

LEGAL ALERT – YESTERDAY PENNSYLVANIA SUPREME COURT HEARD ORAL ARGUMENT ON LACK OF CONSTITUTIONAL UNIFORMITY IN SCHOOL-INITIATED INCREASE APPEALS

March 9, 2017 – Yesterday Siegel Jennings attended the oral argument in Philadelphia before the Pennsylvania Supreme Court in order to provide clients the latest news on several taxpayers’ challenge to school-initiated real estate assessment appeals -- a case being watched by taxpayers around the country. In Pennsylvania, unlike most states, taxing districts (schools, municipalities or counties) have a statutory right to file annual assessment appeals seeking to increase property owners’ assessments. Because Pennsylvania has no mandatory reassessment cycle – some counties have gone more than fifty (50) years without a reassessment – many schools are turning to increase appeals as a way to generate more revenue. When they do, schools frequently target just certain commercial property owners for appeals. The result is that schools’ selective or “spot” appeals disrupt constitutionally-required uniformity in assessment. This violates fundamental fairness and puts targeted commercial owners at a competitive disadvantage with owners of properties whose assessments are not increased. It also shifts more of the tax burden from residential to commercial property owners, since most schools are loathe to sue residential property owners (who vote) to increase their assessments.

In Valley Forge Towers Apts., LP v. Upper Merion Area School District, 135 A.3d 1017, (Pa. Commw. Ct. 2015), the Upper Merion Area School District (“School”) filed increase appeals only against commercial property owners and not against residential owners. The School selected properties for appeal after consultation with Keystone Realty Advisors (a New Jersey-based tax consultant which employs trained appraisers) which takes a 25% contingent fee on any increase in taxes as a result of the appeals. Four apartment building owners (“Taxpayers”) who had been targeted for these appeals challenged the School’s selection of only commercial owners for appeals as violating Pennsylvania’s Constitution which mandates uniformity in taxation. Both the trial court and the first-level appellate court denied Taxpayers’ challenge, holding that the School need only satisfy a “rational basis” test and that the School’s goal of “increasing revenue” justified the selective nature of the appeals.

Taxpayers sought review by the Pennsylvania Supreme Court. The Supreme Court agreed to take the case on the following issue:

[The School District] deliberately chose commercial properties, such as Petitioners’, for selective assessment appeals, but did not appeal assessments of any single-family-home properties, although the latter are significantly underassessed. The Uniformity Clause of the Pennsylvania Constitution prohibits disuniformity in taxation. Is a school district’s decision to appeal property assessment insulated from review because, inter alia, the school district has a statutory right to file appeals and can identify an economic reason for its appeals?

Briefs were submitted by the parties as well as by a dozen other associations. Yesterday, the Pennsylvania Supreme Court heard oral argument.

Taxpayers' Argument. The attorney for Taxpayers opened argument with the proposition that constitutional uniformity means that there cannot be variable tax rates whereby some classes of owners are taxed at a higher rate than others. The purpose of uniformity is to prevent inequitable treatment and to prevent favoritism in how schools exercise their appeal power. Justices Wecht and Baer led questioning of Taxpayers' attorney.

Justice Wecht asked whether the statute which provides schools the right to file appeals is itself unconstitutional. Taxpayers' attorney responded that it is not the statute itself that is unconstitutional but that it is being applied by the School here in an unconstitutional manner because the School focuses only on commercial property owners. Justice Wecht further questioned whether, if the statute permitting school appeals is constitutional, whether that means schools have the right to exercise discretion in choosing properties to appeal. Taxpayers' attorney responded that the current practice is akin to spot assessment and the School is not basing its decision on the properties that are most under-assessed but rather is simply targeting "big ticket" commercial properties.

Justice Wecht reiterated concern that Taxpayers' argument nullifies schools' statutory right to file appeals altogether. Taxpayers' attorney answered that the schools' right to appeal is not an absolute right, but needs to be applied in a constitutional manner.

Justice Baer questioned Taxpayers' attorney as to why Taxpayers did not seek a Clifton remedy, *i.e.*, request a reassessment of all property in the county. Taxpayers' attorney responded that they were bringing a narrow equity claim. Justice Baer responded that the uniformity claim can be seen as Taxpayers' attempt to avoid proper assessment because the properties all are under-assessed. Justice Baer asked -- if relief is granted -- would that not provide an argument for every appealed property owner to simply say "appeal someone else." Taxpayers' counsel replied that Taxpayers' goal is to stop schools' discriminatory behavior and suggested a cure via proportionate appeals whereby schools would appeal a percentage of commercial and residential properties.

In closing, Taxpayers' attorney pointed out that the issue is not just about taxing wealthy commercial property owners. Beyond that, there is a trickle-down affect whereby these increases are passed to the residents of the apartments, to consumers.

School's Argument. The School's attorney opened by saying that the statute provides the School a right to appeal and that all properties in the district are under-assessed. Chief Justice Saylor and Justices Donahue, Baer and Dougherty questioned the School's attorney.

Chief Justice Saylor asked why pick some properties and not others. The School's attorney gave examples of various stages in all tax assessment appeals where discretion is exercised. The Chief Justice further asked if it is constitutional to only choose commercial properties and the School's attorney responded "Yes."

Justice Donahue asked why only commercial property owners should be put through the appeal process. The School's attorney argued that the original issue brought by Taxpayers was a

standard uniformity argument which has somehow morphed into discrimination. Chief Justice Saylor disagreed, stating that the argument is not discrimination but disparate treatment, then questioned whether that was constitutional. Chief Justice Saylor further said that he found this to be “troublesome”. The School’s attorney continued to argue essentially that the discrimination issue had not previously been brought up, and so, was waived. Justice Donahue quickly pointed out that uniformity was the issue on which the Court granted allowance for appeal in terms of targeting commercial properties and both Justices Donahue and Baer urged the School’s attorney to move to that issue.

Justice Baer questioned the School’s attorney as to the constitutionality of essentially creating two (2) classes of property owners. The School’s attorney denied that the School was creating two (2) classes, but argued rather that the School was exercising its discretion in which properties it chose to appeal.

Justice Dougherty asked whether the School follows the recommendation of Keystone Realty Advisors in selecting its appeals and if Keystone Realty Advisors was paid a contingent fee. The School’s attorney answered, “Yes.” The School’s attorney argued that there is a rational basis for the selection of appeals, namely that there has to be a judicious use of School funds in deciding which appeals to pursue based on the cost and time associated with litigation. The School’s attorney further argued that Taxpayers did not exhaust their administrative remedies. The School’s attorney concluded that if the Court rules in Taxpayers’ favor, the Court will essentially gut the School’s statutory right to appeal unless the Court rules that the School must identify and appeal every under-assessed property - a result that the School attorney argued is not practical.

Now that oral argument is concluded, the Court will make its decision and issue its written opinion. Based on our experience in Pennsylvania, the Court could take anywhere from a few months to over a year to issue its decision. In the meantime, if you have specific questions about this case or how Pennsylvania law applies to your property, please contact Siegel Jennings at:

Sharon F. DiPaolo, Esquire
Partner
Siegel Jennings, Co., L.P.A.
430 Freeport Road
Blawnox, PA 15238
(412) 486-2848
(412) 828-1069 (Fax)
www.siegeltax.com

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