NOT FOR PUBLICATION WITHOUT APPROVAL OF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

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

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December 23, 2013

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Re: Pathmark, Inc. TT&A of Owner and OTR Associates v. Township of Edison
Block 643.DD, Lot 36
Docket No. 004940-2010

Dear Counsel:

This letter constitutes the court's decision in connection with the motion of OTR Associates, the property owner ("Owner") of the above referenced property ("Subject") to intervene in the above captioned matter for tax year 2010. Owner contends that its application is

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solely so that it can obtain the same assessment for the Subject for tax year 2011 under the Freeze Act. Plaintiff, tenant in the Subject ("Tenant"), does not oppose the motion. Defendant ("Township") opposes the motion. It contends that since the Bankruptcy Court for the Southern District of New York entered an Order in October of 2013 which set the assessment for tax year 2010, this court has no jurisdiction to enter another judgment setting the valuation of the Subject for that year and because of the inability to enter a Tax Court judgment, the Freeze Act cannot apply. The Township also maintains that intervention should not be allowed due to laches since Owner was on notice of Tenant's 2010 tax appeal; was aware of Tenant's bankruptcy proceedings; and participated/approved the settlement negotiations in connection with the contested assessment.

For the reasons more fully stated below the court finds that (i) the Bankruptcy Court's Order precludes this court from entering a judgment setting forth the valuation of the Subject for tax year 2010; (ii) relief under the Freeze Act by freezing the 2010 valuation for tax year 2011 is nonetheless available to Owner; however, (iii) because the Bankruptcy Court has retained subject matter jurisdiction to decide any and all "matters arising from or related to the implementation" of its October 2013 Order setting the valuation of the Subject for 2010, this court will await the federal court's decision whether it or the Tax Court should grant relief under the Freeze Act.

FACTS AND PROCEDURAL HISTORY

A. Tax Court Filings

For tax years 2009 through 2012, Tenant filed complaints in the Tax Court challenging the local property tax assessments of $19,164,900 imposed by the Township upon the Subject, which is a multi-tenanted retail strip center, with Tenant occupying about 39% of the same. The complaints were captioned "PATHMARK, INC., Tenant, Taxpayer and Agent of Owner, and

OTR ASSOCIATES." For tax year 2012, Tenant's complaint was captioned "A&P Real Property L.L.C., Tenant, Taxpayer and Agent of Owner."

Owner agrees that it was copied on the complaints filed by Tenant. Owner also agrees that Tenant is responsible for its pro-rata share of the Subject's local property tax. It further agrees that the lease agreement between the Owner and Tenant permitted Tenant to contest the local property assessments in the absence of a filing by Owner. The Lease agreement required Owner to provide Tenant "with all pertinent data" in connection with the prosecution of the tax appeals. Owner concedes that it co-operated with the prosecution of Tenant's 2009 to 2012 appeals "to the extent practicable."

According to Owner, Tenant vacated the Subject in July of 2009 but continued to pay real estate taxes until August 2010. After this time, Tenant stopped paying taxes.

Tenant's 2009 complaint was dismissed pursuant to Chapter 91 (N.J.S.A. 54:4-34). Tenant withdrew its 2011 and 2012 complaints on August 2, 2011 and July 2, 2012 respectively.

Owner did not file property tax appeals for 2009 through 2011. It filed such appeals for tax years 2012 and 2013. Both are open and pending before this court.

B. Bankruptcy Proceedings

On December 12, 2010, Tenant filed a petition for Chapter 11 bankruptcy reorganization in the Bankruptcy Court for the Southern District of New York.[1] According to the bankruptcy motion papers, all the debtors were continuing to operate its business as a debtor-in-possession.

On November 23, 2011, debtors (including Tenant) filed a motion under 11 U.S.C. §505(a) ("Section 505 Motion" or "§505 Motion") asking the Bankruptcy Court to determine the

[1] Tenant was one of the 54 debtors, each of which filed for protection under Chapter 11. The lead debtor, whose name appeared in the caption, was The Great Atlantic & Pacific Tea Company, Inc. ("A&P"). The bankruptcy case number was 10-24549, and all the debtors' cases were jointly administered.

validity of their respective local property tax assessments. The motion asserted that the Bankruptcy Court had jurisdiction over the matter, which was a "core proceeding" under the bankruptcy statutes. The debtors claimed that they were not seeking tax refunds through the motion, but only the true value of the properties they were operating upon.

The §505 motion alleged that the debtors had "thoroughly reviewed and analyzed" their "local property tax liabilities in light of recent, independent appraisals of property values" which was performed by Assessment Technologies, Ltd., a property tax consultant retained by the debtors. The motion alleged that the consultant had "reviewed New Jersey state law tax valuation standards," and had obtained an independent appraisal analysis from Integra Realty Resources which had been performed in accordance with the Uniform Standards of Professional Appraisal Practice.

The debtors asserted that they "followed state law requirements and continue to follow the Assessment Appeal process" however, they sought the Bankruptcy Court's "determination" since the "alternative" was a "continuation of the costly and lengthy Assessment Appeals process at the local level." An attached exhibit to the motion listed the asserted true values of the properties at issue, and the motion requested the Bankruptcy Court to enter an Order reflecting the same. The Exhibit listed four properties located in Edison. The "true value" of the Subject for tax year 2010 was listed as "$32,797,800" which after application of the average ratio provided an "assessed value" of "$14,919,719."

The motion also noted that although the debtors filed the motion for the "expeditious and economical resolution of" the bankruptcy cases, they were nonetheless "amendable to consensually resolving the [assessments] out of court." To that extent, the motion also requested

that the Bankruptcy Court enter an Order staying all the "previously commenced" local appeals pending disposition of the §505 Motion.[2]

A month later, by Order dated December 23, 2011, the Bankruptcy Court entered an Order "Authorizing and Approving" the relief requested in the §505 Motion. The Order provided that the "True Values for the purposes of Taxation" as listed on the attached exhibit were "approved and incorporated . . . in their entirety for the reasons" stated in the §505 Motion, and per "any agreements reached by Debtors with an applicable taxing authority or assessor" during pendency of the motion. The Order stated that the "True Value" in the attached exhibit was "the correct taxable values" for the respective properties, one of which was the Subject, "pursuant to N.J.S.A. § 54:1-35.3." The Order noted that the debtors were authorized to take any action needed to effectuate the Order; that the Order was effective upon its entry; and that the Bankruptcy Court retained jurisdiction as "to all matters arising from or related to the implementation of" the Order.

Two weeks later, by letter of January 11, 2012, the property tax consultant wrote to the Township seeking a refund of $188,528.48 for tax year 2010 pursuant to the true value of the Subject determined by the Bankruptcy Court's Order of December 23, 2011. The refund was requested to be made payable to A&P, and forwarded to the consultant.

Sometime later, Township, through its bankruptcy counsel, filed a motion to vacate the above Order. Subsequently, on January 3, 2013, a letter was submitted to the Bankruptcy Court by the City of Hoboken, referencing various rulings made by the Bankruptcy Court concerning the motions to vacate by, among others, the Township, and providing a proposed Joint Order.

[2] The Tax Court was not provided with a Stay Order from the Bankruptcy Court in this regard. However, other than listing the matters on the trial calendar for a status, all proceedings were stayed.

That Joint Order provided that the Township's Motion to Vacate would be granted, any objections to the §505 Motion was to be filed on or before February 1, 2013, after which the Bankruptcy Court would hear the objections on March 8, 2013.[3]

On February 1, 2013, Township filed a motion asking that the Bankruptcy Court abstain from exercising its jurisdiction to decide Tenant's §505 motion. The assessor's certification in support thereof stated, among others, that Tenant's appeals for 2009 to 2011 had been tentatively settled in November of 2010 between Township and Tenant's counsel (which was representing Tenant in the local property tax proceeding in State court); and that the Township "object[ed] to the question of tax assessments being resolved in," and to "the entry of any final judgments by" the Bankruptcy Court.

The parties then engaged in settlement negotiations (see below). On October 29, 2013, the Bankruptcy Court entered an "Agreed Order" resolving the §505 Motion with respect to the Township. The Exhibit attached to the Order indicated the true value of the Subject was agreed as $15,785,000 for tax year 2010. The other language mirrored the December 23, 2011 Order, namely, that the debtors were authorized to take any action needed to effectuate the Order; the Order was effective upon its entry; and the Bankruptcy Court retained jurisdiction as "to all matters arising from or related to the implementation of" the Order.

C. Owner's Motion to Intervene in Tax Court

On or about March 6, 2013, and while the §505 motion and the Township's abstention motion in this regard were pending in Bankruptcy Court, Owner filed a motion in Tax Court to intervene in Tenant's 2010 tax appeal which was still open in the Tax Court. Owner claimed that

[3] On August 20, 2012, the Township of Fairview filed a separate motion to vacate but incorporated by reference, the Township's motion in this regard. These documents, which were all filed with the Bankruptcy Court, thus, subject to judicial notice, are available at www.kcclic.net/APTea.com, a website maintained by Kurtzman Carson Consultants, LLC, at the direction of the debtors' bankruptcy counsel, Kirkland & Ellis, LLP.

while it was previously satisfied that its interests were protected via Tenant's appeals in the Tax Court, Tenant's bankruptcy and vacation of the premises had caused the Subject to suffer ongoing vacancy issues, and potential foreclosure, which was averted in February of 2011 by Owner's refinancing. Owner maintained that its intervention was a "formality" because the Bankruptcy Court would be likely deciding the merits of Tenant's 2010 appeal.

Township opposed the motion in May of 2013. It argued intervention should not be allowed because (i) tax years 2011 and 2012 were already subject to Tax Court judgments of dismissals which were final; (ii) the 2010 tax year was under the Bankruptcy Court's jurisdiction; and (iii) the Owner slept on its rights to intervene because it was on full notice of the Tenant's tax appeals in this court and the bankruptcy proceedings.

Due to ongoing settlement, parties requested the intervention motion be kept on hold. An e-mail of May 29, 2013 between Tenant's counsel (in the Tax Court proceedings) and the Township's assessor provided certain settlement numbers for the Subject for 2010 (reducing the assessment from $19,164,900 to $15,785,000). The e-mail indicated the same reduction for 2011 noting it was "(freeze)."

Owner thereafter asked this court to rule on its intervention motion but only as to tax year 2010 and solely "to protect its interest as to" the 2011 assessment "via the Freeze Act." It argued that it did not intend disturbing the value set in the October 2013 Bankruptcy Court Order, and once permitted to intervene, would simply make an application for relief under the Freeze Act based upon a judgment issued by this court which judgment would reflect the Bankruptcy Court's determination of value. Owner also stated that it did not seek to disturb the 2011 judgment of dismissal obtained by Tenant. It further noted that because it had filed its own appeal for 2012, its request to intervene in Tenant's 2012 appeal (already withdrawn) was moot.

It should be noted that the Tenant's 2010 appeal is still open on the Tax Court's docket since it was stayed pending decision of the §505 motion by the Bankruptcy Court.

FINDINGS

The issue in this matter is two-fold: (1) whether the Tax Court has jurisdiction to enter a judgment finding the value of the Subject so that the Freeze Act can apply; and (2) if the court has this jurisdiction, whether Owner's motion to intervene should be denied because of laches.

A. Freeze Act Application

Subject to certain exceptions, the Freeze Act protects a taxpayer by "freezing" an assessment for the two years following a final judgment of the Tax Court for a particular tax year (called the "base year"). N.J.S.A. 54:51A-8. The statute specifically addressed a judgment of the Tax Court which has become final, by providing that,

> [w]here a judgment not subject to further appeal has been rendered by the Tax Court involving real property, the judgment shall be conclusive and binding upon the municipal assessor and the taxing district, parties to the proceeding, for the assessment year and for the two assessment years succeeding the assessment year covered by the final judgment . . . .
>
> [Ibid.] (emphasis added)[4]

For the Freeze Act to apply, there must be a determination of the value of the property, whether on its merits at trial or by the parties settlement in this regard, pursuant to which the court enters a judgment. Rainhold Holding Co. v. Township of Freehold, 15 N.J. Tax 420 (Tax 1996); Borough of South Plainfield v. Kentile Floors, Inc., 92 N.J. 483, 489 (1983).

Here, the October 2013 Bankruptcy Court Order has determined the value of the Subject under State law. However, the Freeze Act only addresses judgments rendered by the Tax Court.

[4] A similar but separate statute addresses the Freeze Act application to the judgments of a County Board of Taxation. See N.J.S.A. 54:3-26 ("w]here no request for review is taken to the Tax Court to review the . . . determination of the county board involving real property the judgment of the county board shall be conclusive and binding upon the . . . assessor and the taxing district for the assessment year, and for the two assessment years succeeding the assessment year, covered by the judgment, . . .).

Here, there is no such judgment. Therefore, the court must examine whether it can issue a judgment when the Bankruptcy Court has already adjudicated this issue.

B. Is the Tax Court Precluded from Entering a Judgment Setting the Subject's Value for 2010

The Bankruptcy Court, via delegation under 11 U.S.C. §157 has "original and exclusive jurisdiction of all cases under title 11." 11 U.S.C. §1334(a). It has "original but not exclusive jurisdiction of all" cases arising under title 11, or arising in or related to cases under title 11." 11 U.S.C. §1334(b). In this connection, 11 U.S.C. §157(b)(1) authorizes the Bankruptcy courts to "hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments . . . ." Those judgments or final orders are appealable to the federal District Courts. See 11 U.S.C. §158.

Under §505(a)(1), the Bankruptcy Court has "broad discretionary authority" to decide the validity of any tax assessment if not excepted by that statute. City of Jersey City v. Mocco (In re Mocco), 2002 U.S. Dist. LEXIS 18592, at *10 (D.N.J. Sept. 30, 2002), aff'g, 222 B.R. 440 (Bankr. D. N.J. 1998). One exception is that if the same has already be "adjudicated" by the state court before the bankruptcy petition was filed. 11 U.S.C. §505(a)(2)(A). Another exception is if the statute of limitations under "nonbankruptcy law" for challenging the "amount or legality of any amount arising in connection with an ad valorem tax on real . . . property of the [bankruptcy] estate, has run. 11 U.S.C. §505(a)(2)(C).

A §505 proceeding confers original but non-exclusive subject matter jurisdiction in the Bankruptcy Court over tax matters. In re Custom Distrib. Servs., 224 F.3d 235, 239-240 (3d Cir. 2000). See also Quattrone Accountants, Inc. v. Internal Revenue Service, 895 F.2d 921, 923 (3d Cir.1990) ("when we review how the language and purpose of Section 505 has evolved, we conclude that [it] was intended to clarify the bankruptcy court's jurisdiction over tax claims").

Courts have also held that a §505 motion is a "core proceeding" which means that the Bankruptcy Court is authorized to enter a judgment disposing the proceeding, as opposed to a non-core proceeding. In re Market Tower Assocs., 1989 Bankr. LEXIS 2777, at *10-11 (Bankr. D.N.J. Apr. 21, 1989); In re ANC Rental Corp., 316 B.R. 153, 157 (Bankr. D. Del. 2004) (claim under §505 "meets the Third Circuit's test as to core status because it invokes a right given to the Debtor under title 11"). The court then "retains its core jurisdiction in administrative matters to enforce its prior judgment." In re L & S Industries, Inc., 122 B.R. 987, 992 (Bankr. N.D. Ill. 1991). However, because the statute is discretionary, Bankruptcy courts can choose not to exercise its jurisdiction, even if it is a "core proceeding." See generally In re Indianapolis Downs, LLC, 462 B.R. 104, 114 (Bankr. D. Del. 2011); 11 U.S.C. §1334(c).

Here, neither of the exceptions to §505 applied to Tenant's 2010 local property tax appeal which was filed timely March 25, 2010, and which was pending in the Tax Court when Tenant filed for bankruptcy. Therefore, there was nothing preventing the Bankruptcy Court from deciding the §505 motion. The October 29, 2013 Order recites that it is based upon the Bankruptcy Court's subject matter jurisdiction under 11 U.S.C. §1334(b) (original but not exclusive). The §505 motion was deemed a "core proceeding" which meant that the Bankruptcy Court could issue a final Order or judgment disposing the matter.

The federal court did not abstain from exercising its jurisdiction. There was no remand of the §505 motion to the Tax Court for a determination of the Subject's true value for 2010. Cf. Alpha-Bella VI, Inc. by United Jersey Bank v. Township of Clinton, 14 N.J. Tax 597, 603 (Tax 1995) (bankruptcy court entered order permitting the Tax Court to "fully dispose of the pending New Jersey State Court property tax appeal" and "adjudicate all issues raised by that proceeding under the United States Bankruptcy Code . . . including but not limited to, the issue of . . . the

[validity of the] judgment of the . . . Board of Taxation affirming the assessment of rollback taxes on the property"). Rather, the October 2013 Order decided the true value of the Subject as agreed to by settlement of the Tenant and the Township. Additionally, the Bankruptcy Court retained subject matter jurisdiction to decide any and all "matters arising from or related to the implementation" of the October 2013 Order. Cf. id. at 603 (bankruptcy court order provided that the federal court and the parties "will be bound by a judgment of the New Jersey Tax Court or any appellate court reviewing the Tax Court's judgment").

Under these circumstances, this court finds that it cannot enter a state court judgment setting forth the valuation of the Subject when the federal court has exercised its subject matter jurisdiction and has adjudicated the matter even if the valuation conclusion is via a settlement amongst Tenant and Township. That final order is preclusive and binding on this court.[5] See generally Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 406 (1991) ("The rule that state courts must accord preclusive effect to prior federal court judgments is so settled that it is accepted as axiomatic"). Indeed, doing so could render the Tax Court judgment a nullity, thus, unavailable for application of the Freeze Act. Cf. Union City Associates v. City of Union City, 8 N.J. Tax 583, 593 (Tax 1986) rev'd, 223 N.J. Super. 316 (App. Div. 1988), rev'd, 115 N.J. 17 (1989) (dismissing taxpayer's Freeze Act application because the county board judgment, which was the basis for the relief, was void for lack of subject matter jurisdiction).

Thus, even if permitted, the Owner's intervention does not alter the fact that there is a judgment (in the form of a final Order) determining the value of the Subject issued by the federal court pursuant to the exercise of that court's subject matter jurisdiction, which in turn, prevents

[5] No party here, or Owner has alleged that the October 2013 Order of the Bankruptcy Court is subject to, or being appealed, and thus, is not final.

an exercise of this court's jurisdiction and issuance of a judgment reflecting the value of the Subject. The Tax Court's inability in this regard would remain the same even if Owner had sought an intervention in the §505 proceedings, or Tenant had sought relief under the Freeze Act for tax year 2011 by filing an application for the same in the Tax Court.

C. Can the Tax Court Grant Relief Under the Freeze Act

Owner maintains that it is not seeking to re-litigate the issue of the Subject's valuation for tax year 2010. Rather, it is asking the Tax Court to enter a judgment reflecting the value conclusions of the Bankruptcy Court Order, instead of entering a housekeeping-type judgment dismissing Tenant's 2010 appeal. This, per Owner, is the only mechanism allowing it to obtain Freeze relief since the Freeze Act requires a judgment of the Tax Court.

Three factors, when analyzed in cohesion, provide merit to Owner's request for Freeze Act benefits. First, precedent firmly establishes that the legislative purpose of the Freeze Act "is only to protect taxpayers from arbitrary repeated yearly changes in assessment and from harassment." Rockaway 80 Assocs. v. Township of Rockaway, 15 N.J. Tax 326, 335 (Tax 1996); see also Borough of Hasbrouck Heights v. Division of Tax Appeals, 41 N.J. 492, 499 (1964) (the "raison d'etre" for the Freeze Act "was the protection of the taxpayer, not the municipality"). If a township's "interest under the Freeze Act conflicts with that of the taxpayer, the taxpayer's interest should be paramount." Zisapel v. Borough of Paramus, 20 N.J. Tax 209, 215 (Tax 2002).

Second, relief under the Freeze Act runs with the land because it is the assessment that is sought to be frozen. That assessment is imposed only upon the land, i.e., *in rem*, not upon the owners of the assessed property. See Newark v. Fischer, 3 N.J. 191, 199 (1951) (the Freeze Act "is part of Article 4 of Title 54, entitled 'Appeals,' and deals with appeals by a 'taxpayer feeling

aggrieved by the assessed valuation of his property,'" thus, it is "apparent [that] the [Freeze Act] was intended to govern the frequency of appeals as to disputed amounts of assessments"). See also Trebour Trustees v. Township of Randolph, 25 N.J. Tax 227, 231-32 (Tax 2009) (interpreting the statute requiring payment of taxes as a condition for filing a valuation appeal, noting that the terms "'assessment' and 'assessed' refers to an act of valuation, usually directed at property and not at an individual" and that "all statutes that deal with taxation of real property, use the term 'assessed' in reference to specific property"). The taxes which are imposed pursuant to that assessment are also only against the land assessed. Garden State Racing Ass'n v. Township of Cherry Hill, 1 N.J. Tax 569, 573-74 (Tax 1980) ("Taxes on real estate in New Jersey under N.J.S.A. 54:4-1 and N.J.S.A. 54:4-23 are . . . are assessed against the fee and are a lien on it.").

Third, federal courts use state law when deciding a §505 motion/complaint. Thus, a §505 proceeding involving the issue of value determination for local property purposes requires application of New Jersey local property law. See Curtis Papers, Inc. v. Borough of Milford, 2008 Bankr. LEXIS 4597 (Bankr. D.N.J. July 17, 2008) ("[i]n applying §505, the court must look to the substantive law of the state in which the property is located" and finding the true value of the property for tax years 2002 through 2006); Mocco, supra, 222 B.R. at 455 ("the bankruptcy court must give full faith and credit to the substantive law of the state to answer the ultimate question of whether the taxes are legally due and owing"). See also In re AWB Assoc., G.P., 144 B.R. 270, 278 (Bankr. E.D. Pa. 1992) ("the valuation of property for purposes of determining property taxes must be consistent with state law principles" and "the bankruptcy court gives full faith and credit to the law of the state upon which the tax is based" thus, the bankruptcy court "must apply the rather strict evidentiary standards placed upon taxpayers

challenging tax assessments under New Jersey law"). Consequently, a federal court's determination of value would (and should) apply the same substantive principles of law that this court would.

A synergy of the above three principles permits this court to find that a benefit under the Freeze Act is available even if cannot enter a formal judgment setting the true value of the Subject for 2010. Here, the Bankruptcy Court's Order involved a determination of the Subject's value for tax year 2010, even if via a settlement. That determination of value, which here is final, conclusive and binding, allows for relief under the Freeze Act.

Although the plain language of the Freeze Act requires a final Tax Court judgment for the base year, insistence on this requirement in this case would defeat the legislative purpose underlying the statute. Such a result should be avoided. See Fischer, supra, 3 N.J. at 200 (when "the mischief and the remedy proposed are plainly apparent" in the language of the Freeze Act then the same "must be so construed as to suppress the mischief and advance the remedy.") (citation and quotation omitted). See also Hubbard v. Reed, 168 N.J. 387, 393-93 (2001) (while court must apply the statute as written, "where a literal interpretation of individual statutory terms or provisions" would lead to results "inconsistent with the overall purpose of the statute," that interpretation should be rejected). Further, refusing relief under the Freeze Act would effectively disregard the preclusive effect of the Bankruptcy Court's value determination.

The fact that the Bankruptcy Court Order was addressed to the Tenant as debtor in bankruptcy should not prevent Owner here from benefitting from the Freeze Act. As noted above, the relief under the Freeze Act runs with the land. Additionally, here, Tenant filed the 2010 appeal in the Tax Court, as "taxpayer and agent" of Owner. A tenant's standing to file this appeal is generally based on several factors, two of which are a consideration of (a) "whether the

tenant will adequately represent the interests of the landlord and other tenants," and (b) "the tenant's ability to mount and prosecute an effective appeal." Village Supermarkets, Inc. v. Township of West Orange, 106 N.J. 628, 634-35 (1987). Here, the Owner does not dispute either of these factors.

There are no cases holding that a valuation determination pursuant to a complaint filed by a tenant is not entitled to the same conclusive binding effect for purposes of application of the Freeze Act simply because the plaintiff was a tenant. Since a tenant files a complaint as a "taxpayer" who or which is "aggrieved by the assessed valuation of the taxpayer's property" under N.J.S.A. 54:3-21, and since it is the assessment which is frozen as a result of the value determination in that complaint, there is no reason why a property owner or landlord must be required to file a complaint to obtain relief under the Freeze Act. This conclusion is supported by cases involving application of the Freeze Act by successor owners which do not, per se, bar such owners on grounds they were not parties to the local property tax appeals. See e.g. Zisapel, supra, 20 N.J. Tax at 214 & n.3 (the "authority to consent to the conclusive application of the Freeze Act" when "examined in light of general principles, the purpose of the Freeze Act, and practical consequences," is "an incident of ownership or other status as taxpayer with respect to the Freeze Act year and not of control of base year litigation").

Consequently, the court finds that, here, a motion to intervene by Owner is not a condition precedent to application of the Freeze Act when (i) the undisputed purpose of the intervention is a request that the Freeze Act apply to the 2010 value determination by the Bankruptcy Court, and (ii) it is undisputed that the Owner is not attempting to upset a settlement agreement by Tenant.[6]

[6] As noted previously, the May 2013 e-mail from Tenant to the Township's assessor indicated that the parties had agreed to reduce the assessment for 2010 (at the same number reflected in the October 2013 Bankruptcy Order), and apply the Freeze for 2011. In this connection, it should be noted that the freeze benefit cannot be denied simply

The above finding renders moot the Township's argument that Owner's intervention motion should be denied on grounds of laches. In any event, the Bankruptcy Court only made its determination in October of 2013. The Owner's motion to intervene, the purpose of which is solely to obtain the Freeze benefit as opposed to litigating the valuation on its merits in Tax Court, was made about eight months before this date, and thus is not unduly delayed. And as noted above, even if Owner had intervened in the §505 proceeding in 2011, this court would be faced with the same issue it is now facing, namely, whether it can issue a formal Tax Court judgment setting forth the value determination of the Subject after the Bankruptcy Court had already entered an Order in this regard.

D. Procedural Mechanism for Obtaining Freeze Relief

The court's findings above raises the issue of the procedural mechanism of applying for and receiving the Freeze Act benefit. Generally, as here, where a judgment for the base year becomes final after the assessment date for the Freeze year, the taxpayer must file an application requesting application of the Freeze Act to the freeze years. Clearview Gardens Associates v. Township of Parsippany-Troy Hills, 196 N.J. Super. 323, 329 (App. Div. 1984). The court has found no requirement that only the complainant, i.e., the plaintiff in the complaint for the base year, has standing to file such application. Thus, here, either Owner or Tenant can file such application and request Freeze Act application.

However, the Bankruptcy Court has retained subject matter jurisdiction to decide any and all "matters arising from or related to the implementation" of the October 2013 Order. The breadth of this language conceivably includes a Freeze Act application although tax year 2011 is

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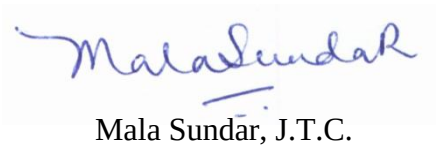
because Tenant had withdrawn its 2011 property tax appeal at the Tax Court. While Freeze Act will not apply if the base year is withdrawn, its application is not barred if an appeal is filed for a Freeze year which is subsequently withdrawn. See Brae Ass'n v. Borough of Park Ridge, 21 N.J. Tax 88, 93 (Tax 2003) ("taxpayer's filing of appeals for the 'freeze' years does not constitute an election of remedies").

not before the Bankruptcy Court, because a Freeze relief would arise from a final determination of the Subject's value for 2010, which here was done by the Bankruptcy Court. Thus, affording the due "respect" to the federal court's order, which is a "fundamental feature of the relationship between state and federal courts," and which is "essential to the fair and efficient functioning of our federalist system of justice," Watkins, supra, 124 N.J. at 406, the court will defer to the Bankruptcy Court's decision in this regard. Therefore, until the federal court decides this issue by either permitting the Tax Court (by remand or otherwise) to exercise jurisdiction and act on a Freeze Act application, or by granting such relief at the federal level itself (upon proper application to it by either Owner or Tenant or both), this court finds that it cannot grant Freeze Act relief. Therefore, the court will deny Owner's motion without prejudice, reserving Owner's and/or Tenant's ability to file a Freeze Act application after, and depending on the Bankruptcy Court's determination in this regard.

CONCLUSION

For the foregoing reasons, Owner's motion to intervene for the limited purpose of seeking Freeze Act relief for tax year 2010 is denied without prejudice. The court will provide the parties and the Owner until April 30, 2014 to provide any direction or order from the Bankruptcy Court or a consent order in this regard, addressing this court's jurisdiction to provide relief under the Freeze Act based upon the Bankruptcy Court's Order for tax year 2010.

Very truly yours,



Mala Sundar, J.T.C.