

*Approved
12-28-88*

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

PROBATE DIVISION

FILED

JUN 20 1988

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

EDWARD T. MORGAN, et al. *
Petitioners *
*
v. *
DISTRICT OF COLUMBIA, *
Respondent *

Tax Docket No. 4018-88

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO DISMISS

This matter came before the Court upon respondent's Motion to Dismiss for lack of jurisdiction over the subject matter, petitioners' response thereto, respondent's reply, and supplemental memorandum in support of the motion. Upon consideration of same, the points and authorities in support of the parties' positions, and the record herein, the Court concludes that the motion must be granted.

This matter was previously before the Court on a Motion to Dismiss upon the same grounds. At that time, the Court denied the motion without prejudice to consideration of the issue upon a properly supported motion for summary judgment. The original motion proceeded on the ground that petitioners had failed to meet the jurisdictional prerequisite to appealing the tax assessment in this case (i.e., full payment of the tax due). See George Hyman v. District of Columbia, 315 A.2d 175, 178 (D.C. 1974). Payment or non-payment of the tax was a factual issue not apparent without

some proof by way of affidavit or other supporting documentation. Since the motion to dismiss turned upon questions of fact, the safeguards of the summary judgment procedure was deemed appropriate. Gordon v. National Youth Work Alliance, 218 U.S.App.D.C. 337, 341 (1982). Any factual dispute relating to the jurisdictional question may also be considered by way of a preliminary hearing. Super. Ct. Civ. R. 12 (d). The present motion is supported by an affidavit and responses to admissions and opposed by an affidavit and supporting exhibit. Thus, it appears that the factual questions raised by the motion can be resolved on the present motion, treated as one for summary judgment.

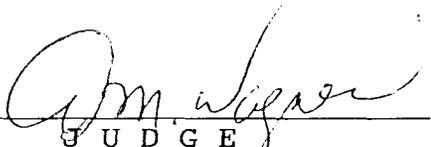
In responses to admissions, petitioners concede that they failed to pay in full taxes for the tax year before filing this appeal. The Court lacks jurisdiction to hear an appeal on a real property tax assessment when the tax payer fails to pay all taxes due prior to the filing of the appeal. George Hyman v. District of Columbia, 315 A.2d 175, 178 (D.C. 1974). Petitioner's opposition is based on the assertion that this case had been settled as a part of the settlement of two other tax cases, Tax Docket 3861-86 and Tax Docket 3860-86. The settlement of those cases, according to petitioners, required reduction of the assessment on the improvement to the property the subject of Tax Docket 3861-86, which was to be effective for tax years 1987 and 1988. The present case involves tax year 1988. In return, the challenge to the assessment to the land was to be dismissed by the petitioners. According to

petitioners, the District's attorney required the filing of the present case before a stipulation of settlement could be entered for tax year 1988.

There is some dispute as to the terms of settlement between the parties. That matter cannot be determined in this case. In this case, the Court lacks jurisdiction by reason of petitioner's failure to meet the jurisdictional prerequisite. Petitioners' remedy, if any, is by way of a motion or complaint to enforce settlement agreement in connection with Tax Docket Nos. 3860-86 and 3861-86, since petitioners claim that the full terms of the settlement reached were not complied with.

It is therefore by the Court this 27th day of June, 1990,

ORDERED that respondent's Motion to Dismiss be and hereby is granted without prejudice to any claim of petitioners to seek to enforce the settlement agreement allegedly made in Tax Dockets 3861-86 and 3860-86.



J U D G E
Signed In Chambers

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