

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1755-12T4

OMEGA SELF STORAGE OF NJ, LLC,

Plaintiff-Appellant,

v.

IP OF LAWRENCE,

Defendant-Respondent.

Argued May 28, 2013 – Decided July 3, 2013

Before Judges Parrillo and Fasciale.

On appeal from the Tax Court of New Jersey,
Docket No. 6793-2012.

John F. Casey argued the cause for appellant
(Wolff & Samson, P.C., attorneys; Mr. Casey
and Lindsay A. Smith, on the briefs).

Jennifer L. Cordes argued the cause for
respondent (Eckert, Seamans, Cherin, &
Mellott, LLC, attorneys; David M. Roskos and
Ms. Cordes, on the brief).

PER CURIAM

Plaintiff Omega Self Storage of NJ, LLC (Omega) appeals
from a November 15, 2012 judgment of the Tax Court dismissing
plaintiff's complaint with prejudice for want of jurisdiction,

finding plaintiff did not have standing to bring a 2012 tax appeal. The Tax Court based its ruling on the fact that, at the time the appeal was filed, plaintiff was a contract purchaser for the property at issue, and a contract purchaser is not a "taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property" within the meaning of N.J.S.A. 54:3-21. We disagree and reverse.

The property at issue is located on Lawrence Station Road in Lawrence Township (Township) and was assessed by the Township at a total of \$1,747,000 for tax year 2012. At the time of this assessment, the property was owned by Lawrence Station Storage, LLC (Lawrence Station), but eventually sold to Omega pursuant to a contract of sale entered into on December 21, 2011. Although the anticipated closing date was in February 2012, Omega did not obtain ownership of the property until May 30, 2012, when the contract of sale closed.

The contract contained a mortgage contingency clause and also allowed the purchaser to cancel the transaction if it did not approve title (up to five days before closing) or was otherwise dissatisfied with its investigation of the property. Paragraph 16 contained a default provision stating that in the event of a breach or default by seller, buyer's "sole and

exclusive remedy" was to terminate the contract and receive a return of its deposit.

In the meantime, in anticipation of the April 1, 2012 filing deadline, Omega filed a complaint with the Tax Court on March 29, 2012, challenging the 2012 assessment on the property. In paragraph one of the complaint, it was alleged that "plaintiff is the taxpayer of the properties [sic] shown on the local property tax case information statements [sic] attached to the FACE of the complaint." Lawrence Station, the owner of the property at the time the complaint was filed, was not mentioned in the complaint or the accompanying case information statement, and did not file its own complaint challenging the 2012 assessment. Moreover, nothing in the contract of sale obligated Lawrence Station to file a tax appeal for 2012 to protect Omega's putative interest.

On August 31, 2012, three months after Omega had taken title to the property and five months after the filing of plaintiff's complaint, the Township moved to dismiss the complaint for want of subject matter jurisdiction. The Township argued that plaintiff lacked standing to bring the 2012 tax appeal because, at the time the complaint was filed, plaintiff was only a contract purchaser for the property, not its title owner, and therefore, was not a "taxpayer feeling aggrieved by

the assessed valuation" for purposes of N.J.S.A. 54:3-21.

Plaintiff opposed the motion, contending that as the contract purchaser, its interest in the property was known to the Township at the time the complaint was filed and that, as the party responsible for the 2012 tax bill, it was an aggrieved taxpayer adversely affected by the Township's assessment.

In its written opinion of November 15, 2012, the Tax Court judge granted the Township's motion and dismissed plaintiff's complaint with prejudice, concluding that as a contract purchaser only, plaintiff did not have standing to bring the 2012 tax appeal for the property. The judge reasoned:

Omega did not have title to the subject property on March 29, 2012. It was not at that time responsible for the payment of taxes assessed against the property and was not liable for the debts of the entity that owned the property on the filing date. At best, Omega had a contractual right to purchase the property on a date after the filing deadline. It is true that the existence of the contract made evident Omega's potential liability for a portion of the taxes due on the property for 2012. This potential liability, however, was insufficient to vest in Omega the financial interest necessary to satisfy the strict jurisdictional requirements of N.J.S.A. 54:3-21. As noted by Judge Kuskin in Mobil [Administrative Services Co. v. Mansfield Township], 15 N.J. Tax 583 (Tax 1996), aff'd, 17 N.J. Tax 509 (App. Div. 1997)], Omega could easily have addressed its potential liability for the 2012 taxes on what it perceived to be an excessive assessment by requiring in its contract that the owner of

the subject property file a tax appeal for 2012 and grant to Omega any tax savings deriving from the appeal. Nor did Omega name the owner of the subject property in its Complaint or, as far as can be derived from the file, serve the owner with notice of the filing of the appeal.

This appeal follows.

"'The right to appeal a real property assessment is statutory, and the appellant is required to comply with all applicable statutory requirements.'" Macleod v. City of Hoboken, 330 N.J. Super. 502, 505 (App. Div. 2000) (quoting F.M.C. Stores Co. v. Borough of Morris Plains, 195 N.J. Super. 373, 381 (App. Div. 1984), aff'd, 100 N.J. 418 (1985)). In this regard, the Tax Court's jurisdiction to review assessments on real property is set forth in N.J.S.A. 54:3-21, which provides in relevant part that:

[A] taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, . . . file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000. In a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer or a taxing district may appeal before or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds

\$1,000,000, by filing a complaint directly with the State Tax Court.

Compliance with the filing requirement is a necessary predicate to establish jurisdiction in the Tax Court for review of an assessment.

This provision is remedial in nature and consistent with its liberal construction, "courts have considered the threshold for standing to be fairly low." Slater v. Holmdel Twp., 20 N.J. Tax 8, 12 (Tax 2002) (internal quotation marks omitted). Thus, one need not be the owner in fee of real property to challenge the assessment on that property. Ewing Twp. v. Mercer Paper Tube Corp., 8 N.J. Tax 84, 91 (Tax 1985). Instead, to have statutory authority to file a complaint, the plaintiff must, at the time of the filing, have a sufficient financial interest affected by the challenged assessment. Ibid. In other words, standing will be found where the plaintiff "evidences a sufficient stake with real adverseness." Slater, supra, 20 N.J. Tax at 12 (internal quotation marks omitted). On this score, the Tax Court has "reasonably inferred that the Legislature intended 'to afford the right to appeal [(i.e., standing)] essentially to any person whose tax payments are adversely affected by an improper assessment and not only to an owner in fee of the assessed property appealed.'" Ibid. (quoting Ewing Twp., supra, 8 N.J. Tax at 91).

Thus, New Jersey courts have consistently found that plaintiffs, who were not the actual owners of the property at the time of the property tax assessment, were nevertheless "persons aggrieved" under N.J.S.A. 54:3-21 and allowed to challenge the assessment because of either the potential for tax liability or the sufficiency of their financial interest in the property. See Slater, supra, 20 N.J. Tax at 11 (finding non-owner spouse of property owner qualified as a "taxpayer" based upon his possessory right to the marital residence and his potential tax liability for the same); Chem. Bank N.J., N.A. v. City of Absecon, 13 N.J. Tax 1, 8, 11 (Tax 1992) (finding the word "taxpayer" pursuant to N.J.S.A. 54:3-21 does not only mean "owner," and plaintiff mortgagee possessed "a sufficient ownership of the assessed property so that . . . [it] is also characterizable as a taxpayer and the property is also [its] for purposes of the statute") (internal quotation marks omitted); Village Supermarkets, Inc. v. Twp. of W. Orange, 106 N.J. 628, 634-36 (1987) (holding a single tenant at a multi-tenanted commercial property may, under certain circumstances, have standing to bring tax appeal in landlord's name); Ewing Twp., supra, 8 N.J. Tax at 91 (included "within the class of 'aggrieved taxpayers,' given the right to appeal tax assessments, [is] any lessee whose lease covers the full tax

year and requires him to pay the full assessment of the taxes levied" (footnote omitted)); Lato v. Rockaway Twp., 16 N.J. Tax 355, 357, 366 (Tax 1997) (the holder of a tax sale certificate who had paid taxes on the subject property subsequent to issuance of the certificate and who initiated foreclosure proceedings has an implied right to file an appeal of the assessment on the property).

As is evident by now, the issue of whether a plaintiff has standing to bring a tax appeal is a mixed question of law and fact. And as to the latter, the question of the substantiality or sufficiency of a plaintiff's financial interest in the assessed property is one of degree, depending upon the facts and circumstances of each case.

Here, plaintiff's interest in the property became known when it executed the purchase contract, which was well before the April 1 filing deadline. Indeed, the original closing date predated the statutory jurisdictional deadline and perhaps explains why no provision was made in the purchase contract to specifically and explicitly protect plaintiff's interest in the 2012 tax appeal. That the closing did not occur until two months later does not alter the fact that although plaintiff had no obligation to pay property taxes as of the filing deadline for 2012, it was responsible for taxes assessed to the property

for the lion's share of the tax year and, if its challenge proved true, would have suffered the injury of being unfairly and inappropriately assessed. See, e.g., Langford v. Town of Newton, 403 A.2d 414, 415-16 (N.H. 1979) (plaintiffs, who were not owners of the property at time of the property tax assessment, were "persons aggrieved" under the applicable statute and would be allowed to maintain petition because they were the owners of the property at time tax was levied and they allegedly suffered injury of being disproportionately assessed.); Weybosset Hill Invs., LLC v. Rossi, 857 A.2d 231, 239-40 (R.I. 2004) (purchaser of property was aggrieved party with standing to appeal tax assessment because, despite not being owner when property was assessed, purchaser would be owner when tax bills were issued and party responsible for paying those taxes).

Nor is it dispositive of the standing question that plaintiff's interest in the property at time of the filing deadline was contingent and inchoate. The contract obligated the seller to convey title unless plaintiff were to otherwise exercise its rights thereunder and withdraw from the deal. From plaintiff's perspective, however, its financial interest in the transaction was substantial and, absent a successful challenge

to the assessment, so was its exposure to a sizeable tax liability.

Nothing in Mobil, supra, is to the contrary. In June 1995, Mobil filed an appeal with the Tax Court challenging the 1995 assessment on property it owned in Mansfield Township. 15 N.J. Tax at 586. Approximately two months later, in August 1995, while the appeal was pending, Mobil sold the property to Zeta Consumers Products Corporation (Zeta). Ibid. Zeta subsequently moved to intervene in the long-pending appeal, in which a settlement was being finalized. Id. at 587. The Tax Court judge denied the motion, based on his conclusion that Zeta was not a taxpayer aggrieved by the assessment within the meaning of N.J.S.A. 54:3-21 at the time the complaint was filed. Id. at 588. According to the court, as of the filing deadline for 1995, Zeta "had no interest in the subject property and no obligation to pay property taxes assessed to the property." Ibid. Thus, the court concluded, Zeta could not intervene in an action in which it lacked statutory authority to challenge the assessment. Ibid.

The facts in Mobil, however, are distinguishable from those here. Unlike the present matter, in Mobil, at the time the appeal was filed, Zeta enjoyed no status vis-à-vis the property and was not even the contract purchaser. As such, Zeta had no

obligation at time of appeal to pay property taxes that would be assessed to the property so as to be adversely affected by the assessment. Moreover, by the time Zeta did have such an interest in the property and sought to intervene, the tax appeal had already been litigated through the county board and had been pending in the Tax Court for approximately nine months, where the parties, including the prior property owner, had reached a settlement. Id. at 586-87. Thus, not only did the party in Mobil attempt to intervene in a long-standing tax appeal, but actually tried to interfere with its resolution by preventing a settlement from being finalized. These special circumstances, compelling the conclusion that the party in Mobil was not a "taxpayer" within the meaning of N.J.S.A. 54:3-21, are simply absent from the present matter.

We do not mean to suggest that every contract purchaser qualifies as an aggrieved taxpayer for purposes of standing under N.J.S.A. 54:3-21. As previously noted, the matter of standing is a mixed question of law and fact and, as to the latter, involves a fact-sensitive analysis of, among other things, the provisions of the contract itself, the timing of title acquisition in relation to the filing deadline, and the proportionality of the tax burden. Taking all these factors into account, we are satisfied that under the present

circumstances, plaintiff had a substantial interest in the property at the time its complaint was filed, sufficient to qualify as an aggrieved taxpayer within the meaning, and in accordance with the jurisdictional prerequisites, of N.J.S.A. 54:3-21.¹

Reversed and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

¹ We assume that any deficiency in the requirement that the complaint be captioned in the name of the actual owner of the property may be remedied by an appropriate amendment on remand.