SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

OMNI SHOREHAM CORP.,

v. Tax Docket No. 7851-99

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

This case is a tax assessment appeal in which the District has raised questions about the concurrent jurisdiction of the Board of Real Property Assessments and Appeals and that of the Superior Court of the District of Columbia. This is an issue of first impression. Essentially, the taxpayer filed the instant Superior Court Appeal only to preserve its rights while awaiting a decision from the Board. Having prevailed before the Board, the taxpayer now desires to rely on its victory, believing that it is unnecessary to continue any further in the Superior Court.

The District urges the Court to rule as a matter of law that the mere filing of a Superior Court Appeal automatically divested the Board of any jurisdiction to make any further decisions in this matter. If the District prevails on this point, the District may seek an increase in the assessment in defending a trial *de novo*.[1] It is not clear, however, how the District might accomplish this implied goal, since it cannot force the taxpayer to present evidence in a case-in-chief to which a defense would be addressed. These are the practicalities that are involved.

This Court directed all counsel to file legal memoranda on the subject of the Board's power vis-à-vis a court appeal. Having reviewed all of the relevant points and authorities, this Court finds as a matter of law that the Board did not lose jurisdiction to rule upon the administrative appeal when the Superior Court petition was filed. The deadline for filing a court appeal is statutory and cannot be extended. Yet, the District of Columbia Code is totally silent on the question of whether the filing of a court appeal legally precludes all decisional activity before the Board. This is, at worst, an anomaly that can only be changed by legislative action if the District is dissatisfied with the structure of the appeal process. The taxpayer may rely

[1] *See District of Columbia v. New York Life Insurance Co.*, 650 A.2d 671, 673 (D.C. 1994).

on the Board's final ruling, and there is no reason why the taxpayer should be forced to continue with a *de novo* appeal in the Superior Court.

RELEVANT PROCEDURAL HISTORY

There are certain historical facts that are not in dispute. The subject property herein is land and improvements located at 2500 Calvert Street, N.W. in the District of Columbia. The property is denominated as Lot 812 in Square 2138. Petitioner is a Delaware Corporation with principal offices in Texas. This particular property is popularly known as the Omni Shoreham Hotel.

The assessment in dispute is a supplemental real property tax assessment that was conducted by the District between July 1, 1998 and December 31, 1998. This is a Supplemental Assessment for the Second Half of Tax Year 1999. The amount of taxes in controversy is $226, 791.50. The Supplemental Assessment was made in connection with the completion of a renovation.

The taxpayer filed a timely appeal before the Board of Real Property Assessments and Appeals. The Board conducted a hearing on December 16, 1999. While waiting for the Board's decision, the taxpayer was

confronted with a dilemma. That is, the statutory deadline for filing an appeal in the Superior Court was October 15, 1999. To avoid losing its appeal rights, the taxpayer had no choice but to file a Petition in the Superior Court on October 15, 1999.

The Board did not issue a ruling to the taxpayer until February 4, 2000.

Essentially, the Board agreed with the taxpayer that the assessor had overvalued the property. The original Supplemental Assessment was $56,522.00.00. The Board granted relief to the taxpayer in the form of an order reducing the Second Half 1999 Assessment to $32,004,000.00. This was exactly the assessment that Omni had demanded in its Board appeal.

The District of Columbia did not want to accept the Board's decision, and filed a Motion for Reconsideration. The Board ruled on the Motion in a decision that was issued on March 8, 2000. The Board denied the District's Motion for Reconsideration.

The taxpayer actually does not want to proceed any further with the instant court appeal. The taxpayer, instead, only seeks a ruling that the Board's decision is final and that there is no basis for the continuation of

litigation if the taxpayer is no longer pursuing the instant appeal in the Superior Court.

The taxpayer only desires to keep what it won before the board. The District has no right to appeal a Board decision. The District takes the position that the Board had lost all authority to issue any decision, once the Superior Court appeal had been filed.

The Court required all counsel to brief the question of whether the Board had jurisdiction to make its ruling in favor of the taxpayer.

THE DISTRICT'S ARGUMENTS

Basically, the District urges this Court to draw a simple analogy to the relationship between the Superior Court and the District of Columbia Court of Appeals. The principle argued by the District is that once a party takes an appeal from a Superior Court judgment, the Superior Court automatically loses any power to decide any other issues in the case. The only case law cited by the District is *Abrams v. Abrams*, 245 A.2d 843 (D.C. 1968). The decision in *Abrams* concerned a motion for new trial that was filed after the entry of a final judgment and the filing of a notice of appeal.

In *Abrams*, the appellate court emphasized that "once an appeal is perfected, the trial court is without power to order a new trial." *Id.* At 844.

Ironically, the District also cites an appellate opinion that recognizes that the trial court is not always divested of its authority during the pendency of an appeal. In *Carter v. The Cathedral Ave. Coop., Inc.*, 532 A.2d 681 (D.C. 1987), the Court of Appeals determined that the Superior Court had not lost jurisdiction where a notice of appeal had been filed while the trial court was still considering a motion to alter or amend the judge's findings. *Id.* at 685.[2]

ARGUMENTS OF THE TAXPAYER

The taxpayer emphasizes that the Board is not required by any statute or regulation to render a decision on any timetable. Thus, the existing law of tax appeals leaves only one genuine option for a taxpayer such as the Omni Shoreham, *i.e.* file the Superior Court appeal according to the statutory deadline, even if the Board has not yet decided the administrative appeal.

[2] Also, where a judgment itself is not affected, the trial court always has jurisdiction to rule upon contempt proceedings in order to protect the integrity of the final judgment. Clearly, then, the general rule on loss of power during appeal is one that has a number of practical exceptions.

At all times relevant herein, the Code contained no language that remotely appears to impact the Board's authority to decide an appeal that is still pending when the next step is required. In fact, when the instant case was still before the Board, the District agreed with the taxpayer that the Board had jurisdiction. At this juncture, the District does not attempt to reconcile why it is now making a different argument or why its initial position was in error.

DISPOSITION OF THE ISSUE

Matters concerning the jurisdiction of the Superior Court should be decided with precision. The District has not presented any firm authority to support the notion that the mere existence of a Superior Court appeal means that the Board was powerless to complete its substantive deliberative process.

The District has taken totally conflicting positions in this case. Before the Board, the District filed its own Petition for Reconsideration. The District availed itself of the Board's power, at a time when the District clearly knew that the Superior Court appeal had been filed. Beyond the date of October 15, 1999, the District had no compunction about seeking and

accepting a favorable ruling from the Board. It did not withdraw from the Board litigation after October 15, 1999.

Conceptually, the District does not appreciate or recognize that the Superior Court's role is not that of a classic appellate court in relation to the Board. Unlike the District of Columbia Court of Appeals, the Superior Court does not sit in judgment of the Board substantive rulings as if the Board is a lower court. This, in fact, is the very reason why it is not actually necessary to have a completed and final Board decision in order to properly and timely file a Superior Court appeal. Referring to the Tax Division of the Superior Court, the Court of Appeals has reiterated, "The court's task is not to conduct a review of agency action." *District of Columbia v. New York Life Ins. Co.*, *supra*, at 672.

The statutory deadline for filing a Superior Court tax appeal is not in any way contingent upon the issuance of a final Board decision. If the legislature had desired to include the completion of the Board's decisional process as a discrete prerequisite for filing an appeal, it could have included such a requirement in the Code. It is simply not there and has never been there. This is not surprising, since such a requirement would be totally at odds with the whole concept of a trial *de novo*.

Once a taxpayer files a Superior Court appeal, the Superior Court scarcely needs to know anything about what supported the Board's decision. The focus of a *de novo* trial is upon the assessment, not the Board. This is not a situation in which the Superior Court's role is to affirm the Board if the Board's decision is supported by "substantial evidence" or any other minimum quality of evidence.

The existing law of tax appeals is instructive, as it recognizes that the Board's work might not be complete when the time comes for the taxpayer to take the next step. The District of Columbia Court of Appeals long ago observed that the recovery of a refund through the court system requires (among other things not here relevant)

> a complaint to the Board of Equalization and Review. Subject matter jurisdiction of the Superior Court does not attach until that prerequisite has been satisfied, and a refund based on a final determination of the Superior Court presupposes that the taxpayer has complied with the procedure mandated by the legislature. If 'aggrieved' for any reason, the taxpayer must appeal within the permitted time to the Board of Equalization and Review.

District of Columbia v. Keys, 362 A.2d 729, 732-33 (D.C. 1976)(footnotes omitted) [emphasis added]. The requirement is only a "complaint," not the issuance of a final Board decision. Thus, the law has always recognized

that the function of the Board might not be completed at the time that a court appeal is initiated.

Upon reflection, the Code's former requirement for concluding Board appeals in concert with presenting the assessment roll to the legislature was not actually linked to the filing deadline for court appeals. If anything, it is only happenstance that the deadline date for presentation of the assessment roll fell on a date that precedes the court filing deadline. Regardless of the former requirement for presenting Board decisions by June 30th each year, there had never been any resultant penalty that would apply to a taxpayer -- for the Board's own failure to comply.[3] There is no linkage whatsoever.

The statutory requirement for filing a Board complaint is found in D.C. Code §47-3305(a) and (b), wherein the taxpayer is directed to "first make a complaint" to the Board. Although the decision in *Keys* was "based on the statutory predecessor to the current property tax assessment scheme, [its] reasoning applies with equal force to [contemporary tax appeals]." *Customers Parking, Inc., v. District of Columbia*, 562 A.2d 651, 654 (D.C. 1989). Though the sections of Title 47 may be re-codified or realigned from era to era, the fundamental exhaustion requirement of filing a Board

[3] The failure to comply might have resulted in an institutional squabble between the Executive Branch and the Legislative Branch, but not between the District and a particular taxpayer.

complaint has always been in place. It has never been enlarged to anything more.

Significantly, the existence of concurrent jurisdiction is consistent with the purpose of the Board appeal process itself. The Court of Appeals has recognized, "The BER [Board of Equalization and Review] exists to give the taxpayer an informal and speedy opportunity to be heard before an assessment becomes final . . . . A taxpayer who is dissatisfied with the Board's informal resolution is entitled, as a matter of right, to a *new* valuation, which is to be made through a formal, adversarial, and judicial process before the Superior Court." *District of Columbia v. New York Life Ins. Co., supra*, at 672 [emphasis in original]. This quoted language is highly important. If the known purpose of the Board process is to give speedy relief it, does not make sense to force the taxpayer to choose (1) to abandon the pending Board process for a more expensive court appeal or (2) to await a Board decision that might never come. The law does not require the taxpayer to make this Hobson's Choice. In other words, if the taxpayer achieves relief from the Board, there should never be any reason to force the taxpayer to maintain a needless appeal. This would be a waste of judicial

resources. It also would be a disservice to the Board, when its members have invested time hearing evidence.

The District's apparent motive for arguing that the Board lost jurisdiction on September 15, 1999 seems to be to seek a higher assessment as part of trial *de novo*. The problem, of course, is that the point at which the District may offer such proof only comes after the trial itself has begun.

The opportunity to prove the basis for a higher assessment is a development that only presupposes that a trial has commenced. To be clear, the District does have the right to seek an increase in the assessment as part of the trial *de novo*. *See* D.C. Code §47-3303. However, this right is born of the trial process itself. It does not arise until after the petitioner has presented its case in chief, establishing that the original assessment was flawed or incorrect. In other words, the district's right to seek a higher assessment is merely secondary to its right to mount a defense to the taxpayer's evidence. No *de novo* proceeding can properly proceed based upon mere arguments of counsel or any other material that is not admissible evidence. For these reasons, the District will not have any opportunity to seek a higher assessment unless it has a way of forcing the taxpayer to commence a trial. There is no such process.

In conclusion, there is no doubt that the Board had the authority to rule on the pending administrative appeal, even where the decision was not issued until after the Superior Court appeal had been initiated. The filing of the appeal herein did not divest the Board of any authority to complete its decisional process.

The net effect of what has occurred in this case is that the District of Columbia should have complied with the Board's ruling, once it became clear that the taxpayer desired to rely upon it and not go any further with the Superior Court appeal.

This case is *sui generis*. There is no longer a demand for a trial *de novo*. Yet, there does not seem to be a basis or purpose for remanding the case to the Board. The Board has done all that it can do. The issue, then, is how to fashion a remedy for a problem that is, in a sense, neither fish nor fowl, *i.e.* where neither a trial nor a remand can resolve the taxpayer's entitlement to due process. The taxpayer must be granted some relief, regardless of the formal label on the litigation.

The taxpayer has stated in its most recent filing that it seeks now an order of this Court to "affirm the Board's jurisdiction and decision and

retain jurisdiction over the petition solely to enforce the Board's decision, which is binding on the District."[4]

The Court of Appeals has made it clear that trial courts should not be diverted by quibbling over how to characterize a lawsuit in order to give the protagonist that to which such party is entitled. The Court of Appeals has observed that "[t]he nature of a motion is determined by the relief sought, not by the label or caption." *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 804 (D.C. 1984). The superficial label or characterization of a request for relief is not determinative. *Farmer v. Farmer*, 526 A.2d 1365, 1369 (D.C. 1987). It is the substance of the pleaded claim that is controlling. *See, e.g., Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 160 (D.C. 2000)(courts look beyond pleading "to get at the substance of the claim").

Herein, the substance of the request for relief is that the taxpayer seeks an order of the Court that would "affirm" the Board's decision to lower the assessment for this particular period of taxation. The Code gives the Court broad authority to "affirm, cancel, reduce, or increase the assessment." D.C. Code §47-3303 (1997 Repl.).

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[4] Petitioner's Response to the Court's Order Dated August 16, 2000 at 7.

Here, the taxpayer seeks one of those forms of relief, but not as the result of a trial *de novo*. Rather, the taxpayer asks for this relief in the same manner that a litigant would seek "declaratory" relief and an order to implement it. Reduced to its essence, the kind of relief requested is another form of ordering a refund, albeit by operation of law and not because of a *de novo* factual finding.

The Court will grant the type of relief that is necessary in order to make the taxpayer whole, *i.e.* to give the taxpayer a refund to which it is already entitled. In fact, the District has never argued that the Board could not have effectuated this refund if the taxpayer had only taken the great risk of foregoing the filing in the Superior Court. The taxpayer should not be punished for merely protecting its rights. This would make no sense.

The Court pauses to note that the District is not actually being harmed by the fact that an appeal was filed under circumstances that should not have made this necessary. After all, the Board's decision came so late only because the Board itself misplaced the taxpayer's appeal documentation – and the taxpayer had to start the process with a reconstructed filing. The District had not resisted this process and should not be heard to complain

about it at this late stage. In fact, the taxpayer had no choice but to insure that its appeal documentation was firmly on file with the Board.

This untidy episode of the loss of the Board complaint is something that was never clarified until after the deadline had passed for the filing of the Superior Court appeal. It would be peevish and unfair to allow the Board's internal negligence to make it impossible for the taxpayer to obtain due process.

The applicable administrative law in the District of Columbia suggests that reconsideration does not affect the finality of an administrative decision. *See Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment*, 391 A.2d 269, 274 (D.C. 1978). Therefore, it is not necessary to affirm the Board's ruling on reconsideration.

WHEREFORE, it is by the Court this 27th day of March, 2001

ORDERED, ADJUDGED AND DECREED that the decision of the Board of Real Property Assessments and Appeals issued on February 3, 2000 is hereby affirmed; and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that for the property denominated as Lot 812 in Square 2138, the correct and legal

Supplemental Assessment for the Second Half of Tax Year 1999 is **$32,004,000.00**; and it is

FURTHER ORDERED that the District of Columbia Office of Tax and Revenue shall correct its assessment card in compliance with the reduced assessment set forth herein and shall issue a refund to the taxpayer; and it is

FURTHER ORDERED that within 30 days hereof, the Petitioner shall file a Motion for Entry of Judgment, along with a proposed order, reflecting the exact dollar amount of the refund that is due.

Cheryl M. Long
Judge

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