

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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DISTRICT OF COLUMBIA
TAX DIVISION

A. BRADLEY ASKIN,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent

Tax Docket No. 6386-95
Judge Long

MEMORANDUM OPINION AND ORDER

In this tax appeal case, the District of Columbia has filed a Motion to Dismiss For Lack of Subject Matter Jurisdiction, focusing upon whether the Superior Court appeal was timely filed. The Petitioner opposes the Motion. The issue presented is whether there is a six-month deadline for filing a Superior Court appeal from the denial of a claim for refund of a recordation and transfer tax. This Court concludes as a matter of law that the District of Columbia Code does impose a six-month filing deadline. Accordingly, the Petition herein must be dismissed because it was clearly not filed within that time frame.

I. Background of the Case.

The Petitioner herein appeals from the disallowance of a claim for refund of recordation and transfer taxes, related to lot 2123 in square 207 and lot 2112 of square

207. As a practical matter, both pieces of real property are apartments that are located within the Gladstone Condominium at 1423 R Street, N.W. in the District of Columbia. The petitioner is an investor who purchased both properties under circumstances of foreclosure.

The instant Petition was filed in the Superior Court on **September 6, 1995**.

II. Issues Raised in the Motion to Dismiss.

The District of Columbia contends that the petition herein was not timely and that a Superior Court petition was required to be filed no later than **June 24, 1993** for lot 2123 and no later than **September 22, 1993** for lot 2112.

For purposes of calculating these two filing deadlines, the District relies upon Section 3310 of Title 47 of the District of Columbia Code, which states in pertinent part:

Where there has been an **overpayment of any tax**, the amount of the overpayment shall be refunded to the taxpayer. . . . Every claim for refund must be in writing under oath, must state the specific grounds on which it is founded, and must be filed with the Mayor. If the Mayor disallows all or any part of the refund claim, he shall notify the taxpayer by registered or certified mail. After receiving notice of disallowance, **if the claim is acted upon within 6 months of filing, or after the expiration of 6 months from the date of filing if the claim is**

not acted upon [by the Mayor or his duly authorized representative], the taxpayer may appeal as provided in §§47-3303 and 47-3304.

47 D.C. § 3310(a) [emphasis supplied]. The two sections incorporated by reference are Code provisions that regulate appeals to Superior Court and the appellate process.¹ For purposes of placing the petitioner's arguments in context, it is worthwhile to note that the Government cited only the last half of the above quotation in the instant Motion.

In other words, Section 3310(a) provides a "catch-all" 6-month deadline for filing Superior Court appeals from the disallowance of any claim for tax refund that is not otherwise covered by a more specific statutory scheme.

The uncontested, jurisdictional facts that are alleged by the District are as follows.

The District proffers copies of the pivotal disallowance (i.e. denial) letters from the Recorder of Deeds.

For lot 2123 of square 207, the Recorder of Deeds acted upon Askin's claim for refund and denied the claim for refund in a letter dated April 4, 1993.

For lot 2112 of square 207, the Recorder of Deeds acted upon Askin's claim for refund and denied his claim

¹Not surprisingly, the same Code section cautions that its provisions do not apply to other, discrete refund laws that are specially directed to matters such as real property assessments and alcoholic beverage tax. 47 D.C. § 3310(a).

for refund in a letter dated March 31, 1993.

III. Opposition Arguments Raised by Taxpayer

In his Opposition to the Motion to Dismiss, Askin makes the following arguments.

Petitioner directs his attention to Sections 3303 and 3304 of Title 47, as if the District is relying upon those portions of the Code as the source of the 6-month filing deadline. Petitioner points out that these two sections cannot serve as a basis for dismissing the instant Petition.

The petitioner emphasizes that the District of Columbia Court of Appeals has held that predecessor versions of the current Sections 3303 and 3304 do not themselves provide the source of the 6-month filing deadline. Rather, the Court of Appeals concluded that such provisions of the Code only

prescribe procedures for the trial court in determining 'appeals' from assessments and for this court and the Supreme Court in reviewing appeals from the trial court's decisions.

Carter-Lanhardt, Inc. v. District of Columbia, 413 A.2d 916, 918 (D.C. 1980). The Court of Appeals elaborated,

Thus, we are of opinion that the reference in § 2413(a) to §§ 2403 and 2404 was meant to set forth the nature of the judicial remedy available to the taxpayer claiming a refund in the event that he was unsuccessful in obtaining such refund

from the Department; it was not meant to impose on refund claimants the time limitation contained in § 2403.62

Id. at 918. Carter-Lanhardt was a case that plainly did not involve transfer and recordation taxes. Rather, it concerned personal property taxes. The appellate court's discussion, then, is limited to what the Code did or did not provide as far as personal property tax appeals are concerned.²

Askin argues that in the absence of any specific filing deadline that is articulated in the Code, taxpayers may take advantage of a general three-year window of time within which to file an appeal in the Superior Court. This is indeed what the law provides where the Code is otherwise silent on a deadline.

The statute of limitations for Superior Court action is set forth in Section 301 of Title 12. It contains explicit filing deadlines for suits involving negligence, contracts, and other matters. There is no specifically enumerated statute of limitation within Section 301 relating to tax appeals or administrative appeals of any kind. Thus, petitioner says, taxpayers must abide by the "catch-all" three-year limit contained in Section 301(8), relating to actions "for which a limitation is not

²The Court of Appeals readily acknowledged that the District of Columbia Code had once included a 90-day deadline for filing appeals from personal property tax assessments -- but that the Code had been amended in 1970 so as to eliminate this deadline.

otherwise specially prescribed. . . . "

Askin appears to be under the impression that the mere reference to Sections 3303 and 3304 indicates that the Government is somehow relying upon such portions of the Code for its position. Thus, he has mistakenly seized upon the quoted language from Carter-Lanhardt.

Ultimately, however, Askin is mistaken because silence in the Code is not a problem in this case.

IV. Adjudication of the Motion to Dismiss

The District's motion is meritorious because it relies only upon the explicit language of Section 3310.

The petitioner, in his own pleading, readily concedes that Section 3310 applies to the imposition of transfer taxes as well as recordation taxes.³ The Court notes that Chapter 9 of Title 47 specifically embraces the law on "transfer tax on real property." Section 915 of Title 47 specifically provides that Section 3310 "shall be applicable to the tax imposed by this chapter." Section 915 is, itself, part of Chapter 9.

Where the "recordation tax" is concerned, the Code contains an identical provision in 45 D.C. § 935 (1996 Repl.)

Having conceded that Section 3310 applies to recordation and transfer taxes, the petitioner has

³Opposition at page 2.

effectively conceded away his case. The internal language of Section 3310 contains an unambiguous 6-month time limit within which a taxpayer must file an appeal in the Superior Court, if the Recorder of Deeds denies his request for refund or if six months has elapsed while the request for refund has been pending before the Recorder of Deeds without a decision. Nothing could be more straightforward.

Petitioner has misinterpreted the significance (or lack of significance) in the Government's reference to Sections 3303 and 3304. In fact, as a practical matter, the Government could have omitted any reference to Sections 3303 and 3304 from its quotation from Section 3310 in the Motion.

The above-quoted language from Carter-Lanhardt poses no impediment to the Government's position in the instant case.

The District of Columbia Court of Appeals has held that the failure to file a Superior Court petition within 6 months of a property tax assessment is sufficient to deprive the Superior Court of jurisdiction to consider the taxpayer's appeal. George Hyman Construction Co. v. District of Columbia, 315 A.2d 175, 178 (D.C. 1974); see First Interstate v. District of Columbia, 604 A.2d 10, 11 (D.C. 1992). Applying the same principle to the instant litigation, the proper and analogous remedy for the

District is the dismissal of the Petition herein for lack of jurisdiction.

WHEREFORE, it is by the Court this 28th day of October, 1996

ORDERED that the District of Columbia's Motion to Dismiss is hereby granted; and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that the instant action is hereby dismissed for lack of jurisdiction.


Cheryl M. Long
Judge

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