

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

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SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
TAX DIVISION

14th STREET WASHINGTON, D.C.  
DEVELOPMENT ASSOCIATES,

Petitioner

V.

Tax Docket No. 6764-96

DISTRICT OF COLUMBIA,

Respondent.

MEMORANDUM OPINION AND ORDER

In this tax assessment appeal, this case came before this Court for oral argument concerning the District's Motion to Dismiss and Petitioner's Cross-Motion for Summary Judgment. Both pleadings are opposed. The Superior Court appeal was commenced on July 19, 1996, when a Petition was filed in this Court.

The property that is the subject of this appeal embraces land and improvements denominated as Lot 858, Square 250, located at 815 14th Street, N.W. in the District of Columbia. The tax year for which the appeal was filed is Tax Year 1996.

The gist of the Motion to Dismiss is the contention that all taxes that were due had not been paid in full prior to the appeal filing date of July 19, 1996, as the prerequisite for invoking the subject matter jurisdiction of the Superior Court.

The District of Columbia contends that the Superior Court lacks subject matter jurisdiction over this appeal specifically because the Petitioner had not fully paid **all taxes due** for the entire affected tax year -- prior to the filing of the original petition in Superior Court.

Petitioner subsequently filed an Amended Petition, to account for the fact that taxes have now been paid for the second half of the tax year that is the subject of this appeal. This additional payment was made on September 3, 1996. Petitioner avers that taxes for the second half of the year were not yet due at the point at which the deadline for filing this appeal would have expired.

Where the Cross-Motion for Summary Judgment is concerned, the taxpayer raises two contentions. First, the taxpayer argues that the District has never actually served upon it a correct Notice of the tax assessment for Tax Year 1996, because of the obviously wrong dates on two Notices that were mailed to the taxpayer. The movant argues that it is entitled to "summary judgment" (presumably including a refund and voiding of the assessment) solely because of the non-receipt of a facially correct Notice. Second, the taxpayer asserts that its Amended Petition and payment of the second installment of the 1996 taxes serves to cure any jurisdictional defect because of the failure to pay all taxes prior to the filing of the original Petition.

Based upon the uncontested facts of record and based upon applicable law, this Court concludes as a matter of law that the

instant Motion to Dismiss must be granted and that the Cross-Motion for Summary Judgment must be denied because this Court has no jurisdiction to reach the merits of the defective notice contention.

I. UNCONTESTED FACTS OF RECORD

The disputed assessment had its origins in the new subdivision of the subject property. The subdivision had been requested by this taxpayer. It was not done by the volition of the District of Columbia Government. Thus, some changes in the annual assessment could be expected.

The District of Columbia Department of Finance and Revenue mailed to the Petitioner a "Notice of Real Property Assessment" that was dated January 22, 1996. It covered the Tax Year that commenced October 1, 1995 and ended September 30, 1996. On its face, this document recognized that the property had been subdivided. The Notice reflected the new lot number of 858, the new assessed value of \$14,026,053 and the explanation "New Lot-Combination/Split." This characterization was indicated on the Notice in a data field entitled, "Reason for Change."

The sole piece of information on the Notice that was erroneous was the date of the tax year for which the Notice was issued. The Notice indicated "1994" instead of the correct tax year, "1996."

Another seemingly incorrect Notice was issued to the Petitioner, dated February 28, 1996. This time, the Notice indicated that the Tax Year for which the Petitioner was being assessed was Tax Year 1997.

In a letter dated March 11, 1996, the Petitioner sought clarification, in light of receiving two different incorrect Notices.<sup>1</sup>

The Government responded in a letter dated April 24, 1996, signed by David B. Jackson, then Acting Associate Director of the Department of Finance and Revenue. Mr. Jackson, wrote, in pertinent part:

The proposed real property assessment for the subject property is correct. The land area was increased due to a requested subdivision, which resulted in a new lot and an increased land value. **The subdivision became effective after the mailing of the Notice of Proposed Real Property Assessment for Tax Year 1997 and the real property tax bill.** Consequently, the proposed notice of assessment did not reflect the additional land value, [sic] however, a Redistribution Notice (which reflects adjustments made through application to the D.C. Surveyor's Office) was printed and mailed to the proper recipient. [emphasis supplied]

A copy of this letter is reproduced in the record as an attachment to the Motion to Dismiss.<sup>2</sup>

On September 30, 1996, the taxpayer filed the Amended Petition herein. In that pleading, the Petitioner averred that taxes due for the first half of Tax Year 1996 were paid on March 6, 1996 (though not due until March 31, 1996), but that the taxes due for the second half of Tax Year 1996 were paid on September 3, 1996.

Payment of tax for the second half of Tax Year 1996 was not

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<sup>1</sup>Apparently the taxpayer's letter went beyond seeking clarification of the dates, but also contained a complaint about the amount of the assessment itself.

<sup>2</sup>Copies of the two Notices are also attachments to that pleading.

due until September 15, 1996.

## II. ISSUES PRESENTED

Myriad arguments have been articulated by both parties, spanning issues of the validity of service of the Notices, the effective date of the subdivision, the allegedly tardiness of tax payments as precursors to the filing of the two Petitions, and other matters.

The Court endeavors to simplify and compartmentalize the issues, so that legal concepts are not confused. The Court discerns that the following issues are raised by the instant Motion and the various responsive pleadings:

1. Whether the original Petition was filed without timely payment of all taxes for Tax Year 1996; and
2. Whether the jurisdictional problem, if any, can be cured by the filing of the Amended Petition and payment of additional tax prior thereto; and
3. Whether the taxpayer is entitled to a refund of taxes and voiding of the assessment because of the two facially incorrect Notices that were issued.

## III. APPLICABLE LAW ON JURISDICTION

The law is clear that a taxpayer must file a Superior Court Petition within six months of receiving the tax assessment from which the taxpayer is aggrieved. The Notice of assessment must, of course, be accurate and not itself legally defective.

A pre-condition to invoking the jurisdiction of the Superior Court is the payment of all taxes due prior to the filing of the

Superior Court petition. 47 D.C. § 3303; George Hyman Constr. Co. v. District of Columbia, 315 A.2d 175, 176 (D.C. 1974), citing Berenter v. District of Columbia, 151 U.S.App.D.C. 196, 203, 466 F.2d 367, 374 (1972). Payment of taxes includes payment of any interest that has accrued. See First Interstate Credit Alliance, Inc. v. District of Columbia, 604 A.2d 10, 11 (D.C. 1992).

Even small deviations from the six month filing deadline are not tolerated so as to stretch the jurisdictional deadline. See Wagshal v. District of Columbia, 430 A.2d 524, 525 (D.C. 1981).

It is incumbent upon the Government to issue correct Notices of tax assessments. See 1776 K Street Associates v. District of Columbia, 446 A.2d 1114, 1116 (D.C. 1982).

Here, the parties do not seem to disagree about what is required by the applicable case law. Rather, their points of disagreement are focused only upon the questions of precisely when the right to appeal actually accrued, when the deadline for filing an appeal had expired, and whether the Amended Petition effectively cures and moots all other contested issues.

#### IV. RESOLUTION OF THE MOTION TO DISMISS

The Superior Court has no subject matter jurisdiction over this tax appeal, either as to the original Petition or the Amended Petition, insofar as it purports merely "to relate back" to or resuscitate a defective Petition. This is not a close case.

In its pleading opposing the Motion to Dismiss, the Petitioner obliquely argues that the original Petition was merely an appeal of the tax bill that applied to the first half of Tax Year 1996 and

that the Amended Petition embraced the entire Tax Year's assessment. In this way, the Petitioner subtly seeks to transform this case into two different appeals that are embraced in the same court action. This is a theory by which the Petitioner desires to evade the fact that all taxes had not been paid prior to the filing of the original Petition. This approach has been legally foreclosed in a controlling appellate opinion from the District of Columbia Court of Appeals.

The holding and discussion in George Hyman Constr. Co. v. District of Columbia, supra, totally precludes the notion of filing two severable appeals from real property assessments, based upon the theory that the option of making two partial payments creates two assessments that can be individually attacked in the courts.

In George Hyman, the relevant facts were that

the taxpayer had only paid the first half of the annual assessment of its real estate taxes for the pertinent taxable year (1972) before filing its petition in Superior Court, even though it did pay the unpaid balance in full before the second half became delinquent.

315 A.2d at 176.

The Petitioner in George Hyman "paid the first installment of taxes for 1972 before the filing of its petition and argues that since it recognized the validity of the assessment for the second half of 1972, as per § 47-711, it was not challenging that part of the tax and therefore was not bound to pay the installment for the second half before the filing of its petition, which was prior to the due date of the second installment." Id. at 177.

The Court of Appeals, citing the Code provision for payment of

"the tax," declared, "We read this language as requiring the payment of the tax before the filing of the appeal." Id. Moreover, the Court found, "Since taxes in the District of Columbia are assessable annually, although payable in two installments and as § 47-710 of the Code does not provide for an assessment on improvements for the second half only, petitioner's attack here on the first installment of the assessment . . . necessarily involves an attack on the entire assessment." Id. at 178.

In other words, the mere fact that taxpayers may satisfy their tax obligation in installments is not a legal basis for only partially prepaying the entire annual tax prior to launching a Superior Court appeal. For this reason alone, the original Petition was legally insufficient, and the Superior Court lacks subject matter jurisdiction over that original Petition.

Where the Amended Petition is concerned, its recitation of the completion of payments does not carry the day or save the taxpayer from dismissal of this case.

This Court cannot accept the "relating back" argument that is premised on Rule 15 of the Superior Court Civil Rules. That Rule allows the trial court to permit "[a] party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense." Rule 15 of the Superior Court Rules of Civil Procedure.

The taxpayer's resort to Rule 15 has no merit, for several



reasons.

First, no party can unilaterally eliminate or waive jurisdictional defects in its own case where the lack of jurisdiction is premised upon a statutory requirement. The lone action of merely filing an additional pleading to recite a second, partial payment of the taxes due cannot serve to evade the Code or the holding in George Hyman.

Second, by its own terms, Rule 15 is a vehicle by which a plaintiff or petitioner may enlarge upon the factual articulation of its claim, such as adding parties or substantive issues.<sup>3</sup> This has no connection to the evasion of the basic prerequisites of filing a complaint or petition itself.

Third, to the extent that the Amended Petition herein "relates back" to the original Petition, it merely highlights the fact that the entire 1996 taxes were not paid in full when this Superior Court appeal was commenced.

If anything, the Amended Petition ironically proves the Government's point about the lack of jurisdiction. The Government correctly emphasizes that "the payment of the final, required tax amount would still be treated as occurring after the petition was filed."<sup>4</sup>

#### V. RESOLUTION OF THE CROSS-MOTION FOR SUMMARY JUDGMENT

Having concluded that the Superior Court lacks subject matter

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<sup>3</sup>See Hartford Accident & Indem. Co. v. District of Columbia, 441 A.2d 969, 972 (D.C. 1982).

<sup>4</sup>Respondent's Motion to Dismiss, at page 3.

jurisdiction over this tax appeal, it would be improper for this Court to attempt to adjudicate any other issues that go to the merits of the relief that is demanded.

To be sure, the issue concerning the character and correctness of the two notices is not entirely frivolous. Moreover, there is another issue that lurks in this case, i.e. whether the letter of Mr. Jackson was sufficient to lull the taxpayer into assuming that yet a third Notice was forthcoming. Such possible third Notice ostensibly would have been the "Redistribution Notice" to which he alluded in his letter. The taxpayer argues that this particular kind of Notice requires a form of service other than ordinary mailing.

Entitlement to summary judgment on the merits of a tax appeal because of such an alleged failure to proper form of Notice and service of the Notice is an issue of first impression in this Court.<sup>5</sup> Nonetheless, this matter cannot be adjudicated until a taxpayer properly brings an appeal to place this unique issue before the Court without the threshold jurisdictional bar to neutralize the debate.

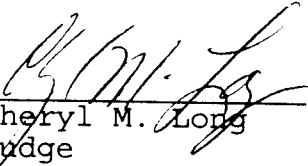
WHEREFORE, it is by the Court this 23<sup>rd</sup> day of October, 1997

ORDERED that the District of Columbia's Motion to Dismiss is hereby granted as to both the original Petition and the Amended Petition; and it is

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<sup>5</sup>The relief that is sought in summary fashion is rather dramatic, i.e. a tax refund or reduction, as opposed to a temporary remand to the agency for issuance of yet another corrected Notice so that the validity of the assessment can still be litigated after a stay.

FURTHER ORDERED that the Petitioner's Cross-Motion for Summary Judgment is hereby denied. This action is dismissed.

  
Cheryl M. Long  
Judge

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