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“TENANTS CAN CHALLENGE REAL ESTATE TAX ASSESSMENTS”

by

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Recent cases in the Commonwealth Court of Pennsylvania have illustrated why it is important for tenants, and even sub-tenants, to have rights to appeal a real estate tax assessment. In one such case, a commercial property owner and a sub-tenant clashed on how to conduct a tax appeal, and the Commonwealth Court permitted the sub-tenant to pursue the tax appeal against the owner's objections. In that case, the owner had appealed 14 years of tax assessments on a subdivided property.

Several tenants who were responsible to pay the real estate taxes intervened. Eventually, the owner and the taxing authorities agreed to the fair market value for the properties during the contested periods and presented a stipulation to the court. However, the tenants were not satisfied.

The court appointed Masters recommended fair market values and assessed values that were less than what was set forth in the stipulation agreed to by the Owner and taxing authorities. The owner actually objected to the lower valuations, and when the trial court dismissed the owner's objections, the owner filed an appeal to the Commonwealth Court. One of the attorneys in the case has stated that the owner objected because it did not want to upset a stipulation on assessments that affected a larger parcel than the tenants' space.

On one of the parcels in question, Ames Department Stores, Inc. had been the tenant and Giant Eagle was Ames' sub-tenant. When Ames settled the dispute and withdrew from the appeal, Giant Eagle attempted to continue the case. The owner then argued on procedural grounds that Giant Eagle lacked standing in the appeal once Ames discontinued its claim. The Commonwealth Court disagreed with the owner on two counts. First, the court held that Giant Eagle was a party to the suit and had intervened separately from Ames. Therefore, Giant Eagle did not discontinue its appeal just because Ames did.

The second issue has more universal significance. The Court also decided that as a sub-tenant Giant Eagle had standing to appeal a tax assessment, under §518.1(a) of the General County Assessment Rule, 72 P.S. Section 5020-518.1(a) that states:

Any owner of real estate or taxable property in this Commonwealth, who may feel aggrieved by the last or any future assessment or valuation of his real estate or taxable property, may appeal from the decision of the...Board of Property Assessment, Appeal and Review..." (Emphasis added)

The Court held that word "owner" includes not only the registered owner of the real estate, but also an equitable owner or owner of a taxable interest in the property. Among other cases, the Commonwealth Court cited an earlier opinion of that court filed just a few months earlier where the court held that the holder of a commercial sub-lease that obligates a sub-lessee to pay the real estate taxes has standing to challenge a tax assessment. The Court reasoned that the sub-lessor is an "owner" in the taxable property under the circumstances for purposes of Section 518.1.

While the opinions do not discuss what the applicable leases provided about tax appeals, it is clear that in each of those leases the tenants had an obligation to pay additional rents based on tax assessments. This raises a broader question about how owners and tenants should negotiate rights to appeal taxes in these types of leases.

It's not clear whether the cases would have been decided differently if the sub-tenants' leases had waived their rights to file a tax appeal, or had given the landlord the right to control the conduct of a tax-appeal proceeding. Also, what would have happened if the tenant had waived those rights in its lease and its sub-tenant had tried to retain them in the sub-lease? Could the owner then have won on the theory that the sub-tenant's rights rise no higher than the tenant's?

Many landlords will want to retain control over assessment appeals under certain circumstances. The landlord could make that clear in the lease. For example, the lease could give the tenant rights to contest tax assessment unless the landlord is handling the contest and the tenant's intervention might prejudice the interests of the landlord in some way.

From the perspective of the tenant or sub-tenant who must pay real estate taxes as additional rent, the court's decision seems to make sense. Generally, the property owner in these types of cases may have less at stake in a tax appeal than the parties who are actually paying the real estate taxes.