

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED

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CLERK
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

JEMAL JEFFERSON LIMITED
PARTNERSHIP,

Petitioner

v.

Tax Docket No. 6339-94

DISTRICT OF COLUMBIA,

Respondent

KINGDON GOULD, III, General Partner,

Petitioner

v.

Tax Docket No. 6338-94

DISTRICT OF COLUMBIA,

Respondent.

MEMORANDUM ORDER

The above-captioned cases are separate matters but are before this Court for determination of an identical issue: whether either the Rules of the Tax Division or the District of Columbia Code, or both, require a petitioner in a commercial assessment appeal to file a separate petition for each individual property whose assessment is challenged. This may be a case of first impression as to this procedural issue.

I. BACKGROUND

The District of Columbia filed identical Motions to Dismiss in

both of the instant cases. The sole basis upon which the Government seeks dismissal is its claim that petitioners "seek to appeal multiple tax properties in the same petition." Respondent's Motion to Dismiss at page one.¹

In both of the instant cases, the single petition in each court file jacket embraces more than one appeal from more than one decision by the Board of Equalization and Review. Those separate appeals appear to have been the result of complaints that were all filed on the same dates. Moreover, the various separate Board decisions were issued on the same dates in each case. Nonetheless, it is clear that each assessment corresponds to its own, individual Board complaint and decision.

The crux of the petitioners' response to the Motions to Dismiss is that neither the Rules nor the Code prohibit the filing of the instant petitions in their present format. Petitioners argue that neither the Rules nor the Code specifically requires the filing of a separate petition to coincide with each separate

¹In Tax Docket No. 6339-94, Petitioner appeals the assessments for a property known as 1212 18th Street, N.W. (Lot 55 of Square 139) and a property known as 1212 and 1214 18th Street (Lot 56 of Square 139).

In Tax Docket No. 6338-94, Petitioner appeals the assessments for a group of properties all of which are located in Square 452. They are known as 602 Massachusetts Avenue, N.W. (Lot 12), 600 Massachusetts Avenue, N.W. (Lot 13), 6180 Massachusetts Avenue, N.W. (Lot 835), _____ Massachusetts Avenue, N.W. (Lots 813, 814), 625 Eye Street, N.W. (Lot 822), 631 Eye Street, N.W. (Lot 824), 6180 Massachusetts Avenue, N.W. (Lot 825), 616 Massachusetts Avenue, N.W. (Lot 826), 608 Massachusetts Avenue, N.W. (Lot 830), _____ Massachusetts Avenue, N.W. (Lot 831), and _____ Massachusetts Avenue, N.W. (Lot 833). For the addresses described in blank, no street numbers are indicated in the Petition.

assessment that is in dispute.

This Court ordered the Government to file a memorandum of points and authorities regarding the legislative history, if any, as it may relate to the present issue. Petitioners were given a similar opportunity to supplement their pleadings. No legislative history could be found and no further pleadings were filed.

In opposing what the petitioners have filed, the Government's practical instinct has merit; but the drastic remedy of outright dismissal is not supportable.²

II. ANALYSIS OF THE ISSUE

Based upon the entire record herein, this Court concludes as a matter of law that the instant cases do not present a problem of lack of jurisdiction, as such. The Government has not alleged that the petitioners have failed to meet any of the usual threshold requirements for filing an appeal to the Superior Court.³ Dismissal would mean that the taxpayers would have no day in court whatsoever. This result would be unfair. Rather, these petitions present a problem of re-aligning the appeals, procedurally, for proper adjudication.

²The Government appears to sense that the aggregation of different properties in the same petition is problematic; but the Government has not actually articulated what those problems are.

³Failure to pay all of the disputed tax prior to the filing of a Superior Court petition is a jurisdictional defect that requires dismissal. See Wagshal v. District of Columbia, 430 A.2d 524, 525 (D.C. 1981), citing George Hyman Construction Co. v. District of Columbia, 315 A.2d 175 (D.C. 1974). Likewise, the failure to observe the requisite time deadline for filing in the Superior Court is a jurisdictional defect that also will result in dismissal. See National Graduate University v. District of Columbia, 346 A.2d 740 (D.C. 1975).

Appeals to the Superior Court from real property assessments are governed by 47 D.C. § 3305 and other portions of the Code that are incorporated therein by reference. Section 3305 merely states that appeals may be brought by any person who is "aggrieved by any assessment or valuation. . . ." 47 D.C. § 3305(a). Assessment is mentioned only in the singular. This is significant, even though the Code does not expressly address the issue of whether more than one property can be subject to a single court petition. The solution of the problem at hand lies in a practical interpretation of the applicable court rule.

Rule 6 of the Superior Court Tax Rules governs the content of the petition itself, as well as service of process and docketing. Specifically where assessment appeals are concerned, the Rule clearly states that the petitioner shall append to the petition "a copy of **the complaint**, if any, made to the Board of Equalization and review and a copy, if any, of **the action of such board** with respect to the complaint." Rule 6(b)(7)(C).

It is significant that the rule speaks of a "complaint" and "action of such board" in the singular. Thus, the Court interprets the Rule to limit the content of a court petition to the content of **one corresponding BER complaint**.

This Court concludes as a matter of law that unless the various different properties were properly aggregated into one complaint before the BER as permitted by the internal rules of the Board, they cannot be aggregated thereafter in a single court petition. However, if complaints involving multiple properties

were allowed to proceed in one unitary Board complaint, then the Court will not disallow the filing of a unitary petition. Certainly, the Court retains the discretion to order the bifurcation of any factual issue or legal issue for trial purposes or for purposes of any dispositive motions.

To some extent, all of the parties herein have focused upon the question of whether it is proper to file a petition that concerns more than one assessment. The more precise issue is not the number of assessments that are the subject of the petition, but the number of Board actions that are the subject of the petition.

In considering the historical context of the issue presented, this Court takes judicial notice of previous Superior Court cases in which petitioners in commercial property tax assessment cases have indeed filed single petitions that concern more than one property. In those cases, no motions to dismiss were filed by the Government. In all of those prior cases, however, the petitions were based upon a **single** Board decision that itself did encompass rulings on more than one property.⁴

Examples of these cases are: (1) Steuart Investment Co., et al. v. District of Columbia, Tax Docket No. 5606-93;⁵ (2) Bell Atlantic-Washington, D.C. Inc. v. District of Columbia, Tax Docket No. 5622-93;⁶ (3) Washington Post Co. v. District of Columbia, Tax

⁴All of the cases were settled.

⁵The properties in question were parking lots.

⁶The properties involved were parking lots.

Docket No. 5650-93;⁷ (4) Washington Post Co. v. District of Columbia, Tax Docket No. 5648-93.⁸ These cases were filed in compliance with Rule 6.

Entirely aside from the logical interpretation of Rule 6, there is an obvious conceptual reason why a petition in an assessment case cannot pertain to more than one Board appeal. A petition that embraces appeals regarding multiple Board decisions presents a serious barrier to the correct operation of the appellate process.

If multiple trials are mandated as to different properties, such trials would occur seriatim. The taxpayer may or may not win each of the trials. If the Government prevails in the first of several trials, there would only be one deadline for the petitioner to file a notice of appeal. The taking of an appeal would divest the Superior Court of all jurisdiction over the entire action -- including the matters remaining to be tried. It is not possible for an action (i.e. a case with one court file number) to proceed in the Superior Court and the Court of Appeals at the same time.

Pieces of one court action cannot float between two different courts at the same time. For this reason alone, it is not proper to allow cases to proceed by a petition that relates to more than one Board appeal.⁹

⁷These properties were mostly warehouses and parking lots.

⁸The lots involved downtown land and buildings.

⁹One might speculate that this problem can be solved by the entry of an order certifying one adjudicated aspect of a case as an interlocutory appeal under Rule 59 of the Superior Court Civil

For purposes of saving money, taxpayers might well aggregate the appeals from multiple Board appeals simply to avoid paying several filing fees. This would insure a chaotic bifurcation problem in untold numbers of cases. This should not be permitted and the applicable portion of Rule 6 operates to avoid this problem.¹⁰

Where the present cases are concerned, they must be separated into individual petitions with separate court file numbers -- unless the cases are completely settled.

Aside from requiring the payment of additional filing fees, this will present no prejudice to the petitioners because the Court will deem each such petition to have been filed as of the original filing dates of the present petitions. Credit will be given for one filing fee that has already been paid by each petitioner. Furthermore, the Court recognizes that mediation dates already have been scheduled in these cases. They will remain as scheduled because these dates are so close in time to the entry of this

Rules. However, this would certainly not be a routine procedure because such certifications would be unjustified where the matter to be appealed is nothing more unique than the usual trial de novo regarding whether the original assessment was flawed. Moreover, if parts of a case are bifurcated for trial purposes, the trial court can scarcely certify to the Court of Appeals that one particular part of the case is outcome-determinative of the others. Yet, this would be the only logical reason for permitting an interlocutory appeal.

¹⁰The taxpayers in the instant cases may have had a particular strategy in mind in attempting to aggregate the appeals regarding several properties. While such reasons may have been logical, this Court has determined that it is not appropriate to decide the motions at hand based upon the motivations of particular taxpayers. The interpretation of court rules must be done in a fashion that applies equally to all taxpayers.

order, so that if a settlement of an **entire** case can be reached, no additional filings will be necessary.¹¹

WHEREFORE, it is by the Court this 19th day of July, 1995

ORDERED that the Government's Motion to Dismiss in each of the instant cases is denied; and it is

FURTHER ORDERED that petitioner in Tax Docket No. 6339-94 shall, no later than September 5, 1995, file a separate petition for one of the two properties originally included in the present petition, with all of the required attachments, and shall tender to the Tax Division a separate filing fee for the new case. Thereupon, the Tax Division shall open a new case jacket for the newly separated appeal; and it is

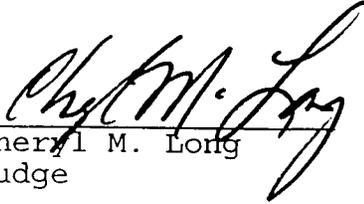
FURTHER ORDERED that petition in Tax Docket No. 6338-94 shall, no later than September 5, 1995 file separate petitions, with all required attachments, for all but one of each individual property enumerated in that petition and shall tender separate filing fees for all such properties, except one. The Tax Division shall thereupon open new case jackets for the separated appeals; and it is

FURTHER ORDERED that if a global settlement has been reached as to **all** issues in **either** of the presently filed petitions, no

¹¹The allowance of time to complete mediation should not be taken generally to mean that any other single petitions based upon multiple Board actions will be allowed to go forward into mediation before being separated. As a discretionary matter, this Court has only fashioned a remedy for the problem, based upon the circumstances that the Court finds at the time that the motion is being adjudicated. In the future, any cases that do not comply with this Court's ruling will be subject to separation at a much earlier stage of litigation.

additional filings will be required by the Court and settlement stipulations may be filed in the present court file jacket for that particular case; and it is

FURTHER ORDERED that if **partial** settlements are negotiated as to different properties in the same present court file **prior to the deadline stated above**, the petitioners nonetheless will be required to file separate actions with fees by that deadline, so as to separate the adjudication of the various properties and the corresponding judgments that will be entered.


Cheryl M. Long
Judge

Copies mailed to:

A. Scott Bolden, Esq.
Michele L. Harrington, Esq.
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Joseph F. Ferguson, Jr., Esq.
Assistant Corporation Counsel
441 4th Street, N.W.
Room 6N78
Washington, D.C. 20001

Hon. Wendell P. Gardner, Jr.
Presiding Judge, Tax Division

Ms. Claudette Flukus
Tax Officer