SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

ENVCON REO SUB LIMITED
LIABILITY COMPANY,

v. Tax Docket No. 6978-96

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

In this assessment appeal, the District of Columbia has filed a Motion to Dismiss, based upon the assertion that this Court lacks subject matter jurisdiction over the instant tax appeal Petition. The District contends that Petitioner failed to exhaust administrative statutory administrative remedies that are a prerequisite to instituting a Superior Court de novo tax appeal. This motion presents an issue of first impression in the Superior Court because of the involvement of a federal statute that appears to obviate the exhaustion requirement.

The pivotal issue is whether a taxpayer who purchased an interest in realty from the Resolution Trust Corporation (hereinafter "RTC") may rely upon the RTC's statutory exemption from the necessity of exhausting administrative remedies as typically required by State or local law.

Based upon the undisputed facts of record and the points and authorities argued by counsel, this Court has determined that the Motion to Dismiss must be denied. This Court is convinced that the federal statute that eliminated RTC's need to comply with local, statutory prerequisites for filing tax appeals does permit the Petitioner as RTC's assignee to maintain the Superior Court appeal.

I. UNDISPUTED JURISDICTIONAL FACTS OF RECORD

The taxpayer is an entity known as EnvCon REO Sub Limited Liability Company (herein after "ENVCON"). It is an Ohio limited liability corporation with a registered agent within the District of Columbia.

Petitioner is the successor-in-interest to the Federal Deposit Insurance Corporation ("FDIC")/Resolution Trust Corporation ("RTC"), which transferred ownership to the Petitioner on or about September 28, 1995.

The real estate tax that is in dispute relates to real property and improvements in Lot 839, Square 403, known as 777 I Street, N.W. in the District of Columbia. As a practical matter, counsel advises the Court that this property is the last potential component part of a large development in the center of the city known as "Techworld."

The amount of tax in controversy is $322,834.44.

At oral argument, the Petitioner clarified that it owns a one-half interest in this property, rather than owning the entire interest.

The particular assessment that is subject to the instant appeal is for Tax Year 1996 (covering the period of October 1, 1995 through September 30, 1996).

It is undisputed that the Petitioner herein did not file and exhaust any appeal of this assessment before the District of Columbia Board of Real Property Assessments (hereinafter "the Board").

It is also undisputed that the previous owner of the property, FDIC/RTC, did not file any appeal with the Board. The time for filing a Board appeal for Tax Year 1996 was the period between March 1, 1995 to April 30, 1995. During this period, FDIC/RTC could have done so and any private taxpayer otherwise would have been obligated to do so in order to preserve the right to pursue the final, de novo stage of a tax appeal in the Superior Court.

For the sake of convenience, the parties and the Court refer to the federal agency as FDIC/RTC in combination because the United States Code grants to RTC the same rights and powers of the Federal Deposit Insurance Corporation. 12 U.S.C. §§ 1821-1823. Any pertinent reference in the United States Code to the "corporation" applies equally to FDIC and RTC.

II. LOCAL ADMINISTRATIVE PRE-REQUISITES TO TAX APPEALS

Under normal circumstances, a District of Columbia taxpayer is required to exhaust all administrative remedies before the Board as a pre-requisite to filing a Superior Court tax appeal from a real property assessment. Case law provides,

> Under the statutory procedure applicable to this case, the recovery of refunds through appeal to the Superior Court requires, as a first step, a complaint to the Board of Equalization and Review. Subject matter jurisdiction of the Superior Court does not attach until that prerequisite has been satisfied, and a refund based on a final

> determination of the Superior Court presupposes that the taxpayer has complied with the procedure mandated by the legislature. If 'aggrieved' for any reason, the taxpayer must appeal within the permitted time to the Board of Equalization and review.

District of Columbia v. Keys, 362 A.2d 729, 732-33 (D.C. 1976)(footnotes omitted).

The statutory requirement for filing a Board complaint is found in 47 D.C. § 3305(a) and (b), wherein the taxpayer is directed to "first make a complaint" to the Board. Although the decision in Keys was "based upon the statutory predecessor to the current real property assessment scheme, [its] reasoning applies with equal force to [contemporary appeals]." Customers Parking v. District of Columbia, 562 A.2d 651, 654 (D.C. 1989). Though the sections of Title 47 may be recodified or realigned from era to era, the fundamental exhaustion requirement of filing a Board complaint has always been in place.

The issue presented in the instant case involves the familiar matter of federal pre-emption, combined with the basic principles of assignability of rights.

III. RELEVANT PROVISIONS OF FEDERAL LAW

In contending that the Superior Court has jurisdiction to hear its tax appeal, Petitioner squarely and exclusively relies upon a federal statute known as the Federal Deposit Insurance Act, as amended by Section 219 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (hereinafter "FIRREA"). In pertinent part, the Federal Deposit Insurance Act provides:

> When acting as a receiver, the following provisions shall apply with respect to the Corporation [FDIC]:
>
> (1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or other taxation to the same extent according to its value as other real property is taxed, **except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.**

12 U.S.C. § 1825(b) [emphasis supplied]. The above-quoted language is Section 15 of the Federal Deposit Insurance Act, as amended by FIRREA.

The plain and practical meaning of the language quoted herein above is that the FDIC/RTC is exempted from any requirement to first challenge a State or local property tax under State or local law in order to obtain a "determination" of the tax.

The ability to challenge past or current tax assessments, even in a truncated manner (e.g. without having resorted to an administrative process) clearly serves the very purpose of RTC's liquidation of the realty of failed financial institutions. This is because RTC is obligated to sell or auction properties held in receivership for the highest price possible -- and marketability can be depressed substantially if the buyer is expected to assume an unreasonable tax burden on such property. See further discussion, infra.

At oral argument, the District of Columbia did not appear to quarrel with the above observation as to the underlying purpose of the applicable federal law itself. Instead, the District contends that RTC's enumerated protections from local statutes of limitations or other local filing requirements are purely "personal" as to the RTC itself. The District also argues that the purposes underlying such exemptions or protections for FDIC/RTC have no connection to the interests or position of a subsequent property owner/assignee.

IV. ANALYSIS OF THE ISSUES

Various federal courts have confronted the issue at hand and the majority of them have held that another type of exemption from local procedural requirements (i.e. compliance with statutes of limitation) is indeed assignable to such a purchaser.

Petitioner asks this Court to draw a logical analogy between extending the benefits of a superseding, federal statute of limitation and extending to assignees the benefits of exemption from other local filing requirements.

On balance, having reviewed the known case law and the relevant statute, this Court concludes that the position of the Petitioner is meritorious. This Court will pause to highlight the most helpful opinions from the federal courts.

First, the Court must note that no federal or local court has addressed the discrete issue of the Act's exemption of FDIC/RTC from the need to exhaust local jurisdictional requirements in tax assessment appeals or any other type of judicial review of administrative action.

So far, the sole issue that has engendered published court opinions on the relationship between RTC and local courts is the Act's six-year statute of limitation for the RTC's filing of all legal actions relating to receivership property. This statute provides,

> Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be . . . the 6-year period beginning on the date the claim accrues; or . . . the period applicable under State law. . . .

12 U.S.C. § 1821(d)(14)(A)(i) (I) and (II).

The first United States Circuit Court of Appeals to interpret the Act's statute of limitations for RTC was the Fifth Circuit. In F.D.I.C. v. Bledsoe, 989 F.2d 805 (5th Cir. 1993), the United States Court of Appeals for that Circuit held that

> assignees of the FDIC and the FSLIC are entitled to the same six year period of limitations as the FDIC and the FSLIC. Transferring the federal six year statute of limitations from the FDIC and FSLIC to its assignees is consistent with the common law of assignments, furthers Congressional policy, and is supported by the cases extending the D'Oench Duhme doctrine to private assignees.

Id. at 811.[1]

In Bledsoe, the Fifth Circuit emphasized that the statute at

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[1]The reference to the "D'Oench Duhme doctrine" concerns a decision of the United States Supreme Court in which Justice Jackson noted in his concurring opinion that in effectuating the intent of Congress, courts are to fill inevitable statutory gaps by reference to the principles of common law. D'Oench, Duhme & Co. v FDIC, 315 U.S. 447, 469-70 (1942)(Jackson, J., concurring).

hand was silent as to the rights of assignees, but that the common law immediately provided guidance as to whether and to what extent any statutory protections of the RTC could be assigned along with an interest in RTC property. In surveying the common law, the Fifth Circuit noted the District of Columbia Circuit's decision that

> since an assignee stands in the shoes of his assignor, deriving **the same but no greater rights and remedies** than the assignor then possessed, the statute of limitations continues to run against the assignee as it had against the assignor before.

FDIC v. Bledsoe, supra, 989 F.2d at 810, citing Fox-Greenwald Sheet Metal Co. v. Markowitz Bros. Inc., 147 U.S.App.D.C. 14, n.69, 452 F.2d 1346, 1357 n. 69 (1971)(citations omitted)[emphasis supplied]. Our own appellate court certainly follows the above-quoted principle from Fox-Greenwald. Leroy Adventures v. Cafritz Harbour Group, 640 A.2d 193, 198 (D.C. 1994), modified on other grounds, 660 A.2d 908 (D.C. 1995).

Using the same analytical model as Bledsoe or parts thereof, most courts (at both the trial level and the appellate level of State and federal systems) have reached the conclusion identical to that of the Bledsoe court. Some of those cases are discussed herein, infra.[2] Bledsoe is cited as the strongest case on point, because its internal discussion of the issue is very comprehensive.

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[2]A useful list of State and local cases that are consistent with Bledsoe can be found in the published opinion of WAMCO III, Ltd. v. First Piedmont Mortgage Corp, infra, in text. The District of Columbia concedes that Bledsoe represents the majority view among all courts, but nonetheless urges this Court to ignore Bledsoe.

Apart from reliance upon the common law for guidance on the assignability issue, the public policy aspect of the intent of Congress was also central to the Bledsoe holding. The Fifth Circuit stated,

> For the same reason that the extension of the D'Oench, Duhme doctrine and the federal holder in due course status to assignees of the FDIC and the FSLIC facilitates Congress' policy of protecting failed institutions' assets, the extension of the six year limitation period to assignees of the FDIC and the FSLIC would facilitate Congress' intent in enacting . . . 12 U.S.C. § 1821(d)(14).

FDIC v. Bledsoe, supra, 989 F.2d. at 811.

Furthermore, "To hold that assignees are relegated to the state statute of limitations would serve only to shrink the private market for the assets of failed banks. It would require the FDIC to hold onto and prosecute all notes for which the state statute of limitations has expired because such obligations would be worthless to anyone else. This runs contrary to the policy of allowing the FDIC to rid the federal system of failed bank assets." Id., quoting Fall v. Keasler, 1991 WL 340182 (N.D. Cal. 1991).[3]

The logic of Bledsoe and other similar cases can be applied easily to the FDIC/RTC's exemption from the other kinds of pre-filing requirements associated with tax appeals. Realistically, it makes no sense to conclude that the generous federal statute of limitations and the opportunity to escape administrative exhaustion requirements are not equally important to the mission of FDIC/RTC.

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[3]A computer citation is utilized herein for Keasler because this opinion apparently has not been published in the Federal Supplement Reporter.

The ability to launch local tax appeals without first having to exhaust administrative proceedings and remedies is important to the very purpose for which these agencies were established and is consistent with intent of Congress to facilitate the liquidation of certain properties.

To be sure, the need to engage in such proceedings, even in a timely fashion and without regard to statutes of limitation, would add more time and expense to the whole process of liquidation of real properties held by RTC. Moreover, such time and expense would be a palpable, added burden to a subsequent purchaser or assignee. This burden could only be reconciled by the payment of a higher price for the property.

The Government has an interest in selling receivership properties at the highest possible price. Nonetheless, depending on the condition and location of some properties, it is also in the Government's interest to be able to market properties as "bargains." This certainly cannot be accomplished if a given property is arbitrarily loaded with a prior, excessive tax assessment that will cost the buyer or assignee additional money to litigate.

As a practical matter, then, the need to engage in local or State administrative litigation as a precursor to a court tax appeal could effectively ratchet up the cost of many RTC receivership properties, nation-wide. This is clearly not the kind of result that Congress was intending to permit or tolerate in erecting the liquidation process for these assets.[4]

State courts also have had occasion to adjudicate disputes over the applicability of the six-year statute of limitations to assignees of FDIC/RTC.

The most recent, published decision by a State court on this issue is the opinion in Twenty First Century Recovery, LTD. v. Mase, 665 N.E.2d 573 (Ill. App. 1996), in which that appellate court concluded that the failure to extend the benefits of the federal statute of limitations period to RTC assignees would be inconsistent with the legislative purpose of FIRREA. The Appellate Court of Illinois specifically adopted the entire approach of Bledsoe.

Another State appellate court, in Oklahoma, has also concluded that an assignee of FDIC may rely upon the six-year federal statute of limitations for filing a foreclosure action. This holding emerged from SMS Financial L.L.C. v. Ragland, 918 P.2d 400 (Okla. 1995). Without venturing into an analysis of either Congressional intent or the Bledsoe holding itself, this decision is based exclusively on the adoption of the common law, which provides simply that an assignee stands "in the shoes of the assignor, and thus obtained the same rights as the assignor. . . ." Id. at 403, citing Cadle Co. II, Inc. v. Lewis, 864 P.2d 718 (Kan. 1993).

In Mase, the Court rejected the reasoning that was employed in

[4]Naturally, the ability to avoid the need to exhaust local administrative remedies would not apply to tax years that elapse after the assignee has acquired the property. The benefits of the federal law do not last in perpetuity.

a United States District Court opinion that is cited by the District of Columbia in oral argument as a competing analysis that this Court should adopt. The case cited by the District in support of its Motion to Dismiss is the opinion in WAMCO, III, Ltd. v. First Piedmont Mortgage Corp., 856 F. Supp. 1076 (E.D. Va. 1994)(Payne, J.).

It is essential for this Court to discuss the contrary ruling in WAMCO and to set forth this Court's basis for declining to adopt its minority interpretation of the federal statute.

The facts in WAMCO are that this party sued First Piedmont as makers of a note in the amount of $500,000 in the United States District Court for the Eastern District of Virginia.[5] First Piedmont and its codefendants filed a Motion to Dismiss, based specifically upon the five-year statute of limitations found in the Virginia Code. It is clear that the Court in WAMCO relied expressly upon the holding in Bledsoe and similar opinions in making its argument against the Motion to Dismiss. However, the United States District Judge declined to recognize Bledsoe as controlling and persuasive authority based upon the following points.

First, the District Judge disputed the accuracy of the Fifth Circuit's reliance upon common law as one of the bases of its holding. The District Court contended that the Fifth Circuit in Bledsoe erroneously relied in part upon a certain portion of the Restatement (Second) of Contracts that, in its view, appeared not

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[5]The suit also extended to guarantors.

to apply "to the negotiation or transfer of negotiable instruments." Id. at 1087. Thus, the District Court perceived that it had discovered a major chink in Bledsoe's armor.

Second, the District Court invoked the concept that the six year statute of limitations was a right that was strictly "personal" to RTC. The District Court based this conclusion solely on the language of the statute itself, insofar as it contains the reference to "any action brought by the corporation as conservator or receiver. . . ." Id. at 1086. The District Court interpreted this language to mean that Congress exclusively had intended this particular agency to have the right to proceed under the six-year statute of limitation. The District Court stated that "the remedial benefit conferred by the statute is explicitly tied to the status of the entity on which it is conferred." Id.[6]

This Court totally rejects the reasoning in WAMCO for the following reasons.

First, the matter of whether the Restatement's summary of the common law of assignments applies to negotiable instruments is not relevant in the instant case. This tax appeal has no connection to anyone's attempt to sue on a note. Thus, this Court need not pause to grapple with the District Court's interpretation of the Restatement.

It is important to recall that the District of Columbia has never argued or suggested that the common law of the District of

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[6]No legislative history was cited in support of this conclusion.

Columbia on the subject of the rights of assignees is any different than the identical common law principle cited in Bledsoe. Thus, the District cannot credibly assert that the statutory rights of RTC cannot be assigned, with a property interest, to the Petitioner herein.

Second, the District Court has unfortunately inflated the significance of the federal statute's reference to actions "brought by the RTC." This kind of language could have appeared anywhere and everywhere in this particular statute as a routine phrase, simply because RTC is the only "actor" that would be filing lawsuits in order to avenge Government interests related to receivership properties.

In other words, this particular phrase is actually superfluous. In setting forth this statute of limitations, Congress could not possibly have been referring to any entity other than RTC. The tax appeal language does not contain any reference to tax appeals filed by RTC -- but it could have included such language in that section of the Code, just as easily as such language was used elsewhere.

The use of the phrase "brought by the RTC" is non-essential. The District Court too readily seized upon a detail that means little or nothing.

To the extent that there was any remote necessity for Congress to specify that the six-year statute of limitations applied to suits brought by RTC, this could only have been useful in order to clarify that there was no enlarged statute of limitations under which the Government _itself_ could be sued by any pursuer of a property that RTC had acquired.

This case presents a situation in which the weight of federal authority is well known on a key point that supports the position of the Petitioners. The District of Columbia has not presented a compelling reason for this Court to depart from persuasive, majority-view federal law interpreting a federal statute. While local courts are certainly free to scrutinize any case holding for its basic logic and applicability, this Court finds no basis for eschewing the _Bledsoe_ rationale that is the underpinning of Petitioner's argument.

The District of Columbia has made one additional argument that has no merit. At oral argument, the District contended that the Petitioner has failed to provide proof, as a threshold jurisdictional fact, that the property interest it purchased from RTC was an interest that RTC had held specifically in its role as a "receiver" of assets.

This argument is frivolous for two reasons.

First, there are no circumstances under which RTC could have owned an interest in this property in any capacity other than that of a "receiver." This is true because of the statutory differences in the agency's role as both a "receiver" and a "conservator."

As the United States Court of Appeals for the Second Circuit has noted, "A conservator of a failed thrift is empowered to take action to restore the thrift to a solvent position and 'to carry on the business of the institution.' 12 U.S.C. § 1821(d)(2)(D) (Supp.

IV 1992). . . . In contrast, a receiver is empowered to liquidate and wind up the institution's affairs. 12 U.S.C. § 1821(d)(2)(E) (Supp. IV 1992)." 1185 Ave. of the Americas Associates v. RTC, 22 F.3d 494, 497 (2d Cir. 1994).

As the statute and the case law demonstrate, the two roles of receiver and conservator are very different -- and the conservatorship function of RTC is manifestly not pertintent to the instant case.

It is obvious that the sale or auctioning of real property is at the heart of the **liquidation** process, whereas the conservatorship aspect of the agency's functions is only directed to the internal management of a financial institution itself. For this simple reason, the District's argument is baseless.

There is absolutely no indication that the subject property was anything other than a stereotypical RTC property, once owned by a defunct bank or savings and loan company and which was sold to the highest bidder. While the Government was unable to clearly articulate why the establishment of RTC's role as "receiver" was doubtful, the mere fact that RTC sold this property to someone else, such as the Petitioner, is sufficient to demonstrate that the sale itself was an act that evolved in the agency's receivership role. This tax appeal does not concern the internal functioning of a financial institution, where the conservator function would be implicated.

The Government also seemed to be concerned that RTC had sold this property for some other reason that had no connection to RTC's core function -- as if it had acquired this property for its own, internal purposes in order to generate income. As the Court noted at the oral argument on this motion, the only other piece of realty that RTC might "own" in any non-receiver capacity is its own office building(s), to the extent that office space is not directly provided through the General Services Administration. Clearly, this property was not a government office building.

For all of the reasons set forth above, the Court will not require the Petitioner to prove up the ancient details as to how RTC originally came to acquire title to this property.

In the end, it suffices to say that the District of Columbia has not carried it burden of persuasion in its Motion to Dismiss.

WHEREFORE, it is by the Court this 3d day of October, 1997

ORDERED that the District of Columbia's Motion to Dismiss is hereby denied. This Superior Court tax appeal may proceed.

Cheryl M. Long
Judge

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