

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS**

ERIN B. O'CONNELL,

Plaintiff,

v.

TOWNSHIP OF NEPTUNE,

Defendant.

TAX COURT OF NEW JERSEY
DOCKET NO. 009646-2020

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: September 23, 2020

Erin B. O'Connell for plaintiff
(Self-Represented).

Gene J. Anthony for defendant
(Law Offices of Gene J. Anthony, attorney).

SUNDAR, J.T.C.

This opinion addresses defendant's motion to dismiss the above captioned complaint on grounds it was filed untimely, therefore, this court lacks subject-matter jurisdiction to consider the same on its merits. Plaintiff contends that since all appeal filing deadlines in local property tax matters were extended to July 1, 2020 due to the COVID-19 pandemic, her complaint which was filed on June 30, 2020, is timely. For the reasons set forth below, the court agrees with plaintiff, and therefore, denies defendant's motion to dismiss the complaint.

FACTS AND PROCEDURAL HISTORY

Plaintiff owns residential property ("Subject") located in defendant, Township of Neptune ("Township"). The Township is in Monmouth County.

By judgment dated February 28, 2020, the Monmouth County Board of Taxation (“County Board”) affirmed the local property tax assessment of \$837,100 for tax year 2020 imposed by the Township’s assessor upon the Subject. The judgment was mailed to plaintiff on March 3, 2020.

On June 30, 2020, plaintiff appealed the County Board’s judgment by filing a complaint to this court. On July 9, 2020, the Township moved to dismiss the complaint as untimely since it was filed more than 45 days from the date of the County Board’s judgment. At oral argument,¹ plaintiff contended that after receipt of the County Board judgment, she had called the Township’s representative and the Tax Court and was allegedly advised that the filing deadline was extended to July 1, 2020. The court then directed her to file a certification in this regard, with supporting documentation if any, and permitted the Township to respond to the same.

Plaintiff then filed a “Response to Motion” that due to the New Jersey Governor’s March 9, 2020 “lockdown of” the courts, it was “evident that the [c]ourts would have to make some accommodation about filing deadlines,” and that she, in good faith, relying upon alleged telephonic representations that the “new filing date” was July 1, 2020, had filed her complaint to the Tax Court on June 30, 2020. She also filed a certification that she had spoken to certain personnel of the Township and the Tax Court who told her that the filing deadline was July 1, 2020. She provided telephone records as proof of her calls on various dates starting March 23, 2020.

The Township conceded that its official had responded to plaintiff’s email by directing her to the Tax Court. However, it noted, there were only two calls to the Tax Court one on March 19,

¹ Plaintiff did not file a written opposition to the motion but requested oral argument which the court in its discretion permitted. Under R. 1:6-2(a), absent a timely written and focused response, a “motion shall be deemed uncontested and there shall be no right to argue orally in opposition.” A pro se litigant is not entitled to any “greater rights” than a represented litigant, however, oral argument can be permitted to avoid denial of due process especially as R. 1:6-2(a) is “subject to the general relaxation rule, R. 1:1-2.” Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982).

2020, and one on April 29, 2020, while the remaining numbers were to other State departments unrelated to the Tax Court or the Township. Regardless, the Township argued, all such allegations were pure hearsay, and any calls made by plaintiff after the filing deadline were irrelevant.

ANALYSIS

General

This court's subject-matter jurisdiction is established by statute. Compliance with statutory filing deadlines is a necessary predicate to establish jurisdiction in this court for review of a judgment of a county board of taxation. As our Supreme Court explained, "[f]ailure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 425 (1985). Strict adherence to statutory filing deadlines is of particular concern in tax matters given "the exigencies of taxation and the administration of local government." Id. at 424. Filing deadlines are strictly construed and are non-relaxable.

N.J.S.A. 54:51A-1, the statute controlling appeals from county tax board judgments, provides as follows:

Review of judgment, action or determination of county board of taxation.

a. Any party who is dissatisfied with the judgment, action or determination of the county board of taxation may seek review of that judgment, action or determination in the Tax Court by filing a complaint in the Tax Court, pursuant to rules of court.

Similarly, N.J.S.A. 54:51A-9(a), titled "Time for taking real property tax cases to Tax Court," provides that "a complaint seeking review of . . . [a] judgment of the county board of taxation shall be filed within 45 days of the service of the judgment."²

² N.J.S.A. 54:51A-9(b) applies to direct appeals to the Tax Court and provides for a filing deadline of the later of "April 1 of the tax year or 45 days from the date the bulk mailing of notifications of assessment is completed for the taxing district."

Rule 8:4-1(a)(2) provides as follows:

A complaint to review a judgment of a County Board of Taxation shall be filed within 45 days of the service of the judgment of the County Board of Taxation. Service of the judgment of the County Board of Taxation, when by mail, shall be deemed complete as of the date the judgment is mailed, subject to the provisions of R. 1:3-3.

Rule 1:3-3 states that “[w]hen service of a notice or paper is made by ordinary mail, and a rule . . . allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period.”

Here, the County Board judgment was mailed to plaintiff on March 3, 2020. Three days for mailing plus 45 days provides a filing deadline of Monday April 20, 2020. Plaintiff’s appeal was filed June 30, 2020. Hence, it would normally be untimely and merit dismissal under the above quoted/cited statutes and court rules. However, as explained below, COVID-19 engendered formal extensions of the filing deadlines.

Extension of Appeal Filing Deadlines

COVID-19 engendered a series of Orders by the Chief Justice of the New Jersey Supreme Court tolling the filing deadlines for local property tax (and State tax) appeals,³ which culminated in the enactment of L. 2020, c. 35. On March 19, 2020, our Chief Justice issued an Order (effective immediately) that the deadlines for filing local property tax complaints under N.J.S.A. 54:3-21 and R. 8:4-1(a)(4), whether to the county board of taxation or to the Tax Court, were extended to May 1, 2020 or 30 days after the State of Emergency is declared to have ended, whichever date is later. However, this extension was “to the extent [the filing] deadlines have not already passed.”

³ The Orders are available at <https://www.njcourts.gov/attorneys/notices.html>

By a subsequent Order, our Chief Justice continued the extension. See Order dated March 27, 2020, ¶5, p.10 (“[p]rovisions of the Order dated March 19, 2020 remain in effect with respect to the extension of filing deadlines for local property tax appeals and state tax appeals”).

N.J.S.A. 54:3-21, the statute referenced in the Supreme Court’s March 19, 2020 Order, controls the filing of initial appeals to either a county board of taxation or to the Tax Court. Subsection (a)(1) provides that a taxpayer may file a petition to the county board of taxation by the later of “April 1 or 45 days” from the bulk mailing of assessment date. If the assessment exceeds \$1,000,000, the same deadline applies except that the taxpayer can file a complaint directly to the Tax Court (“direct appeal”).

Subsection (a)(2) applies to appeals for properties located in a county which participates in the Assessment Demonstration Program (“ADP”), N.J.S.A. 54:1-101 to 1-106. Monmouth County, in which the Subject is located, is an ADP-participant county. This subsection is the same as subsection (a)(1) as to filing deadlines for a direct appeal to the Tax Court. However, it is accelerated as to petitions before the county board of taxation, i.e., the filing deadline is the later of January 15 or “45 days from the date the bulk mailing of notification of assessment is completed.” N.J.S.A. 54:3-21(a)(2).

Rule 8:4-1(a)(4), the court rule referenced in the Supreme Court’s March 19, 2020 Order, provides that

Complaints pursuant to the direct review provisions of N.J.S.A. 54:3-21(a)(1) and appeals pursuant to N.J.S.A. 54:3-21(a)(2) shall be filed on or before April 1 of the tax year or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later.

On April 6, 2020, our Supreme Court “supplemented” the March 19, 2020 Order by providing that:

as to property tax appeals to the New Jersey Tax Court from judgments issued by the county board of taxation in those counties participating in the [ADP] . . . which at present includes . . . Monmouth Count[y] . . . the filing deadlines as to complaints . . . for such matters as set forth in Court Rule[] 8:4-1(a)(2) . . . pursuant to N.J.S.A. 54:51A-1, to the extent that those deadlines have not already passed, are hereby extended to the later of: (a) May 1, 2020, or (b) 30 days following a determination that the State of Emergency declared under Executive Order 103 has ended.

The above Order was “effective retroactive to March 19, 2020.”

As noted above, N.J.S.A. 54:51A-1 controls a complaint filed to the Tax Court from a judgment of a county board of taxation, while R. 8:4-1(a)(2) explicates the 45-day deadline (plus 3 days for mailing).

As of the date of the initial Supreme Court Order (March 19, 2020) and when it was supplemented (April 6, 2020 but retroactive to March 19, 2020), plaintiff’s appeal deadline (April 20, 2020) had not yet expired. Thus, the appeal deadline was tolled until the later of May 1, 2020 or 30 days after formal cessation of the State of Emergency in New Jersey. The latter is yet to occur. This would render the actual filing date of plaintiff’s complaint (June 30, 2020) as timely.

On May 28, 2020, our Legislature enacted law tolling the appeal filing deadlines in local property tax matters but to a finite date of July 1, 2020 and only as to tax year 2020. The law provides as follows:

1. Notwithstanding the provisions of any law, rule, or regulation to the contrary, for tax year 2020, the deadline to file an appeal of the assessment of a parcel of real property pursuant to [N.J.S.A.] . . . 54:3-21 shall be July 1, 2020, and the deadline for a county board of taxation to render a decision on appeals filed by property taxpayers shall be September 30, 2020. The provisions of this section shall apply to an appeal of an assessment of a parcel of real property even if the deadline for filing the appeal was prior to the effective date of this act.

The provisions of this section shall not apply to appeals filed with a county board of taxation with respect to parcels of real property located in a county participating in the demonstration program established in section 4 of P.L.2013, c.15 (C. 54:1-104), in a county operating under the “Property Tax Assessment Reform Act,” P.L.2009, c.118 (C. 54:1-

86 et seq.), or in a county that has adopted, by resolution, the provisions of section 1 of P.L.2018, c.94 (C. 54:1-105).

2. This act shall take effect immediately, shall be retroactive to April 1, 2020, and shall expire on December 31, 2020.

[L. 2020, c. 35 (emphasis added).]

The Senate Bill when initially passed reiterated the provisions (enacted into law and reproduced above), and explained that under current law, local property tax appeals should be filed “no later than April 1, or 45 days from date of the bulk mailing of notification of assessment is completed in the municipality, whichever date is later, and decisions regarding those appeals must be rendered by county boards of taxation within three months after the last day for filing appeals.” Statement to Senate No. 2387 (May 4, 2020).⁴ The provisions as to the ADP-participant counties was included as an amendment to the proposed law. See Senate Budget and Approp. Comm., Statement to Senate No. 2387 (May 7, 2020) (“The committee amended the bill to require that the extensions of time provided in the bill are not applicable to appeals filed with a county board of taxation” for properties “located” in an ADP-participant county); Senate No. 2837 at 2 n.1 (First Reprint) (the amendment included the phrase “filed with a county board of taxation” and was pursuant to “Senate SBA committee amendments adopted May 7, 2020”).

The Township notes that L. 2020, c. 35 §1 “specifically and explicitly excludes” properties in an ADP-participant county such as Monmouth County where the Subject is located, arguably because “filings” there are earlier than in other counties. It also notes that the legislation was adopted “after actions taken by the Governor under Executive Order and after notification of the Supreme Court of its disposition of filing.” Therefore, it argues, plaintiff’s appeal does not merit any tolling of the limitations period under the law.

⁴ An identical bill was passed by the Assembly. See Assembly No. 4157 at 2 (May 14, 2020).

The enacted law's exclusion of ADP-participant counties from the tolling of the filing deadlines is only to the initial petitions filed before the County Board (i.e., an appeal from the local property tax assessment after a taxpayer's receipt of the Notice of Assessment, informally referred to as the "green" assessment card, and sometimes referred to as the Chapter 75 card). As noted earlier, in an ADP-participant county, the deadline to file a petition before the County Board is accelerated, as compared to a non-ADP participant county. Cf. N.J.S.A. 54:3-21(a)(2) (deadline to file appeals before the County Board is January 15 of the tax year) to N.J.S.A. 54:3-21(a)(1) (deadline to file appeals before the a county board of taxation in a non-ADP participant county is April 1 of the tax year). Consequently, hearings before the County Board and judgments therefrom (which should be within three months "after the last day for filing . . . appeals," see N.J.S.A. 54:3-26) are also accelerated. See generally 1959 Highway 34, L.L.C. v. Township of Wall, 29 N.J. Tax 506, 511 (Tax 2016) (explaining the legislative history of the ADP law, which was to, among others, accelerate "appeal deadlines" before the County Board, so the County Board can decide appeals February, March, April as opposed to May, June, and July) (citing Statement to Senate No. 1213 (Jan. 23, 2012)).

Therefore, by the time L. 2020, c. 35 was enacted on May 28, 2020, and even if retroactive to April 1, 2020, the statutory deadlines for filing petitions before the County Board had already expired, which is possibly why the law did not toll the January 15, 2020 filing deadline, as correctly surmised by the Township. Thus, had plaintiff delayed her initial petition to the County Board, she could not have benefitted from the tolling of the January 15, 2020 deadline by filing it by July 1, 2020.

However, that is not the issue here. It is undisputed that plaintiff's initial petition to the County Board was timely. She then appealed the County Board's judgment by filing a complaint

with the Tax Court. Clearly, the appeal to the Tax Court from the County Board's judgment is not an "appeal[] filed with a county board of taxation" as required by L. 2020, c. 35 § 1 (emphasis added). Therefore, L. 2020, c. 35 § 1 does not impact the filing date of her complaint to this court.

The Township argues that since L. 2020, c. 35 § 1 makes no mention of appeals to the Tax Court from judgments of the County Board, the time for filing complaints to the Tax Court is not tolled. The court is unpersuaded.

First, legislature history indicates that L. 2020, c. 35 codified the New Jersey Supreme Court's March 19, 2020 Order. See Senate Budget and Approp. Comm., Statement to Senate No. 2387 (Senate No. 2387 "substantively codifies a March 19 order by the Chief Justice of the Supreme Court of New Jersey that extended property tax appeal filing deadlines because of COVID-19 coronavirus concerns"). The March 19, 2020 Order was retroactively clarified and supplemented on April 6, 2020, whereby the filing deadlines to the Tax Court from judgments of a county board of taxation were tolled. Therefore, the court cannot agree that the time to appeal a County Board judgment to the Tax Court was excepted from being tolled under the COVID-19 umbrella of concerns.

Second, one simply cannot ignore the public policy and circumstances under which our Supreme Court's Orders and the consequent law were passed. The March 19, 2020 Order stressed the national and State health crisis due to the pandemic and the need to effectuate the New Jersey Governor's declared State of Emergency "with statewide implementation of social distancing measures to attempt to slow the spread of the virus." The Court stated that such "measures are resulting in unprecedented closures and cancellations throughout the state such that corporate and residential property taxpayers are severely disrupted in their ability to meet filing deadlines in

property tax appeals before the County Boards of Taxation and the New Jersey Tax Court” due to which filing deadlines should be extended.

The same underlying public policy reasons were explicated at length in the Court’s March 27, 2020 Order. The Court noted that “in response to the growing public health crisis worldwide and in” New Jersey, it “implemented various modifications to court operations,” such as virtual appearances to “minimize in-person contact and adhere to social distancing measures” recommended by the government. In conjunction with these “operational changes,” the Court also entered several orders, among others, “extending deadlines and tolling time periods because of the practical impossibility of continuing business as usual during this public health crisis.” However, since COVID-19 “continued to increase exponentially,” causing several emergency declarations at all governmental levels, which then was “further disrupting the practice of law and the normal operations of the courts,” our Court decided to further extend “the effective periods,” this being “in the interest of justice” and based on the government’s recommended activity restrictions. The Court therefore ordered that provisions of its prior order “or otherwise necessitated by the Judiciary’s response to the COVID-19 pandemic, are affirmed, continued, or supplemented.” As noted above, ¶5, p.10 reiterated that the “[p]rovisions of the” March 19, 2020 Order continued as to “the extension of filing deadlines for local property tax appeals and state tax appeals.”

Clearly, our Supreme Court promptly took action to comply with the governmental restrictions and recommendations in reducing COVID-19’s impact on the public by limiting court operations and tolling filing deadlines.⁵ This included its recognition that since COVID-19 negatively impacted a property owner’s ability to timely file appeals, filing deadlines should be

⁵ Several deadlines were tolled such as for instance, discovery deadlines and the time periods for dismissals for lack of prosecution.

tolled. Therefore, it ordered that the deadlines to file complaints to the Tax Court be extended (tolled for a period after the statutory filing deadlines). Filing a complaint before the Tax Court from a county board of taxation's judgment is no less a complaint filed before the Tax Court on a direct appeal. Through its April 6, 2020 Order, our Supreme Court precisely recognized this principle when it clarified and supplemented its March 19, 2020 Order.

Therefore, this court does not see any conflict between L. 2020, c. 35 § 1, and that law's intent to codify the Chief Justice's March 19, 2020 Order, especially where the April 6, 2020 Order was retroactive to March 19, 2020. Rather, Our Supreme Court's Orders and the law are complementary, and in complete consonance with each other in recognizing that property tax appeals filed before the Tax Court require a tolling of the filing deadlines. The only thing the law did change vis-à-vis the Supreme Court Order was to provide a finality to the appeal deadline for tax year 2020, i.e., July 1, 2020.

For these reasons, the court agrees with plaintiff that her appeal to this court, which was filed on June 30, 2020, was timely. Consequently, it does not need to address plaintiff's implied arguments of collateral estoppel against the government: i.e., due to her alleged reliance upon alleged telephonic assurances that the filing deadline was extended to July 1, 2020, she filed her appeal on June 30, 2020.

CONCLUSION

For the above reasons, the court denies the Township's motion to dismiss plaintiff's complaint as untimely filed.