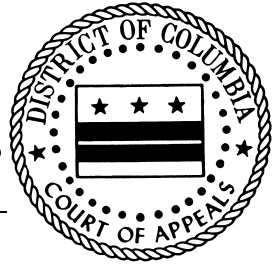


IN THE DISTRICT OF COLUMBIA COURT OF APPEALS



NO. 22-CV-299

Clerk of the Court
Received 11/14/2022 11:46 PM

ROMEO MORGAN

Appellant

v.

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, *et al.*

Appellees

ON APPEAL FROM THE D.C. SUPERIOR COURT
(Judge Hiram E. Puig-Lugo) CASE NO. 2021 CAB 3660

BRIEF OF APPELLANT

BY
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**CERTIFICATE AS TO PARTIES
RULINGS AND RELATED CASES**

Pursuant to DC Ct App Rule 28, Counsel for the Appellant, Kellee Baker, hereby certifies to the following:

A. PARTIES, COUNSEL AND AMICI

The names of the parties in this appeal, who either appeared or were named in the D.C. Superior Court as parties, were:

1. Appellant: Romeo Morgan
2. Appellant’s Counsel: Kellee Baker of KB Law Firm
3. Appellee 1: D.C. Department of Consumer and Regulatory Affairs
4. Appellee 2: D.C. Office of Tax and Revenue
5. Appellee’s Counsel: Caroline VanZile of the Office of the Attorney General for the District of Columbia
6. There are no Amici.

B. RULINGS UNDER REVIEW

The rulings at issue in this Court are as follows:

1. February 8, 2022 Order Granting Appellee’s Motion to Dismiss in the Superior Court by Associate Judge Hiram E. Puig-Lugo.
2. March 22, 2022 Order Denying Appellant’s Motion for Reconsideration (to Alter or Amend Judgment) in the Superior Court by Associate Judge Hiram E. Puig-Lugo.

C. RELATED CASES

2022 CA 1928 L (RP)—There is now a pending tax sale foreclosure on Appellant’s property based on the tax sale certificate referenced in the Amended Complaint.



Kellee Baker
Counsel for Appellant

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2. Whether construing the complaint in the light most favorable to Plaintiff, it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim that would show that he endured exceptional and extraordinary circumstances related to the taxation of his property during the State of Emergency to invoke the equitable jurisdiction of the court.

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ON APPEAL FROM THE D.C. SUPERIOR COURT
(Judge Hiram E. Puig-Lugo) CASE NO. 2021 CAB 3660

BRIEF OF APPELLANT

STATEMENT OF APPELLATE JURISDICTION

On February 8, 2022, Associate Judge Hiram E. Puig-Lugo for the District of Columbia Superior Court signed an order granting Appellee’s Motion to Dismiss and on March 22, 2022, an order denying Appellant’s Motion for Reconsideration (to Alter or Amend Judgment), constituting a final order closing the case.

Appellate jurisdiction of this Court is granted under D.C. Code §11-721(a)(1) which states that “The District of Columbia Court of Appeals has jurisdiction of appeals from —all final orders and judgments of the Superior Court of the District of Columbia.”

STATEMENT OF STANDARD OF REVIEW

The Superior Court denied Appellant’s Motion for Reconsideration based solely on legal conclusions, as there was no hearing or findings of fact. Therefore, this court should review the trial court’s legal conclusions *de novo*.

The standard of review for dismissal of an action is “beyond doubt.” In *Oparaugo v. Watts*, the Court proclaimed that it “adhere[s] to the standard of whether, construing the complaint in the light most favorable to the plaintiff, ‘it appears beyond doubt that [plaintiff] can prove no set of facts in support of his claim which would entitle him to relief.’” 884 A.2d 63 (D.C. 2005) (emphasis added), (quoting *Crowley v. North Am. Telecomms. Ass'n*, 691 A.2d 1169, 1172-73 n. 2 (D.C.1997), quoting *McBryde v. Amoco Oil Co.*, 404 A.2d 200, 202 (D.C.1979)).

STATEMENT OF ISSUES

1. Whether the vacant tax assessment Appellant's property should be deemed void *ab initio*, therefore invoking Appellant's right to equitable relief without requiring statutory remedies.
2. Whether construing the complaint in the light most favorable to Plaintiff, it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim that would show that he endured exceptional and extraordinary circumstances related to the taxation of his property during the State of Emergency to invoke the equitable jurisdiction of the court.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Appellant, Romeo Morgan, is the fifth-generation owner of 3200 Georgia Avenue, NW, Washington, DC 20010 ("Property"). Since the 1920s, the Property housed the family-owned restaurant, Morgan's Seafood. For two years prior to the District of Columbia's State of Emergency, the Property was undergoing renovations, limiting the restaurant's service to catering.

The District of Columbia's Coronavirus/COVID-19 State of Emergency ("Pandemic" or "Shut-Down") was declared on March 11, 2020. The District of Columbia enacted a law that declared that properties housed by commercial

businesses that were closed from March 11, 2020 to November 5, 2021 were exempt from vacant classification, however, on or about April 12, 2020, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) classified Appellant's Property as vacant causing the real property tax liability to triple. When Appellant wished to pay his property taxes, the tax office was closed due to the Shut Down. Appellant did not know that his property was not exempt from the vacant classification and believed his taxes would remain the same.

It was not until October 2021 that Appellant found out that his property was set to be auctioned at the tax sale on October 13, 2021. When Appellant went to the recently opened District of Columbia Office of Tax and Revenue ("Tax Office") on October 12, 2021 to pay the Property's tax bill, it was approximately \$100,000 instead of the normal \$50,000. Appellant paid \$50,000 to the Tax Office, and the Property moved forward to be auctioned at the tax sale the next day.

On October 12, 2021, Appellant went to the Superior Court and filed a complaint for an injunction of the tax sale, *pro se*. An amended complaint was filed with legal counsel on December 6, 2021. Defendants / Appellee's filed a motion to dismiss because Appellant failed to exhaust his administrative remedies to challenge the tax liability. The Appellant opposed. The court granted the dismissal. Appellant requested the court's reconsideration and the court upheld its dismissal. Appellant filed a timely Notice of Appeal.

ARGUMENT

DCRA's declaration of the Property's vacant classification is void *ab initio*;
Appellant endured exceptional and extraordinary circumstances due to the Shut
Down (the Shut Down itself was an exception and extraordinary circumstance)

During the Shut Down, the District of Columbia enacted D.C. Code §42-3131.06 (b) (10) which states that “A vacant building shall not be included on the [Vacant Property] list ...if it is [a] commercial property that houses a business that closed between March 11, 2020 and November 5, 2021.” The Property housed Morgan's Seafood that closed in March 2020. DCRA declaring the Property vacant on or about April 12, 2020 is in direct conflict with the law and should be deemed void *ab initio*.

In *District of Columbia v. Green*, it was determined to be improper for the District to charge different tax rates for properties in the same tax classification, 310 A.2d 848, 852 (D.C. 1973). In *Green*, the District challenged the jurisdiction of the trial court to determine the claims of the six appellees who failed to exhaust their administrative remedies per D.C. Code. The District also challenged a class of appellees whose opportunity to challenge was not yet ripe because when October 1 of that year came, that class could use the administrative process to challenge their tax rate. The *Green* court determined: “[W]here complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and

extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence, a suit may be maintained to enjoin the collector. . .” *Id.* at 852. quoting *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 509, 52 S.Ct. 260, 263, 76 L.Ed. 422 (1932).

In the light most favorable to the Plaintiff/ Appellant, Morgan’s Seafood was a business that shut down after March 11, 2020 and the Shut Down was a special and extraordinary event that caused him to not know about and therefore challenge his new tax liability during the Pandemic. Businesses already had to deal with the lack of income during the Pandemic and to deem a property vacant triple one’s property taxes is an undue burden that does not fit withing the intent of the law. Further, for 100 years, the Morgan family has been able to maintain the property taxes on the Property, evidenced by Appellant being able to pay the normal \$50,000 amount prior to the tax sale. But the extraordinary event which was the Pandemic caused a lack of access and communication for a man who is not computer literate.

The Appellee’s presented facts in its Motion to Dismiss that there were hundreds of thousands of phone calls fielded and tens of thousands of written responses answered during the Tax Office’s closure. These facts are not validated and accepting them are not in a light most favorable to Plaintiff / Appellant. The court should have determined specifically Mr. Morgan’s circumstances as presented and allowed him to testify to his experiences during the Shut Down. If he visited

the Tax Office in person for over 40 years, should he have even known that writing a letter was effective? Did he call the tax office and receive no answer or did he speak to someone that had no knowledge of his new tax classification? There are so many facts that have yet to be determined prior to dismissal of the case, and in the light most favorable to Plaintiff / Appellant, the case should have moved forward in equity or to at least make a finding of fact to determine if equity is proper.

CONCLUSION

It would be false to classify the Pandemic as anything but extraordinary in our lifetime. Now more than ever does the court need to offer more equity and less strict statutory adherence to those affected by the Pandemic. Property owners should not lose their 100-year inheritances to property taxes without an equitable eye. Most importantly, if citizens are faced with strict adherence to statutory law, the District should be strictly bound as well.

The court should determine that DCRA's vacant classification of the Appellant's Property after March 11, 2020 was improper violative of the Mayor's directive. If it is improper, Appellant should be able to invoke the equitable jurisdiction of the court and challenge his exuberant tax bill without having to exhaust administrative remedies. The Court should also find that the Shut Down was also extraordinary and that being able to exhaust administrative remedies could

have been burdensome or at least confusing to some and that the rights in property outweigh following an administrative process during a government Shut Down.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kellee Baker".

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Appellant's Brief and Appendix was filed electronically to the District of Columbia Court of Appeals and Appellees on November 14, 2022, and hard copies served via first class mail, postage prepaid prior to the Court and to:

Caroline S. Van Zile
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Kellee Baker