

NOT FOR PUBLICATION WITHOUT APPROVAL OF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

March 14, 2014

BY ELECTRONIC MAIL

Thomas Denitzio, Esq.
Greenbaum Rowe Smith Davis L.L.P.
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, New Jersey 07095

John R. Lanza, Esq.
Lanza & Lanza, L.L.P.
5 Main Street, P.O. Box 2520
Flemington, New Jersey 08822

Re: Rocky Top, L.L.C. v. City of South Amboy
Block 89, Lot 5
Docket No. 008144-2012

Dear Counsel:

This is the court's opinion addressing a contested motion whereby the defendant requests leave to extend the time to file a counterclaim relying upon R. 8:3-8 as basis for the same. Plaintiff opposes the relief sought on grounds limitations periods are strictly construed against both taxpayers and taxing districts. The court agrees and denies the City's motion.

*

FACTS AND PROCEDURAL HISTORY

Plaintiff is the owner of property located at 540 Bordentown Avenue, designated as Block 89, Lot 5 (“Subject”) in defendant, City of South Amboy (“City”). For tax year 2012, the City imposed an assessment on the Subject as follows:

Land:	\$1,690,000
Improvements:	<u>\$2,560,000</u>
Total:	\$4,250,000

On March 29, 2012, plaintiff timely filed a direct appeal to the Tax Court contesting the City’s 2012 tax assessment. The City did not file any responsive pleading.

Two years later, on February 14, 2014, the City filed the instant motion to seek leave from the court to file a counterclaim out of time.

Plaintiff has filed timely appeals against the Subject’s assessments for tax years 2011 and 2013 which are currently pending in the Tax Court.¹ For both these years, the City filed timely counterclaims (April 19, 2011, and April 1, 2013) seeking to increase the Subject’s assessment.

FINDINGS

N.J.S.A. 54:3-21 provides that time limitations for a counterclaim. Thus,

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

The regulations governing the County Boards of Taxation provide similarly. See N.J.A.C. 18:12A-1.6 (b).

The statutory provision with respect to the deadlines for filing counterclaims was added as a result of the holding in F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 424

¹ Docket numbers 006942-2011 and 002189-2013 respectively.

(1985) that “taxing districts are [also] required to comply with the time prescriptions for the filing of tax appeals, as with all other statutory requirements.” (aff’g 195 N.J. Super. 373 (App. Div. 1984)). “The rationale is to afford the responding party an equal amount of time to file a counterclaim in property tax appeals that are filed close to the April 1 deadline.” Majestic Const. Co. v. Township of Deptford, 14 N.J. Tax 332, 336 (Tax 1994).

The court rules addressing counterclaims also provide that “[i]n a direct appeal . . . a counterclaim may be filed within 20 days from the date of service of the complaint even if the counterclaim is filed after the deadline for filing the complaint provided by N.J.S.A. 54:3-21.” R. 8:4-3(a). Three days are added to the 20-day period where service of a complaint is by mail. Majestic Constr., supra, 14 N.J. Tax at 337-38 (noting that the three additional days for mailing do not equate to relaxation of the statute of limitations but “merely provides the defendant in most cases with a full 20 day period after receipt of the pleading within which to respond”).

The City relies upon R. 8:3-8 as the authority for its motion to file its counterclaim out of time. That court rule however addresses the ability of a party to amend or supplement pleadings “at any time prior to the completion of the pretrial conference or, if there is no pretrial conference, at any time prior to the receipt of notice of the first date fixed for trial.” The rule plainly addresses the existing pleadings which were filed by the party moving to amend as evidenced by the requirement that “[t]he amendments in the amended pleadings shall be underlined.” The City’s reliance on this rule as authority for filing its pleading for the first time, namely, its counterclaim, misconstrues the rule as allowing it to bootstrap a new pleading to the other party’s pleading, here, plaintiff’s complaint. Such a reading is unpersuasive.²

² To the extent the decision in Curtiss-Wright Corp. v. Borough of Wood-Ridge, 2 N.J. Tax 143 (Tax 1981) suggests otherwise, the holding in F.M.C. Stores, supra, and the consequent amendment to N.J.S.A. 54:3-21 mandating a 20-day statutory time limit for counterclaims control.

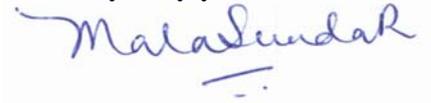
The City argues that the limitations period should be relaxed because the Court has applied a liberal standard in construing amendments to pleadings in Prime Accounting Dept. v. Township of Carney's Point, 212 N.J. 493 (2013). As noted above, the City is not trying to amend its pleadings, it is attempting to file a pleading for the first time. Therefore, that case, which dealt with amendments to pleadings in the context of R. 4:9-1, not to filing untimely counterclaims, is factually and legally inapposite and distinguishable from the case sub judice. The Court's holding in Prime Accounting does not stand for the proposition that the City can file a counterclaim beyond the time permitted by the rules under the guise of "amending" the taxpayer's complaint. See McMahon v. City of Newark, 195 N.J. 418, 425 (2008) ("The statutory time limit is jurisdictional and may not be relaxed by the Tax Court.").

The City maintains that the limitations period should be relaxed and it be permitted to file a counterclaim after nearly two years because plaintiff is not surprised or prejudiced inasmuch as it is aware that the City has filed timely counterclaims in response to plaintiff's appeals for tax years 2011 and 2013. The argument is without merit. A taxpayer or taxing district is required to file a complaint/counterclaim contesting the assessment for each year at issue, and its failure to do so is a fatal jurisdictional defect, precluding review of the assessment by this court. Pantasote Co. v. City of Passaic, 6 N.J. Tax 34, 42 (Tax Ct. 1983) ("It is well settled that each annual assessment of property is a separate entity, distinct from the assessment of previous years"); Rodwood Gardens, Inc. v. Summit, 188 N.J. Super. 34, 38 (App. Div. 1982) ("Each annual assessment and, *a fortiori*, each annual valuation, of property for taxation constitutes a separate entity, distinct from valuations and assessments of previous or subsequent years.").

CONCLUSION

For the foregoing reasons, the court denies the City's motion for leave to file an untimely counterclaim. 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.