

2014 IL App (2d) 130751-U
No. 2-13-0751
Order filed August 29, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SCOTT O'CONNELL and SUSAN)	Appeal from the Circuit Court
O'CONNELL,)	of Du Page County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 10-TO-09
)	
GWEN HENRY, County Treasurer and)	
<i>ex officio</i> County Collector of Du Page)	
County, Illinois,)	
)	
Defendant-Appellee)	
)	Honorable
(Board of Education of Downers Grove Grade)	Paul M. Fullerton,
School District No. 58, Intervenor-Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed plaintiffs' tax-objection complaint: despite the complaint's formal compliance with the Property Tax Code, it was subject to dismissal for legal insufficiency under section 2-615 of the Code of Civil Procedure; the school district was entitled to raise cash for its working-cash fund even beyond the needs of "full operation," as long as there was no abuse of discretion, which plaintiffs did not allege under any standard.

¶ 2 On November 12, 2010, plaintiffs, Scott O’Connell and Susan O’Connell, filed a tax objection complaint against Gwen Henry, the treasurer and *ex officio* county collector of Du Page County (Collector). The O’Connells’ complaint (which they later amended) consisted of five separate objections to taxes levied for the 2009 tax year by Downers Grove Grade School District No. 58 (District). The District was given leave to intervene, and the Collector and the District jointly filed a combined motion to dismiss under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). The trial court dismissed objection 3, with prejudice, pursuant to section 2-619 of the Code and dismissed objections 1, 2, 4, and 5, without prejudice, pursuant to section 2-615 of the Code. The O’Connells filed a notice of appeal, but the appeal was dismissed for lack of jurisdiction because there was no final judgment disposing of the entire controversy. *O’Connell v. Henry*, 2013 IL App (2d) 120707-U. Thereafter, the trial court entered an order dismissing each of the objections, with prejudice, pursuant to section 2-615. (The court dismissed objection 3, with prejudice, pursuant to section 2-619 as well.) This appeal followed. For the reasons set forth below, we affirm.

¶ 3 Objections 1 and 2 challenged the District’s authority to levy taxes for its working cash fund or for the payment of interest on bonds issued to raise money for the working cash fund. See generally 105 ILCS 5/20-2, 20-3 (West 2012). The working cash fund is designed to allow a school district to meet its expenses before the property taxes levied for payment of those expenses have been collected. See *Barrett v. Henry*, 2013 IL App (2d) 120829, ¶¶ 10-11. Alternatively, a school district may issue tax anticipation warrants to meet its expenses before property taxes have been collected. In their amended complaint, the O’Connells maintained that the District’s working cash fund had been “fully operational”—*i.e.*, sufficient to permit the

District to meet its expenses without issuing tax anticipation warrants—for 30 years and that it was an abuse of discretion to levy taxes in order to accumulate additional money in the fund.¹

¶ 4 Objection 3 pertained to a levy to pay interest on fire prevention and safety bonds issued pursuant to section 17-2.11(a) of the School Code (105 ILCS 5/17-2.11(a) (West 2010)), which authorizes the issuance of such bonds “[w]henever, as a result of any lawful order of any agency, other than a school board, having authority to enforce any school building code applicable to any facility that houses students, or any law or regulation for the protection and safety of the environment, pursuant to the Environmental Protection Act, any school district having a population of less than 500,000 inhabitants is required to alter or reconstruct any school building or permanent, fixed equipment.” The bonds may not be issued unless “a certified estimate of an architect or engineer licensed in this State stating the estimated amount necessary to make the alteration or reconstruction or to purchase *** has been secured by the school district, and the estimate has been approved by the regional superintendent of schools having jurisdiction over the district and the State Superintendent of Education.” 105 ILCS 5/17-2.11(a)(2) (West 2010). The O’Connells alleged that the bonds were issued pursuant to an “Order to Effect Compliance” issued by the regional superintendent of schools *after* the District secured a certified estimate of the expenses of reconstruction. The O’Connells maintained that the order must *precede* the estimate.

¹ When the O’Connells filed their amended complaint, there was no case law directly addressing the O’Connells’ legal theory. However, we have since rejected the notion that a school district may not add to its working cash fund after the fund has become “‘fully operational.’” *Id.* ¶ 13.

¶ 5 The Collector and the District sought dismissal of objection 3 on grounds of mootness. The Collector and the District submitted the affidavit of James Popernik, the District's controller. Popernik averred that the bonds were issued pursuant to a resolution providing for tax levies beginning with the 2010 tax year and that the District approved a tax abatement, such that the taxes had been or would be refunded to the taxpayers. The Collector and the District further argued that the O'Connells' interpretation of section 17-2.11 was contrary to the plain language of the statute.

¶ 6 In objection 4, the O'Connells challenged the 2009 levy for the District's operations and maintenance fund. The O'Connells argued that the District had illegally transferred over \$3 million from the operations and maintenance fund to the capital projects fund. In their motion to dismiss, the Collector and the District contended that the "transfer" was required by a regulation adopted by the Illinois State Board of Education (see 23 Ill. Adm. Code 100.50 (2012)) for accounting purposes and that the transferred sum was used for capital projects for which expenditures from the operations and maintenance fund are authorized under section 17-7 of the School Code (105 ILCS 5/17-7 (West 2008) ("Any sum expended or obligations incurred for the improvement, maintenance, repair or benefit of school buildings and property, including the cost of interior decorating and the installation, improvement, repair, replacement and maintenance of building fixtures, for the rental of buildings and property for school purposes, or for the payment of all premiums for insurance upon school buildings and school building fixtures or for the purchase or equipment to be used in the school lunch program shall be paid from the tax levied for operations and maintenance purposes and the purchase of school grounds"))).

¶ 7 In objection 5, the O'Connells asserted that the District's levy for its education fund was excessive because the District carried surpluses in other funds and those surpluses should be

considered assets of the educational fund. In their motion to dismiss, the Collector and the District responded that, in order to prevail on their objection, the O'Connells were obligated to prove that there was at least a two-to-one ratio between the assets of the educational fund (including surpluses from other funds) and the average expenditures from the education fund during the preceding three years. See *Allegis Realty Investors v. Novak*, 379 Ill. App. 3d 636 (2008). The O'Connells did not allege that the ratio met or exceeded the two-to-one threshold.

¶ 8 A section 2-615 motion to dismiss “attacks the legal sufficiency of a complaint and alleges only defects on the face of the complaint.” *Doe v. Chicago Board of Education*, 339 Ill. App. 3d 848, 853 (2003). “The question to be decided when ruling on a section 2-615 motion to dismiss is whether the plaintiff has alleged sufficient facts which, if proved, would entitle the plaintiff to relief.” *Id.* In contrast, “[a] section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts affirmative matter that defeats the claim.” *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21.

¶ 9 We first consider the dismissal of objections 3, 4, and 5. The O'Connells have not argued on appeal that those objections were *legally* valid. Instead, their principal argument is that, in order to survive a motion to dismiss, a tax objection complaint need only contain the allegations specifically required under the Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 2010)). Under the Property Tax Code, a taxpayer may object to his or her property taxes by paying the taxes and filing a tax objection complaint in the circuit court of the county in which the subject property is located. 35 ILCS 200/23-5, 23-15 (West 2010). The complaint must (1) list, on the first page, the taxing districts against which it is directed (35 ILCS 200/23-5 (West 2010)); (2) “specify any objections that the [taxpayer] may have to the taxes in question” (35 ILCS 200/23-15 (West 2010)); and (3) contain a summary of the reasons for the objections. The

O’Connells’ argument, as we understand it, is that the disposition of a motion to dismiss involves no inquiry into the merits of the legal bases for the objections. Thus, assuming we understand the O’Connells’ argument correctly, it is their position (at least implicitly) that, to survive a motion to dismiss under section 2-615, a tax objection complaint need not specify *legally valid* objections. We disagree.

¶ 10 Section 1-108 of the Code provides that “[i]n proceedings in which the procedure is regulated by statutes other than those contained in [the Code], such other statutes control to the extent to which they regulate procedure but Article II of [the Code] applies to matters of procedure not regulated by such other statutes.” 735 ILCS 5/1-108(b) (West 2010). Although sections 23-5 and 23-15 of the Property Tax Code regulate the *form* of the complaint in a tax objection proceeding, those do not regulate pretrial motion practice in such proceedings. Accordingly, the provisions of Article II apply.

¶ 11 Section 2-612 of the Code provides:

“(a) If any pleading is insufficient in substance or form the court may order a fuller or more particular statement. If the pleadings do not sufficiently define the issues the court may order other pleadings prepared.

(b) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet.

(c) All defects in pleadings, either in form or substance, not objected to in the trial court are waived.” 735 ILCS 5/2-612 (West 2010).

This provision works in tandem with section 2-615, which provides, in pertinent part, that “[a]ll objections to pleadings shall be raised by motion” (735 ILCS 5/2-615(a) (West 2010)) and that

“[a]fter rulings on motions, the court may enter appropriate orders either to permit or require pleading over or amending or *to terminate the litigation in whole or in part*” (emphasis added) (735 ILCS 5/2-615(d) (West 2010)). Of particular significance, the language of section 2-612(b) (735 ILCS 5/2-612(b) (West 2010)) has been “interpreted to indicate that the essential test of a complaint is that it inform defendant of a *valid claim* under a general class of cases *as distinguished from a complaint which states no cause of action.*” (Emphases added.) *Reed v. Hoffman*, 48 Ill. App. 3d 815, 819 (1977).

¶ 12 *In re Anderson*, 313 Ill. App. 3d 578 (2000), cited by the O’Connells, is not to the contrary. In *Anderson*, owners of property in Lake County that was within the boundaries of a school district—Barrington Community Unit School District 220 (District 220)—that included property in Cook, Kane, Lake, and McHenry Counties appealed from the dismissal of a consolidated tax objection proceeding and *mandamus* action. The property owners alleged that, in certain tax years, the Department of Revenue (Department) had placed a disproportionately high tax burden on taxpayers in Lake County. Section 18-155 of the Property Tax Code provides, in pertinent part, that “[t]he burden of taxation of property in taxing districts that lie in more than one county shall be fairly apportioned as provided in Article IX, Section 7, of the Constitution of 1970.” 35 ILCS 200/18-155 (West 2012). The apportionment is performed by the Department using, *inter alia*, assessment ratio studies in the townships in which the taxing district lies. *Id.* In reversing the dismissal, we reasoned as follows:

“A tax objection complaint ‘shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question.’ 35 ILCS 200/23-15(a) (West 1998). The Property Tax Code (35 ILCS 200/1-1 *et seq.* (West 1998)) (the Code) is not more specific in identifying what must be alleged in order to

state a cause of action in a tax objection petition. *** [T]he objectors allege that they owned property within the boundaries of District 220, which includes properties in Lake, Cook, McHenry, and Kane Counties. Citing section 18-155 of the Code (35 ILCS 200/18-155 (West 1998)), the objectors allege that, where taxing bodies lie in more than one county, the [Department] must apportion the amount of taxes to be raised so that each county in which the district lies bears the burden of taxation as though all parts of the overlapping district had been assessed at the same proportion of actual value and shall certify to each county clerk the percentage of the burden that the clerk is to extend upon the equalized valuation of district property lying in the clerk's county. In layman's terms, the taxpayers in each county should pay their fair share of taxes based upon a fair apportionment of their respective properties regardless of differences in levels of assessment in adjoining counties. [Citation.] The DOR certified to the clerk of Lake County that 46.70% of the total extension for District 220 for the tax year 1996 was to be extended against Lake County property, producing a tax rate of 3.258% and an extension of \$23,933,255.47. The petition then alleges that only 40.00% of the extension should have been certified to the Lake County clerk, producing a tax rate of 2.8% and an extension of \$20,600,000. The objectors contend that the excess extension and tax rate were incorrect, illegal, and void.

We conclude that this petition adequately sets forth facts under which the tax objectors could recover. Taking the facts alleged as true, Lake County bore too great a share of District 220's tax burden, and property owners within the Lake County portion of District 220 would be due tax refunds. ***

District 220 also argues that the tax objections merely allege that the [Department] is not apportioning the tax burden correctly between Lake and Cook Counties without stating specifically what the [Department] did incorrectly. Looking at the 1996 petition, we see that the objectors allege with specificity the certified apportionment of the extension, the actual extension, the actual tax rate, the alleged proper apportionment, the alleged proper extension, and the alleged proper tax rate. This is sufficient to place the parties on notice as to what the objection is. District 220 argues that the petition does not allege why the figures are incorrect. The ‘why’ does not have to be included in the petition. The ‘why’ is the proof of the objection. The petition is not insufficient for failing to allege why the [Department] was incorrect in its apportionment.” *Anderson*, 313 Ill. App. 3d at 581-83.

¶ 13 In *Anderson*, the central issue—whether the taxes had been properly apportioned—was a fact-sensitive inquiry, possibly involving technical aspects of the assessment ratio studies conducted in the townships within District 220. The *Anderson* court did not require the pleadings to allege in detail the facts constituting the proof of their cause of action. It does not follow, however, that a tax objection complaint that does not advance a valid legal theory for relief is sufficient to survive a motion to dismiss.

¶ 14 In a more sweeping argument, the O’Connells contend that section 2-615 of the Code simply does not apply in property tax objection proceedings. They maintain that a taxpayer’s “initial filing” is not a “pleading” within the meaning of the Code. We disagree. Section 602 of the Code provides that “[t]he first pleading by the plaintiff shall be designated a complaint.” 735 ILCS 5/2-602 (West 2010). The Property Tax Code specifically refers to the initial filing in a tax

objection case as a “tax objection complaint” (35 ILCS 200/23-10 (West 2010)) and that is how the O’Connells designated their initial filing in this case.

¶ 15 We next consider the O’Connells’ objections to levies for the District’s working cash fund or to pay interest on bonds issued to raise money for the working cash fund (objections 1 and 2). As noted, the O’Connells objected that the working cash fund is currently “fully operational” and was “fully operational” when the bonds in question were issued. In *Barrett*, we rejected the argument that a school district may no longer add to its working cash fund after the fund is “ ‘fully operational.’ ” *Barrett*, 2013 IL App (2d) 120829, ¶ 13. The term “fully operational,” as used in *Barrett*, is derived from language in our supreme court’s decision in *Mathews v. City of Chicago*, 342 Ill. 120, 140 (1930), where the court held as follows:

“The question of the establishment of a working cash fund plan as a means by which it should be made certain that the municipalities would be able to meet their ordinary expenses as they became due[,] either in lieu of or in connection with the use of tax anticipation warrants, is a question of sound business judgment. The legislature decided that the working cash fund plan should be adopted and the tax anticipation warrant plan should be continued. The working cash fund plan is within the principle announced by this court in the various decisions which have been cited. *When it is in full operation* there will be no occasion for the use of tax anticipation warrants, but until that time the municipalities will continue to use the tax anticipation warrant plan so far as it may be necessary.” (Emphasis added.)

In *Barrett*, we rejected the argument that “ ‘[t]he clear intent of Article 20 of the School Code is that the district must first demonstrate that there has been a need for tax anticipation warrants in the most recent past or that there will be a continual need for tax anticipation warrants into the

foreseeable future prior to 1) establishing a working cash fund and 2) increasing a working cash fund.’ ” *Barrett*, 2013 IL App (2d) 120829, ¶ 13. The O’Connells argue that our decision in *Barrett* condones taxation that does not serve a public purpose and that is therefore in violation of our state constitution. See Ill. Const. 1970, art. VIII, § 1(a) (“Public funds, property or credit shall be used only for public purposes.”). By dint of the O’Connells’ reasoning, any surplus in the working cash fund could be challenged on constitutional grounds. Suffice it to say that the cases cited in *Barrett* make it abundantly clear that the accumulation of reasonable reserves is a proper public purpose. The salient question is what level of reserves the law will permit.

¶ 16 Relying on *Central Illinois Public Service Co. v. Miller*, 42 Ill. 2d 542 (1969), and *Allegis Realty Investors v. Novak*, 379 Ill. App. 3d 636 (2008), we held in *Barrett* that, in determining whether a school district may issue working cash fund bonds, the applicable test is whether “at the beginning of fiscal years when the bonds were issued, the balance of the district’s funds (including the working cash fund) plus taxes extended for the prior year were two to three times the average annual expenditures from the preceding three years.” *Barrett*, 2013 IL App (2d) 120829, ¶ 15. The O’Connells argue that this test is improper inasmuch as it calls for an analysis of the aggregate surpluses in all the district’s various funds.² They contend that under *Miller* and *Allegis* the analysis should be applied on a fund-by-fund basis. They also note that, in *Alpha Gamma Rho Alumni v. People ex rel. Boylan*, 322 Ill. App. 3d 310 (2001), the fourth district held that surpluses should be analyzed on a fund-by-fund basis, not in the aggregate. We need not resolve the question here. The O’Connells have not shown that the test they prefer, as applied to

² In *Barrett*, we observed that *Miller* and *Allegis* “allow[] maintenance of considerable reserves.” *Id.* We added that, “[f]rom an analytical standpoint, it makes no difference that a portion of the reserves is maintained in a discrete fund.” *Id.*

the facts alleged in their tax objection complaint, would result in a different outcome than the test set forth in *Barrett*. Accordingly, as far as this case is concerned, the question is of purely academic concern.

¶ 17 For the reasons stated above, we conclude that the trial court properly dismissed each of the O'Connells' objections pursuant to section 2-615 of the Code. We briefly note that the O'Connells argue that the trial court erred in refusing to consider an affidavit they presented at the hearing on the Collector and the District's combined motion to dismiss under sections 2-615 and 2-619. The O'Connells' affidavit was germane only to the portion of the motion seeking dismissal under section 2-619. Because the tax objection complaint was properly dismissed under section 2-615, the trial court's failure to consider the O'Connells' affidavit was, at most, harmless error.

¶ 18 The judgment of the circuit court of Du Page County is affirmed.

¶ 19 Affirmed.