

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY



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JUDGE

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BY ELECTRONIC MAIL

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Re: Township of Cranbury v. Princeton Ballet Society
Block 23, Lot 59
Docket No. 012522-2013

Dear Counsel:

This letter constitutes the court's decision in connection with the motion of defendant ("PBS") to dismiss the above captioned complaint filed by plaintiff ("Township") as being untimely. Township argues that the time to file its appeal began from the date the amended judgment of the Middlesex County Board of Taxation ("County Board") was mailed. PBS argues that the time should be counted from the date the original judgment was mailed because the amended judgment did not materially or substantively change the original judgment.

*

It is undisputed that both judgments dismissed the Township’s petition without prejudice due to prior year appeal pending in this court. Both also included an assessment in the “Judgment” column. Only the amended judgment indicated that the property was tax-exempt. The court finds that this information was required to form the basis of an appeal to the Tax Court, therefore, the time limit to appeal began from the date of the amended judgment.

FACTS AND PROCEDURAL HISTORY

PBS is the owner of property located at 29 North Main Street, in the Township. It is designated as Block 23, Lot 59 (“Subject”) on the Township’s tax map.

On or about March 8, 2013, the Township filed a timely petition with the County Board claiming that the Subject was not entitled to a tax exemption. The petition indicated the Subject’s assessment in the left-hand column titled “Current Assessment” was “exempt” and “To be advised at a later date” in the right-hand column titled “Requested Assessment.”

On June 4, 2013, the County Board issued a judgment. The two columns on the judgment, one on the left titled “Original Assessment,” and the one of the right titled “Judgment” included the assessment on the Subject as follows:

Land:	\$242,200
Improvements:	<u>\$244,500</u>
TOTAL	\$486,700

The line in either column indicating “Abatement” was left blank, thus, the “total” amount on each column indicated \$486,700.

The judgment Code indicated “6A” which meant that the petition was dismissed without prejudice due to prior year’s appeals pending before the Tax Court.¹ The line titled “Judgment

¹ The Township filed a Complaint in the Tax Court for tax year 2012 (docket no. 010651-2012), which is currently pending.

memorandum” was left blank. The judgment was mailed June 12, 2013 (hereinafter “June Judgment”).

Immediately thereafter, Township’s counsel, who had prepared a complaint to be filed to the Tax Court against the County Board’s judgment, requested the secretary to the County Board to issue an amended judgment. Township’s counsel certified that this request was prompted because the June Judgment on its face, indicated that an assessment was imposed upon the Subject, and affirmed by the County Board. However, since this was the relief being sought by the Township (i.e., imposition of an assessment), the County Board had to correct its judgment to indicate that the Subject was tax-exempt not taxable. Township’s counsel certified he therefore asked that the June Judgment be corrected to reflect that the assessment reflected on the judgment was on the Township’s tax exempt list.

After another reminder by Township’s counsel in this regard in August of 2013, the County Board issued an Amended judgment indicating a mailing date of August 14, 2013 (hereinafter “Amended Judgment”).² The Amended Judgment reflected the same assessment amount on both columns as did the June Judgment. It also contained the same Judgment Code “6A.” However, on the Judgment Memorandum line, it added the following: “Assessment Numbers Noted Are On The Exempt List.”

Promptly thereafter, on or about August 16, 2013, the Township filed a complaint with the Tax Court appealing the Amended Judgment.

PBS then filed this motion to dismiss the Township’s complaint as untimely. It also requested an injunction be issued against the Township because the latter had indicated that if the

² It is undisputed that the County Board had jurisdiction to enter the Amended Judgment because the Director, Division of Taxation provided the County Board an extension until the end of August 2013 to issue judgments.

Township's complaint was dismissed then based on the face of the County Board judgment which indicated an assessment on the Subject, a tax bill could be issued seeking payment of taxes from PBS.

FINDINGS

A "complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment." N.J.S.A. 54:51A-9. See also R. 8:4-1(a)(2). R. 1:3-3 adds three days to the 45-day time when service of the judgment is by mail.

It is well-settled that a complaint challenging an assessor's "quantum [of assessments] or methodology applied," unless timely appealed, is time-barred and "the Tax Court . . . lack[s] jurisdiction to hear the cause." McMahon v. City of Newark, 195 N.J. 526, 543-44 (2008). "[B]oth appealing taxpayers and taxing districts must adhere strictly to the deadlines prescribed by statute" since a "[f]ailure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 425 (1985).

Here, the issue is whether the time to appeal began from the mailing date of the June Judgment or the Amended Judgment. If counted from the June Judgment, the limitations period ended July 30, 2013, and the Township's complaint is late by 16 days. If counted from the Amended Judgment's service date, the appeal period ended October 1, 2013, making the Township's complaint timely.

In City of Newark v. Fischer, 3 N.J. 488 (1950), the taxpayer petitioned the county board for a cancellation of an assessment of \$77,200 imposed upon certain property, but incorrectly listed that assessment as \$79,200. Id. at 490. The county board issued a judgment "granting a remittance of \$79,200." Ibid. Subsequently, the county board, sua sponte, issued a "corrected"

judgment, “the context of which was exactly the same as the original” judgment, except that the amount remitted was corrected to \$77,200. Ibid. The City thereafter filed an appeal. Ibid.

The Appellate Division ruled that the county board did not have jurisdiction to cancel or reduce an assessment beyond the original assessment, thus, the first judgment was a “nullity.” Id. at 491. Therefore, the time to appeal ran from the date of corrected judgment. Ibid.

The Supreme Court reversed. Ibid. It recited the “general rule” that the time limits for a judgment which “is amended in a material and substantial respect” is from the date of the amendment. Id. at 492. However, if the amendment related “solely to the correction of a clerical or formal error,” then the date of the original judgment controls. Id. at 492-93.

The Court found that the “correction [was] for the purpose of having the figures in the judgment comply with the actual assessment” thus, was a “clerical error.” Id. at 492. The correction “did not materially change the judgment [nor] . . . involve any exercise of discretion” Ibid. It did not change the “rights or status of the parties.” Ibid. Nor did it change the “substance” of the original judgment. Ibid. This is because the county board petition “sought a cancellation of the entire assessment” on grounds the property was tax exempt, the original assessment “in substance and effect cancelled the whole assessment,” and the corrected judgment did the same. Ibid. The recitation of the assessment numbers in this regard was entirely “immaterial.” Ibid.

The Court noted that since the City’s complaint from the county board judgment was that the assessment should have been affirmed not cancelled, and since the “original judgment cancelled the assessment as effectively as did the amended judgment,” the City could have “obtained the desired relief” by appealing the original judgment. Id. at 493. It noted that “if a party [could] obtain the desired relief from a judgment before it is amended” then a timely appeal

from the judgment should be made. Ibid. (citation and quotation omitted). However, if “the amendment materially and in a substantial respect affects the judgment and the rights of the [losing] party” then the appeal runs from the amendment. Ibid.

PBS argues the case is virtually indistinguishable to the facts here. The June Judgment denied the relief sought by the Township, namely, cancellation of the Subject’s tax exemption status, by dismissing the Township’s petition. The Amended Judgment did the same. In both judgments the Judgment Code 6A was used indicating that the Township’s petition to the County Board was dismissed without prejudice. Thus, there was nothing which prevented the Township from appealing the June Judgment.

The Township argues that the June Judgment may have used the Code 6A to indicate a dismissal without prejudice, nonetheless, the amount reflected in the Judgment column clearly conflicted with the relief sought by the Township. The Township sought an imposition of the assessment and cancellation of the tax exemption. The “Judgment” column afforded that very relief by including the assessment amount but not indicating anywhere that the Subject was tax-exempt.³ Thus, the Township could not file an appeal from a judgment which appeared to grant it the relief it sought. Therefore, the amendment indicating the Subject as still being tax-exempt was a material and substantial change.

The matter thus hinges on the importance attached by the parties’ to the Judgment Code 6A. PBS claims the Code is the substance and the nature of the judgment entered by the County Board, here, dismissal of the Township’s petition, therefore, the Code controls. The Township contends that the information in the Judgment column controls, the Code simply being the reason

³ The Judgment Code indicating whether an exemption or abatement was granted, denied, or amount of exemption/abatement was changed is 13 (a), (b) or (c). None of these codes were used.

for the judgment. The Township's counsel notes that the uniform understanding and practice in the local property tax area and amongst practitioners is that the Judgment column incorporates the County Board's determination, and an appeal from a county board's decision or determination is an appeal from what is reflected in that column.

Under the facts of this case, the court agrees with the Township that without the information that the Subject is tax-exempt, the June Judgment reflects the imposition of an original assessment of \$486,700 and a County Board judgment for the same amount. The Code 6A only indicates that the merits of the petition was not decided,⁴ however, it does not lead to an undisputed conclusion that the County Board rejected the Township's claim that the Subject's tax exemption should be denied or revoked. There is nothing on the face of the judgment to indicate that the prior year's appeal was from a denial or grant of a tax exemption, or from the imposition or otherwise of an assessment. Each tax year's assessment being an independent appealable cause of action, this court can only review the county board judgment for that particular tax year in deciding whether an appeal therefrom was timely.

PBS argues that both parties were aware that it was the Township that was the petitioner, thus a dismissal (Code 6A) means that only the Township should file an appeal. However, the County Board's June Judgment appears to have already granted the "desired relief" to the Township, namely, imposition of an assessment, making an appeal from such grant questionable. See Fischer, *supra*, 3 N.J. at 493. Thus, the Amended Judgment sought to be consistent with the denial of the relief sought by the Township, namely, imposition of an assessment. Since the

⁴ The "effect" of a dismissal without prejudice, sometimes referred to as 'affirmed without prejudice,' because of a prior year's appeal pending in Tax Court, is that " the matter proceeds to the tax court without the presumption of correctness, which usually attaches to judgments of the county board because a prior year's appeal is pending in the Tax Court " Division of Taxation, Handbook for County Boards of Taxation, §1105.15 (July 2005).

denial of the desired result was accomplished in the Amended Judgment, the time limit began to run from that date.

CONCLUSION

For the foregoing reasons, PBS' motion to dismiss the Township's complaint as untimely is denied. As a result, its request for injunctive relief is moot.

Very truly yours,



Mala Sundar, J.T.C.