

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CARBON COUNTY TAX CLAIM BUREAU, :  
Plaintiff :  
 :  
vs. : No. 11-0850  
 :  
RIDGEWOOD COUNTRY ESTATES :  
HOMEOWNERS' ASSOCIATION, INC., :  
Defendant :

Gerald F. Strubinger, Jr., Esquire                      Counsel for Plaintiff  
James R. Nanovic, Esquire                                Counsel for Defendant

**MEMORANDUM OPINION**

Serfass, J. - April 2, 2012

Petitioner Ridgewood Country Estates Homeowners' Association, Inc. (hereinafter referred to as "Petitioner"), has filed a "Petition for Stay of Judicial Sale" in connection with a parcel of real property situated in Kidder Township, Carbon County, Pennsylvania. For the reasons that follow, we will deny Petitioner's requests to further stay the judicial sale and expunge the delinquent taxes levied against the subject premises.

**FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner is the owner of the parcel of land bearing the Parcel Identification Number 19-21-A2.16 which is located in Lake Harmony, Kidder Township, Pennsylvania (hereinafter

referred to as the "Parcel"). The Parcel contains the common facilities of the Ridgewood Country Estates Development, a planned community consisting primarily of forty-two (42) units. "Common facilities" is defined in the Uniform Planned Community Act as "any real estate within a planned community which is owned by the Association or leased to the Association. The term does not include a unit." 68 Pa. C.S.A. § 5103. The parcel at issue contains the development's sewer system as well as roads and open land. In general, "common facilities" are exempt from real estate taxation and assessment. 68 Pa. C.S.A. § 5105 (b).

For the 2006 and 2007 tax years, the Petitioner was issued real estate tax bills for the Parcel. The Petitioner did not timely appeal the 2006 or 2007 tax assessments. For all subsequent years, the Petitioner obtained a tax-exempt status for the Parcel. The dispute over the delinquent 2006 and 2007 taxes was first litigated in 2008. However, no written record reflecting the terms of any mutual agreement between the parties is available, leaving the nature of any resolution at that time in question. Specifically, in Carbon County Case Number 08-1108, the Petitioner filed a "Petition for Allowance of Appeal of Determination of Carbon County Board of Assessment Appeals" contesting the Board's decision that the tax assessment on the subject parcel would remain unchanged. The record reflects that the matter was discontinued upon an amicable resolution, which

included the issuance of a corrected assessment notice in 2008, but the precise terms of that resolution are unclear. In Carbon County Case Number 10-0840, the Petitioner challenged the subject tax assessment by way of its "Answer to Rule to Sell Property at Judicial Sale." After circulation of a proposed stipulation, which was apparently never executed by the parties, the matter was discontinued on Praecipe of the Petitioner without further explanation.

On September 14, 2011, with the delinquent taxes on the Parcel still outstanding, this Court ordered that the Parcel be listed for a judicial sale scheduled for November 18, 2011. On November 4, 2011, the Petitioner filed a "Petition for Stay of Judicial Sale," arguing that, pursuant to 68 Pa. C.S.A. § 5105(b), common areas such as the Parcel are not subject to separate taxation, that as of 2008 the Carbon County Tax Assessment Bureau had properly determined that no taxes should be assessed against the Parcel, and that a judicial sale of the Parcel based on the delinquent taxes would be contrary to law and cause significant harm to the development and unit owners. The Carbon County Tax Claim Bureau (hereinafter referred to as the "Respondent") filed an Answer and New Matter on November 10, 2011, arguing that the Petition should be barred by the doctrines of laches, res judicata, collateral estoppel, and

impossibility of performance, in addition to the applicable statute of limitations.

On November 11, 2011, this Court ordered that a hearing be scheduled for November 14, 2011. On November 16, 2011, following the hearing on this matter, we ordered that the judicial sale of the Parcel be stayed and directed that the parties submit legal memoranda in support of their respective positions. Counsel for the Petitioner lodged Ridgewood's legal memorandum on December 16, 2011 and counsel for the Respondent lodged a legal memorandum on behalf of the Carbon County Tax Claim Bureau on January 9, 2012.

#### **DISCUSSION**

Pursuant to 68 Pa. C.S.A. § 5105, the "rights to any common facilities" that accompany any parcel of real estate are included in that parcel, and the value of each unit includes the value of the unit's appurtenant interest in the common facilities. No separate tax is imposed against common facilities as independent parcels. 68 Pa. C.S.A. § 5105 (b)(2).

Any person aggrieved by a property tax assessment may appeal to the Board of Assessment Appeals for relief by September 1<sup>st</sup> of the subject tax year. 53 Pa. C.S.A. § 8844 (c). The taxpayer bears the responsibility "to challenge an assessment in the year the assessment is issued in order to avoid the imposition of improper taxes." Locust Lake Village

Property Owners Association, Inc. v. Monroe County Bd. of Assessment Appeals, 940 A.2d 591, 596 (Pa. Cmwlth. 2008). Further, "this principle applies not only where the taxpayer challenges the amount of an assessment but also where the taxpayer claims to be exempt from taxation." Id. at 596. See also Academy Plaza Associates, Ltd. v. Board of Revision of Taxes, City of Philadelphia, 503 A.2d 1101, 1102-03 (Pa. Cmwlth. 1986)(finding a court has no jurisdiction over a real property tax exemption claim that was not timely raised). In the case of a claimed exemption from a tax assessment, there is an affirmative burden on the taxpayer to prove that he is entitled to the exemption, and no obligation on the part of the taxing authority to proactively investigate and determine the possibility of any such exemption. Locust Lake, 940 A.2d at 597. Indeed, "the burden of proof usually is allocated to the party possessing facts or evidence uniquely within its knowledge." Lawrence G. Spielvogel, Inc. v. Cheltenham, 601 A.2d 1310, 1316 (Pa. Cmwlth 1992).

A taxpayer's failure to discharge his responsibility to challenge an assessment is fatal to any claim of error in that assessment, because "(i)f no appeal is taken from the assessment of taxes within the time allowed by law it becomes binding and conclusive [and] neither the common pleas nor an appellate court can afford any relief." Lincoln Philadelphia Realty Associates I

v. Board of Revision of Taxes of City and County of Philadelphia, 758 A.2d 1178, 1190 (Pa. 2000). Challenges to tax assessments must be made promptly or not at all because "the revenue base of taxing bodies should not be left open indefinitely to retrospective claims." Id. (internal quotations omitted).

Section 8844 (c) of the Consolidated County Assessment Law and the relevant case law of this Commonwealth clearly place the burden on the record property owner to raise any grievances based on tax assessment by September 1<sup>st</sup> of the subject tax year or be conclusively subject to that assessment. In this case, the Petitioner did not appeal the 2006 or 2007 tax assessments in accordance with those requirements. As a result, we find that each of those assessments became binding on the Petitioner when a timely appeal was not filed, and they are no longer subject to review by this Court. Accordingly, while we are mindful of the Petitioner's concerns regarding the common facilities of the development, we are nonetheless constrained by the applicable statutes and case law to deny the relief requested by the Petitioner.

#### **CONCLUSION**

For the foregoing reasons, this Court concludes that the 2006 and 2007 real estate taxes levied on the Parcel remain due and payable notwithstanding the Petitioner's argument that said

Parcel is exempt from taxation. The window for a proper challenge to those assessments has closed, and the assessments became binding on the Petitioner when no appeal was filed by September 1<sup>st</sup> of the tax years at issue. The Petitioner was not granted a real estate tax exemption for the Parcel until said Petitioner affirmatively sought relief in 2008, and that relief, once obtained, did not apply retrospectively.

**BY THE COURT:**

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**Steven R. Serfass, J.**

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James R. Nanovic, Esquire	Counsel for Defendant

**ORDER OF COURT**

**AND NOW**, to wit, this 2<sup>nd</sup> day of April, 2012, upon consideration of the "Petition for Stay of Judicial Sale" filed by Ridgewood Country Estates Homeowners' Association, Inc., the Carbon County Tax Claim Bureau's Answer thereto, the briefs of counsel, and following an evidentiary hearing thereon, and in accordance with our Memorandum Opinion of this same date, it is hereby **ORDERED and DECREED** that the request of Ridgewood Country Estates Homeowners' Association, Inc. to expunge the delinquent real estate taxes which were levied on the subject premises for tax years 2006 and 2007 is **DENIED**.

It is **FURTHER ORDERED and DECREED** that the stay of the judicial sale of the subject premises imposed by this Court's Order of November 16, 2011 is **LIFTED**, and the subject premises shall be listed for and sold at judicial sale unless the aforesaid delinquent real estate taxes are paid by Ridgewood Country Estates Homeowners' Association, Inc.

**BY THE COURT:**

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**Steven R. Serfass, J.**