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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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Re: Darwin et al. v. Township of Edison et al.
Block 415, Lot 4.A, Unit CG071
Docket No. 013378-2013

Kolenski et al. v. Township of Edison et al.
Block 415, Lot 4.A, Unit CE055
Docket No. 013377-2013

Romero et al. v. Township of Edison et al.
Block 415, Lot 4.A, Unit CB021
Docket No. 013376-2013

Smyth et al. v. Township of Edison et al.
Block 415, Lot 4.A, Unit CD041
Docket No. 013375-2013

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Dear Counsel:

This is the court's opinion with respect to plaintiffs' joint summary judgment motions seeking a correction of judgments entered by the Middlesex County Board of Taxation ("County Board"). Plaintiffs contend that at the end of the County Board hearing, the single commissioner who had heard the testimony and evidence presented, indicated that he had determined the market value of the properties was $420,000, and this amount would be memorialized in the County Board's judgments. This market value would have reduced the assessments for each property. However, the County Board judgments when entered, affirmed the assessments using Code 2A, indicating that they were "within the [common level] range." Plaintiffs argue that it is undisputed that the single commissioner had determined the true value of the properties as $420,000 which rendered the assessments outside the common level range. Therefore, they maintain, the judgments were entered as a result of a typographical or clerical error, which is correctable under the Correction of Errors statute.

Defendant, Township of Edison ("Township"), opposed the motions maintaining that relief from County Board judgments cannot be by way of a Correction of Errors complaint.

The County Board, also a defendant, filed a cross-motion on similar grounds. In addition, it maintains that there are "material facts" in dispute, namely, whether the alleged errors even occurred, thus disposition by way of summary judgment is "premature."

The court finds that the Correction of Errors statute is not the proper mechanism to challenge errors in the County Board's value conclusions which are reflected in the county board judgments. County board judgments are entered pursuant to a determination of the local property tax appeal by the board, sitting as a board. The fact that a single member of the board is delegated to hear the appeals does not convert his or her opinion of the property's value into a

judgment of the county board, nor is it controlling in this regard. This is because the controlling statute requires a "determination" of local property appeals be made only by the county board.

Consequently, the error complained of here, namely, the alleged failure of the County Board to carry forward the hearing commissioner's alleged determination of the properties' true values, into the County Board's judgments, are not correctable under the Correction of Errors statute. Rather, the value conclusions reflected in the judgments rendered by the County Board after the merits of plaintiffs' local property tax appeals were determined by that board, are correctable pursuant to a de novo review by this court. Because of the de novo review, the County Board is not a proper or necessary party to plaintiffs' present litigation.

Plaintiffs' summary judgment motions are therefore denied. Plaintiffs' complaints against the County Board are dismissed with prejudice.

FACTS AND PROCEDURAL HISTORY

The facts are taken from the certifications and supporting documentation provided in connection with the motions.

Plaintiffs are owners of the above captioned properties all located in the Township on Block 415, Lot 4.A. The properties are part of a development called "Giggleswick Way," which has 37 attached homes. The units are of three designated styles, "A," "B," and "C." The "A" and "B" units are about 2,000 square feet ("SF"), whereas the "C" units are 2,250 SF, the largest in the development. The four plaintiffs each own a "C" unit.

For tax year 2013, each plaintiff's property was assessed as follows:

Owner	Property	Land Allocation	Improv. Allocation	Total Assessment
Darwin	CG071	$115,000	$168,800	$283,800
Kolenski	CE055	$115,000	$155,800	$270,800
Romero	CB021	$115,000	$160,700	$275,700
Smyth	CD041	$115,000	$154,400	$269,400

For 2013, the Township's average (Chapter 123) ratio was 50.10% with an upper limit of 57.62% and a lower limit of 42.58%. This translated the equalized value of the properties' assessments as follows:

Owner	Property	Assessment	Equalized Value
Darwin	CG071	$283,800	$566,467
Kolenski	CE055	$270,800	$540,518
Romero	CB021	$275,700	$550,299
Smyth	CD041	$269,400	$537,724

All four plaintiffs filed timely petitions with the County Board. A hearing was held on July 12, 2013 around 9:30 p.m. A single commissioner delegated by the County Board in this regard conducted the hearing of plaintiffs' tax appeals. Present also were a County Board staff member, the Township's assessor, the Township's counsel, plaintiffs' counsel, and a licensed real estate appraiser retained by plaintiffs.

Plaintiffs' counsel and plaintiffs' real estate appraiser certified that they had presented testimony as to the physical description of the four properties and provided comparable sales relevant to each property. The appraiser had also testified as to his opinion of the market value for each of the four properties as follows: $420,000 for Units CG071 and CE055; $410,000 for Unit CB021; and $380,000 for Unit CD041.[1]

The Township did not proffer any independent or additional evidence but rested on the validity of the assessments.

Per the certifications of the plaintiffs' counsel and real estate appraiser, at the end of the hearing, the commissioner indicated that he would use the market value in determining the

[1] There were a total of 30 petitions filed before the County Board including the plaintiffs' four properties involving the homes in "Giggleswick Way." All were represented by the same counsel and real estate appraiser as plaintiffs' herein. Thus, evidence was provided for all 30 properties at the July 2013 hearing.

assessments of the various properties, and as to plaintiffs' properties, his "decision was to be a new total assessment based upon a market value of $420,000."

The County Board met on August 15, 2013. The minutes of the meeting stated that all four members of the County Board who constituted "the entire Board membership" were present. The minutes reflected that one of the agenda items for "Board consideration was the entry of the Year 2013 Tax Appeal judgments based upon the recommendations submitted by each Commissioner sitting on an individual basis in hearing each of the appeal cases filed." The minutes noted that the County Board, "after due deliberations, voted to adopt the recommendations submitted and enter judgments on each of the cases heard in accordance therewith."[2] There is no evidence of the nature of the recommendations provided by the commissioner as to the plaintiffs' local appeals.[3]

On the same date, the County Board passed a resolution which memorialized, "ratifie[d] and endorse[d]" the judgments entered "with respect [to] the appeals emanating from," among others, the Township. The County Board judgments were mailed the next day, August 16, 2013.

The County Board judgments for each of the plaintiffs reflected an affirmance of the assessments pursuant to Code 2A. Code 2A indicates "Assessment within Range (**N.J.S.A.** 54:3-26)." Each judgment was signed by three commissioners and the County Tax Administrator.

Per plaintiffs' counsel, the County Board judgments for the remaining 26 units reflected a reduction of assessments which accorded with the commissioner's indication at the end of the hearing of using a certain dollar amount as those units' market value and entering commensurate judgments. None of the 26 were "C" units.

[2] One commissioner abstained from voting on the appeals pertaining to the Township.

[3] The minutes also noted that the "Open Public Meetings Act statement was read into the record."

Upon receipt of the County Board judgments, plaintiffs' counsel called the County Tax Administrator to discuss the alleged error in their entries. He was apparently advised that the County Board could not do anything to alter the judgments.

Plaintiffs then filed timely complaints with the Tax Court. The factual allegations were as set forth here, except to include the allegation that the commissioner's bench decision to use a market value of $420,000 would place the assessments of the four properties "below the corridor." Therefore, the use of Code 2A on the County Board judgments was obviously a "clerical error" in "transcribing the judgment." The complaints requested a reduction of the assessments to $210,420 which reflects an equalized value of $420,000. It should be noted that the Case Information Statements accompanying the complaints did not check the box for "Correction of Error" and the only box checked was "Appeal from a County Board Judgment."[4]

These motions for summary judgment followed. Plaintiffs seek relief of "enforce[ment of] the decision of the County Tax Board Commissioner given on the evening of the hearing."

ANALYSIS

(*A*) *Appropriateness of Summary Judgment*

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

[4] Plaintiffs' counsel agreed it was his omission, however, the body of the complaints contained a count of relief under the Correction of Errors law.

Plaintiffs argue it is undisputed that (i) the County Board delegated the hearing of the appeals to a single commissioner, (ii) a single commissioner heard and determined plaintiffs' appeals, and (iii) the same commissioner indicated to everyone present at the hearing that he was going to accept and use a market value of $420,000 for each plaintiff's property. Thus, per plaintiffs, the County Board judgments affirming the assessments using Code 2A were clerically incorrect because the assessments at the $420,000 market value were clearly outside of the common-level range. These errors, plaintiffs contend, are within the reach of the Correction of Errors statute.

The Township and the County Board do not dispute plaintiffs' contentions (i) and (ii). As to (iii), they argue that there is nothing to show that the hearing commissioner's indication was his final opinion that the market value for each property was $420,000, and even if it was, the same is not controlling and is irrelevant for purposes of the relief sought by plaintiffs' in their instant motion. They argue that the only cognizable fact before this court is the County Board judgment issued as to each plaintiff's property. The correctness or otherwise of each of those judgments is not to be examined under the Correction of Errors statute but by this court's de novo examination of the valuation of each property, based on evidence to be adduced by plaintiffs.

The issue implicated is the applicability of the Correction of Errors statute to County Board judgments issued after the merits of the appeals are heard. This calls for a legal interpretation of the statute's purpose and extent. Therefore, the matters can be disposed by way of summary judgment regardless of the commissioner's opinion at the end of the hearing or the nature of his recommendations to the County Board at the August 2013 meeting.

(B) The Correction of Errors Law

The Correction of Errors statute is an exception to the regular tax-appeal process because it establishes a longer period for seeking relief after the normal deadline for a standard appeal has expired. The statute provides that:

> [t]he tax court may, upon the filing of a complaint at any time during the tax year or within the next 3 years thereafter, by a property owner, a municipality or a county board of taxation, enter judgment to correct typographical errors, errors in transposing, and mistakes in tax assessments, provided that such complaint shall set forth the facts causing and constituting the error or errors and mistake or mistakes, or either thereof sought to be corrected and that such facts be verified by affidavits submitted by the plaintiff. The tax court shall not consider under this section any complaint relating to matters of valuation involving an assessor's opinion or judgment.
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> [N.J.S.A. 54:51A-7]

The history of this section was stated in Hovbilt, Inc. v. Township of Howell, 138 N.J. 598, 604-605 (1994). Substantive changes were made to the statute in 1979 to (i) impose time limits to seek relief, which was either "during the tax year or within the ensuing three years;" (ii) permit "the right of appeal to municipalities and county boards;" (iii) confer "jurisdiction in the Tax Court" to decide a Correction of Errors matter; (iv) limit the type of corrections to "typographical errors, errors in transposing, and mistakes in tax assessments;" and, (v) deny relief if it involved a "challenge" to "valuations that involved the opinion or judgment of the assessor." Id. at 604. See also State Revenue, Finance and Appropriations Committee, Statement to Senate Bill No. 1103, at 1-2 (Sept. 18, 1978) (the Correction of Errors law was "not intended" to "be used for settlement of challenges of" the assessor's "opinion as to value of a parcel of real property or the assessment of property as real property"). The Court held that it "underst[ood] that exclusion as a clear expression of legislative intent to limit the . . . the

correction of mistakes that are indisputable and not subject to debate about whether the assessment to be corrected resulted from an assessor's exercise of judgment." Hovbilt, supra, 138 N.J. at 618. Thus,

> mistakes in assessments that are indisputable, and cannot plausibly be explained on the basis of an exercise in judgment or discretion by the assessor or his or her staff, are within the category of mistakes that can be corrected under the statute. Based on our characterization of the category of mistaken but correctable assessments, we hold further that the correct assessment must readily be inferable or subject to ready calculation on the basis of the assessment mistake for which correction is authorized.
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> [Id. at 618-19]

See also H.G.K.W. Corp. v. Township of East Brunswick, 8 N.J. Tax 454, 460-61 (Tax 1986) ("mistakes in assessments" are limited "to errors similar to typographical errors and in transposing, i.e., clerical or administrative mistakes or errors"), aff'd o.b. per curiam, 9 N.J. Tax 91 (App. Div. 1987).

Here, the County Board's judgments contained a determination that the assessments did not require revision since they were within the Chapter 123 corridor. Given the fact that plaintiffs' appeals were heard on their merits, with competent evidence having been presented, the court finds that the County Board judgments reflected the County Board's opinions of value.

Plaintiffs argue that the Correction of Errors statute permits correction of county board judgments even if they reflect a county board's value opinions, because the plain language bars a challenge only to an assessor's opinion. A similar argument was made and rejected in L.S. Village, Inc. v. Township of Lawrence, 8 N.J. Tax 287, 292 (Law Div. 1985). There, the taxpayer contended that the imposition of rollback taxes by a county board was correctable under

the Correction of Errors statute because the county board's decision was based upon another statute that was subsequently declared unconstitutional. The court stated:

> The [Correction of Errors] statute appears to provide a method by which errors made by an assessor can be corrected. This is evidenced by the language in the statute that precludes use of the statute if the alleged error involves an assessor's opinion or judgment. It is not at all clear that this correction of errors statute can be utilized to correct an error made by a county board of taxation. This is all the more true since the alleged error is a county board decision which was issued after a hearing at which plaintiff had a full opportunity to present its case based on facts fully available to it at the time. It does not appear that the correction of errors statute was designed to provide a mechanism for relief from erroneous determinations by county boards of taxation. If permitted, this would have the effect of bypassing the normal appeal procedure for challenging rollback assessments and would extend the appeal period for such challenges. Such an interpretation does violence to the concept of finality of assessments necessary for the predictability of revenues and the orderly financing of government.
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> [Id. at 303-304]

The court held that even if the statutory language was "broad enough" to apply to "an error in assessment by a county board of taxation," it still means that the statute did not permit a challenge to a county board's determination or judgment just as it did not permit a challenge to an assessor's opinion. Id. at 304. Thus, whether the county board's judgment as to an assessment is a mistake either "of fact or law, it remains a judgmental error reversible only by the customary statutory appeal process and not under the correction of errors statute." Ibid.

Here, even if plaintiffs' couch the County Board's judgments as being simply a "mistake in assessment," the substance of the relief they seek is a change to the value conclusions contained therein. The court is not convinced that such an affirmance is available under the Correction of Errors under the reasoning in L.S. Village, supra, which fully applies here.

Further, the county board of taxation is imposed with the obligations substantively similar to that of an assessor. See e.g. N.J.S.A. 54:3-13 (county board of taxation must "secure the taxation of all property in the county at its taxable value as prescribed by law"); N.J.S.A.

54:3-22(a) (county board of taxation must "determine" local property tax appeals "and revise and correct the assessment in accordance with the value prescribed by law"); N.J.S.A. 54:4-1 (all real property should be valued and assessed "at the taxable value prescribed by law"); N.J.S.A. 54:4-23 (an assessor is charged with determining the full and fair value of property in that municipality and assessing it at the taxable value established for the county). See also N.J.S.A. 54:3-16 (the county tax administrator, "under the supervision and control of the county board of taxation" must "direct all officers charged with the duty of making assessments for taxes in every taxing district in the county" and such "officers" must "be governed by directions" and "rules and orders" of the county tax administrator and the county board). It is implausible to argue that the Correction of Errors statute does not apply to an assessor's opinion or judgment which is the basis for the initial setting of an assessment, but can apply to a county board's opinion or judgment which reviews or scrutinizes that very assessment in the context of an appeal.

Plaintiffs next argue that the County Board judgments were entered as a result of typographical or clerical errors because the single commissioner's "bench" opinion of value at the end of the hearing should have been carried forward to and on the County Board judgments. They contend that this is so because (i) only the person or persons who hears the testimony can make an educated and informative final determination, which here was the single commissioner; and (ii) there is no evidence that the County Board diverged from or disagreed with the recommendations made by the hearing commissioner, or adopted a value other than the $420,000 allegedly determined by the hearing commissioner.

However, a single commissioner's inclination or indication of value does not carry the day. The statute requires there be a collective determination of and by the County Board. Thus,

> The [county] board may, as occasion shall require, by order, refer to one or more of its members the duty of taking testimony in a matter pending before it, and to report thereon to the board, but no determination shall be made therein except by the board.
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> [N.J.S.A. 54:3-20.1]

See also N.J.A.C. 18:12A-1.9(j) (county board can, "as occasion shall require, by order, refer any appeal or other matter pending before it to one or more of its members for the purpose of taking testimony and reporting thereon to the board for appropriate action").

Although a county board is required to "hear and determine all appeals," see N.J.S.A. 54:3-22(a), the statute has delegated only the "hearing" of appeals, i.e., the taking of evidence, to one or more commissioner/s or member/s of the board under N.J.S.A. 54:3-20.1.[5] There is no such statutory delegation for the determination, thus, disposition, of such appeals. See also N.J.A.C. 18:12A-1.12(B)(1)(i); 18:12A-1.12(B)(1)(ii) (the left hand column in a county board judgment titled "Original Assessment" reflects "the assessed value of the land, improvements and the total of same" while the right-hand column is titled "Judgment" reflects the "determination of the county board of taxation separately for land, improvements and total") (emphasis added).

The regulations uniformly require any action be taken by the county board only as a board. See e.g. N.J.A.C. 18:12A-1.12(a) ("[a] majority of the members of the county board of taxation shall constitute a quorum for the transaction of business, and any action or determination agreed to by such majority shall be taken as the action of the board"); N.J.A.C. 18:12A-1.12(b)(3) (requiring every county board to "institute procedures" to ensure, among others, that thee be "written memorandum of" judgments, each of which is signed by the board

[5] Indeed, "the statutory complex, taken as a whole, accords the county board, over the objection of a party, the discretion to dismiss without prejudice as a technique for deferring the evidentiary evaluation hearing to the Tax Court" and such dismissal comports with a county board's "statutory hearing obligation" under N.J.S.A. 54:3-22(a). Greate Bay Hotel & Casino v. City of Atlantic City, 21 N.J. Tax 122, 128 (App. Div. 2003).

president and by "any other member of the board who participated in the rendering of the county board judgments on appeal" and such judgments "must be considered to be the action of the board and must be agreed upon by the majority of such board"). See also Essex County Bd. of Taxation v. Township of Caldwell, 19 N.J. Tax 587, 594 (Tax 2001) (a county board of taxation "is empowered as a voting body pursuant to N.J.S.A. 54:3-25" which statute provides that a "majority of the members of the board shall constitute a quorum for the transaction of business, and an adjustment agreed to by such majority shall be taken to be the action of the board"), aff'd, 21 N.J. Tax 188 (App. Div.), certif. denied, 176 N.J. 426 (2003).

The statute and the implementing regulations thus require that for any determination or judgment to be valid, there must be an action by the county board after the hearing commissioner/s has/have made a report/recommendation to the county board. In this connection, law implicitly grants authority to the county board to accept, reject, or modify the member/s recommendations. These considerations necessarily require a board participation and input into the hearing member/s recommendation/s, and thus involve an exercise of the county board's judgment in regard to the valuation of the properties appealing their tax assessments especially when those appeals were heard on their merits. Plaintiffs' argument that the hearing commissioner's indications of adopting a value of $420,000 should also be the County Board's determination would effectively make the County Board's action no more than a "rubber stamp," an abdication of the statutorily imposed obligation that the county board must make the final determination. The court does not view the County Board as performing its statutory obligations in so mechanical a fashion despite the multitudinous appeals it has to decide within a short statutory time-frame. Cf. Greate Bay, supra, 21 N.J. Tax at 129 ("[w]e also do not believe that

the Legislature intended the county board proceeding not to be meaningful--to be nothing more than a charade").

It is true that there is no evidence of the nature of the commissioner's recommendations in connection with plaintiffs' appeals. Thus, while plaintiffs reasonably speculate that in the absence of any evidence to the contrary the only possible recommended market value was $420,000 from the hearing commissioner, it could, as the Township argues, be equally posited that after the hearing, the commissioner further weighed or considered the proffered proofs and opined to another value for the larger C units, which resulted in an affirmance of the assessments due to the Chapter 123 ratio, and recommended that value to the County Board, which then adopted the recommendation and issued the judgments.

In this regard, the court does not find it necessary to divine or investigate into the hearing commissioner's thought processes or require a factual hearing to establish the nature of his recommendations. The court is guided only by the four corners of the county board judgment in deciding their validity since they are issued pursuant to the board's quasi-judicial capacity and are attended with a presumption of correctness but are reviewed de novo by this court. See N.J.S.A. 2B:13-3(b) (the Tax Court "shall determine all issues of fact and of law de novo"). See also Township of North Brunswick v. Gochal, 27 N.J. Tax 31, 33 n.2 (Tax 2012) ("Appeals to the Tax Court from county tax board judgments are de novo . . . . The only record of a county board of taxation decision that comes to the Tax Court is the judgment"); Chevron U.S.A., Inc. v. City of Perth Amboy, 9 N.J. Tax 571, 581 (Tax 1988) (a de novo hearing is a "a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard" where the court "hears [the] matter as court of original and not appellate jurisdiction") (citations omitted). To the extent that judgment incorporates an opinion of value

via the assessment, the proper challenge to that value conclusion is through a de novo hearing by this court.

The decision in Jersey City v. Hudson County Bd. of Taxation, 130 N.J.L. 309 (Sup. Ct. 1943) does not require a different conclusion or mandate a full-fledged inquiry into the hearing commissioner's acts or thoughts. In that case, the issue was a lack of evidence of any report or recommendation by the hearing commissioner required under N.J.S.A. 54:3-20.1 which rendered the county board's judgments as being invalidly issued. Id. at 312. The court also decried the county board's post-litigation attempt to rectify this omission with testimony of a board member who averred to the existence of a undisclosed hand-written report by the hearing member. Ibid. The court noted that the judgment was in any event not signed by either the testifying or hearing board member to create a valid "board action." Ibid.

Here, although the exact nature of the hearing commissioner's recommendations as to plaintiffs' properties is not in evidence, there is no dispute as to the contents and nature of the County Board's minutes and resolution. It is clear that the County Board met to consider the hearing commissioners' recommendations as to all the 2013 property tax appeals in the county; deliberated upon the same; and then voted to adopt the recommendations of each commissioner. The resolution in this regard also makes clear that judgments, which were entered in accordance with the recommendations, were duly ratified and endorsed by the County Board. There is no allegation that the judgments were defective for lack of the required quorum or signatures of the board members acting as a board. Therefore, the case is factually inapposite in that there is no challenge to the County Board's initial jurisdiction to enter the judgments at issue here. See also City of Atlantic City v. Greate Bay Hotel And Casino, Inc., 16 N.J. Tax 486, 496-497 (Tax 1997) ("the relationship of the Tax Court to local property assessments is unique" because there is "no

other situation where . . . an appeal from an administrative agency" is tried de novo "as opposed to a determination based on, or a review of, the record below" where the standard of review is "whether the agencies' actions were arbitrary, capricious or unreasonable based upon what was before the board [or agency] and not on the basis of a trial de novo"), aff'd o.b., 17 N.J. Tax 101 (App. Div. 1997).

Plaintiffs' contend that "the Correction of Errors Statute provides . . . mandatory relief" where the County Board "has violated [the] statutory mandate" of N.J.S.A. 54:3-22(c). They argue that the County Board is "statutorily obligated to enter a judgment based upon" the commissioner's alleged determination of value of $420,000. They maintain that having failed to apply the Chapter 123 ratio to this amount, the County Board's judgments are incorrect as a matter of law but which can be mathematically corrected.

It is true that a determination of value by a county board is subject to the application of the Chapter 123 ratio. To the extent it is not so done, the county board judgment is in error. See e.g. Gochal, supra, 27 N.J. Tax at 36 (granting summary judgment to the municipality and reversing a county board judgment which had incorrectly reduced, rather than affirmed, an assessment, after application of the Chapter 123 ratio). However, plaintiffs' argument here is unavailing because it is premised on the presumption that the commissioner's indication at the end of the hearing was and should be the County Board's judgment. N.J.S.A. 54:3-20.1 clearly refutes the soundness of this premise. Further, even if the allegedly "correct" assessment can be readily calculated,[6] the mistake sought to be rectified must be "authorized" by the statute. Hovbilt, supra, 138 N.J. at 619. As this court has found above, it is not appropriate to apply the

[6] While a county board judgment does not "explicitly note[] the true value of the property as it was determined by the [County] Board[,]" the same "can . . . be developed mathematically from the taxable value" reflected on the county board judgment by application of the Chapter 123 ratios. Gochal, supra, 27 N.J. Tax at 35.

Correction of Errors statute to the County Board judgments which were entered after a hearing on the merits.[7] Therefore, plaintiffs' resort to N.J.S.A. 54:3-22(c) as a reason for applying the Correction of Errors statute is misplaced.

Plaintiffs' next maintain that although they failed to request an amendment, the County Board should have sua sponte issued amended judgments because the commissioner told everyone present at the county board hearing that he was going to use $420,000 as the market value for plaintiffs' properties.

A county board can amend its judgments sua sponte. City of Newark v. Fischer, 3 N.J. 488, 490 (1950). However, the absence of a sua sponte correction by the County Board does not automatically make the issued judgments susceptible to application of the Correction of Errors statute. Further, plaintiffs' argument is yet again based upon the incorrect belief that a single commissioner's opinion of value before its adoption or ratification by the County Board controls, and if not reflected as such in the judgments, render those judgments incorrect as a matter of law rectifiable under the Correction of Errors statute. Under this theory, all county board judgments which plaintiffs disagree with would have to be automatically corrected by a county board or risk a full blown hearing on the whys and wherefores underlying the entry of a county board judgment, thus, potentially including inquiry into the board member/s opinion/s or thought process/es. Such an exercise is not envisaged by, nor within the scope of, the remedies afforded by the Correction of Errors statute.

Plaintiffs next argue that the County Board judgments are plainly erroneous because they assign a true value of almost $170,000 to a 250 SF difference in size since all the 30 units which

[7] It should be noted that in Gochal, supra, the error in the county board judgments, namely, failure to apply the Chapter 123 ratio after, and to, the county board's value determination, was sought to be rectified via a regular valuation appeal.

filed appeals are identical in all respects except for being smaller than the "C" units by 250 SF. They contend that this staggering difference violates their constitutional right to have their properties uniformly assessed and therefore, the County Board judgments are patently erroneous. However, these arguments properly belong in and during this court's de novo review of the County Board's judgments. They do not allow for relief under the Correction of Errors statute which was intended to remedy only mechanical or obvious clerical mistakes.

Finally, plaintiffs contend that it is unfair to deny them the ability to hold the hearing commissioner to his determination or to have this court require the County Board to reflect the hearing commissioner's determination since they now have to incur unnecessary, duplicative and/or additional expenses by litigating the same issue and using the same proofs before this court, but not have the matters promptly decided because of the sheer quantity of other local property tax appeals pending before this court.

This argument is unpersuasive being once again premised upon plaintiffs' belief that there is no doubt or dispute that the commissioner decided the true value of their properties was $420,000, made this exact recommendation to the County Board, which then committed a clerical error in using Code 2A to affirm the assessments. It is not at all clear this is what happened. Regardless, the Correction of Errors statute is not the source or authority for relief for the reasons stated above. Trials de novo require the Tax Court to "consider an original assessment completely anew" under "separate and distinct proceedings, governed by different rules," Campbell Soup Co. v. City of Camden City, 16 N.J. Tax 219, 225 (Tax 1996), so that the court can make its own findings of fact and law, even if the ultimate issue is the same, namely, valuation of the subject property. In re Appeal of Township of Monroe, 16 N.J. Tax 261, 270 (Tax 1996) ("it is the function of the Tax Court to conduct a de novo hearing 'in which the

ultimate fact sought to be determined is the full and fair value of the property'"). Thus, some duplication of proofs and related costs can be inevitable. However, this cannot constitute a valid basis to extend the application of the Correction of Errors statute to county board judgments which determine the taxable value of the property, especially after a hearing on the merits.

In sum, plaintiffs' arguments are premised upon an unclear but legally irrelevant fact that the hearing commissioner made a final determination of the properties' market value on the date of the hearing as $420,000, and must have recommended that number to the County Board. They also incorrectly conclude that the County Board thereafter has no discretion or role other than to incorporate the $420,000 into the judgments. The court finds that the assessments reflected in the "judgment" column of the County Board judgments, which were entered after a hearing on the merits, reflect the County Board's opinion of value. Regardless of an individual board member's opinion, the controlling event is the County Board's determination which is reflected in the County Board's judgment. The errors complained of are not "mistakes in assessments that are indisputable, and cannot plausibly be explained on the basis of an exercise in judgment." Therefore, relief is not available under the Correction of Errors statute. Rather, a challenge to the mistake in the assessments must be pursued through the regular appeals process and by this court's de novo review of the County Board's judgments.

Further, due to the this court's de novo nature of review of county board judgments, the County Board is not a proper or necessary party to plaintiffs' lawsuit involving a challenge to those judgments. As thoughtfully analyzed by this court, "it is the judgment of the county board which is appealed to the Tax Court" and that judgment names as parties the taxpayer and the taxing district, who are "no doubt . . . affected thereby." Kurtz v. Burlington County Bd. of Taxation, 4 N.J. Tax 343, 348 (Tax 1982). Upon appeal to this court, which reviews a county

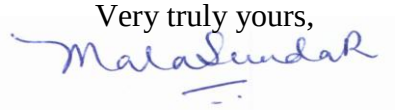
board judgment de novo, "[t]he dispute remains between the taxpayers and the taxing district and the latter is certainly an indispensable party." Ibid. However, a county board "is not a party to the litigation in a local property tax appeal to this court where the sole issue is the correct amount of the assessment levied by the taxing district." Ibid. Since this court has concluded that the County Board judgments here are not subject to rectification under the Correction of Errors statute, but their correctness may be challenged by a regular valuation appeal, the County Board is not a proper or necessary party defendant.[8]

CONCLUSION

For the aforementioned reasons, the plaintiffs' combined motions for summary judgment are denied. Plaintiffs' complaint against the County Board are dismissed with prejudice, and the County Board's cross-motion for summary judgment is granted in this regard.

An Order and Judgment will be entered in accordance with, and accompany this opinion.

Very truly yours,



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[8] The County Board cites to R. 8:5-3(a)(3) as additional authority for being removed as a defendant. However, that court rule applies to a taxpayer's complaint "to review an action of the County Board of Taxation with respect to the property of another . . . " This is not the case here.