persons similarly situated. The tax is an amusement tax and Oak Leaf owns an amusement enterprise. Moreover, the Township funds the fire company at over $30,000.00 per year, while the amusement tax collected only accounts for about half of that figure. Thus, Oak Leaf is not the sole supporter of the fire company. Accordingly, we conclude that the amusement tax is not unconstitutional as applied to Oak Leaf.

For all of the above reasons, the trial court's order is affirmed.

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JOHNNY J. BUTLER, Judge

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Ruscombmanor Township,	:	
Berks County, Pennsylvania	:	No. 191 C.D. 2011

O R D E R

AND NOW, this 12th day of October, 2011, from the January 21, 2011 order of the Court of Common Pleas of Berks County is affirmed.

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JOHNNY J. BUTLER, Judge