STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: May 6, 2014]

JOSPEH ANDRADE and KIMBERLY ANDRADE	:	
VS.	:	**C.A. No. PC 2012-5720**
TOWN OF LINCOLN, and ELAINE MONDILLO, in her capacity as the TAX ASSESSOR FOR THE TOWN OF LINCOLN, and JOHN WARD in his capacity as FINANCE DIRECTOR FOR THE TOWN OF LINCOLN	:	

DECISION

CARNES, J. Before the Court is Joseph Andrade and Kimberly Andrade's (Plaintiffs) Complaint, seeking a declaratory judgment regarding their entitlement to a homestead exemption for the tax year 2012. The Defendants—the Town of Lincoln; Elaine Mondillo, in her capacity as the Tax Assessor for the Town of Lincoln; and John Ward, in his capacity as Finance Director for the Town of Lincoln (Defendants)—assert that Plaintiffs were not the owners of the property in question as of the date of assessment, and so, are not entitled to the homestead exemption for the tax year 2012. Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel

Defendants' Answer to Plaintiffs' Complaint demonstrates the absence of factual issues before the Court as Defendants admit all the allegations essential to this Court providing declaratory relief to the parties. The facts of the case are set forth in Plaintiffs' Complaint as follows:

"1. Plaintiff, Joseph Andrade is a resident of the State of Rhode Island.

"2. Plaintiff, Kimberly Andrade is a resident of the State of Rhode Island.

"3. The Town of Lincoln is a town established by home rule charter in the state of Rhode Island.

"4. Defendant, Elaine Mondillo is the tax assessor for the Town of Lincoln.

"5. Defendant, John Ward is the finance director for the Town of Lincoln.

"6. This court has jurisdiction over this matter pursuant to The Uniform Declaratory Judgment Act.

"7. The Plaintiffs jointly own [a] home located at 2 Lauretta Lane in Lincoln, Rhode Island.

"8. The subject property was purchased in the beginning of 2012.

"9. Plaintiffs filed for a Homestead Exemption with the Town of Lincoln in March of 2012.

"10. On April 9, 2012 the Plaintiffs received a letter from Elaine Mondillo indicating that because the Plaintiffs were not the owners of record on December 31, 2011, they were ineligible for the Homestead Exemption or a pro rata share thereof for the year of 2012. (Pls.' Mem., Ex. 2.)

"11. In the letter, tax assessor Mondillo, specifically references R.I.G.L. § 44-5-1.

"12. R.I.G.L. § 44-5-1 refers to the date of assessment of any property in a city or Town. This section of law does not discuss ownership interest in said property.

"13. On Oct 17, 2006, the Town of Lincoln adopted article 8, entitled Homestead Exemption, and enumerated a procedure for requesting and obtaining a Homestead Exemption. (Pls.' Mem., Ex. 1.)

"14. The ordinance indicates that a taxpayer shall file an application on or before April 15 of the year the Homestead Exemption is being requested.

"15. The Plaintiffs followed the ordinance of the Town of Lincoln and completed all applications correctly and within the proper time frame."

In their petition for declaratory judgment, Plaintiffs aver that they are eligible for the Homestead Exemption or a pro rata share of the exemption for the year 2012. In addition,

Plaintiffs argue that they fulfilled the requirements of art. 8, §§ 228-30 and 228-31, which are the Town of Lincoln's Ordinances that enumerate the procedure for requesting and obtaining a homestead exemption. Specifically, Plaintiffs assert that they were the record owners of the property when they applied for the exemption, that their application was timely, and that as a result, the homestead exemption should have been applied to the property for the year 2012. Moreover, Plaintiffs contend that the Tax Assessor's reliance on § 44-5-1 as the basis for her denial of the requested exemption was an error of law because the statute is inapplicable to homestead exemptions.

Defendants claim that the Town lawfully denied Plaintiffs' application for the homestead exemption for the year 2012 because Plaintiffs were not the record owners of the home on the date of assessment for the year 2012. In particular, Defendants maintain that the date of assessment for 2012 was December 31, 2011, that the owner on the date of assessment for 2012 was Deutsch Bank National Trust (not entitled to homestead exemption), and that consequently, taxes were issued against the subject property for 2012 without any homestead exemption. Furthermore, Defendants allege that the tax assessor for the Town of Lincoln properly relied upon § 44-5-1 as both property tax liabilities and benefits are assessed against the record owner as of the date of assessment, defined in § 44-5-1. Additionally, Defendants assert that a homestead exemption cannot be apportioned between Plaintiffs and the former owner because there is no State statute granting the Town the authority to apportion exemptions in this manner, and the Town has no authority to grant a tax exemption without express authorization from the Legislature. Finally, Defendants aver that Town Ordinance art. 8, § 228-31 describes the procedure for applying for a homestead exemption and as a result, it cannot displace state law mandating the date of assessment for tax liabilities and benefits.

II

Standard of Review

Pursuant to the Uniform Declaratory Judgments Act, the Superior Court is vested with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. Thus "the Superior Court has jurisdiction to construe the rights and responsibilities of any party arising from a statute pursuant to the powers conferred upon [it] by G.L. chapter 30 of title 9, the Uniform Declaratory Judgments Act." Canario v. Culhane, 752 A.2d 476, 478-79 (R.I. 2000). Specifically, § 9-30-2 of the Uniform Declaratory Judgments Act provides as follows:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or legal relations thereunder."

"This statute gives a broad grant of jurisdiction to the Superior Court to determine the rights of any person that may arise under a statute not in its appellate capacity but as a part of its original jurisdiction." Canario, 752 A.2d at 479 (citing Roch v. Harrahy, 419 A.2d 827, 830 (R.I. 1980)); see also Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997). '"A decision to grant or deny declaratory relief is addressed to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice committed an error of law."' Panarello v. State, Dep't of Corr., - A.3d -, 2014 WL 1349491, at *9 (R.I. Apr. 7, 2014) (quoting Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005)).

Moreover, "[a]ny taxpayer claiming entitlement to a statutory tax exemption carries the burden of proving that the assessment in question falls within the terms of the exemption." Kent

Cnty. Water Auth. v. State Dep't of Health, 723 A.2d 1132, 1135 (R.I. 1999) (citing Dart Industries, Inc. v. Clark, 696 A.2d 306, 310 (R.I. 1997)). Our Supreme Court "repeatedly has held that [this court is] constrained to strictly construe statutory tax exemptions in favor of the taxing authority." Delta Airlines, Inc. v. Neary, 785 A.2d 1123, 1126 (R.I. 2001) (citing Preservation Soc'y of Newport County v. Assessor of Taxes of Newport, 104 R.I. 559, 564-65, 247 A.2d 430, 434 (1968)).

III

Analysis

In support of their request for declaratory relief, Plaintiffs argue that this Court need look no further than Town Ordinance art. 8, §§ 228-30 and 228-31, in order to determine the rights of the parties. Article 8, § 228-30 states that the Town Council is adopting a "uniform procedure for the application of the homestead exemption." Town Ordinance art. 8, § 228-31, "Procedure," reads, in relevant part, that:

> "Applicants for the homestead exemption shall submit completed application forms to the Office of the Tax Assessor on or before April 15 of the tax year for which the exemption is sought. For illustrative purposes, taxpayers seeking the homestead exemption for the tax year from January 1, 2007, to December 31, 2007, with the first quarterly payment due by July 31, 2007, would be required to file a completed application on or before April 15, 2007."

In response, Defendants assert that this Court must interpret Rhode Island General Law §§ 44-5-1, 44-4-4, and 44-9-1 in pari materia to determine Plaintiffs' rights. Pursuant to the doctrine of in pari materia, "statutes on the same subject . . . are, when enacted by the same jurisdiction, to be read in relation to each other." Horn v. S. Union Co., 927 A.2d 292, 301 (R.I.

2007) (citing Reed Dickerson, The Interpretation and Application of Statutes 233 (1975)). Section 44-5-1 provides that:

> "The electors of any city or town qualified to vote on any proposition to impose a tax or for the expenditure of money, when legally assembled, may levy a tax for the purposes authorized by law, on the ratable property of the city or town, either in a sum certain, or in a sum not less than a certain sum and not more than a certain sum. The tax is apportioned upon the assessed valuations as determined by the assessors of the city or town as of December 31 in each year at 12:00 A.M. midnight, the date being known as the date of assessment of the city or town valuations." (Emphasis added.)

Section 44-4-4, "Assessment of real estate taxes against owner," states, in pertinent part, that "[t]axes on real estate are assessed to the owners." (Emphasis added.) Defendants contend that when interpreting §§ 44-5-1 and 44-4-4 in pari materia, our Supreme Court has steadfastly held that tax liabilities and benefits "rests solely on him who owns the property at the precise time as of which the assessment is made." Indus. Trust Co. v. Wilson, 58 R.I. 378, 192 A. 821, 824 (1937). Defendants also assert that § 44-9-1 provides further proof that the date of assessment is the date that tax liabilities and benefits are imposed because taxes create a lien on the property on the date of assessment.[1] Accordingly, Defendants argue that the homestead exemption is only available to the record owner of the property being taxed and that because Plaintiffs were not the record owners as of the date of assessment for the tax year 2012, Plaintiffs are not entitled to the homestead exemption for that tax year.

It is readily apparent to this Court that § 44-5-1 is determinative of whether or not Plaintiffs have a right to a homestead exemption for the tax year 2012. Plaintiffs' reliance on art.

[1] Section 44-9-1(a) provides that "[t]axes assessed against any person in any city or town for either personal property or real estate shall constitute a lien on the real estate. The lien shall arise and attach as of the date of assessment of the taxes, as defined in § 44-5-1." See Sec. 44-9-1(a).

8, § 228-31 is not persuasive because the clear and unambiguous language of the ordinance merely sets a procedure and a deadline for applying for the homestead exemption; it does not purport to determine at what date the exemption is to be assessed.

The parties agree that the meaning of the word "assessment" contained in § 44-5-1 is important to this Court's interpretation of that statute. Plaintiffs' rely on the Black's Law Dictionary definition of "assessment" to argue that the "date of assessment" is solely the date when the value of the ratable property is determined and not the actual date that the tax is imposed. However, Defendants rely on another definition of "assessment," also derived from Black's Law Dictionary, stating that an "assessment" is the "[i]mposition (of something, such as a tax or fine) according to an established rate." Equipped with this definition of "assessment," Defendants contend that the phrase "date of assessment," as used in § 44-5-1, means the date that tax liabilities and benefits are imposed.

With respect to statutory interpretation, the Court's ultimate goal is to give effect to the purpose of the act as intended by the Legislature. Sycamore Properties, LLC v. Tabriz Realty, LLC, 870 A.2d 424, 427-28 (R.I. 2005). A statute must be examined in its entirety, and its words must be accorded their plain and ordinary meaning. Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire, 637 A.2d 1047, 1049 (R.I. 1994). When a statute has a plain, clear, and unambiguous meaning, no interpretation is required. State v. Diamante, 83 A.3d 546, 548 (R.I. 2014) (internal quotation omitted); Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007) (internal citation omitted.) As previously mentioned, this Court must "strictly construe statutory tax exemptions in favor of the taxing authority." Delta Airlines, Inc., 785 A.2d at 1126 (internal citation omitted); see also 3A Sutherland Statutory Construction § 66:9, n.10 (7th ed.) (citing First Bank and Trust Co. v. City of Providence, 827 A.2d 606, 610-11 (R.I. 2003)) (statutes

exempting property from taxation should be strictly construed in favor of taxation, but should not be interpreted unreasonably).

Principal to this Court's interpretation is recognizing that "[t]ax exemptions, which exist solely by virtue of legislative grace, arise only from constitutional or statutory provisions" and cannot be read into a statute by implication. Kent Cnty. Water Auth., 723 A.2d at 1135 (internal citations and quotations omitted); see also Diamante, 83 A.3d at 550-51 (quoting Rivera v. Emps.' Ret. Sys. of Rhode Island, 70 A.3d 905, 910 (R.I. 2013) (holding that where a statute is unambiguous, a court is "not privileged to legislate, by inclusion, [by inserting] words which are not found in the statute"). Despite the Legislature's "entire control" over taxation, it has delegated to municipalities the power to tax real property within their borders. See City of Providence v. Killoran, 447 A.2d 369, 370 (R.I. 1982) (internal quotation omitted) (reaffirming that the Legislature has complete control over what is taxed, how much it is taxed, and what shall be exempt from taxation). However, any delegation of the Legislature's authority to a municipality must be expressly authorized by statute. See Warwick Mall Trust v. State, 684 A.2d 252, 254-55 (R.I. 1996) ("If a City or a town cannot levy, assess, and collect taxes without General Assembly authorization, then it certainly cannot abate, exempt, or allocate payments it would otherwise be entitled to receive as taxes (or to negotiate for their receipt as payments in lieu of taxes) without such authorization"); Ramsden v. Ford, 88 R.I. 144, 146-47, 143 A.2d 697, 698-99 (1958) (finding that the power to exempt property from taxation "resides in the state alone" and can only be exercised by the Legislature or a municipality with express authorization of the Legislature); R.I. CONST. art. 13, § 5 ("Nothing contained in this article shall be deemed to grant to any city or town the power to levy, assess and collect taxes or to borrow money, except as authorized by the general assembly").

In the within matter, the Court finds that Plaintiffs have failed to meet their burden. See Kent Cnty. Water Auth., 723 A.2d at 1135. This Court remains mindful that it must "strictly construe statutory tax exemptions in favor of the taxing authority." Delta Airlines, Inc., 785 A.2d at 1126. This Court has interpreted §§ 44-5-1, 44-4-4, and 44-9-1 in pari materia and has concluded that the definition of "assessment," as defined in Black's Law Dictionary, which states that an "assessment" is the "[i]mposition (of something, such as a tax or fine) according to an established rate," evinces the Legislature's intent in drafting § 44-5-1.[2] See Horn, 927 A.2d at 301; Sycamore Properties, LLC, 870 A.2d at 427-28. Section 44-5-1 reads, in relevant part, that "[t]he tax is apportioned upon the assessed valuations as determined by the assessors of the city or town as of December 31 in each year at 12:00 A.M. midnight, the date being known as *the date of assessment* of the city or town valuations." (Emphasis added.) Furnished with the aforementioned definition of "assessment," the Court finds that the statute has a plain, clear, and unambiguous meaning and that no other interpretation is required. Chambers, 935 A.2d at 961 (internal citation omitted). Specifically, "the date of assessment" is the date utilized to determine a property owner's tax liabilities or benefits for the upcoming tax year. See § 44-5-1. It is recognized that the homestead exemption is a tax benefit. See 40 C.J.S. Homestead § 1 (2006 & Supp. 2013).

Therefore, this Court finds that Plaintiffs are not entitled to the homestead exemption for the tax year 2012 because the Plaintiffs were not the owners of the property on or before

[2] The Court notes that § 44-5-13, "Assessment and apportionment according to law--Date of assessment," also references § 44-5-1 as establishing the date of assessment for all valuations and apportionments of taxes within a municipality. See § 44-5-3. Specifically, § 44-5-13 reads, in pertinent part, that "[t]he assessors shall assess all valuation and apportion any tax levy on . . . the ratable property in the city or town according to law, and the assessed valuation of the ratable property is made as of the date of assessment provided in § 44-5-1." See id.

December 31, 2011, at 12:00 A.M. See id. In addition, Plaintiffs' argument that § 44-5-1 is inapplicable because the statute is devoid of the term "homestead exemption," fails to consider that § 44-5-1 states the "date of assessment" for all tax liabilities and benefits accruing to a property owner in the State of Rhode Island. See id.; Killoran, 447 A.2d at 370.

While not essential to this Court's holding—though noting for purposes of discussion—if this Court ignored Town Ordinance art. 8, § 228-31's clear and unambiguous language and interpreted it as altering the date of assessment of the homestead exemption pursuant to § 44-5-1, the Ordinance would likely be found to be preempted by state statute because it would directly conflict with § 44-5-1. See Amico's Inc. v. Mattos, 789 A.2d 899, 907 (R.I. 2002) (quoting Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255, 1261 (R.I. 1999)) (finding that "a municipal ordinance is preempted if it conflicts with a state statute on the same subject"); see also State v. Pascale, 86 R.I. 182, 186–87, 134 A.2d 149, 152 (1957) (local traffic ordinance punishing any refusal to comply with order of police officer was preempted by state statute punishing willful refusal to comply with police order) (emphasis added). It is essential to note that our Supreme Court has steadfastly recognized that cities and towns that have adopted home rule charters are free to exercise authority over purely local concerns. Town of E. Greenwich v. O'Neil, 617 A.2d 104, 111 (R.I. 1992) (citing Westerly Residents for Thoughtful Development, Inc. v. Brancato, 565 A.2d 1262, 1264 (R.I. 1989)). However, "[m]unicipalities may not . . . legislate on matters of statewide concern. The power of the General Assembly remains exclusive in those areas." Westerly Residents for Thoughtful Development, Inc., 565 A.2d at 1264. Moreover, a municipality is created by the state, and as a result, the municipality has only such powers as are delegated to it by the state. Specifically, article XIII, section 4, of the Rhode Island Constitution gives the Legislature the "power to act in relation to the property, affairs and

government of any city or town by general laws which shall apply alike to all cities and towns." See Bruckshaw v. Paolino, 557 A.2d 1221, 1223 (R.I. 1989).

Here, this Court has interpreted § 44-5-1 as establishing the date of assessment for tax liabilities and benefits for all cities and towns in the State of Rhode Island. See § 44-5-1. Thus § 44-5-1's subject matter is not purely local in nature and is, in fact, a matter of statewide concern. See Westerly Residents for Thoughtful Development, Inc., 565 A.2d at 1264; see also Bruckshaw, 557 A.2d at 1223. Furthermore, this Court finds that if it interpreted Town Ordinance art. 8, § 228-31 as urged by Plaintiffs, the Ordinance would directly conflict with § 44-5-1, which would result in the Town Ordinance being superseded by state law. See Amico's Inc., 789 A.2d at 907; Thornton-Whitehouse, 740 A.2d at 1261; Pascale, 86 R.I. at 186–87, 134 A.2d at 152. Accordingly, this Court interprets Town Ordinance art. 8, § 228-31 as exclusively describing the requisite procedure for applying for a homestead exemption to save the Ordinance from being preempted by § 44-5-1. See 6 Eugene McQuillin Municipal Corporations § 21:35 (3rd revised ed. 2007) (noting that "state preemption of municipal enactments occurs when the ordinance substantially interferes with the effective functioning of the statute or its underlying purpose"); Murphy v. Dir. of Pub. Works, 103 R.I. 451, 458, 238 A.2d 621, 625 (1968) (holding that "[t]he law is well settled that where [an] [ordinance] is susceptible of two reasonable constructions, one of which would raise a serious question of [preemption] and the other which would not, the latter construction should be adopted").

Furthermore, Plaintiffs' interpretation of Town Ordinance art. 8, §§ 228-30 and 228-31 and Rhode Island General Law § 44-5-1 would lead to an absurd result. See McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 243-44 (R.I. 2012) (internal citation omitted) (stating that a court will not ascribe to the legislature an intent that leads to an absurd or

unreasonable result). Specifically, Plaintiffs' interpretation would require a lien, applied to the property pursuant to § 44-9-1, to be retroactively vacated. See § 44-9-1 ("[t]axes assessed against any person in any city or town for either personal property or real estate shall constitute a lien on the real estate. The Lien shall arise and attach as of the *date of assessment* of the taxes, as defined in § 44-5-1") (emphasis added). The clear language of § 44-9-1 indicates that the date the tax is assessed and the lien are attached is the date of assessment. Accordingly, Plaintiffs' interpretation of the phrase, "date of assessment," would lead to an absurd result because it would require the lien to be retroactively vacated, and there is no provision within Rhode Island law that authorizes vacating a tax lien in those circumstances. See McCain, 41 A.3d at 243-44; Warwick Mall Trust, 684 A.2d at 254-55; see also Diamante, 83 A.3d at 550-51 (quoting Dodd v. United States, 545 U.S. 353, 359-60 (2005) (stating that a court is simply "not free to rewrite [a] statute that [a legislative body] has enacted").

A final consideration before the Court is whether a homestead exemption may be apportioned between a current property owner and the former owner for a particular tax year. Section 44-4-8.1, "Apportionment of taxes upon sale of real estate," reads as follows:

> "Whenever any real estate situated in this state is sold and conveyed to a purchaser, the tax assessed upon the real estate and the buildings and land improvements thereon as of any December 31st shall, except as otherwise provided by contract of the parties involved, be apportioned as if the assessment were made in advance for the immediate following calendar year and shall be adjusted between the seller and the purchaser as of the date of delivery of the deed of conveyance, the seller paying for the period commencing January 1st to and including the date of delivery of the deed of conveyance, and the purchaser paying the balance of the taxes."

The statute allows for the apportionment of tax liabilities between a buyer and seller for the tax year the property is sold, but makes no reference to the apportionment of tax benefits.

See § 44-4-8.1 (Emphasis added.) The apportionment of tax benefits cannot be read into the statute. Kent Cnty. Water Auth., 723 A.2d at 1135; Ramsden, 88 R.I. at 146-47, 143 A.2d at 698-99; R.I. CONST. art. 13, § 5. In addition, there is no other provision of Rhode Island General Laws that allows for the apportionment of a homestead exemption. Therefore, the apportionment of a homestead exemption is proscribed by the Legislature because the Legislature has not expressly authorized this practice. Warwick Mall Trust, 684 A.2d at 254-55; Killoran, 447 A.2d at 370; Ramsden, 88 R.I. at 146-47, 143 A.2d at 698-99; R.I. CONST. art. 13, § 5.

IV

Conclusion

This Court hereby declares that Plaintiffs are not entitled to the homestead exemption, or an apportionment thereof, pursuant to § 44-5-1, for the tax year 2012 because they were not the owners of the subject property on the date of assessment for that year. Both counsel shall submit an appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Joseph Andrade and Kimberly Andrade v. Town of Lincoln, et al.
CASE NO:	PC 12-5720
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 6, 2014
JUSTICE/MAGISTRATE:	Carnes, J.
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