STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: June 18, 2014)

PICERNE INVESTMENT POOL, LLC, MITCHELL PLACE HOLDINGS INC., GOUGH ESTATES, LLC, GREENWICH PLACE LLC, MUTUAL APARTMENT PROPERTIES, LP and MUTUAL DEVELOPMENT PROPERTIES LP	:	
VS.	:	**C.A. No. KC 12-1312**
BRIAN SILVIA, IN HIS CAPACITY AS FINANCE DIRECTOR FOR THE TOWN OF WEST WARWICK	:	

DECISION

RUBINE, J. This action is before this Court on a Petition for Relief from Illegal Taxation (Petition) filed by six real property owners in the Town of West Warwick (Town or West Warwick). Each of the six petitioners owns real estate that is classified as residential real property with six or more dwelling units (hereinafter referred to as the apartment class). The petitioners initiated this cause of action against the Finance Director for the Town of West Warwick on November 19, 2012. The parties each submitted a memorandum of law and jointly submitted a set of stipulated facts. It is undisputed that, in 2012, the Town increased the tax rate by 24% for the apartment class property owners only. The petitioners allege that they are aggrieved by the tax rate established by the Town for the apartment class in that the class and the rate for that class are in violation of:

1. G.L. 1956 § 44-5-11.8;
2. Article 407(D) of the West Warwick Home Rule Charter; and

3. Article I, section 2 of the R.I. Constitution.[1]

The petitioners seek a declaration that the tax classification and tax rate increase are illegal.

This Court has jurisdiction over this cause of action pursuant to §§ 44-5-26(c) and 44-5-27 because the petitioners allege that the tax rate increase assessed on their property for tax years 2012 and 2013 is illegal. Section 44-5-26 is entitled "Petition in superior court for relief from assessment," and subsection (c) allows a petitioner direct access to the Superior Court for relief from an illegal tax without first filing an account or an appeal to the local office of tax assessment. Normally, this statute requires the taxpayer to exhaust administrative remedies before filing a petition in Superior Court. Section 44-5-26(a). Accordingly, the usual travel is that a taxpayer first seeks relief from the local tax assessor and appeals thereafter to the local tax board of review. However, when a taxpayer challenges an alleged tax assessment as either illegal or void, the taxpayer is not required to exhaust local remedies before invoking the equity jurisdiction of the Superior Court. Section 44-5-27. Here, the petitioners allege that the tax rate increase on the apartment class is illegal. It is undisputed that the petitioners did not attempt to exhaust their administrative remedies prior to filing the instant Petition in the Superior Court. However, the petitioners have properly invoked the equity jurisdiction of this Court, notwithstanding their failure to pursue local remedies because of their allegations of illegality.

The issue of law presented by the Petition is whether § 44-5-11.9 exempts West Warwick from the provisions of § 44-5-11.8. Section 44-5-11.8 provides cities and towns with the authority to adopt a tax classification plan. This authority is expressly limited by paragraph (a)(3), which states that "[a]ny tax rate changes from one year to the next shall be applied such

[1] While the Petition includes counts for alleged violations of Article 407(D) of the West Warwick Home Rule Charter and article I, section 2 of the Rhode Island Constitution, the petitioners do not press these counts in their memorandum of law. Instead, the memorandum only addresses the alleged violation of § 44-5-11.8.

that the same percentage rate change is applicable to all classes, . . ." Sec. 44-5-11.8(a)(3). Section 44-5-11.9, entitled "West Warwick – Residential real estate classification," permits West Warwick to establish additional tax classification classes beyond the four authorized by § 44-5-11.8. The five additional classes of property include the apartment class into which the petitioners' property falls. Paragraph (a) of § 44-5-11.9 states, "Notwithstanding any limitation, condition or any other provision to the contrary contained within § 44-5-11.8, the town of West Warwick may adopt the following separate and distinct tax classification tax-rates for each of the [five] classification[s]." Section 44-5-11.9 is silent as to uniformity among the classes with respect to parity of tax rate increases.

The petitioners argue that the action by the Town that creates a new tax classification for apartment buildings containing six or more dwelling units and increases the tax rate for the apartment class by 24% for tax year 2012-2013, while not increasing the rate for any other class of real property, is in violation of § 44-5-11.8(a)(3). The Town disputes the petitioners' claims of illegality and argues that § 44-5-11.9(a) is clear that the limitations, conditions, and other provisions of § 44-5-11.8 are not applicable to West Warwick. The parties stipulated that both statutory sections serve to establish tax classifications. The parties also stipulated that § 44-5-11.8 is a statute of general applicability, while § 44-5-11.9 specifically applies to West Warwick.

It is well settled 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." Downey v. Carcieri, 996 A.2d 1144, 1150 (R.I. 2010). "It is an especially well-settled principle of statutory construction that when, as here, 'we are faced with statutory provisions that are *in pari materia,* we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope.'" Horn v. S. Union Co., 927 A.2d

292, 295 (R.I. 2007) (quoting State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004)). In the absence of any published record of legislative history, the Rhode Island Supreme Court has adopted the rule that the intent of the legislature can best be gleaned from the plain meaning of the words used in the statute. See Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007).

By its use of the words "[n]otwithstanding any limitation, condition or other provision . . . contained within § 44-5-11.8," the legislature clearly intended that § 44-5-11.9 would create a special exemption for West Warwick from the provisions and limitations generally applicable to other municipalities set forth in § 44-5-11.8 (emphasis added).[2] If the General Assembly intended to create an exception to West Warwick for only some of the limitations generally applicable under § 44-5-11.8, it would have clearly stated which provisions still applied to West Warwick for these additional classifications. Instead, the legislature used the word "any" to define which limitations would not apply to that Town. By the plain meaning of the words in § 44-5-11.9(a), the Town "may adopt [a] separate and distinct tax classification tax-rate[] for the classifications defined in subsection (b). Therefore, when the Town increased the tax rate for only the apartment class, it acted with proper authority as provided in § 44-5-11.9.

The legislature has the authority to exempt certain municipalities from conditions generally applicable to all cities and towns and has often exercised such authority for the benefit of only one community. For example, § 44-5-11.8 contains special exceptions applicable only to Providence, Glocester, Middletown, and Little Compton, respectively. By applying the rules of statutory construction, this Court finds that the General Assembly exempted West Warwick from each and every limitation or requirement with respect to municipal tax classifications. For that

[2] "Notwithstanding" is clear and unambiguous. It is defined as "despite; in spite of" (Black's Law Dictionary 1094 (8th ed. 2004)) or "without being prevented by" (Webster's Third New International Dictionary 1545 (1981)). In common parlance, "any" connotes "every." (American College Dictionary Random House 69 (1961)).

reason, the petitioners' challenge to the legality of the increased tax rate passed in 2012 for the apartment class only must fail. The Town, consistent with a proper interpretation of §§ 44-5-11.8 and 44-5-11.9, fully understood that a real estate tax program could be created by adding the new apartment class classification, and that the tax rate applicable thereto could be increased even if other classes were not subject to a rate increase.[3] Therefore, the petitioners' claims are denied and dismissed as a matter of law. The petitioners are required to satisfy the tax obligations in the real estate tax statements sent to them for tax years 2012 and 2013, computed in conformity with the tax rate adopted by the Town for those tax years.

Counsel for the Town shall prepare an appropriate judgment, denying and dismissing petitioners' claims, consistent with this Decision.

[3] The Town argues, and this Court accepts, as a reasonable legislative rationale for treating apartment properties differently than other classes of real property, that the apartment class of properties creates a greater burden on municipal resources. Accordingly, as among residential properties, there is ample justification for requiring the owners of such apartment properties to bear a greater portion of the tax burden, as compared to owners of other residential properties in the Town.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Picerne Investment Pool, LLC v. Silvia**
CASE NO:	**KC 12-1312**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**June 18, 2014**
JUSTICE/MAGISTRATE:	**Rubine, J.**
ATTORNEYS:	
For Plaintiff:	**John A. Pagliarini, Jr., Esq.**
For Defendant:	**Timothy A. Williamson, Esq.**