

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(DATED: June 25, 2013)

LAWRENCE C. LABONTE

:

V.

:

C.A. No. PM-10-4650

NEW ENGLAND DEVELOPMENT
RI, LLC

:

:

:

DECISION

SILVERSTEIN, J. Simply stated, before this Court is the Receiver’s Motion to Determine Value and Ownership of Historic Tax Credit. The status of the Historic Tax Credit (the Tax Credit), however, is anything but simple. For over seven years, there has been a plan to use the Tax Credit (if it still exists) to convert the Hope Mill in Scituate into residences. The rights to the Tax Credit—or at least the rights to the continuing litigation involving the availability of the Tax Credit—have flowed through multiple entities and multiple receiverships. The issue has implicated both state and federal courts, all three branches of state government, and two levels of the state judiciary; it raises constitutional and jurisdictional issues. What everyone wants to know is whether there is still a live tax credit available for someone to sell and someone to buy. Nevertheless, the answer will not come today, as this Court finds that it does not have the authority to decide whether the receivership has a Rhode Island Historic Tax Credit worth \$7.5 million. That issue is currently on appeal in the District Court.

I

Facts and Travel

On July 1, 2001, the General Assembly enacted the Historic Structure Tax Credit. G.L. 1956 § 44-33.2-1 et seq. The enactment was amended on June 14, 2002. Id. On June 5, 2006,

Hope Mill Village Associates, LLC (the Associates) was organized for the purpose of renovating Hope Mill (the Mill) into a residential rental complex. At the time, there was a three-part certification process to receive historic tax credits. The Rhode Island Historical Preservation & Heritage Commission (the Commission) certified the Mill as a Historic Structure (Part 1 Certification) on October 13, 2006. On March 19, 2008, however, the Associates went into receivership in Kent County Superior Court.

On April 12, 2008, while the Associates was in receivership, the General Assembly amended the Historical Structures Tax Credit. After the amendment, § 44-33.2-4(d) provided:

“The division of taxation shall charge a fee equal to two and one quarter percent (2.25%) of the qualified rehabilitation expenditures of structures placed in service after July 31, 2005 and prior to January 1, 2008. The fee shall have been paid by May 15, 2008 for certified historical structures or some identifiable portion of a structure to qualify for the thirty percent (30%) tax credits under subsection 44-33.2-3(a). For certified historical structures or some identifiable portion of a structure placed in service after December 31, 2007, the division of taxation shall charge a fee equal to three percent (3%), four percent (4%), or five percent (5%) of the qualified rehabilitation expenditures as contracted between the division of taxation and the person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or non-profit) or other business entity that incurs qualified rehabilitation expenditures for the substantial rehabilitation of certified historic structures or some identifiable portion of a structure to be placed in service after December 31, 2007; provided further that two and one quarter percent (2.25%) of the qualified rehabilitation expenditures shall be paid by May 15, 2008 with the remaining percent to be paid by March 5, 2009. Payments made after March 5, 2009 shall accrue interest as set forth in § 44-1-7.” *Id.* (emphasis added).

The Commission and the Rhode Island Division of Taxation took measures to implement the amendments to the Tax Credit program and advise prospective claimants of the changes. The Division of Taxation put out an “Important Notice to Taxpayers Regarding Historic Tax Credits,” which stated, “Projects that fail to submit Part 3 Application or fail to make payment by

May 15, 2008 will not be eligible for tax credits.”¹ (Tax Admin. Ex. 10.) Although members of the Associates informed the Receiver about the issue of the Tax Credits, the Receiver of the Associates did not make a payment or file the Part 3 Application by May 15, 2008.

Starting on May 20, 2008, members of the Associates—not the Receiver—began sending letters to the Commission and the Division of Taxation, inquiring about the continued eligibility for the Tax Credit. At a member’s request, the Division of Taxation held a hearing on August 7, 2008, but determined that the Receiver was the proper party to bring the petition. (Tax Admin. Ex. 17.)

On August 20, 2008, the Associates filed a Chapter 11 bankruptcy petition in United States Bankruptcy Court for the District of Rhode Island. In September and October of 2008, the members of the Associates again requested a hearing, noting that they were now debtors in possession in the federal bankruptcy case and could represent the Associates. A hearing was held before the Hearing Officer on December 1, 2008. On November 13, 2009, the Tax Administrator adopted the Hearing Officer’s conclusion that the Associates were not eligible for the Tax Credit “because the Taxpayer did not file and make the requisite statutory payment by May 15, 2008.” In re: Hope Mill Village, LLC, Case No. 08-T-046, Decision and Order, Nov. 13, 2009.²

¹ The parties dispute whether the Associates filed a Part 2 Application. See Tr. 26-29, Mar. 19, 2013. Because no payment was made and no Part 3 Application was filed by May 15, 2008, and because of the nature of the disposition below, the dispute over the status of the Part 2 Application does not affect this Decision.

² While the Division of Taxation was considering the issue of the Tax Credits, the Rhode Island Superior Court entered an Order discontinuing receivership of the Associates because of “the removal of [the Associates] and its assets to Federal Bankruptcy Court.” (Tax Admin. Ex. 20.) Additionally, the Bankruptcy Trustee moved to convert the matter to a Chapter 7 proceeding.

On December 8, 2009, the Associates filed an appeal of the Tax Administrator’s decision in the District Court. The Bankruptcy Trustee also appealed the decision separately. On December 30, 2009, the Bankruptcy Trustee petitioned the Bankruptcy Court to sell the Associates’ assets to New England Development & Funding (N.E. Development & Funding) under an Asset Purchase Agreement (the Agreement) between the Bankruptcy Trustee and N.E. Development & Funding. The Bankruptcy Court entered an order approving the sale on January 7, 2010. (Tax Admin. Ex. 36.) Notably, the petition stated that “[t]he assets of the estate consist . . . of . . . potential tax credits” (Tax Admin. Ex. 35, ¶ 11 (emphasis added).) Furthermore, the Bankruptcy Trustee disclaimed warranties and stated that the assets would be transferred “on an ‘as-is, where-is’ basis.” *Id.* ¶ 25. Finally, the Agreement itself included among the assets to be sold, “all of the Seller’s right, title and interest, if any, in the Tax Credits.” (Tax Admin. Ex. 36, ¶ 2.1(d) (emphasis added).)

On January 28, 2010, a stipulation was filed in the District Court case, substituting New England Development RI, LLC (N.E. Development R.I.) for the Bankruptcy Trustee as Plaintiff in that appeal.³ On August 10, 2010, however, N.E. Development R.I. went into receivership. On August 20, 2012, the Receiver of N.E. Development R.I. entered into a Purchase and Sale Agreement with Vincent Coccoli, a former member of the now defunct Associates. Coccoli agreed to buy, among other things, “the Receiver’s rights and interests in governmental authorizations and tax credits.” (Tax Admin. Ex. 54.) This Court approved the proposed sale on October 2, 2012; however, no closing has taken place, and the closing date has been extended at least twice.

³ It is unclear to the Court how N.E. Development R.I., as opposed to N.E. Development & Funding came to hold the relevant assets, but this fact does not bear on the disposition of this Decision.

On October 5, 2012, Coccoli requested a status conference in the District Court cases “in an effort to lasso NE Development assets with regards to Hope Mill.” (Tax Admin. Ex. 56.) He claimed to represent himself pro se and asserted standing as “‘Purchaser’ of NE Development/Hope Mill.” Id. It appears that a conference was held on December 11, 2012. (Tax Admin. Ex. 56.) In January 2013, the Tax Administrator, the Receiver of N.E. Development R.I., and Coccoli all filed pre-trial memoranda in the District Court.⁴

The Receiver filed his Motion to Determine Value and Ownership of Historic Tax Credit in the N.E. Development R.I. receivership case on February 12, 2013. The Tax Administrator objected. The Court held an evidentiary hearing on March 19, 2013, and has received supplemental briefing and exhibits since that time.

II

Discussion

The Receiver requests that this Court “[d]eclare that the Receivership owns a R.I. Historic Tax Credit in the approximate value of \$7.5 million dollars [sic].” (Receiver’s Mot. to Determine Value and Ownership of Historic Tax Credit 3.) The Receiver asserts that “only [the] Superior Court has exclusive jurisdiction to determine the assets of corporations to be liquidated by its Receivers, pursuant to R.I. Gen. Laws § 7-1.2-1314, (Corporate Receiverships,) R.I.G.L. 8-6-13, (Equity)and R.I. Gen Laws 8-6-14 (law) and R.I. Gen Laws 9-30-1. Declaratory Judgments[.]”⁵ (Mem. of Def. Receivership in Supp. of Its State Contract 6.) The Tax Administrator argues that this Court lacks jurisdiction to determine a state tax dispute.

⁴ Coccoli’s memoranda is dated October 5, 2012; presumably, this was a typographical error as both the Receiver and the Tax Administrator represented in their filings here that the District Court memoranda were filed in January 2013.

⁵ Presumably, §§ 8-6-13 and 8-6-14 were meant to be §§ 8-2-13 and 8-2-14, respectively.

“[A] receiver . . . succeeds only to the debtor’s rights, and takes the property subject to the claims, liens and equities which would affect the debtor if he himself were asserting his interest in the property.” Vittorito v. Sportsman’s Lodge & Restaurant, Inc., 102 R.I. 72, 79, 228 A.2d 119, 124-25 (1967). Here, Coccoli agreed to buy “the Receiver’s rights and interests in governmental authorizations and tax credits.” (Tax Admin. Ex. 54.) The Receiver of N.E. Development R.I. has only the rights that N.E. Development R.I. had at the time that it went into receivership. Those rights flow from the sale from the Bankruptcy Trustee, who sold “all of [the Associates’] right, title and interest, if any, in the Tax Credits” to N.E. Development & Funding. (Tax Admin. Ex. 36, ¶ 2.1(d) (emphasis added).) Given the conditional nature of this sale, along with the fact that the Tax Administrator had already ruled that the Associates were ineligible for the Tax Credits at the time of the sale of the assets by the Bankruptcy Trustee to N.E. Development & Funding, the Bankruptcy Trustee only passed on the continuing rights to that litigation. Therefore, N.E. Development R.I.’s Receiver’s asset is the interest in the appeal pending in the District Court; it is not an undisputed, vested contractual right to a Tax Credit.

The District Court has jurisdiction over appeals from final decisions of the Tax Administrator. See G.L. 1956 § 8-8-24.⁶ The Supreme Court has stated that the Legislature has provided “a single method of review in the District Court for all final determinations made by the tax administrator.” Old Colony Bank v. Clark, 517 A.2d 249, 250 (R.I. 1986). Furthermore,

⁶ Section 8-8-24 refers to appeals “of a final decision of the tax administrator concerning an assessment, deficiency, or otherwise” Here, the decision concerned the eligibility for a tax credit after the failure to make a statutorily required payment; this fits into the “otherwise” category. See § 8-8-24; Old Colony Bank v. Clark, 517 A.2d 249, 250 (R.I. 1986) (noting that the intent of the Legislature was to provide “one method of review of all final decisions of the tax administrator”).

when reading §§ 8-8-24 to -32, together with other statutes, the Supreme Court has stated that the Legislature vested the District Court with:

“exclusive jurisdiction over tax matters, implied that the District Court is empowered to administer full relief, including adjudication of challenges to the constitutionality of tax statutes and claims for equitable relief that relate to tax disputes. We advance the Legislature’s objectives of judicial economy, fairness to litigants, and the elimination of duplicative proceedings. Since the District Court retains exclusive jurisdiction over tax disputes, it is necessary that the District Court retain power to decide all claims for relief attached to the underlying matter. The District Court could not function effectively if the scope of power regarding tax disputes is fragmented. A holding to the contrary would effectually dissipate the force of the statutory system established for the resolution of tax disputes.” Owners-Operators Independent Drivers Assoc. of America v. State, 541 A.2d 69, 73-74 (R.I. 1988).

The Receiver cites only one case regarding jurisdiction—Blue Cross/Blue Shield of Rhode Island v. Dept. of Business Regulation, No. 04-5769, 2005 WL 1530449, R.I. Super. June 23, 2005, Silverstein, J. That case is inapplicable here because it was properly brought under the jurisdiction of the Superior Court (not the District Court) under the Administrative Procedures Act. See id. at *1. Additionally, Long v. Dell, Inc., et al., 984 A.2d 1074 (R.I. 2009), which held that the Superior Court had jurisdiction over a Deceptive Trade Practice Act case that involved a tax issue, does not apply. In Long, the Court first noted that although the plaintiffs disputed the correctness letter rulings by the Tax Administrator and the validity of a regulation, “neither issue . . . is before [the Court].” Id. at 1077. Later, after noting that the Tax Administrator conceded that purchases of certain Dell products were not taxable even though Dell charged taxes to its customers, the Court stated, “Most importantly, this case does not concern an appeal from a decision by the tax administrator, who was given notice of this case because Dell disputed the tax administrator’s regulations and letter rulings.” Id. at 1079-80.

This Court may not and will not usurp the power clearly vested in District Court. Therefore, this Court finds that it does not have jurisdiction to decide whether the Receiver of N.E. Development R.I. has a Rhode Island Historic Tax Credit, what the Tax Credit would be worth, or the attendant constitutional issues relating to the change of the requirements to receive the Tax Credit.

III

Conclusion

The Receiver's Motion is denied. The substantive issues raised are properly before the District Court in the appeal of the Tax Administrator's decision. Although counsel have presented many other arguments as to procedure and the merits, the jurisdictional issue is dispositive and thus it is unnecessary for the Court to address those other arguments. Prevailing counsel may present an order consistent herewith which shall be settled after due notice to counsel of record.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Lawrence C. LaBonte v. New England Development RI, LLC**

CASE NO: **PM-10-4650**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **June 25, 2013**

JUSTICE/MAGISTRATE: **Silverstein, J.**

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