

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JEFFREY D. HILL,	:	
Plaintiff	:	DOCKET NO. 11-01572
	:	CIVIL ACTION – LAW
vs.	:	
	:	
CENTURY 21 APPRAISALS//PRIVATIZED	:	
LYCOMING COUNTY ASSESSMENT OFFICE,	:	
Defendants	:	

OPINION AND ORDER

AND NOW, this 7th day of December, 2011, following oral argument on Lycoming County and the Lycoming County Assessment Office’s Preliminary Objections, it is hereby ORDERED and DIRECTED that the objections are GRANTED and Plaintiff’s complaint is DISMISSED.

On September 6, 2011, Plaintiff filed a complaint against Defendants Century 21 Appraisals and Privatized Lycoming County Assessment Office. In his complaint, Plaintiff alleges violations of his civil rights, major criminal fraud, deceptive business practices, mail fraud, illegal taxation, constitutional rights, breach of a \$370,000.00 contract, and racketeering criminal enterprise. On October 3, 2011, Attorney Peter Burchanowski entered his appearance in the above-captioned matter on behalf of Lycoming County and the Lycoming County Assessment Office.¹ Also on October 3, 2011, Attorney Burchanowski filed Preliminary Objections to Plaintiff’s complaint. On November 22, 2011, this Court heard oral arguments on Attorney Burchanowski’s objections, along with Plaintiff’s Motion

¹ This Court notes that Attorney Burchanowski’s clients are not listed as named Defendants in Plaintiff’s complaint. Additionally, Attorney Burchanowski clearly expressed in his Entry of Appearance that he was not entering as counsel on behalf of Privatized Lycoming County Assessment Office or Century 21 Appraisals.

for Recusal and Motion for Summary Judgment.² Attorney Burchanowski's objections allege that Plaintiff's complaint is legally insufficient and that Plaintiff failed to exhaust his administrative remedies.

Initially, this Court notes that it denies jurisdiction over Century 21 Appraisals because Plaintiff did not properly serve that Defendant. This Court will address the merits of Plaintiff's complaint against Privatized Lycoming County Assessment Office because Attorney Burchanowski entered his appearance on behalf of Lycoming County and the Lycoming County Assessment Office.

This Court will address Plaintiff's complaint in three different aspects: as an appeal of the 2004 Lycoming County tax assessment, as a current tax appeal, and as a complaint for fraud, deceptive business practices, illegal taxation, breach of contract, illegal taxation, racketeering, and constitutional rights violations.

To the extent that Plaintiff's complaint can be construed as a challenge to prior tax assessments, Plaintiff's complaint is DISMISSED for lack of standing. "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, Appeals and Review..." *West Mifflin Area School District v. Board of Property Assessment*, 802 A.2d 687 (Pa. Cmwlth. 2002); *see* 72 P.S. § 5020-518.1. Twice, the Commonwealth Court has held that Plaintiff "does not have standing to question the propriety of a property tax assessment increase on property that he does not actually pay the property taxes on." *Hill v. Lycoming County Government* (No. 2118 C.D. 2005, filed June 14, 2006); *Hill v. Lycoming County Board of Assessment*

² This Court addressed Plaintiff's Motion for Recusal and Motion for Summary Judgment in two additional orders. This Order addresses only Attorney Burchanowski's objections, and not potential issues of collateral estoppel/res judicata.

Appeals (No. 2709 C.D. 2004, filed June 23, 2005).³ One of these actions is currently pending on appeal before the Pennsylvania Supreme Court. In short, the same issue has been the subject of two previous cases.

To the extent that this complaint is a current tax appeal and assuming Plaintiff can prove standing, Plaintiff's complaint is DISMISSED for lack of subject-matter jurisdiction because Plaintiff failed to exercise his statutory remedies for appealing a county tax assessment. If an adequate state remedy exists to review taxpayers' tax assessments, trial courts do not have subject-matter jurisdiction until their administrative remedies are exhausted. *See Jordan v. Fayette County Board of Assessment*, 782 A.2d 642, 644 (Pa. Cmwlth. Ct. 2001). Within Commonwealth, the General County Assessment Law requires counties to have assessment boards to hear and determine tax assessment appeals. 72 P.S. § 5020-511. The law provides that assessment board decisions may be appealed to the courts of common pleas. 72 P.S. § 5020-518.1. Lycoming County has an Assessment Office who appeared through counsel in this matter in attempt to resolve Plaintiff's complaint.

In this instance, this Court lacks subject-matter jurisdiction because Plaintiff has not filed a current tax appeal with the Lycoming County Assessment Office. Instead, Plaintiff filed a complaint in the common pleas court alleging violations of his civil rights, breach of contract, and other fraudulent conduct. All of Plaintiff's allegations appear to be based upon the 2004 Lycoming County assessment. However, in the event that this complaint may be construed as a current appeal, this Court believes that the statutory remedies provided to Plaintiff by the General County Assessment Law should be exercised prior to this Court's

³ This Court notes that Plaintiff now alleges that he has a life tenancy from his brother who owns the property in question and that Plaintiff is required to pay the real estate taxes. Plaintiff has not provided this Court with a written lease or deed that establishes this tenancy. Additionally, this Court notes that leases for more than three years must be in writing to be enforceable, as provided for by the Statute of Frauds. 33 P.S. § 1.

involvement. Therefore, this Court DISMISSES Plaintiff's complaint, as it can be construed as a current tax appeal, for lack of jurisdiction.

Additionally, this Court DISMISSES the remainder of Plaintiff's complaint under the doctrine of exhaustion of administrative remedies. This Court finds the *Jordan* case instructive on this point as well. In *Jordan*, the Commonwealth Court affirmed a lower court's grant of preliminary objections and dismissal of complaint on the basis of failure to exhaust administrative remedies. 782 A.2d at 646. In that case, Plaintiffs alleged that the county's assessment methods violated their constitutional rights. *Id.* at 643. In that case, the Commonwealth Court stated:

[t]he doctrine of exhaustion of administrative remedies as a restraint upon the exercise of a court's equitable powers not only reflects a recognition of the general assembly's directive of strict compliance with statutorily-prescribed remedies, it also acknowledges that an unjustified failure to follow the administrative scheme undercuts the foundation upon which the administrative process was founded.... The premature interruption of the administrative process restricts the agency's opportunity to develop an adequate factual record, limits the agency in the exercise of its expertise and impedes the development of a cohesive body of law in that area.

Id. at 646 (citing *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 438 (Pa. 1982)). Therefore, in addition to holding that the lower court correctly determined that the Plaintiffs failed to exhaust their administrative remedies, the Commonwealth Court held that the lower court correctly dismissed the Plaintiffs' entire complaint because "when a constitutional attack is brought against the application of a tax statute, the board is the proper authority to hear the challenge." *Id.* at 464 (citing *Consolidated Gas Supply Corp. v. County of Clinton*, 470 A.2d 1113, 1115 (Pa. Cmwlth. Ct. 1984)).

This Court believes that rationale can be similarly applied in this matter to Plaintiff's additional complaints. In this matter, all of Plaintiff's allegations should be addressed by the Lycoming County Assessment Office prior to this Court's involvement. The Lycoming

County Assessment Office has knowledge of the county's assessment procedures and laws and of Plaintiff's particular complaints. A record should be fully developed at the assessment office level, prior to an appeal to this Court.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Jeffrey D. Hill – 306 South Washington Street, Muncy, PA 17756
Peter Burchanowski, Esquire
Gary Weber, Esquire