[J-87A-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

THOMAS AND KATHERINE KOWENHOVEN, ROBERT AND MICHELLE DEWITT, AND DANIEL AND CAROL HOLTGRAVER,	:	No. 2 WAP 2005
	:	Appeal from the Order of the Commonwealth Court entered April 13, 2004 at No. 1673 CD 2003, affirming the Order of the Court of Common Pleas of Allegheny County entered July 10, 2003 at No. GD 02-21763.
Appellants	:	
v.	:	
THE COUNTY OF ALLEGHENY AND THE BOARD OF ASSESSMENT OF ALLEGHENY COUNTY,	:	
Appellees	:	ARGUED: September 12, 2005

CONCURRING AND DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: JULY 18, 2006**

I agree with the Majority that Appellants' claim pursuant to 42 U.S.C. § 1983 was properly dismissed. Where I part ways with the Majority is in its analysis of and conclusion regarding the issue of whether equity jurisdiction was properly invoked in this matter.

At issue is whether in seeking relief under state law, Appellants can pursue their claims in equity rather than following the statutorily-mandated procedure of taking a de novo appeal to the trial court from an unfavorable decision of the Board of Property Assessment Appeals and Review ("Board"). It is axiomatic that where the Legislature has provided a statutory remedy to rectify an alleged wrong, a plaintiff is to utilize that statutory

method. See Borough of Green Tree v. Bd. of Prop. Assessments, Appeals and Review of Allegheny Cty., 328 A.2d 819, 823 (Pa. 1974) (plurality) (stating that our Commonwealth's constitution empowers our legislature to limit the equitable jurisdiction of our courts of common pleas by establishing statutory methods for seeking redress). This Court has recognized a limited exception to this general rule. This exception declares that a plaintiff may eschew a statutory method of redress and instead turn to equity when the plaintiff shows that the legal remedy is not adequate or complete. Pentlong Corp. v. GLS Capital, Inc., 820 A.2d 1240, 1245 (Pa. 2003).

In the instant matter, the question is whether Appellants have qualified for this exception by establishing that a de novo appeal to the trial court from an unfavorable decision by the Board is not adequate or complete. The Majority concludes that Appellants have shown that such a remedy is not adequate or complete and thus qualify for the exception. The Majority provides several bases of support for this conclusion. First, the Majority reasons that allowing this class action matter to proceed in equity would achieve the laudable goal of avoiding "a multiplicity of individual de novo appeals to the trial court . . . ." M.O. at 13 (relying on Pentlong, supra). The Majority also finds that this matter should be allowed to proceed in equity because "the general procedures of which Appellants complain can be facially tested against constitutional norms unaided by agency expertise . . . ." Id. Finally, the Majority concludes that equity jurisdiction was properly invoked based on the speculation that "many of the taxpayers potentially affected by the Board's procedures may not have known" that the decision in their appeals was premised on evidence which is allegedly dehors the record. Id. at 14. Thus, equity will lie because some taxpayers may have failed to pursue their statutorily-allowed appeal because they were ignorant of this potential due process claim.

I am unconvinced by this reasoning. First, I do not believe that Pentlong holds that equity jurisdiction may be invoked simply because such invocation will avoid having

multiple matters proceed through the legislatively-endorsed appeals process. It is true that the Pentlong Court's concern over piecemeal litigation supported the Court's decision to allow the plaintiffs to forego the statutory remedy and invoke equity jurisdiction. See Pentlong, 820 A.2d at 1246. Yet, what drove the Pentlong decision was not simply that equity jurisdiction would provide "a tidy global resolution" to that controversy. Id. Rather, the Pentlong Court noted that that matter involved "purely legal challenges . . . ." Id. at 1247. In Pentlong, there was no simmering question of fact; in that matter, it was undisputed that the County of Allegheny ("County") sold its title and rights over thousands of tax liens located within the County. Thus, that matter was well-suited to resolution via a class action in equity. In contrast, in the matter sub judice, there are open questions as to whether all members of the class had the assessment appeals determined via reliance on evidence dehors the record. A "tidy global resolution" will thus not be afforded by a class action in equity.

I also reject the Majority's reasoning that equity jurisdiction is proper here because "the general procedures of which Appellants complain can be facially tested against constitutional norms unaided by agency expertise . . . ." M.O. at 13. By stating that "agency expertise" is not needed here, the Majority implies that equity is properly invoked because funneling these matters through further agency adjudication will not aid in resolution of these matters. This is paper tiger reasoning. Appellants have already appeared before the Board. In fact, it is the Board's actions which Appellants complain are constitutionally deficient. The next step in the statutory appeals process which Appellants are trying to avoid would have taken them not to an administrative body but rather to the trial court. Thus, the fact that "agency expertise" is not necessary in the resolution of these legal issues is of no moment because "agency expertise" would not have been sought had Appellants followed the statutory appellate process.

Finally, the Majority reasons that equity is properly invoked because some taxpayers may have declined to take a statutory appeal as they may have been unaware that the Board relied on evidence dehors the record in determining their assessment appeals. Even if we accept such speculation as true, I do not see how it renders the statutory process inadequate or incomplete. As noted by the Commonwealth Court, the statutory process allows taxpayers to ferret out information via discovery. See Commw. Ct. slip op. at 8. And any constitutional issues which a taxpayer would wish to raise could adequately and completely be addressed to a trial court in a de novo appeal.

I fear that the Majority's interpretation of when a statutory remedy is incomplete and inadequate is so broad that the exception threatens to engulf the rule. As I believe that Appellants have not shown that the statutory remedy is either incomplete or inadequate, I dissent to that portion of the majority's order and would affirm the order of the Commonwealth Court.