1050 WASHINGTON BOULEVARD v. STAMFORD, No. CV00 0179496 S (Jul. 12, 2002)

1050 WASHINGTON BOULEVARD ASSOCIATES, LP v. CITY OF STAMFORD.
2002 Ct. Sup. 8690
No. CV00 0179496 SConnecticut Superior Court, Judicial District of Stamford-Norwalk at Stamford
July 12, 2002

[EDITOR'S NOTE: This case is unpublished as indicated by the issuing court.]
MEMORANDUM OF DECISION RE: MOTION TO STRIKE #116
MINTZ, JUDGE.

This is a tax appeal case, wherein the plaintiff, 1050 Washington Boulevard Associates, LP appeals the property tax assessments made by the defendant, City of Stamford.

The plaintiff alleges the following pertinent facts: that it owned certain real property located in the City of Stamford; that the defendant's assessor determined that all property in the municipality should be liable for taxation at 70% of its true and actual valuation; that the defendant's assessor estimated the value of the plaintiffs property; that the assessment was grossly excessive, disproportionate, unlawful and not in accordance with a uniform percentage of true and actual value; that the disproportionate assessment was in violation of General Statutes § 12-64; that the plaintiff timely appealed to the Board of Assessment Appeals (board) claiming to be aggrieved by the assessment; that the board made no change to the assessment; and that the plaintiff is aggrieved by the assessor and board's actions.

On January 31, 2002, the plaintiff filed an offer of judgment pursuant to Practice Book § 17-14[1] , expressing a

willingness to stipulate to a judgment from the defendant in the specified amount. On February CT Page 8691 14, 2002, the defendant filed a motion to strike the plaintiff's offer of judgment on the grounds that offers of judgment, in the tax appeal context, are legally insufficient and because the application of General Statutes § 12-117a[2] would constitute a denial of the defendant's equal protection and due process rights. In response, the plaintiff filed a memorandum of law in opposition to the motion to strike.

Preliminarily, the court notes that motions to strike are governed by Practice Book § 10-39 which states in pertinent part that: "Whenever any party wishes to contest (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or any one or more counts thereof, to state a claim upon which relief can be granted, or (2) the legal sufficiency of any prayer for relief . . . or (3) the legal sufficiency of any such complaint, counter claim or cross complaint, or any count thereof, because of the absence of any necessary party, or (4) the joining of two or more causes of action which cannot properly be united in one complaint . . . or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may do so by filing a motion to strike the contested pleading or part thereof." Thus, offers of judgment are not covered by § 10-39. However, this court will examine the propriety of the arguments raised in the defendant's motion and will thus, view the motion to strike as an appropriately filed objection to the filing of the offer of judgment. SeeCocozza v. Wickes, Superior Court, judicial district of Danbury, Docket No. 334642 (June 14, 1999, Radcliffe, J.).

The defendant makes three arguments in its motion. First, it argues that an offer of judgment is not permissible in a tax appeal seeking relief pursuant to § 12-117a. Second, although the defendant concedes that tax appeals are indeed civil

actions, it argues that they are essentially equitable in nature and thus, outside the scope of the offer of judgment statute. Third, the defendant argues that to the extent that the procedures that apply to the offer of judgment statute, General Statutes § 52-192a,[3] are deemed applicable to tax appeals, they create a significant disparity between the position of defendants and plaintiffs which violates the defendant's right to equal protection and substantive due process.

The plaintiff responds by arguing, among other things, that the defendant's motion is not yet ripe for adjudication because the events which trigger the offer of judgment procedures are still speculative. The plaintiff further argues that because it seeks both equitable relief and money damages in this action, the offer of judgment is legally sufficient and § 52-192a does not violate equal protection or substantive due process. CT Page 8692

In order to place the analysis in context, the court notes that the underlying purpose of § 52-192a is judicial economy. The offer of judgment statute serves to "encourage pretrial settlements and, consequently, to conserve judicial resources." (Internal quotation marks omitted.) Willow Springs Condominium Assn., Inc. v. Seventh BRT Development Corp., 245 Conn. 1, 55, 717 A.2d 77 (1998). "The strong public policy favoring the pretrial resolution of disputes . . . is substantially furthered by encouraging defendants to accept reasonable offers of judgment." (Internal quotation marks omitted.) Id., 55-56.

As to the defendant's first argument, the Connecticut Supreme Court has rejected the argument that tax appeals do not constitute civil action and thus are net amendable to offers of judgment. Loomis Institute v.Windsor, 234 Conn. 169, 179, 661 A.2d 1001 (1995). The Court found that "the General Statutes contain no generic definition of the term `civil action,' [but, that] the provisions of [the] Practice Book

fill this gap. The section in the Practice Book that directly implements §52-192a (a) mirrors the usage of `civil action' that is found in the statute. See Practice Book § 346 [now, § 17-14]. Practice Book § 256 [now, § 14-6] expressly provides, furthermore, that. [f]or purposes of these rules, administrative appeals are civil actions [except for purposes of General Statutes §§ 52-591, 52-592 and 52-593]. Tax appeals fall within the Practice Book's definition of administrative appeals." (Internal quotation marks omitted.) Id. Thus, following the Supreme Court guidance on this issue, this court finds that tax appeals pursuant to § 12-117a are civil actions and thus amenable to the offer of judgment statute and its procedures.

The second issue raised by the defendant is whether the purported equitable nature of tax appeals places them beyond the scope of the offer of judgment statute. The court agrees that tax appeals are equitable in nature. Konover v. West Hartford, 242 Conn. 727, 735, 699 A.2d 158
(1997). Moreover, tax appeals under § 12-117a involve a two step process and "[o]nly after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive and that the refusal of the board of tax review to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains." (Internal quotations marks omitted.) Konover v. West Hartford, supra, 242 Conn. 735 (1997).

In this case, the complaint is not solely equitable in nature. The plaintiff prays, among other things, for "reimbursement from the City of Stamford for the excess of the taxes paid by the plaintiff together with interest and costs. . . ." Furthermore, the offer of judgment statute CT Page 8693 itself, refers to "any civil action based upon contract or seeking therecovery of money damages. whether or not other

relief is sought. . . .” (Emphasis added.) General Statutes § 52-192a (a). Thus, the equitable nature of tax appeals plus the money damages sought place this case squarely within the type of case for which offer of judgments are utilized. In fact, as previously stated, the court can award such relief as justice and equity permit which may or may not include money damages. Thus, the court is not persuaded by the defendant’s argument that the equitable nature of tax appeals excludes them from offers of judgment.

The third and final argument raised by the defendant’s objection is whether offers of judgment, in the tax appeal context, create such a disparity in bargaining position that they violate the due process and equal protection clauses.[4] In support of this proposition, the defendant poses several examples and hypothetical situations where the defendant is placed at a disadvantage due to the operation of the offer of judgment statute.

While the Connecticut Supreme Court has not directly addressed the issue of the constitutionality of offers of judgment in the tax appeal context, it has considered the constitutionality of offers of judgment generally.[5] In Blakeslee Arpaia Chapman, Inc. v. El Constructors,Inc., 239 Conn. 708, 753, 687 A.2d 506 (1997), the Court decided that Connecticut’s offer of judgment legislation does not violate a part’s right to equal protection and due process under the federal constitution. The Supreme Court stated that “[t]o implicate the equal protection clauses under the state and federal constitutions . . . it is necessary that the state statute in question, either on its face or in practice, treat persons standing in the same relation to it differently.” Id., 755. In its analysis, the Court concluded that plaintiffs and defendants are not similarly situated and that indeed defendants who generally hold the money in question are best suited to resolve pending litigation. Moreover, the court specifically found that under circumstances involving the

assessment of statutory interest, plaintiffs and defendants are not similarly situated. Id. Furthermore, using a traditional equal protection analysis, the Court held that if the case does not pertain to a suspect class or the provision at issue does not burden a fundamental right, any challenge to legislation need only be rationally related to some legitimate government purpose and that the judicial economy purportedly served by the statute meets the rational basis test. Id., 757. The court thus found that offers of judgment are not unconstitutional. Id.

With regard to tax appeals, this court finds no authority, nor have the parties directed the court to any authority, to view the defendant's negotiating position as a violation of equal protection or due process. CT Page 8694 The defendant's argument that the offer of judgment process is different in a tax appeal context is not without merit, however, the court does not find that this difference amounts to a constitutional violation.

Accordingly, the defendant's objection to the plaintiff's offer of judgment is overruled.

_____ *Mintz, J.*

[1] Practice Book § 17-14 states: "After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may, before trial, file with the clerk of the court a written "offer of judgment" signed by the plaintiff or the plaintiffs attorney, directed to the defendant or the defendant's attorney, offering to settle the claim underlying such action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of such offer of settlement to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant."
[2] General Statutes § 12-117a states in relevant part that: "Any person, including any lessee of real property whose lease has been recorded as provided in section 47-19 and who is

bound under the terms of his lease to pay real property taxes, claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom, with respect to the assessment list for the assessment year commencing October 1, 1989, October 1, 1990, October 1, 1991, October 1, 1992, October 1, 1993, October 1, 1994, or October 1, 1995, and with respect to the assessment list for assessment years thereafter, to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court."

[3] General Statutes § 52-192a states in pertinent part that: "(a) After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may before trial file with the clerk of the court a written "offer of judgment" signed by him or his attorney, directed to the defendant or his attorney, offering to settle the claim underlying the action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of the offer of settlement to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant himself. Within thirty days after being notified of the filing CT Page 8695 of the "offer of judgment" and prior to the rendering of a verdict by the jury or an award by the court, the defendant or his attorney may file with the clerk of the court a written "acceptance of offer of judgment" agreeing to a stipulation for judgment as contained in plaintiffs "offer of judgment". Upon such filing, the clerk shall enter judgment immediately on the stipulation. If the "offer of judgment" is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the court, the "offer of judgment" shall be considered rejected and not subject to acceptance unless refiled. Any such "offer of judgment" and any "acceptance of offer of judgment" shall be included by the clerk in the record of the case."

[4] defendant fails to indicate whether its reference to the equal protection and due process clauses relates to the federal or state constitutions. The Connecticut Supreme Court

has consistently read these clauses as embodying the same level of protection. See Florestal v.Government Employees Ins. Co., 236 Conn. 299, 314 n. 8, 673 A.2d 474
(1996). Accordingly, the court reads this argument as referencing the federal constitution.
[5] For the purposes of this decision, the court notes that equal protection and substantive due process are treated similarly for analytic purposes. Ramos v. Vernon, 254 Conn. 799, 841, 761 A.2d 705 (2000).