

Carl B. and Betty Thomas

v.

City of Claremont

DLC Claremont, LLC

v.

City of Claremont

Carl B. Thomas

v.

City of Claremont

Docket Nos.: 26574-11PT; 26575-11PT; 26577-11PT

ORDER

The board has reviewed the “City’s” October 26, 2012 Motion to Transfer and Dismiss (“Motion) the above three tax year 2011 appeals, as well as the brief response to the Motion in an October 31, 2012 letter (the “Lutter Letter”) from Mark Lutter of Northeast Property Tax Consultants, the representative for the Taxpayers in these appeals. The Motion is denied.

The following undisputed facts are of relevance to the issues presented in the Motion. Four related taxpayers [“DLC Investments”¹ (“Investments”), DLC Claremont, LLC² (“DLC Claremont”); Carl B. and Betty Thomas (“Carl and Betty”); and Carl B. Thomas (“Carl”)] have ownership interests in Parcel 108-71, which comprises a total of 144 condominium units in six buildings on 16.43 acres of land. These four taxpayers have separate legal ownership interests in 142 of the 144 condominium units, as follows: DLC Investments owns 135 units, DLC Claremont owns four units, Carl and Betty own two units and Carl owns one unit. (The remaining two units are owned by unrelated parties.)

For tax years 2009 and 2010, Mr. Lutter, as the tax representative for (i) Investments, (ii) DLC Claremont, (iii) Carl and Betty, and (iv) Carl, filed separate abatement requests with the City followed by separate tax appeals with the board (a total of eight abatement requests and eight appeals). Because all eight appeals involve common valuation issues and virtually identical arguments and evidence, the board, with the consent of the parties, held a consolidated hearing on all eight appeals (on July 25, 2012) and is in the process of issuing its decisions.

For tax year 2011, however, Mr. Lutter followed a different strategy. He again filed four abatement requests with the City but, for unstated and unclear reasons, filed three appeals with the board (on behalf of DLC Claremont, Carl and Betty and Carl) and one (on behalf of Investments through Attorney Fred K. Mayer, III) in the Sullivan County Superior Court (as reflected in the Order of Notice, attached as Exhibit A to the Motion.)

¹ Mr. Lutter filed the 2009 and 2010 appeals in the name of “DLC Investments”; records filed with the Secretary of State’s office, however, indicate the correct name is “D-L-C Investments,” which is a trade name for three individuals (David M. Thomas, Lynn M. Thomas and Chris W. Thomas). These three individuals are children of Carl and Betty Thomas.

² Records at the Secretary of State’s office confirm the members of this limited liability company (“LLC”) are the three children named in fn. 1. The “Certificate of Formation” for this LLC further states D-L-C operates as a “New Hampshire general partnership” composed of three general partners (the three children).

In the Motion (pp. 4-5), the City asks the board to “transfer” the above three tax year 2011 appeals filed with the board to the superior court and “dismiss” each of them. A transfer request aimed at consolidating appeals raising identical issues regarding the same condominium complex is not unreasonable, insofar as it aims to streamline and simplify the process and resolution of all four tax year 2011 appeals and insure consistent outcomes.

Nonetheless, the board finds it must deny the Motion. The City has not cited any statutory or case authority that supports its request to transfer and dismiss the three appeals and the Motion appears to concede this point. See Motion, ¶16 (“Neither state law nor [b]oard rule addresses the choice of forum for appeal of an abatement denial by related parties pertaining to their respective interests in [the] same parcel.”).

Under the relevant statutory framework, the board has concurrent jurisdiction with the superior court (under RSA 76:16-a and RSA 76:17) to hear and decide tax abatement appeals. Tax 201.24, which is cited in the Motion, addresses what should happen when the same taxpayer files appeals in both the superior court and the board for the same property for the same tax year. It is clear only one forum should hear such an appeal and Tax 201.24(b) prescribes the process to be followed to allow only one appeal to go forward, based on a ‘first in time’ principle.

In these appeals, however, transfer and dismissal of the three appeals filed with the board cannot be ordered. Even though the taxpayers in the four 2011 appeals are closely related (they are all in one family, so to speak) and they operate all of the condominiums as one economic unit,³ they have legally distinct and separate ownership interests in the real property. Based on

³ One of the owners, Lynn Thomas, the daughter of Carl Thomas, testified at the July 25, 2012 hearing. She stated the owners keep just one set of books for themselves as owners of the condominium complex (and one other set of books for the activities of the condominium association). She further testified her family intends to acquire the two remaining units they do not already own and convert the condominium complex into apartments under a common ownership.

the statutes and case law, the board finds the “entire estate” of each taxpayer would be viewed as distinct and separate from each other, even if their representative (Mr. Lutter) intends to present essentially the same type of value evidence with respect to each estate in the tax year 2011 appeals, as he did in the prior appeals.⁴ Thus, none of these four taxpayers are precluded from filing appeals with either the superior court or the board.

While considerations of judicial economy and “the potential for inconsistent results” suggest filing separate appeals in separate forums for the same tax year is ill-advised and serves no rational purpose, there is no authority, under the present statutory framework, that prohibits DLC from maintaining its appeal in the superior court while the three other appeals remain at the board. The board understands the City’s concerns regarding the possibility of inconsistent assessments, but no authority exists under the present statutory framework to grant the Motion.⁵

For these reasons, the Motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

⁴ Comparison of the three tax year 2011 appeal documents filed with the board indicates Mr. Lutter intends to make virtually the same argument for abatement in each appeal and to rely on one appraisal that arrives at a single value for all 142 units owned by the four Taxpayers, including the units owned by DLC Investments which filed its appeal in the superior court.

⁵ The City can, of course, emphasize the commonality of issues and facts Mr. Lutter is attempting to present to different forums and such emphasis could help guard against the possibility of “inconsistent results” in the three appeals filed with the board and the one appeal filed in the superior court.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayers; Jane F. Taylor Esq., 58 Opera House Square, Claremont, NH 03743, counsel for the City; and Chairman, Board of Assessors, City of Claremont, 58 Opera House Square, Claremont, NH 03743.

Date: December 18, 2012

Anne M. Stelmach, Clerk