STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: July 8, 2021]

Newport and New Road, LLC and The Butler Children Trust 1992	:	
v.	:	**C.A. No. PC-2015-5627**
Steven D. Hazard, in his capacity as the Tax Assessor, City of East Providence, Rhode Island	:	

DECISION

LICHT, J. In this case, Respondent Steven D. Hazard, in his capacity as the Tax Assessor for the City of East Providence, Rhode Island has moved for summary judgment with respect to Petitioners' appeals for tax years 2012 and 2013. Respondent contends that Petitioners' claims are barred under the applicable statutes of limitations of G.L. 1956 §§ 44-5-26(a) and 44-5-27. Petitioners object to Respondent's motion.

I

Facts and Travel

Newport and New Road, LLC and The Butler Children Trust 1992 (Petitioners or Property Owners) are the owners of real property located in East Providence, Rhode Island designated as Parcel 002, Block 08, Map 401 on the records of the Tax Assessor for the City of East Providence, Rhode Island (Subject Parcel).

Petitioners began litigating the alleged overassessment of the Subject Parcel in 2011. Petitioners filed a Petition on January 19, 2011, appealing the assessed value of the Subject Parcel

for Tax Year 2010 (PC-2011-0297). Petitioners then filed another Petition on March 7, 2012, appealing the assessed value of the Subject Parcel for Tax Year 2011 (PC-2021-1244). On December 28, 2015, Petitioners filed its third Petition pursuant to § 44-5-26 challenging the assessed value of the Subject Parcel for Tax Year 2012 and Tax Year 2013 and seeking judgment in their favor providing them relief from the assessment of the Tax Assessor. Although all three cases are currently pending before this Court, this motion for summary judgment deals only with the Property Owner's appeal as to Tax Years 2012 and 2013.

Taxes were assessed against Petitioners by the city of East Providence for Tax Year 2012 in the amount of $46,838.89, based upon a full and fair cash value assessment of the Subject Parcel of $2,041,800.00. Petitioners alleged in the Petition that the 2012 Assessed Value is illegal. For Tax Year 2013, taxes were assessed against Petitioners by East Providence in the amount of $53,544.44, based upon a full and fair cash value assessment of the Subject Parcel in the amount of $2,123,500.00. Petitioners alleged in the Petition that the 2013 Assessed Value is excessive and exceeds the 2012 Assessed Value.

This Court entered a Consent Judgment on February 23, 2012, which ordered among other things that the methodology used by the Respondent in the assessment as of December 31, 2009 of the Subject Parcel, which includes the 2012 assessed value, "will not be admissible as evidence and/or will not be otherwise relied upon."

On April 26, 2021, a Rule 16 Stipulation and Order was entered by this Court, which required Respondent to file a motion for summary judgment on or before May 15, 2021, which it did on May 14, 2021. Petitioners filed their objection on June 15, 2021.

II

Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Employers Mutual Casualty Co. v. Arbella Protection Insurance Co.*, 24 A.3d 544, 553 (R.I. 2011) (internal quotations omitted). "[S]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the Court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted). The moving party bears the initial burden of establishing that no such issues exist. *Heflin v. Koszela*, 774 A.2d 25, 29 (R.I. 2001). If the moving party can sustain its burden, then the "litigant opposing a motion for summary judgment has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *American Express Bank, FSB v. Johnson*, 945 A.2d 297, 299 (R.I. 2008) (citations omitted).

The parties agree that there is no genuine issue of material fact with respect to this motion but rather the issue is one of statutory interpretation.

III

Analysis

Statute of Limitations

Respondent first claims the appeals for Tax Year 2012 and Tax Year 2013 are barred by the applicable statute of limitations. Respondent maintains that the undisputed facts show that: (1) the property tax for Tax Year 2012 was assessed on December 31, 2011 based on an assessment

of December 21, 2009; (2) the first installment of the tax was due on July 1, 2012; and (3) there was no appeal filed with the local tax assessor, nor with the local board of review. Respondent contends that the Property Owners' appeal must have filed by October 1, 2012 and the Property Owners did not file their petition until December 28, 2015. Petitioners counter the Tax Assessor's argument by asserting that the 2012 Tax Appeal was filed pursuant to § 44-5-26, not § 44-5-27. They further contend that § 44-5-26(c) does not contain any applicable statute of limitations.[1]

Similarly, for Tax Year 2013, Respondent argues that there is no genuine dispute that the claims were not timely brought and are, therefore, barred by the three-month statute of limitations. The Tax Assessor asserts that the undisputed facts show that: (1) the property tax for Tax Year 2013 was assessed on December 31, 2012; (2) the first installment of the tax was due on July 1, 2013; and (3) there was no appeal filed with the local tax assessor, nor the local board of review. Respondent contends that the Property Owners' appeal must have been made by October 1, 2013, and the Property Owners did not file their petition until December 28, 2015. Petitioners disagree, arguing that the 2013 Assessed Value exceeds the 2012 Assessed Value and is excessive, and therefore, under § 44-5-26(c), the 2013 Appeal was not subject to a statute of limitations.

Section 44-5-16(a) provides in pertinent part "whoever neglects or refuses to bring in the account, if overtaxed, shall have no remedy therefor, except as provided in §§ 44-4-14, 44-4-15, 44-5-26 – 4-5-31, and 44-9-19 – 44-9-24." Under § 44-5-26(a), a person aggrieved by an assessment of taxes may:

> "within ninety (90) days from the date the first tax payment is due, file an appeal in the local office of tax assessment[.] . . . The assessor has forty-five (45) days to review the appeal, render a decision and

[1] After oral argument, Petitioners and Respondent each filed a memorandum with an elaborate discussion of the history of the amendments to § 44-5-26. While the Court found the discussion interesting, it does not affect this Court's analysis and thus, the Court has not commented on the various conclusions put forth by the parties based on their reading of these amendments.

> notify the taxpayer of the decision. The taxpayer, if still aggrieved, may appeal the decision of the tax assessor to the local tax board of review, or in the event that the assessor does not render a decision, the taxpayer may appeal to the local tax board of review at the expiration of the forty-five (45) day period. Appeals to the local tax board of review are to be filed not more than thirty (30) days after the assessor renders a decision and notifies the taxpayer, or if the assessor does not render a decision within forty-five (45) days of the filing of the appeal, not more than ninety (90) days after the expiration of the forty-five (45) day period. The local tax board of review shall, within ninety (90) days of the filing of the appeal, hear the appeal and render a decision within thirty (30) days of the date that the hearing was held." Section 44-5-26(a).

Under § 44-5-26(c), if a person has not filed an account, or filed first within the local tax board of review:

> "that personal shall not have the benefit of the remedy provided in this section and in §§ 44-5-27 – 44-5-31, *unless (1) that person's real estate has been assessed at a value in excess of the value at which it was assessed on the last preceding assessment day*, whether then owned by that person or not, and has been assessed, if assessment has been made at full and fair cash value, at a value in excess of its full and fair cash value, or, if assessment has purportedly been made at a uniform percentage of full and fair cash value, at a percentage in excess of the uniform percentage; *or (2) the tax assessed is illegal in whole or in part;* and that person's remedy is limited to a review of the assessment on the real estate or to relief with respect to the illegal tax, as the case may be." (Emphasis added.) Section 44-5-26(c).

Under § 44-5-27, a person may invoke the equity jurisdiction of the Superior Court; provided that that "the complaint is filed within three (3) months after the last day appointed for the payment, without penalty, of the tax, or the first installment of the tax, if it is payable in installments. A taxpayer alleging an illegal or void tax assessment against him or her is confined to the remedies provided by § 44-5-26, except that the taxpayer is not required to file an appeal with the local assessor."

The dispute at issue is a question of statutory construction; specifically, whether the Legislature intended for the three-month statute of limitations identified in both §§ 44-5-26(a) and 44-5-27 to also extend to the circumstances of a challenge to an assessment when the circumstances outlined in § 44-5-26(c) apply. When interpreting a legislative enactment, this Court must "determine and effectuate the Legislature's intent and attribute to the enactment the meaning most consistent with its policies or obvious purposes." *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). The Supreme Court has stated that courts should not "construe a statute to reach an absurd result." *Shepard v. Harleysville Worcester Insurance Co.*, 944 A.2d 167, 170 (R.I. 2008); *see also Gaube v. Landmark Medical Center,* No. PB 08-4371, 2015 WL 412881, at *5 (R.I. Super. Jan. 07, 2015*)* ("When more than one interpretation of the statute is possible, the court will not infer the Legislature to have intended unreasonable consequences."). "[I]t is axiomatic that '[the] Court will not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent . . . of the statute.'" *State v. Santos*, 870 A.2d 1029, 1032 (R.I. 2005) (quoting *Simeone v. Charron*, 762 A.2d 442, 448-49 (R.I. 2000)).

In municipal tax cases, Rhode Island law holds that the statute of limitations be strictly applied. *See cf. Ramsden v. Ford*, 88 R.I. 144, 148, 143 A.2d 697, 699 (1958) ("We are of the opinion that a legislative grant of municipal authority to exercise a portion of the state's sovereignty should be strictly construed."). In *Lehigh Cement Co. v. Quinn,* 173 A.3d 1272, 1278 (R.I. 2017), the Supreme Court of Rhode Island held that "the ability of a taxpayer to file a suit in equity directly in the Superior Court [] *is sharply circumscribed by a brief limitations period.*" (Emphasis added). In that case, the plaintiff had leased 3.65 acres of land at the Port of Providence but was taxed by the City of Providence for 16.8 acres of land and, consequently, paid nearly

$500,000.00 in excess taxes. *Id.* at 1274. The Court explained that "[i]t is indisputable that [the plaintiff] became aware of the erroneous assessment in 2010, yet did not file its complaint until 2012, well beyond the limitations period set forth in the statute." *Id.* at 1279. Accordingly, the Court upheld the lower court's grant of summary judgment, in part, because the plaintiff failed to meet the three-month filing requirement.

Likewise, the Rhode Island Supreme Court has held that the legislative intent behind the three-month statute of limitations is clear. Specifically, the Court explained that "[r]eal property taxation provides a significant source of municipal revenues, and departmental appropriations are necessarily dependent on the funds available." *Northgate Associates v. Shorey*, 541 A.2d 1192, 1193 (R.I. 1988). Accordingly, municipalities desire that "disputes relative to an assessment be resolved as expeditiously as possible so that the tax roll may be finalized and the tax rate established." *Id.* The Court surmised that "[i]t is obvious that the Legislature, in enacting § 44-5-27, recognized the necessity for finality in assessment disputes" when it imposed the three-month statute of limitations period. *Id.*

Although this case presents a question that has not been previously dealt with, the Court believes that the Legislature's intent behind §§ 44-5-26 and 44-5-27 necessitates that the statutes of limitations within those sections be strictly applied here. In their Objection, Petitioners emphasize that there are three "tracks" for pursuing a real estate tax appeal— "the administrative appeal track" and the "direct appeal track" in § 44-5-26 and the "equity track" in § 44-5-27. And, for that reason, the "direct appeal track" in § 44-5-26(c) is separate and distinct from § 44-5-26(a) and § 44-5-27, where the Legislature has established statutes of limitations. Furthermore, Petitioners contend that because § 44-5-26(c) does not explicitly establish a statute of limitations,

G.L. 1956 § 9-1-13(a) is applicable. Section 9-1-13(a) provides that when all civil actions are not otherwise limited, the period of limitation is ten years.

The Court finds that Petitioners' interpretation of the statute fails to view and read the statutory scheme as a whole. The Court stresses that Petitioners' position leads to an absurd result; namely, that claims brought pursuant to §§ 44-5-26(a) and 44-5-27 are subject to statutes of limitations of three months, but a claim brought pursuant to § 44-5-26(c) is subject to a ten-year statute of limitations. *See Kaya v. Partington,* 681 A.2d 256, 261 (R.I. 1996) (refusing to construe a statute to reach an absurd result or to create a result not intended by the Legislature). When reading the plain language of the statute, this Court concludes that all "tracks" lead to the same "station," namely the Superior Court. Only § 44-5-26(b) and § 44-5-27 authorize filing in the Superior Court. Why would the General Assembly have provided three months for two tracks and ten years for the third?

The Supreme Court has consistently held that the taxing statutes provide the exclusive relief "to any person aggrieved by any assessment of taxes against him by any city or town." *Lehigh Cement Co.* 173 A.3d at 1278. The Superior Court remedies available to an aggrieved taxpayer are located within § 44-5-26(b) and § 44-5-27. Respondent suggests that § 44-5-26(c) somehow creates a separate and distinct remedy from § 44-5-26 and thus, those claims are not subject to the statutes of limitations within §§ 44-5-26(a) and 44-5-27. This notion is unsupported by not only logic but also by the statute's plain and unambiguous language.

The Court first highlights that § 44-5-26(c) begins by stating that when a person "has not filed an account, or filed an appeal first within the local tax board of review, that person *shall not have the benefit of the remedy provided in this section* and in §§ 44-5-27 – 44-5-31, unless . . ." (emphasis added). This language concretely indicates that § 44-5-26(c) does not prescribe its own

separate remedy, rather it affirms that the ability to appeal to the Superior Court under § 44-5-26 is the remedy. Section 44-5-26(b) states in pertinent part, "[a]ny person still aggrieved on any ground whatsoever by an assessment of taxes against him or her in any city or town may, within thirty (30) days of the tax board of review decision notice, file a petition in the superior court . . ." The statutory scheme then provides for what happens in the Superior Court when a taxpayer has failed to file an account (§ 44-5-31-(1)) or the tax is illegal (§44-5-31(2)). Section 44-5-26(c) merely provides an exception to the administrative procedure delineated in § 44-5-26(a). Section 44-5-26(c) does not itself set forth a path by which an aggrieved taxpayer may appeal to the Superior Court, thereby creating a new separate and distinct remedy and removing it from the purview of §§ 44-5-26(a) and 44-5-26(b). Section 44-5-26(c) acts as a proviso, applicable to § 44-5-26 in its entirety, by which a taxpayer may avoid the administrative process of § 44-5-26(a) if their claims fall under either of the specified conditions.

In sum, § 44-5-26(a) furnishes the process by which a taxpayer must abide by to seek properly the benefit of the remedy described within § 44-5-26(b), and § 44-5-26(c) simply creates an exception to that administrative procedure. Therefore, a taxpayer cannot escape the statute of limitations of § 44-5-26(a) because it relies on the exceptions provided for in § 44-5-26(c).[2] Because Petitioners did not file either the Tax Year 2012 appeal or the Tax Year 2013 appeal in a timely manner, Petitioners' claims are barred under § 44-5-26. Since, as the Court has articulated, § 44-5-26(b) contains the statutory remedy, not § 44-5-26(c), Petitioners' only other alternative remedy is located in § 44-5-27.

---

[2] Moreover, under § 9-1-36, entitled "Enumeration of statutes of limitation," § 44-5-26 is listed as having a period of limitations of "[three] months from last day to pay without penalty."

In analyzing Petitioners' claim that the Tax Year 2012 tax assessment is illegal, the Court similarly finds that Petitioners cannot take refuge in § 44-5-26(c) in order to circumvent the statute of limitations in § 44-5-27. In *Bluedog Capital Partners, LLC v. Murphy*, 206 A.3d 694 (R.I. 2019), plaintiff appealed from a judgment of the Superior Grant granting a motion to dismiss, arguing that there are certain situations in which a taxpayer may bypass the normal review procedures set forth in §§ 44-5-26 and 44-5-27. In that case, plaintiff argued that one such situation is where the tax is alleged to be illegal. The Supreme Court held that assuming "for purposes of defendants' motion to dismiss that Bluedog had alleged an illegal tax, there is no question that Bluedog did not file its complaint within the three-month statute of limitations set forth in § 44-5-27," and therefore failed to comply with the taxing statutes. *Bluedog,* 206 A.3d at 700. The Court further stated that "any action challenging the assessment of taxes, for any reason, that does not follow the normal procedures set forth under § 44-5-26, *must* be brought pursuant to § 44-5-27." *Id.* (emphasis in original).

Based on the Supreme Court's holding in *Bluedog*, this Court finds that Petitioners' illegal tax assessment claim is subject to the statute of limitations contained in § 44-5-27. Petitioners have alleged an illegal tax claim for Tax Year 2012 and have not followed "the normal procedures set forth under § 44-5-26." Petitioners, therefore, were required to file their complaint within three months after the last day appointed for the payment of the tax, or the first installment of the tax if it was payable in installments. Because Petitioners filed their Complaint more than three years after the applicable statute of limitations had run, their illegal tax assessment claim is additionally barred under § 44-5-27.[3]

[3] At oral argument, the Court inquired as to why Petitioners had filed appeals for tax years 2010 and 2011 in a timely manner yet failed to do so for tax years 2012 and 2013. Petitioners responded that they did not want to go to the "Kangaroo Court" of tax assessment review. However, as

To conclude, the Court believes Petitioners' contention not only leads to an absurd result, but it would also wreak havoc with municipal finances. The General Assembly has required each municipality to revalue the real property within its borders every nine years with a requirement to perform a statistical update every three years from the date of the revaluation. Sections 44-5-11.5 and 44-5-11.6. Generally, although not always, property values increase after a revaluation or update. Consequently, in such circumstances, all the taxpayers not satisfied with their new assessment can seek relief even though no account was filed. If the Court accepts Petitioners' argument, then those taxpayers could file their Petitions for relief after the next two updates and after the next revaluation. The General Assembly would have never intended such an outcome.

With the Court's finding that Petitioners' claims are barred under the statutes of limitations of both §§ 44-5-26 and 44-5-27, this Court need not determine whether Petitioners' claim for Tax Year 2012 was in fact an illegal tax under Rhode Island law. Accordingly, Petitioners' Complaint for Tax Year 2012 and Tax Year 2013 is dismissed.

IV

Petitioners' Motion *in Limine*

Petitioners also move that Respondent should be precluded from admitting into evidence the Appraisal of Real Estate prepared by J. Michael Tarello, the "City Appraisal" of the property. Pet'rs' Mot. Lim. This appraisal assigned a $3,330,000.00 value to the property at issue. *See id.* Petitioners maintain that the appraisal is in excess of the $2,041,800.00 assessed value of the Property for tax years 2010, 2011, and 2012 as well as in excess of the December 31, 2009 $700,000.00 fair market value of the Property established by the Petitioners' appraiser, Thomas

---

discussed above, because they alleged the 2012 assessment was illegal and the 2013 assessment had increased over the prior year, § 44-5-26(c) affords Petitioners the opportunity to avoid the "Kangaroo Court." But that does not mean they could wait up to ten years to do so.

O. Sweeney. Petitioners argue that admission of this appraisal would violate Rhode Island Rules of Evidence 401 and 403; Respondents contend that the appraisal is relevant and probative of the factual question at issue. *Id.*; Resp't's Obj. Pet'rs' Mot. Lim. Petitioners contend that because the Court cannot increase the assessment after trial, the City Appraisal is irrelevant and prejudicial. It also contends that the appraisal supports a finding that the City acted illegally and unconstitutionally because if the City accepts the City Appraisal, which is approximately fifty percent higher than the assessment, then it assessed the Subject Parcel at less than its full fair cash value.

The Court rejects the Petitioners' contentions. The Court finds that the City Appraisal is relevant and probative of the material fact at issue in this matter, which is whether "the real estate in question has been assessed at a value in excess of the value at which it was assessed on the last preceding assessment day, and at a value in excess of its full and fair cash value, or in excess of the uniform percentage of full and fair cash value utilized in the particular municipality . . ." *Jacober Realty Trust v. Neary*, 723 A.2d 292, 293 (R.I. 1999) (citing § 44-5-31). The Court believes that the City Appraisal will assist the trier of fact in answering such question, by allowing the trier of fact to compare the assessments forwarded by both parties; the trier of fact will then ultimately decide what weight to afford those appraisals.

The admission of the City Appraisal would not offend Rule 403 as the Respondent has the right to counter evidence provided by the Petitioners, who bear the burden of proof. *Nos Limited Partnership v. Booth*, 654 A.2d 308, 308 (R.I. 1995) (explaining that the taxpayer bears the burden of proof). As Petitioners intend to forward an appraisal of their own, it cannot be said that allowing Respondent to do likewise would create an unfair prejudice to Petitioners and in turn substantially outweigh the appraisal's probative value. Moreover, the Consent Judgment contemplated the

introduction of the City's appraisal as it states, "at trial the Respondent will have the opportunity to rebut the Petitioners' showing of fair market value for the Subject Parcel with admissible expert testimony." Consent J. ¶ (c). If Respondent was precluded from introducing this appraisal, the Court questions how it would be able to assess the validity of Mr. Sweeney's appraisal fairly and adequately.

The Court also finds that the constitutional or disproportionate argument also fails. Considering its ruling above dismissing the challenge to Tax Years 2012 and 2013, the issue of the illegality of the tax will not be before the Court. Even if it were, the Petitioners' burden to establish disproportionality is daunting. *See Merlino v. Tax Assessors for Town of North Providence*, 114 R.I. 630, 337 A.2d 796 (1975).

Petitioners' argument goes to the weight of the appraisal's value, not its admissibility. Petitioners will be free to argue to the Court why the appraisal should be given little weight. However, as a matter of evidentiary law, it is admissible.

V

Conclusion

Based on the foregoing, the Court finds that under both §§ 44-5-26 and 44-5-27, Petitioners' claims for both Tax Year 2012 and Tax Year 2013 are barred by the applicable statutes of limitations. Accordingly, Respondent's Motion for Summary Judgment is granted. Additionally, for the reasons stated above, Petitioners' Motion *in Limine* is denied. Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Newport and New Road, LLC and The Butler Children Trust 1992 v. Steven D. Hazard, in his capacity as the Tax Assessor, City of East Providence, Rhode Island**
CASE NO:	**PC-2015-5627**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 8, 2021**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Robert D. Wieck, Esq.**
For Defendant:	**Michael J. Marcello, Esq.**