

NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE



R.J. Hughes Justice Complex
P.O. Box 975
25 Market Street
Trenton, New Jersey 08625
Telephone (609) 943-4761
TeleFax: (609) 984-0805
taxcourttrenton2@judiciary.state.nj.us

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BY ELECTRONIC MAIL

David P. Lonski, Esq.
Shamy, Shipers & Lonski, P.C.
251 Livingston Avenue
New Brunswick, New Jersey 08901

Salvatore Alfieri, Esq.
Cleary, Giacobbe, Alfieri, Jacobs, L.L.C.
5 Ravine Drive
P.O. Box 533
Matawan, New Jersey 07747

Re: Brunswick Hills Racquet Club v. Township of East Brunswick
Block 174, Lot 6.05
Docket Nos. 013941-2011; 004272-2012; 001497-2013

Dear Counsel:

This letter constitutes the court's decision in connection with the defendant's motion seeking summary judgment to dismiss plaintiff's complaints for tax years 2011, 2012 and 2013 on grounds that this court lacks subject matter jurisdiction.

FACTS

Plaintiff, Brunswick Hills Racquet Club ("Brunswick Hills"), is a tenant of property within a shopping mall commonly known as Route 18 Shopping Center, located at 1020 State

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Highway Route 18 in defendant Township of East Brunswick (“Township”), and designated as Block 174, Lot 6.05 (“Subject”). The Subject is owned by Route 18 Shopping Center Associates.

For each of the tax years 2011 to 2013, the Subject’s owner appealed the local property tax assessments imposed on the Subject by the Township.¹ For these same tax years, Brunswick Hills also filed appeals against the assessment but only as to Lot 6.05.²

On or about May 14, 2013, the Township served Interrogatories on Brunswick Hills for tax year 2013. In response, and by letter of May 31, 2013, counsel for Brunswick Hills stated that its client did not possess the requested information, and in any event did not “dispute the total assessed value of the property.” Rather, Brunswick Hill’s “dispute relate[d] solely to the internal allocation of the value of [its] building in relation to the remainder of the shopping center.”³

Thereafter, on June 6, 2013, the Township moved for summary judgment seeking dismissal of the 2011-2013 complaints on grounds that this court lacks subject-matter jurisdiction. Brunswick Hills did not oppose the motion. The Subject’s owner also did not file any response, opposition or otherwise, to the Township’s motion.

ANALYSIS

Pursuant to R. 4:6-7, “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the matter.” See also Caine v. Anchor Petroleum Co., 65 N.J. Super. 271, 274 (App. Div. 1961) (“[a] court should

¹Docket Nos. 005073-2011, 002820-2012, 005962-2013; Block 174, Lot 6.05 and Block 174.07, Lot 6.10.

²Docket Nos. 013941-2011, 004272-2012, 001497-2013.

³The term “dispute” presumably means the basis for the appeals filed by Brunswick Hills.

dismiss for lack of jurisdiction whenever, at any stage of the proceedings, it is satisfied from the facts then of record that jurisdiction is absent.”).

The Tax Court is a court of limited jurisdiction. McMahon v. City of Newark, 195 N.J. 526, 546 (App. Div. 2008). It has jurisdiction to review actions or regulations with respect to a tax matter of the following: 1) any state agency or official; 2) a county board of taxation; and 3) a county or municipal official. In addition, the court has jurisdiction over “actions cognizable in the Superior Court which raise issues as to which expertise in matters involving taxation is desirable. . . .” N.J.S.A. 2B:13-2(c). The court may also exercise “any powers that may be necessary to effectuate its decisions, judgments and orders,” which includes both “legal and equitable relief so that all matters in controversy between the parties may be completely determined.” N.J.S.A. 2B:13-2(d); N.J.S.A. 2B:13-3(a).

Under N.J.S.A. 54:3-21, a “taxpayer feeling aggrieved by the assessed valuation of the taxpayer’s property . . . may . . . file a complaint” either to the Tax Court or the County Board of Taxation. For purposes of this statute, “[t]enants responsible for the payment of real property taxes have long been recognized as having standing” to file and prosecute appeals against local property assessments imposed upon property in which the tenant/s is/are located. See Target Corp. v. Township of Toms River, 27 N.J. Tax 19, 24 (Tax 2012).

Here, Brunswick Hills is undisputedly the tenant in the Subject. However, it is not an “aggrieved taxpayer” for purposes of N.J.S.A. 54:3-21 because it has conceded that it “does not dispute the total assessed value of the property.” Thus, unlike in Target, supra, the tenant here has no interest in the substantive prosecution and resolution of its tax appeals in terms of the imposed assessments for the tax years at issue. Rather, it’s only concern is the allocation of the value to the building it occupies as tenant, which value is being left for resolution by and

between the Subject's owner and the Township. As such, Brunswick Hills' invocation of this court's jurisdiction via filing the property tax appeals is questionable.

Although this court has subject matter jurisdiction over a tenant's timely filed property tax appeals, here, since Brunswick Hills' complaints in substance seek relief as to an internal (contractual) issue of allocation between itself and the Subject's owner, its complaints can be dismissed for failure to state a claim as to which relief can be afforded by this court. See R. 4:6-2(e). Where the court considers matters outside the pleadings, such as here, the May 31, 2013 letter from counsel to Brunswick Hills, then, the matter can be "treated as one for summary judgment and disposed of as provided by R. 4:46." J.L. v. J.F., 317 N.J. Super. 418, 437 (App. Div. 1999).

CONCLUSION

For the aforementioned reasons, the Township's motion to dismiss the complaints of Brunswick Hills for tax years 2011 to 2013 is granted.

An Order reflecting the denial will be simultaneously entered by this court.

Very truly yours

A handwritten signature in blue ink that reads "Mala Sundar". The signature is written in a cursive style with a horizontal line underneath the name.

Mala Sundar, J.T.C.