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Valley Forge Quashes School Districts' Reverse Appeals

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Just over two months ago, the Pennsylvania Supreme Court issued a sweeping opinion in Valley Forge Towers Apartments N. LP et al v. Upper Merion Area School District et al., 163 A.3d 962 (Pa. 2017) squarely holding that school districts' policies and practices governing filing "reverse" real estate tax assessment appeals are governed by the Pennsylvania Constitution's uniformity clause, Art. VIII, § 1, which mandates that"[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

The court succinctly explained, "[t]his appeal raises the question of whether the Uniformity Clause of the Pennsylvania Constitution permits a taxing authority to selectively appeal only the assessments of commercial properties, such as apartment complexes, while choosing not to appeal the assessments of other types of property — most notably, single-family residential homes — many of which are under-assessed by a greater percentage." Chief Justice Saylor, for the unanimous court, clearly answered "no" — the uniformity clause prohibits taxing authorities from selectively appealing the assessments of one type of property and not other under-assessed types of properties, a practice that, by all appearances, has been widespread in the commonwealth for many years.

We had the privilege of representing the taxpayers, all owners of commercial properties, in this case from day one; from the filing of their declaratory judgment and injunction complaint, through losses at the common pleas court and commonwealth court, and then to success in the U.S. Supreme Court. This remarkable case went on for four years, involved a dozen amicus briefs, and overturned a 15-year string of contrary commonwealth court decisions. By looking back to lessons learned and looking forward to next steps in how this broad public controversy will play out, we have gleaned the following four insights.

Intermediate Appellate Court Momentum can be Illusory

Newton's first law provides that an object in motion stays in motion with the same speed and in the same direction unless acted upon by another force. As if guided by that law, commonwealth court

decisions for more than 15 years had continued in the same direction, cutting off avenues of scrutiny of school district appeals and effectively immunizing those appeals from meaningful review. These decisions relied upon a mixture of three considerations: a reading of the assessment statute granting taxing authorities the right to appeal real estate tax assessments; the commonwealth court's interpretation of language from Supreme Court decisions interpreting the uniformity clause in related — but distinct contexts — in particular Downingtown Area School District v. Chester County Board of Assessment Appeals, 590 Pa. 459, 913 A.2d 194 (2006) and Clifton v. Allegheny County, 600 Pa. 662, 969 A.2d 1197 (2009); and, finally, the fairness and policy notions that school districts and taxpayers should have "parallel" rights to appeal assessments and that school districts need such unfettered rights in order to raise tax revenue. Moreover, like a body following Newton's first law, the commonwealth court's adherence to stare decisis made changing the court's direction a near impossibility.

It took an opposite and greater force from the Supreme Court to redirect the law governing school district reverse appeals. In Valley Forge, the Supreme Court saw the three considerations relied on by the commonwealth court very differently and rejected the commonwealth court's long line of cases. As to the first, the court returned to first principles — as a constitutional provision, the uniformity clause necessarily limits a school district's exercise of any statutory "right" to appeal. As to the second, the court explained that the commonwealth court had misread Downingtown and Clifton on the scope of judicial review and ignored the Supreme Court's century-old jurisprudence on the uniformity clause as a meaningful bar on discrimination in taxation. And finally, the court emphasized the primacy of the uniformity clause as a constitutional provision, noting "[w]here there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy." Valley Forge, 163 A.3d at 980.

And so, the commonwealth court's momentum of providing increasing permissiveness to school districts proved illusory as the Supreme Court's eloquent opinion provides the clear framework for preventing local taxing authority discriminatory real estate tax assessment appeals.

Focus on the Long Run

A key lesson for taxpayers' counsel is not to be too deterred by contrary trial court and intermediate appellate authority in advising clients and evaluating possible litigation. We filed our case knowing that patience and perseverance were prerequisites for success. While we understood the taxpayers would in all likelihood lose rounds one and two, we believed based on careful review of Supreme Court precedent that there was a genuine long run prospect (if not probability) that the Supreme Court would grant allowance of appeal and right the course of uniformity clause law.

Our thinking was thus guided from day one by the knowledge that everything we did would have a very long shadow. For every issue X, we were mindful of how our resolution of issue X would look four or five yeas later by the Supreme Court. The shadow of our decisions required attention to many things, including carefully scrutinizing precisely what should be pleaded, what record was required and what issues needed to be preserved. And because we lived in the real world of real clients mindful of cost, we knew that losing quickly in the trial court and commonwealth court would have a salutary impact on legal fees.

Watch Out for Overconfidence

On the flip side, perhaps falling prey to what the Nobel Prize winning behavioral economist Daniel Kaheman labels "optimism bias," school districts continued to pursue large numbers (probably

thousands) of reverse appeals as Valley Forge made its way to the Supreme Court. For example, the data reveals that since 2015, while Valley Forge was pending, school districts in Montgomery County — a center of school district activity that spawned the Valley Forge controversy — initiated more than 220 reverse appeals of properties with a combined assessment of $970 million.

Apparently brought on the assumption that the taxing authority would prevail in Valley Forge and that there would be essentially no judicial scrutiny of reverse appeals, these school district reverse appeals are most likely doomed. In a harbinger of things to come, on Sept. 8, Judge Idee Fox of the Philadelphia Court of Common Pleas announced from the bench, after extensive argument, that the court would issue an order quashing approximately 100 school district reverse appeals because it found that the school district had discriminated against commercial properties. We predict that this is the first of many shoes to drop across the commonwealth as courts apply uniformity clause scrutiny that school districts long assumed was inapplicable.

Looking Ahead

Trial courts are now beginning to grapple with how to efficiently and fairly apply Valley Forge to the scores of pending school-district initiated appeals. Discovery procedures need to be established so that taxpayers promptly obtain information concerning the content and implementation of school district reverse appeal policies and practices, as well as the role of outside consultants in identifying assessments for appeal. It is no secret, for example, that Keystone Realty Advisors Inc., a New Jersey based consultant, advised many school districts throughout the commonwealth, guiding the selection of commercial — not residential — properties for appeal. In addition to paper discovery, taxpayers will take depositions of school district business administrators and elected board members, hopefully in a way that avoids unduly burdening school district personnel with repeated depositions.

In many instances, courts will be well positioned to summarily dismiss school district reverse appeals. As noted, this just happened in Philadelphia because the court found that it was so clear that the school district had not appealed any single-family properties, allowing the court to conclude straightforwardly that the school district had improperly discriminated based on property type. We anticipate that other school districts are similarly vulnerable, as publicly available data appear to show that many have appealed the assessments of only (or nearly only) commercial and industrial properties, not single-family properties. And those that only appealed a sprinkling of residential properties are likewise highly vulnerable.

Finally, some school districts' reverse appeals may survive motions to quash or summary judgment and head to trial. As to those, the most innovative courts will coordinate the flow of trials to allow individual school districts to justify how their particular reverse appeal policy or practice does not violate the uniformity clause, to promote clarity on important legal issues common across multiple appeals, and to tee up cases for appellate review. Steering committees of taxpayer counsel and taxing authority counsel should well serve our courts to guide it in this process.

DISCLOSURE*: The authors of this article represent the taxpayers in the Valley Forge case discussed in this article.*

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