IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

THE MEADOWS AT LEHIGH VALLEY, L.P.,	)	**NO: C-48-CV-2012-11426**
Petitioner,	)	
v.	)	
COUNTY OF NORTHAMPTON REVENUE APPEALS BOARD,	)	
Respondent,	)	
And	)	
BETHLEHEM AREA SCHOOL DISTRICT and COUNTY OF NORTHAMPTON,	)	
Intervenors.	)	

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

THE HILLS AT LEHIGH VALLEY, L.P.,	)	**NO: C-48-CV-2012-11427**
Petitioner,	)	
v.	)	
COUNTY OF NORTHAMPTON REVENUE APPEALS BOARD,	)	
Respondent,	)	
And	)	
BETHLEHEM AREA SCHOOL DISTRICT and COUNTY OF NORTHAMPTON,	)	
Intervenors.	)	

ORDER OF COURT

AND NOW, this 28th day of March, 2014, upon consideration of the Intervenors, Bethlehem Area School District and County of Northampton's, Motions in Limine, and the Petitioners, the Meadows at Lehigh Valley, L.P., and the Hills at Lehigh Valley, L.P.'s, Responses thereto, it is hereby **ORDERED** that said Motions are **GRANTED** and the Petitioners shall be precluded from introducing base-year valuation evidence at trial.

STATEMENT OF REASONS

Facts and Procedural History

On or about July 27, 2012, Bethlehem Area School District (the "School District") initiated and filed individual assessment appeals with regard to the subject properties, identified as Tax Parcels M7 2 7 0204, M7 2 17A 0204, and M7SW3 25 2 0205, with the Northampton County Revenue Appeals Board. The Meadows at Lehigh Valley, L.P., and The Hills at Lehigh Valley, L.P. (are related business entities and collectively referred to as the "Property Owner"), are the owners of the subject properties. A hearing with regard to the assessments of these properties was held before the Northampton County Revenue Appeal Board on October 24, 2012. On November 7, 2012, the School District was notified that the Revenue Appeals Board had denied the assessment appeals and would not change the assessed values for the property as requested by the School District.

On November 9, 2012, the Property Owner dated and mailed the above-captioned appeals to the three decisions of the Revenue Appeals Board in which the Board denied the School Districts request to raise the property assessments of the three parcels. The appeals were docketed on November 13, 2012.

The Property Owner has appealed the decisions which denied the School Districts request to raise the Property Owner's real property tax assessment. The School District and the Board of Revenue Appeals of Northampton County have filed petitions to intervene in the Property Owner's appeals. On December 7, 2012, the School District filed its appeal of the Revenue Appeals Board decisions under three separate docket numbers[1] to pursue its "fair-market appeal" pursuant to 53 Pa.C.S.A. § 8854(a)(2).[2]

Under the above captioned docket numbers, the Property Owner has pursued a "base-year valuation appeal" pursuant to 53 Pa.C.S.A. § 8854(a)(9)(i). On February 20, 2013, this Court consolidated the appeals of both the Property Owner and the School District for hearing purposes.

On March 6, 2014, the School District filed Motions in Limine in the above-captioned matters, seeking to preclude the introduction of base-year valuation evidence at trial, along with its Briefs in Support. On March 7, 2014, the Property Owner filed Briefs in Opposition in the above-captioned matters. On March 20, 2014, the School District filed Reply Briefs to Property Owner's Briefs. On March 21, 2014, the other Intervenor, the County of Northampton, filed Briefs in Support of Bethlehem Area School District's Motions in Limine.

This matter was placed on the March 25, 2014, Argument List and oral argument was heard. On March 26, 2014, the Property Owner submitted Post-Argument Supplementary Briefs on Behalf of The Hills at Lehigh Valley, L.P., and The Meadows at Lehigh Valley, L.P.

[1] Docket Nos. C48-CV2012-12115, C48-CV2012-12116, C48-CV2012-12117.

[2] We also note that the School District filed a Motion to Quash the appeal filed under docket number 2012 - 11426 on December 17, 2013, related to the failure of the Property Owner to bring separate appeals for each decision of the Revenue Appeals Board. This motion has apparently been abandoned.

Discussion

Stated most succinctly, this is a matter in which the Property Owner is seeking to appeal an event that never occurred.

In this matter, Bethlehem Area School District brought the original assessment appeal before the Northampton County Revenue Appeals Board with regard to the subject properties. In its assessment appeal, the School District sought a reassessment using the application of the fair market value as applied through the State Tax Equalization Board's (STEM) Common Level Ratio (CLR) pursuant to 53 Pa.C.S.A. § 8854(a)(2). The School Board wanted to raise the tax assessment of the subject properties. No petition or assessment appeal was brought before the Revenue Appeals Board by the Property Owner.

The School District was unsuccessful, in that its assessment appeal was denied by the Revenue Appeals Board on November 7, 2012. The School District timely filed an appeal of the denial on December 7, 2012.

However, the Property Owner, by a document dated November 9, 2012, appealed the November 7, 2012 decision of the Revenue Appeals Board prior to the School District filing an appeal. In its appeal, the Property Owner alleged that it was permitted to raise, for the first time, a new claim that the Property Owner was entitled to a decrease in the assessment of the subject properties based upon a "base-year valuation" pursuant to Pa.C.S.A. § 8854(a)(9)(i). The Property Owner never properly raised its base-year valuation claim before the Revenue Appeals Board – the body having original jurisdiction to hear the challenge. The Property Owner's "appeal" therefore seeks to attack an issue never presented to the Revenue Appeals Board and/or a decision that was never made because it was not perfected and/or presented to the Board by the Property Owner.

By use of convoluted, or perhaps better stated, circular logic, the Property Owner asserts that the Consolidated County Assessment Law, 53 Pa.C.S.A. § 8801, *et seq.*, permits it to avoid submitting an assessment appeal before the body in which the statute has conferred original jurisdiction over challenges to real property tax assessments. As justification for advancing this new claim on appeal, the Property Owner asserts that the Revenue Appeals Board's decision did not adjust the assessment by the base-year valuation method and therefore, the decision should be deemed to be a denial of a request for a base-year valuation (even though this claim was never raised before the Revenue Appeals Board).

Clearly, a property owner can file an appeal of the Revenue Appeals Board decision if it is an "aggrieved party." See 53 Pa.C.S.A. § 8854; see also Pa.R.A.P. 501 (setting forth "aggrieved party rule"). However, as we understand it, a party is aggrieved only if the decision of the Revenue Appeals Board is against that aggrieved party's interests. In this case, the Property Owner would be an aggrieved party if the School District had actually won its underlying assessment appeal and successfully raised the property assessment. But, in fact, the Property Owner here is *not* an aggrieved party, because the Property Owner actually won and the School District's claim request for an increased assessment was denied.

Now, the Property Owner is seeking to directly by-pass the Revenue Appeals Board by filing an original action couched as "an appeal" to obtain relief that is in the nature of a new action, seeking to reduce an existing assessment.

At oral argument, counsel for the property owner insisted that, the by operation of law, the Property Owner is the appellant and therefore the aggrieved party.[3] The Property Owner

[3] We can only guess by the filing date that the property owner was in a rush to file an appeal of the decision in which it prevailed, because it believed that the early filing would support its claim that it is the "aggrieved " party and therefore can claim to be the "appellant."

cites to 53 Pa.C.S.A. § 8854(a)(9)(i)[4] as permitting it – the appellant – to appeal a base-year valuation without reference to ratio. However, we agree with the School District that the plain language of the Consolidated County Assessment Law contemplates that the party initiating the appeal in front of the Revenue Appeals Board is the "appellant." Section 8844(c) sets forth the procedures by which an aggrieved party must challenge an original assessment, providing that:

> **(c) Annual appeal deadline.—**
>
> (1) Any person aggrieved by any assessment, whether or not the value thereof shall have been changed since the preceding annual assessment, or any taxing district having any interest in the assessment, may appeal to the board for relief. **Any person or taxing district desiring to make an appeal *shall*, on or before September 1 or the date designated by the county commissioners if the option under paragraph (3) is exercised, file with the board an appeal in writing, identifying the following**:
>
> (i) **Appellant**.
>
> (ii) Property location.
>
> (iii) Owner.
>
> (iv) **Assessment or assessments by which the person is aggrieved.**
>
> (v) Address to which notice of the time and place for a hearing shall be mailed.

55 Pa.C.S.A. § 8844(c) (emphasis added).

Section 8854(a)(1) provides, moreover, that "**[f]ollowing an appeal to the board**, **any appellant, property owner or affected taxing district** may appeal the board's decision to the court of common pleas in the county in which the property is located . . . ." 55 Pa.C.S.A. § 8854(a)(1) (emphasis added). Read with the rest of the statute, therefore, the "appellant" is the party that originally appealed to the Revenue Appeals Board. See 1 Pa.C.S.A. § 1921(a)

[4] 53 Pa.C.S.A. § 8854(a)(9)(i) provides:

> "(9) Nothing in this subsection shall:
>
> (i) Prevent an appellant from appealing a base-year valuation without reference to ratio . . . ."

(providing that statutes should be construed to give effect to all provisions, if possible). We find that the plain language of this statute is free and clear from doubt in this regard. See Commonwealth v. Hagan, 654 A.2d 541, 544 (Pa. 1995).

As the Property Owner is not the appellant under the Consolidated County Assessment Law, the Property Owner cannot pursue an appeal of a base-year valuation under 53 Pa.C.S.A. § 8854(a)(9)(i).

The Property Owner also cites Daugherty v. County of Allegheny, 920 A.2d 936 (Pa. Commw. Ct. 2007), as authority which supports its right as an appellant to advance an "appeal" or claim under a base-year valuation assessment theory. In Daugherty, taxpayers challenged their revenue assessment board's rule that limited the scope of their appeal. 920 A.2d at 937-38. The Commonwealth Court of Pennsylvania found that:

> Section 10 of the Second Class County Assessment Code gives the taxpayer the ability to challenge its assessment for the reason that the base year market value no longer reflects the property's current market value. It is the taxpayer's decision which theory to pursue in its **assessment appeal**, i.e., that the assessment exceeds the current market value or the assessment is based upon an incorrect base year market value. Once the valuation is determined in accordance with the appeal it 'shall stand as the [valuation] for the [assessment] of all county . . . taxes . . . .'

Id. at 943 (emphasis added) (internal citations omitted).

While we agree that a taxpayer acting as an appellant is entitled to challenge its assessment under whichever theory it chooses, the decision in Daugherty addressed a taxpayer who brought the original appeal in front of the revenue appeals board. Here, the Property Owner did not bring an appeal in front of the Northampton County Revenue Appeals Board. If it had, it could have pursued the base-year valuation theory. However, the School District is the appellant here, as it brought the assessment appeal in front of the Revenue Appeals Board. As such, the School District rightfully chooses the theory it wishes to proceed under during its appeal.

Finally, we note that during oral argument, counsel for the Property Owner asserted an additional, alternative claim that because the School Board's appeal is *de novo,* the Property Owner is entitled to bring a challenge seeking a base-year valuation assessment for the first time. Counsel argued that because the statute permits an aggrieved party to appeal and obtain a trial *de novo* on appeal, at the *de novo* trial the Property Owner should be permitted to raise a new claim at the new trial, even though the issue was never properly brought before the Revenue Appeals Board.

We find that counsel has incorrectly defined the Latin term and the legal concept of *de novo*. A literal translation of the Latin term "*de novo*" is: "from the beginning," "beginning again," and/or "a second time." See Black's Law Dictionary 483 (6th ed. 1994). A *de novo* trial is defined in Black's Law Dictionary as: "Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered." Id. Pennsylvania courts have held that "a trial *de novo* is, in reality, a retrial of the case as if the prior summary proceeding had not occurred." Commonwealth v. Koch, 431 A.2d 1052, 1054 (Pa. Super. 1981) Here, once an appeal is taken, all general provisions of the Consolidated County Assessment Law become applicable to the trial *de novo* unless specifically made inapplicable. See id. at 1054 (dictum).

Under the law in Pennsylvania, the School District can re-litigate its underlying assessment appeal and require this Court to rule on the claim(s) originally perfected before the Revenue Appeals Board at its trial *de novo*. In other words, this Court will rule upon whether the Board was incorrect and/or whether it abused its discretion when it denied the School District's request to increase the property assessment under the fair market value analysis of 53 Pa.C.S.A. § 8854(a)(2). At the trial *de novo,* evidence related to the base-year valuation should not be considered.

We find that the Property Owner cannot bring an appeal of an issue that was *never* submitted to the Revenue Assessment Appeals Board.[5] Should the Property Owner wish to challenge this existing assessment, it is incumbent upon it, under the Consolidated County Assessment Law, to bring an original assessment appeal before the Revenue Appeals Board. See 53 Pa.C.S.A. § 8844(c). Once the Revenue Appeals Board has the opportunity to fully vet the Property Owner's claims, the Property Owner may prosecute an appeal as an aggrieved party if it is disappointed with the decision of the Revenue Appeals Board.

The Property Owner's "appeal" and the base-year valuation evidence can therefore be excluded by the School District when prosecuting its appeal of the denial to raise the assessment under the fair market value theory.

THEREFORE, the School District's Motions in Limine are **GRANTED**.

BY THE COURT:

_____

STEPHEN G. BARATTA, P.J.

[5] While we would strike or quash these appeals as improperly brought under the Consolidated County Assessment Law, it is incumbent upon the School District to request such relief through an appropriate motion. However, we note that by granting this Motion in Limine, the School District has received similar relief.