STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: MARCH 14, 2012)

THE NARRAGANSETT ELECTRIC COMPANY	:	
v.	:	**C.A. No.: PC/10-2226**
SALVATORE SACCOCCIO, JR., in his capacity as ASSESSOR for the CITY OF CRANSTON, ROBERT STROM, in his capacity as the FINANCE DIRECTOR for the CITY OF CRANSTON	:	

DECISION

RUBINE, J., This is an appeal from a personal property tax assessment for the 2008 tax year.[1] Before the Court is a Motion for Summary Judgment filed by The Narragansett Electric Company ("Narragansett" or "Plaintiff"), and a Cross-Motion for Summary Judgment filed by Salvatore Saccoccio, Jr., in his capacity as Tax Assessor for the City of Cranston ("Assessor"), and Robert Strom, in his capacity as Finance Director for the City of Cranston ("Finance Director") (collectively, "City" or "Defendants"). In its three-count Complaint, Plaintiff has appealed the City's 2009 tax assessment for the 2008 tax year. In addition, Plaintiff seeks declaratory relief. The taxed property at issue is located in the City and owned by Plaintiff. Jurisdiction is pursuant to G.L. 1956 § 44-5-26.

[1] It is undisputed that both parties consider the relevant property to be tangible personal property subject to depreciation in accordance with § 44-5-12.1.

I

Facts and Travel

The property in question consists of public utility equipment, gas mains, meters and services ("hereinafter referred to collectively as the "gas assets"). Some of these gas assets were put into service as far back as 1872. See Pl.'s Answers to Defs.' First Set of Interrogatories., Response No. 6 (Defs.' Ex. A).

In accordance with § 44-5-15, Plaintiff submitted its Annual Return for personal property to the Tax Assessor for the year 2008, stating that the total "Acquisition Cost" of its gas assets amounted to $39,843,390. See Annual Return to Cranston Tax Assessor at 5 (Pl.'s Ex. B). Plaintiff also stated that the depreciated taxable value of said assets amounted to $18,323,520. Id.[2] The City did not accept this valuation; instead, it assessed the taxable value of Plaintiff's gas assets at $24,696,717. See Pl.'s 2009 Tax Bill (Pl.'s Ex. A). The City computed this amount based upon acquisition cost data supplied by Plaintiff for the assets for which such data was currently available, as well as upon an alleged "agreement" that it had with Plaintiff's predecessor-in-interest regarding the value of certain pre-1984 gas assets for which no acquisition cost data was available.

Believing that it had been overcharged, on September 30, 2009, Plaintiff timely filed for an abatement of tax from the City, contending that the City had incorrectly assessed the gas assets in violation of § 44-5-12.1. See Application for Appeal of Property Tax-Tangible Property (Pl.'s Ex. G). The Assessor informed Plaintiff by letter, dated October 20, 2009, that the City's Division of Assessment had denied the appeal. (Pl.'s Ex. H.) In a subsequent letter, dated March 29, 2010, the Board of Tax Assessment Review upheld the denial of Plaintiff's

[2] Depreciation was calculated in accordance with G.L. 1956 § 44-5-12.1, which categorizes "Gas distribution, total distribution equipment" as Class III Long-Life Assets.

appeal. (Pl.'s Ex. I.) On April 13, 2010, Plaintiff timely filed the instant action pursuant to § 44-5-26. Thereafter, Plaintiff filed a Motion for Summary Judgment. The Defendants responded by filing an objection and a Cross-Motion for Summary Judgment.

Additional facts will be supplied as needed in the Analysis portion of this Decision.

II

Standard of Review

Summary judgment is proper when, after reviewing the admissible evidence in the light most favorable to the non-moving party, "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). When considering a motion for summary judgment, "the court may not pass on the weight or credibility of the evidence but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion." Westinghouse Broad. Co., Inc. v. Dial Media, Inc., 122 R.I. 571, 579, 410 A.2d 986, 990 (R.I. 1980) (internal citations omitted).

During a summary judgment proceeding, "the justice's only function is to determine whether there are any issues involving material facts." Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). Moreover, if no genuine issue of material fact exists, the trial justice may determine "'whether the moving party is entitled to judgment under the applicable law.'" Ludwig v. Kowal, 419 A.2d 297, 301 (R.I. 1980) (quoting Belanger v. Silva, 114 R.I. 266, 267, 331 A.2d 403, 404 (1975)). "When there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is properly entered." Tangleridge Dev. Corp. v. Joslin, 570 A.2d 1109, 1111 (R.I. 1990); Absi v. State Dept. of Admin., 785 A.2d 554, 556 (R.I.

2001) (stating that "[s]ummary judgment is proper when there is no ambiguity as a matter of law. . . . It is the burden of the party opposing a motion for summary judgment to assert facts that raise a genuine issue to be resolved.") (quoting Buonanno v. Colmar Belting Co., 733 A.2d 712, 715 (R.I. 1999) (internal quotations omitted)).

III

Analysis

The Plaintiff generally alleges that its gas assets have been the subject of an over-assessment and illegal taxation; it seeks a declaration from this Court as to how these assets lawfully should be taxed by the City. Specifically, Plaintiff maintains that in calculating the value of certain gas assets, the City improperly relied upon the alleged agreement entered into by the City and Plaintiff's predecessor-in-interest that purportedly set the base value of pre-1984 gas assets. Consequently, Plaintiff asserts, the City's assessment is in violation of procedural and substantive due process, and it avers that summary judgment should be granted in its favor. The Plaintiff maintains, instead, that it filed the appropriate valuation as required under the statute, and that the City was obligated to accept that valuation and simply apply the statutory depreciation in accordance with the statute.

The City states that there is a legal presumption that it validly assessed the value of the disputed gas assets, and it maintains that Plaintiff failed to offer competent evidence as to the full and fair cash value of those gas assets in order to rebut that presumption. In particular, the City contends that Plaintiff impermissibly collapsed the value of certain gas assets into one figure and, as a result, cannot meet its burden of establishing that the City's assessment of those particular gas assets was excessive. Consequently, the City avers that its Cross-Motion for Summary Judgment should be granted as to all counts of the Complaint.

Section 44-5-27 provides in pertinent part: "The remedy provided in § 44-5-26 shall be exclusive if the taxpayer owned or possessed any ratable estate at all, ... A taxpayer alleging an illegal or void tax assessment against him shall be confined to the remedies provided by § 44-5-26." Section 44-5-27. Considering that § 44-5-26 provides "the exclusive remedy for relief from an alleged illegal assessment of taxes[,]" our Supreme Court has held that "if the Legislature intended to furnish the taxpayer with another remedy by means of § 9-31-1, it would have said so in view of the existence of the remedy already provided in § 44-5-26." S. S. Kresge Co. v. Bouchard, 111 R.I. 685, 689, 306 A.2d 179, 181 (R.I. 1973); see also Pascale v. Capaldi, 95 R.I. 513, 514, 188 A.2d 378, 379 (1963) ("In our opinion the legislature did not intend that a petition under the uniform declaratory judgments act was to take the place of a taxpayer's suit and, therefore, the superior court had no jurisdiction under the act to grant the petitioner's prayers."); see generally Felkner v. Chariho Regional School Committee, 968 A.2d 865, 870 (R.I. 2009) (finding that when "the specific terms are controlling, this Court will defer to the more precise language governing a particular subject").

Considering that § 44-5-26 is the exclusive remedy available for allegedly illegal tax assessments, a taxpayer who disagrees with an assessment cannot avoid the procedures under the tax statute and, instead, file an action for declaratory relief. As the Court does not have jurisdiction to consider Plaintiff's claim for declaratory relief, it only will consider the tax appeal claims made by Plaintiff. Consequently, Plaintiff's claim for Declaratory Relief is denied and dismissed, and summary judgment in favor of the City on that count must be granted.

Section 44-5-26 provides in pertinent part: "Any person aggrieved on any ground whatsoever by an assessment of taxes against him or her . . . may within ninety (90) days from the date the first tax payment is due, file an appeal in the local office of tax assessment . . . ."

Section 44-5-26(a). Thereafter, "[a]ppeals to the local tax board of review are to be filed not more than thirty (30) days after the assessor renders a decision and notifies the taxpayer, or if the assessor does not render a decision within forty-five (45) days of the filing of the appeal, not more than ninety (90) days after the expiration of the forty-five (45) day period." Id. The local tax board of review then has ninety days of the filing to "hear the appeal and render a decision within thirty (30) days of the date that the hearing was held." Id.

The statutory application form provided in § 44-5-26(b), entitled "APPLICATION FOR APPEAL OF PROPERTY TAX," provides that:

> "[a]ny person still aggrieved on any ground whatsoever by an assessment of taxes against him or her in any city or town may, within thirty (30) days of the tax board of review decision notice, file a petition in the superior court for the county in which the city or town lies for relief from the assessment, to which petition the assessors of taxes of the city or town in office at the time the petition is filed shall be made parties respondent, and the clerk shall thereupon issue a citation . . . . " Section 44-5-26(b).

In the instant matter, Plaintiff filed an appeal pursuant to § 44-5-26.[3] The instant motion involves interpretation of § 44-5-12.1 and its application to the particular gas assets that are in dispute in this case.

It is axiomatic that the interpretation of a statute is a question of law. See Palazzolo v. State ex rel. Tavares, 746 A.2d 707, 711 (R.I. 2000). It also is well established that "when the language of a statute is clear and unambiguous, [this Court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Liberty Mutual Insurance Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting State v. LaRoche, 925 A.2d 885, 887 (R.I. 2007). Accordingly, if "a statutory provision is unambiguous, there is no room for statutory construction and [the Court] must apply the statute as written." Retirement Bd. of

[3] For reasons stated above, the Court does not have jurisdiction to address the claim for declaratory relief.

Employees' Retirement System of State v. DiPrete, 845 A.2d 270, 297 (R.I. 2004) (quoting In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994)).

However, it must be remembered that giving words their plain and ordinary meaning "is not the equivalent of myopic literalism." Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011) (quoting In re Brown, 903 A.2d 147, 150 (R.I. 2006). Instead, the Court must look at "the sense and meaning fairly deducible from the context" in order to "determine the true import of statutory language[.]" Id. Indeed, "it would be foolish and myopic literalism to focus narrowly on one statutory section without regard for the broader context." Id. Furthermore, it is a cardinal principle of statutory interpretation that "statutes should not be construed to achieve meaningless or absurd results." Ryan, 11 A.3d at 71 (quoting Berthiaume v. School Committee of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)). Accordingly, when considering a "statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." Id. (quoting Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)).

In 2006, the General Assembly enacted § 44-5-12.1, entitled "Assessment of tangible personal property." Prior to that enactment, tangible personal property was taxed pursuant to § 44-5-12. It provided in pertinent part: "All property liable to taxation shall be assessed at its full and fair cash value . . . ." Section 44-5-12 (emphasis added).

When § 44-5-12.1 was enacted, § 44-5-12 was amended to reflect the separate treatment for the assessment of tangible property. Thus, although it still reads: "All property liable to taxation shall be assessed at its full and fair cash value . . . [,]" (Section 44-5-12(a)), the additional provision states that "[t]angible property shall be assessed according to the asset

classification table as defined in section 44–5–12.1." Section 44-5-12(a)(5). Section 44-5-12.1 provides in pertinent part:

> "All tangible personal property subject to taxation shall be assessed for taxation based on the original purchase price (new or used) including all costs such as freight and installation. Assets will be classified and depreciated as defined in this section." Section 44-5-12.1(a) (emphases added).

Section 44-5-12.1 classifies tangible assets into three groups for purposes of applying different rates of depreciation. See § 44-5-12.1(b). Thus, pursuant to the classification table set forth in the statute, tangible assets with a projected life of thirteen years or more are classified as Class III Long-Life Assets. See id. When Class III Long-Life Assets reach fifteen-years of age, or more, they are depreciated by seventy percent of the original purchase price and associated costs (collectively, original purchase price). See id.

As previously stated, it is undisputed that both parties consider the gas assets to be tangible personal property subject to depreciation in accordance with § 44-5-12.1. However, the parties dispute the assessment value of Plaintiff's pre-1966 Class III Long-Life Assets. The original purchase price of those gas assets apparently is not available.[4]

It is undisputed that some of Plaintiff's Class III Long-Life Assets date as far back as 1872. The City asserts that it noticed on Plaintiff's Annual Return that there "was a significant drop in reported value for 'prior to 1994' assets . . . as compared to returns that have been turned in by plaintiff's predecessors for the past 20 + years for presumably the same property." (First Set of Interrogs. Propounded to Defs., Response No. 6 (Pl.'s Ex. D)). It further "noted that Narragansett Electric's Annual Return (a) failed to identify any tangible assets with a vintage year prior to 1966 and (b) failed to account for nearly $6 million in deletions of pre-1984 assets that had been accounted for through 2006." Id. As a result, the City states that in order "to

[4] The value of the gas assets acquired after 1966 is not in dispute.

determine the assessed value of pre-1984 assets[,] the City gave more weight to the consistent annual returns of Narragansett Electric's predecessor [in interest, The Providence Gas Company]." Id.

According to the City, the pre-1984 assessment value of the gas assets was calculated in the mid 1980's by an individual named Ray Gannon ("Mr. Gannon"). See Deposition of Defendant Salvatore Saccoccio at 38 (Defs.' Ex. B). It then maintains that:

> "by agreement with Providence Gas back in the mid 1980s, the fully depreciated base value for all gas assets existing in the City prior to 1984 was set at approximately 9.9 Million. This value of pre-1984 has changed slightly due to deletions in assets (as reported on annual statements). Based on information, belief, and the best evidence available to the city at the time of the assessment, the full value of the pre-1984 gas assets existing in the city as of 12/21/08 was $30,347,170. When depreciated down to 30%, the base value that the city used for pre-1983 gas assets was $9,104,151.00. This value was then subtracted from the "acquisition cost" of $22,070,424 (as reported on the 2009 return for assets 1995 & prior), leaving a balance of $13,166,273.00. This number, ($13.166 million), was then depreciated [to] 30% for a value of $3,949,881 to determine the correct assessed value of $9,104,151.00 along with the valued reported from 2006 to 1995 for a total of $24,696,717 for the 2009 tax bill." Id. (emphasis added); see also Plaintiff's 2009 Tax Bill (Pl.'s Ex. A).

The City has not produced a copy of the alleged agreement between The Providence Gas Company and the City. Furthermore, the Assessor admitted that he's never seen any such agreement, and that he does not know whether it ever was ratified by the City. See Deposition of Defendant Salvatore Saccoccio at 36-37 (Pl.'s Ex. E).

The Plaintiff readily admits that it owns "gas assets within the City of Cranston with vintage years prior to 1966." (Defs.' Ex. A, Response No. 7, and Pl.'s Ex. B.) However, Plaintiff asserts that when it purchased the company, it was neither aware of, nor informed about, the alleged agreement between the City and Plaintiff's predecessor in interest. See Affidavit of

Shannon Larson, Director of Real Estate for Plaintiff (Pl.'s Ex. F). The Plaintiff further contends that it never has agreed to a base assessment of almost $10 million for its pre-1984 assets, and that its annual return accurately sets forth the value of its entire inventory of gas assets. Id.[5]

The Plaintiff's Annual Return did not individually list the any of its pre-1966 Class III Long-Life Assets pursuant to § 44-5-12.1. According to Plaintiff, "a utility may choose to collapse large numbers of assets into the same categories or vintage years to reduce [Information Technology] resources need." (Defs.' Ex. A, Response No. 7.) It further maintains that "[t]he most likely explanation for the fact that no pre-1966 assets are specifically shown in the Company's plant accounting system is that they were all included in the asset grouping with the vintage year of 1966." Id. No such aggregation of cost data by year is referenced in the statute.

As stated, § 44-5-12.1(a) requires tangible personal property to be assessed for tax purposes based upon the original purchase price of that property. However, considering that some of Plaintiff's pre-1966 Class III Long-Life Assets date back to 1872, it apparently would be next to impossible for Plaintiff to obtain the original purchase price of its pre-1966 assets because, according to Plaintiff, such information no longer exists.

Essentially, both parties to this litigation take the position that the other side lacks the proof necessary to value the disputed assets. The Plaintiff maintains that the City should accept the valuation that it submitted in its Annual Return and simply apply the necessary depreciation to that valuation. The City, on the other hand, contends that it disagrees with Plaintiff's valuation, and that the valuation it has placed on the property presumptively is correct unless Plaintiff can prove otherwise.

Considering that the original purchase price of the disputed property is unavailable, it is

[5] The $10 million figure includes gas assets acquired between 1966 and 1984. The original purchase price of those particular assets is available and not in dispute.

not possible for Plaintiff to value the property in strict compliance with the procedures set forth in § 44-5-12.1. However, although the statute does not specifically provide for an alternative method for the calculation of value in situations where the original purchase price is unavailable, failure to employ an alternative method would lead to an absurd result. The reason is because there would be nothing to prevent a city or town from arbitrarily conjuring up a grossly excessive, but presumptively valid, property value that a taxpayer could not challenge due to the unavailability of the original purchase price of the disputed property. Such interpretation would lead to an absurd result. See Ryan, 11 A.3d at 71 ("statutes should not be construed to achieve meaningless or absurd results"). The next issue to determine is whether, when viewing the statute as a whole, there exists an appropriate alternative methodology for determining value in the absence of the original purchase price.

Prior to the 2006 enactment of § 44-5-12.1, property was assessed at its "full and fair cash value" in accordance with § 44-5-12. In making a determination as to "full and fair cash value," an assessor:

> "is not bound by any particular formula, rule or method . . . to ascertain the fair market value of [property]. The choice of a particular method is a discretionary act authorized by our state constitution and delegated by the General Assembly to our state's various municipal assessors. [T]ax assessors are entitled to a presumption that they have performed their acts properly until the contrary is proven. The taxpayer in a tax assessment challenge bears the burden of proving that the assessor's valuation exceeds fair market value. If the taxpayer . . . claims that the assessor used an inappropriate fair market value . . . the burden will be on the taxpayer to present evidence of fair market value. The fact-finder can accept the property valuation of one set of experts and reject that of another set of experts . . . . Just as a trial justice may pick and choose among evidence presented by laypersons, he or she may do the same when dealing with evidence of experts." (emphasis added) (internal citations and quotations omitted). Harvard Pilgrim Health Care of New England, Inc. v. Gelati, 865 A.2d 1028, 1035 (R.I. 2004).

Although Harvard Pilgrim Health Care of New England, Inc., dealt with the valuation of real property pursuant to § 44-5-12, the Court considers appropriate its burden shifting analysis when valuing tangible personal property in situations where the original purchase price is not available, as required by § 44-5-12.1. In applying this burden shifting paradigm to determine the taxable value of tangible property, the burden is on the taxpayer to first show that there was an inappropriate assessment of the property. Thereafter, the taxpayer must provide evidence of the actual taxable value of the property through reliable and competent evidence.

In the instant matter, the Tax Assessor assessed the value of Plaintiff's pre-1966 Class III Long-Life Assets based upon a previous assessment conducted by Mr. Gannon. This assessment presumptively is correct; however, Plaintiff disagrees and has provided its own valuation for said assets. This disagreement constitutes a genuine issue of material fact concerning the appropriate assessment value of Plaintiff's pre-1966 Class III Long-Life Assets. To settle this dispute, the burden is upon Plaintiff, through reliable and competent evidence, to prove the taxable value of those assets without the benefit of original purchase price. As the above analysis evidences that there exist genuine issues of material fact, the parties' Cross-Motions for Summary Judgment must be denied.

IV

Conclusion

For the foregoing reasons, the Court concludes that there exists a genuine issue of material fact concerning the assessed value of Plaintiff's gas assets. Accordingly, Plaintiff's Motion for Summary Judgment is denied. Likewise, the City's Cross-Motion for Summary Judgment is denied.

Counsel shall submit an appropriate order for entry consistent with this Decision.