Opinion
No. 1274

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

MAY 1 - 1989

FILED

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Tax Division

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

Docket No. 3872-87

**MEMORANDUM OPINION AND ORDER DENYING MOTION TO DISMISS**

This matter came before the Court upon the respondent's oral motion to dismiss upon the ground that petitioner did not fulfill the jurisdictional prerequisite of first making a complaint to the Board of Equalization and Review. The request was reduced to writing, and the parties submitted legal memoranda in support of their respective positions. Testimony was offered to develop the unique factual context in which the issue is raised. The pertinent facts are not disputed. From the evidence presented, the Court makes the following factual findings.

1. Petitioner, John Hancock Mutual Life Insurance Company (hereinafter "Hancock"), is the present owner of land in the District of Columbia described as Lot 12 in Square 215. William B. Wolf. Sr., William B. Wolf, Jr. and

Lorraine Dreyfuss are lessees of the described land under a written lease agreement dated May 12, 1966 originally with one Marion Lovitz . (Petitioner's Motion Exh. 3). The lease was assigned to Hancock by an Assignment of Lease dated May 12, 1966. (Petitioner's Motion Exh. 4). The lessees also hold title to the building which was constructed upon the land as provided in Section 7 of the lease. Hancock holds a deed of trust on the building.

2. Under the terms of the lease, the lessees are obligated to pay all real property taxes for the land and improvements. The tax bills and notices of proposed assessments are sent in Hancock's name c/o Wolf & Wolf. A timely appeal was filed with the Board of Equalization and Review for the proposed assessment for the land only for Tax Year 1987. (Petitioner's Motion Exh. 5). The Real Property Assessement Appeal form lists the name of the owner (appealing party) as "William B. Wolf, Sr., et al." The Board sustained the proposed assessment on May 5, 1986. (Respondent's Motion Exh. 1). The taxes were paid by the lessees. There is no dispute that the taxes were paid timely.

3. The lessees sought permission of their lessor, Hancock, to file an appeal in Superior Court in the name of Hancock. By letter dated January 29, 1987, William B. Wolf, Jr. outlined the terms under which the arrangement was to be undertaken. (Petitioner's Motion Exh. 2). The

lessees are to bear all costs of the litigation, receive any refund and pay any increase which might result.

4. By letter dated February 5, 1987, Hancock consented to the arrangement. (Petitioner's Motion Exh. 1). In accordance with the agreement between the lessor and lessees, the appeal in this case was filed in the name of John Hancock Mutual Life Insurance Company on February 13, 1987. The lessees have filed appeals with the Board of Equalization and Review in their own names in the past as they did in this case.

5. William B. Wolf, Jr. is authorized to act in this matter on behalf of the ground lessees and owners of the building. He signed the notice of appeal with the Board of Equalization and Review on behalf of all lessees. The attorney with Mr. Wolf's law firm, who represented the lessees before the Board, is counsel of record in this proceeding. William B. Wolf, Jr. (hereinafter Wolf) executed the responses to respondent's interrogatories to petitioner without objection. The jurisdictional issue was raised for the first time by respondent on the day of trial.

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Respondent contends that the subject matter jurisdiction of the Superior Court did not attach in this case because Hancock did not first appeal to the Board of Equalization and Review. It is a prerequisite to filing an appeal to this Court from any real property tax assessment

that the aggrieved party first file an appeal to the Board of Equalization and Review. D.C. Code §47-825(i) (1981). The lessees timely appealed to the Board of Equalization and Review. Had they filed this appeal in their own names rather than enlisting the consent of Hancock to file the petition in its name (for the benefit of the lessees), the present motion would not be before the Court. In an apparent effort to avoid any challenge to their standing to file the petition, the lessees have generated this issue concerning their right to a disposition of this appeal on its merits. To further complicate matters for petitioner and the lessees, Super. Ct. Tax Rule 3, which makes applicable to the Tax Division some of the Superior Court Rules of Civil Procedure, does not include Super. Ct. Civ. Rules 15 (amended pleadings), 17 (real party in interest), or 19 (joinder of parties).

Real property is assessed for tax purposes in the name of the owner. D.C. Code §47-822(a) (1981). A covenant in a lease that the lessee is to pay the taxes does not alter this. See Hebrew Home for the Aged v. District of Columbia, 79 U.S. App. D. C. 64, 65, n.4 (1944). The appeal provision of the Code provides that "any person aggrieved" by the tax assessment may appeal. D. C. Code §47-825(i)(1981). A person whose individual interests are directly affected by an assessment is an aggrieved person in the context of the statute. See National Bank of Washington v. District of Columbia, 96 U. S. App. D. C.

395, 397 (1953). Whether the person is obligated to pay the tax, rather than whether the tax was assessed against the person determines who is an aggrieved person. District of Columbia v. Fadeley, 98 U. S. App. D. C. 176,178 (1956). In this case, the ground lessees, who are obligated by contract to pay all real property taxes and who did so, are the parties adversely affected by the assessment, and they are aggrieved persons within the meaning of the statute. Accordingly, they had the right to appeal the assessment to the Board of Equalization and Review pursuant to D. C. Code § 47-825 (i) as they did.

Having appealed first to the Board of Equalization and paid all taxes due, the ground lessees have met the jurisdictional prerequisites to filing an appeal in this Court. D.C. Code §§ 47-825 (i) and 47-3303. Petitioner Hancock doe not meet the jurisdictional prerequisites in its individual capacity. However, the facts show that Hancock is pursuing the appeal only for the use and benefit of the lessees. All costs must be paid by the lessees and, any refund or increase in the tax resulting from the appeal must be paid by the lessees. The lessees are the real parties in interest in this case. If Super. Ct. Civ. Rule 17(a) were made applicable specifically to the Tax Division, time would be allowed for the substitution of the real party in interest, and dismissal could be readily avoided. It does not appear that the failure to include Rule 17 among those civil rules applicable to the Tax

Division occurred because inappropriate for utilization in the division. Super. Ct. Tax Rule 3 includes the rule related to substitution of parties (Super. Ct. Civ. 25). Moreover, the decisions in civil tax cases are reviewable in the same manner as civil cases tried without a jury. D. C. Code §47-3302(a). Therefore, the rules applicable to civil cases would be appropriate for utilization in the course of the litigation. Thus, there appears to be no legal impediment nor policy reason for excluding from utilization in the Tax Division the rule which allows for the substitution of a party in lieu of dismissal when the case is not brought in the name of the real party in interest.

Relying on Super. Ct. Civ. Rule 15, petitioner seeks leave to amend to substitute or join the lessees as petitioners. Petitioner further urges that the amendment relate back to the date of commencement of the action, thereby foreclosing any period of limitations problem. As noted earlier, Rule 15 is not incorporated explicitly in the rules of the Tax Division. However, the authority of the Court to allow amendments is provided for in the rules governing the Tax Division. Super. Ct. Tax Rule 9(f)(2) provides:

> If an order of the court to file amended pleadings is not complied with within 15 days of the date of the service of said order or within such other time as the court may fix, the court may strike

a pleading to which such an order of court has been directed or may enter such order as it deems just.

The only other reference to amendments to pleadings in the rules of the Tax Division is in Rule 6 (e) which relates to amendments which may be made without motion or order of court. In the absence of any other guidelines for the Court's exercise of its authority to grant leave to amend under Super. Ct. Tax Rule 9(f)(2), the Court must look to Super. Ct. Civ. Rule 15 for guidance. The statutory provision that civil tax cases be tried in the same manner as civil cases tried without a jury lends further support to this proposition. Rule 15 affords a sound and tested basis for the exercise of the Court's authority to grant leave to amend under Tax Rule 9 (f)(2).

Applying the principles contained in Super. Ct. Civ. Rule 15, it appears that this is an appropriate case for allowance of the amendment and for the amendment to relate back to the date of the filing of the original petition. Strong liberality is encouraged in granting leave to amend. Leave to amend should be freely given when justice so requires. Super. Ct. Civ. Rule 15(a). Among the criteria to be considered in determining when leave to amend should be granted are the number of requests, the length of time that the trial has been pending, the number of previous continuances, the existence of bad faith or dilatory motive and the prejudice to the other party. Bennett v. Fun & Fitness of Silver Hill, 434 A. 2d 476, 478-479 (D. C. 1981). The trial date had been set for about five months

when leave to amend was requested. There appeared to be no need for the request prior to that time as respondent had never objected to the pursuit of the lessees' interest by the property owner. The circumstances giving rise to the request occurred on the first trial date. The trial had not been pending for a substantial period of time in view of past pre-trial practices in the division. There appears to have been no bad faith or dilatory motive associated with the request. Respondent suggests that it was precluded from obtaining certain discovery because petitioner was not the owner of the building. Respondent was not precluded from obtaining the information sought. Respondent filed no motion to compel the information it contends was not disclosed. Additional discovery can be had without any undue delay in the trial date. Under the circumstances, respondent is not prejudiced by the amendment. Justice requires that the request be granted, and the factors to be considered in determining whether to grant the relief balance in petitioners's favor.

The requirements for relation back of an amendment to substitute another party are met in this case. Super. Ct. Civ. Rule 15(c) provides for the relation back of amendments if within any applicable period of limitations, the party to be brought in has received such notice of the action that he will not be prejudiced in his defense on the merits and knows, or should have, that but for a mistake concerning the identity of the party, the action would have

been brought against him. By analogy, the rule extends to a change of plaintiffs. Raynor Brothers v. American Cyanimid Co., 695 F.2d 382, 384 (9th Cir. 1982); Strother v. District of Columbia, 372 A.2d 1291, 1298 (D. C. 1977). The motion to amend by substitution of the lessees does not alter the original claim in any way. Respondent was informed of the claim timely. It was aware that, but for a mistake as to the propriety of a suit by the owner-lessor for the use of the lessees, the lessees would have been named as petitioners in this case. Since the original petitioner brought the action for the use of the real parties in interest, a viable suit was initiated. Link Aviation, Inc. v. Downs, 117 U. S. App.D.C. 40, 42 (1963). The facts support application of the "relation back" provision of Rule 15. Therefore, upon amendment, the appeal must be deemed to be timely filed. The "relation back" provision allows a party to avoid the bar of any period of limitations. Davis v. Potomac Electric Power Company, 449 A.2d 278, 281 (D. C. 1982). Accordingly, the lessees' amended petition, if filed in accordance with this Order, will not be barred by limitations.

For the foregoing reasons, it is by the Court this 27th day of April, 1989

ORDERED:

1. That respondent's Motion to Dismiss be, and hereby is denied.

2. That petitioner's Motion for Leave to Amend to Substitute as petitioner the ground lessees be, and hereby

is granted, and the amendment shall relate back to the date of filing of the instant case.

3. That petitioner shall cause to be filed herein by the grounds lessees an amended petition on behalf of the ground lessees on or before the 10th day of May 1989, otherwise, the petition shall stand dismissed with prejudice.

4. The parties shall appear before the Court on the 15th day of May, 1989 at 9:30 a.m. for a status hearing of the case.

J U D G E
Signed In Chambers

Copies mailed this 1st day of ~~April~~ May, 1989, to each of the following:

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