[J-3-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CITADEL DEVELOPMENT COMPANY	:	No. 30 WAP 2001
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court entered April 3,
	:	2000, at No. 2065CD1999 vacating the
	:	Order of the Court of Common Pleas of
BOARD OF ASSESSMENT APPEALS OF	:	Erie County, Civil Division entered July 9,
ERIE COUNTY AND COUNTY OF ERIE	:	1999 at Nos. 14120, 14121, 14122,
	:	14123, 14124, 14125of1996.
	:	
APPEAL OF: CITADEL DEVELOPMENT	:	751 A.2d 1272 (Pa. Cmwlth. 2000)
COMPANY	:	
	:	ARGUED: March 4, 2002
	:	

DISSENTING OPINION

MADAME JUSTICE NEWMAN **DECIDED: JULY 22, 2003**

This action involves interpretation of the Improvement of Deteriorating Real Property or Areas Tax Exemption Act (IDRPA), 72 P.S. §§ 4711-101 et seq., and an ordinance enacted pursuant thereto. Because I disagree with the analysis and the ultimate result reached by the Majority, I respectfully dissent.

In 1971, the Pennsylvania Legislature, pursuant to Section 2(b)(iii) of Article 8 of Pennsylvania Constitution, enacted the IDRPA, authorizing local taxing authorities to provide "by ordinance or resolution" certain exemptions for improvements in deteriorated areas, 72 P.S. §§ 4711-301. Section 4711-302(a) states as follows:

> Each local taxing authority may, by ordinance or resolution, exempt from all real property taxation the assessed valuation of any residential construction built in a deteriorating area from and after the effective date of this article in the amounts and in accordance with the schedule and limitations hereinafter provided.

72 P.S. § 4711-302(a). Consistent with this language, Section 4711-303(a) allows an exemption "on the assessment attributable to the actual cost of the construction." 72 P.S. § 4711-303(a). Similarly, Section 4711-303(b) provides that "[t]he exemption from taxes shall be limited to the assessment valuation attributable to the cost of construction of the new dwelling unit not in excess of the uniform maximum cost per dwelling unit specified by the municipal governing body." 72 P.S. § 4711-302(b).

In 1980, the County Council of the County of Erie adopted Ordinance 59-1980 (Ordinance 59), implementing the IDRPA in Erie County.[1] After defining the boundaries of the relevant "deteriorated area" within the county, Ordinance 59 conveyed the directives of the IDRPA as follows:

> **Exemption**
>
> There is hereby exempted from all property taxation the assessed valuation of improvements to deteriorated commercial and residential properties and the assessed valuation of new residential construction, in accordance with the provisions and limitations as hereinafter provided.

[1] Before 1980, the City of Erie implemented the IDRPA in Ordinance 60-1478, approved on November 15, 1978. Similarly, the Erie School District passed a resolution, implementing the IDRPA, on July 17, 1979.

Two years after the County of Erie passed Ordinance 59, the Commonwealth incorporated the Common Level Ratio (CLR) into the county assessment practice.[2] Application of the CLR in a property assessment calculation accounts for inflation and equalizes assessments of properties in relation to a base tax year, which is the year of the last countywide assessment.[3] As aptly related by the Majority, this scheme "ensures [that] assessments are applied equally to construction that happened years apart." Majority Opinion, p. 3.

In the early 1990s, Citadel Development Company (Citadel) purchased six parcels of land located in the "deteriorated area" on the Presque Isle Bay waterfront, where, some time thereafter, it built new, upscale, single-family residential dwellings.[4] Following the assessment of the property by the Erie County Board of Assessment (Assessment Board), Citadel objected to the method of the assessment on the ground that the Assessment Board incorrectly calculated the maximum exemption amount for improvements under the IDRPA and Ordinance 59. Specifically, Citadel argued that the Board of Assessment unjustifiably reduced the value of the exemption by the CLR. At issue presently is the following language of Ordinance 59, which correlated the limiting criteria of Section 4711-303 as follows:

---

[2] Act of December 13, 1982, P.L. 1165, 72 P.S. § 5342.1. Prior to 1982, the State Tax Equalization Board used the CLR for valuation of school subsidies. 72 P.S. § 4645.16a.

[3] For purposes of the present litigation the base tax year is 1969.

[4] Until the mid-1980s, the Presque Isle Bay waterfront was inaccessible for development and consisted of a heavy industrial/commercial area with a railroad thoroughfare. Trial Court Opinion, p. 1; Brief for Appellee, p. 4. But, with the addition of the Erie Bayfront Highway and other infrastructure improvements in the mid-1990s, the nature of the area transformed to recreational, residential, and commercial uses. Trial Court Opinion, pp. 1-2; Brief for Appellee, p. 4.

Maximum Exemption

* * *

> The maximum cost per dwelling unit eligible for exemption shall be . . . $50,000.00 per dwelling unit on the assessment attributable to the actual cost of new construction. . . . Maximum cost for improvements constructed during each year thereafter shall be the maximum cost for the preceding year multiplied by the ratio of the United States Bureau of the Census new one-family houses price index for the current year to such index for the preceding year.

The Assessment Board understood this language to mean that the $50,000.00 figure (adjusted for inflation by the inflation index ratio of the United States Bureau of the Census)[5] is the maximum cost of a new dwelling that is eligible for the exemption. Citadel maintains, however, that the limit set forth in Ordinance 59 is the **maximum assessed valuation** of the cost of construction that can be excluded from taxation. These varying interpretations translate into the following formulas for Citadel: Amount Subject to Taxation = (Actual Cost of the Property × CLR) - ($50,000.00 × inflation index ratio) and the Board of Assessment: Amount Subject to Taxation = (Actual Cost of the Property × CLR) - ($50,000.00 × inflation index ratio × **CLR**). It is plainly evident that because of the application of the CLR (as highlighted above), these two formulas produce varying results and, specifically, the method of the Assessment Board significantly increases the taxpayer's tax liability.[6]

---

[5] For the three relevant years at issue, the limit set forth in Ordinance 59 increased to $76,861 for 1996, $78,297 for 1997, and $80,964 for 1998.

[6] I note that not a single opinion written in this case at the trial or the appellate level sets forth both formulas advocated by the parties. For instance, while the Majority asserts that "[i]t does not matter what method of assessment is used," this statement is self-serving in that it is only true if one accepts the interpretation of the language of Ordinance 59 (continued…)

Relying on the legal canon, which states that statutes exempting property from taxation should be interpreted narrowly against the party claiming the exemption, see 1 Pa.C.S. § 1928(b)(5), the Majority accepted the approach advocated by the Assessment Board, because: (1) it found the language of Ordinance 59 to be vague; and (2) Ordinance 59 did not explicitly set forth that $50,000.00 was the maximum exemption. The problem with this methodology, however, is that, irrespective of the characterization of the $50,000.00 figure, it utilizes the CLR in calculating the exemption.[7] This could not have been intended by the legislators who enacted the IDRPA or those who voted for Ordinance 59, because, at the time both were ratified, the CLR did not apply in the county assessment process. Consequently, the enabling legislation pertinent to this case is devoid of anything that could be interpreted to authorize application of the CLR in the calculation of the exclusion for purposes of the IDRPA.

The testimony of Mr. Joseph Cocco of the Assessment Board unequivocally supports this conclusion, as he admitted that there is nothing in either the IDRPA or Ordinance 59 that directs the Assessment Board to apply the CLR in calculating the

---

(…continued)
proposed by the Assessment Board. Majority Opinion, p. 7. Simple mathematics, however, illustrate that the formulas produce widely different results. The method advocated by the Assessment Board, for example, in the year 1996, for a property worth $350,000.00 with a CLR of 20% would generate $54,340.60 of property value subject to taxation. Conversely, given the same hypothetical numbers, Citadel's approach generates an exemption greater than the property value, which equates to no tax liability.

[7] Indeed, the title of the subsection containing the language at issue is "Maximum Exemption." Therefore, I believe that, while the characterization of variables involved in the formula set forth in that subsection may differ, the result, unquestionably, must produce the maximum exemption allowed by Ordinance 59.

exemption. See N.T., pp. 53-54; 63-64. It is also important to note that statutes similar to the IDRPA in nature (in that they authorize local taxing authorities to enact real estate tax exemptions) likewise make no reference to the CLR in provisions dealing with setting the maximum amount for the tax exemption. See Local Economic Revitalization Tax Assistance Act, 72 P.S. § 4725; New Home Construction Local Tax Abatement Act, 72 P.S. § 4754-4.

As Citadel points out, the IDRPA requires that local government implement the exemption it sets forth by "ordinance or resolution." 72 P.S. 4711-302(a)(stating "[e]ach local taxing authority may, **by ordinance or resolution**, exempt from all real property taxation")(emphasis supplied). It follows from this statement that the calculation of the exemption must also be clearly set forth in the "ordinance or resolution" and any changes in that calculation must be adopted by "ordinance or resolution." Presently, despite the fact that the Legislature authorized the use of the CLR in the county assessment methodology in 1982, Erie County has not undertaken any steps to amend Ordinance 59 to explicitly incorporate the CLR in the valuation of the maximum exemption.

Yet, Erie County and the Assessment Board seek to integrate the CLR in this calculation, admittedly, without any authority to do so. While, as indicated previously, statutes exempting property from taxation are interpreted narrowly against the party claiming the exemption, I see no reason why Erie County and the Assessment Board should receive a windfall because they failed to do what was required of them, especially in circumstances such as these, where the enabling legislation could not have intended the interpretation they currently advocate.

By the late 1970s, the Presque Isle Bay waterfront was so economically devastated that, at that time, nobody anticipated a real estate developer, like Citadel, using the area to

construct upscale, single-family homes.[8] Nonetheless, that is exactly what took place. Unquestionably, the tax-break attracted Citadel to develop the Presque Isle Bay waterfront and, hence, Erie County achieved far more than it ever hoped to accomplish by way of Ordinance 59. Presently, in limiting the tax benefit set forth in Ordinance 59, Erie County is seeking to exploit this success to increase its own tax revenue. It is patently clear, however, that the interpretation proposed by Erie County and the Assessment Board is reactionary to the way Citadel took advantage of Ordinance 59. This interpretation burdens the developer with a higher tax obligation and, hence, stifles economic growth in the "deteriorated areas," which is inconsistent with the original purpose of the IDRPA and Ordinance 59.

Accordingly, I would reverse the decision of the Commonwealth Court.[9]

Mr. Justice Castille joins this dissenting opinion.

---

[8] Given the economic decline of the Presque Isle Bay area at that time, in all likelihood, if Ordinance 59 stimulated even a semblance of economic growth in that locale, it would have been perceived as a considerable achievement.

[9] The Commonwealth Court is correct that, without applying the CLR to the calculation of the exemption, an assessed value of zero would result in every case, unless the construction costs exceed $400,000.00. However, this reasoning is not enough to overcome the fatal flaw of the argument made by the Assessment Board -- there is nothing in the enabling legislation authorizing the use of the CLR in the calculation. Furthermore, I note that the exemption authorized by the IDRPA only lasts for three years and, thereafter, the properties become subject to taxation, just as other real estate.