2017 IL App (1st) 150416-U

FIFTH DIVISION
January 27, 2017

No. 1-15-0416



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| RAYMOND E. HAWKINS, individually and as a representative of all owners of record in Special Service Areas,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>CITY OF CHICAGO, a municipal corporation, DAVID ORR, in his capacity as COOK COUNTY CLERK, MARIA PAPPAS, in her capacity as COOK COUNTY TREASURER, and JOSEPH BERRIOS, in his capacity as COOK COUNTY ASSESSOR,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 11 CH 22804<br><br>Honorable Rita M. Novak, Judge Presiding. |

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The trial court did not err when it held plaintiff lacked standing to represent special service area property owners other than those residing in the plaintiff's special service area; and (2) the trial court did not err when it found plaintiff's complaint lacked a valid legal basis for invalidating the ordinance establishing Special Service Area 45.

¶ 2 Plaintiff-appellant, Raymond Hawkins (Hawkins), appeals the trial court's decision granting defendant-appellee's, the City of Chicago (City), motion to dismiss. Mr. Hawkins filed his complaint in which, among other things, he sought to void the city ordinance establishing Special Service Area (SSA) 45. In response, the City filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). The trial court granted the City's motion to dismiss, and Mr. Hawkins responded by filing a timely appeal.

¶ 3 BACKGROUND

¶ 4 On December 2, 2009, the Chicago City Council passed an ordinance creating SSA 45 (Ordinance). The Ordinance was proposed by the Far South Community Development Corporation (Far South). The Ordinance authorized additional property taxes to be levied against property located within the boundaries of SSA 45. Mr. Hawkins is an owner of record within Chicago SSA 45. On June 27, 2011, he filed his initial complaint as a class action on behalf of himself and all owners of record within SSA 45. The initial complaint and all subsequent amendments sought to void the Ordinance on two grounds. First, the complaint alleged that the application for SSA 45 was not signed by an owner of record within the proposed SSA as required by section 27—20 of the Property Tax Code (Tax Code) (35 ILCS 200/27—20 (West 2009)); second, the complaint alleged the Ordinance was not recorded within 60 days after the date on which it was adopted pursuant to section 27—40 of the Tax Code (35 ILCS 200/27-40

(West 2009)). The complaint also sought a refund of the 2009 property taxes; however, Mr. Hawkins later withdrew this claim.

¶ 5 The City filed a motion to dismiss, arguing that the complaint was essentially a tax objection and should have been brought pursuant to the Tax Code. The trial court agreed and granted the City's motion to dismiss. Consequently, Mr. Hawkins appealed the trial court's ruling, and the reviewing court reversed and remanded the case back to the trial court. *Hawkins v. Far South CDC, Inc.*, 2013 IL App (1st) 121707. The reviewing court reasoned that dismissal was improper because Mr. Hawkins had withdrawn the portion of his complaint seeking reimbursement for the 2009 taxes, and he had instead proceeded only on his claim that the Ordinance was invalid.

¶ 6 On remand, Mr. Hawkins filed a second amended complaint purporting to represent all property owners in every Chicago SSA and naming the City, the Cook County Treasurer, the Cook County Clerk and the Cook County Assessor (Defendants) as defendants. In his second amended complaint, Mr. Hawkins (1) sought a declaratory judgment invalidating Chicago SSA ordinances; (2) claimed defendants had been unjustly enriched by collecting taxes under void ordinances and requested reimbursement; and (3) sought a mandamus ordering the removal of "unauthorized SSA tax assessments."

¶ 7 The City moved to dismiss the second amended complaint pursuant to sections 2-619(a)(5) and (a)(9) of the Code. The City argued that (1) Mr. Hawkins lacked standing to bring claims on behalf of any property owners outside of SSA 45; (2) the applications for the ordinances were not deficient; (3) the ordinances were properly recorded; (4) any request for unjust enrichment must be brought pursuant to the Tax Code; and (5) that a valid application is not a prerequisite to the City enacting an SSA ordinance.

¶ 8 On January 9, 2015, the trial court dismissed Mr. Hawkins' complaint with prejudice. The trial court found he lacked standing to bring suit to void SSA ordinances other than SSA 45's, and the trial court found that the second amended complaint failed to allege a valid basis for declaring the Ordinance void. Because Mr. Hawkins' claim for unjust enrichment and mandamus were dependent on the Ordinance being found void, the trial court dismissed the complaint in its entirety. Subsequently, Mr. Hawkins filed his notice of appeal on February 9, 2015.

¶ 9 ANALYSIS

¶ 10 On appeal, there are two questions this Court must answer. First, we must determine whether Mr. Hawkins lacked standing to represent SSA property owners outside of SSA 45; and second, this Court must determine whether the City's enactment of the Ordinance was in compliance with the law as to warrant dismissal of Mr. Hawkins' claims. For the following reasons, we answer both questions in the affirmative.

¶ 11 Discussion

¶ 12 I. Standing

¶ 13 "A complaint may be involuntarily dismissed for lack of standing pursuant to section 2–619(a)(9) of the Code." *Lyons v. Ryan,* 201 Ill. 2d 529, 534 (2002). An order dismissing a complaint for lack of standing presents a question of law subject to *de novo* review. *Scachitti v. UBS Financial Services,* 215 Ill. 2d 484, 493 (2005).

¶ 14 "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Glisson v. City of Marion,* 188 Ill. 2d 211, 221 (1999). The doctrine "requires that a party, either in an individual or representative capacity, have a real interest in the action brought and in its outcome." *In re Estate of Wellman,* 174 Ill. 2d 335, 344

(1996). Standing requires some injury in fact to a legally recognizable interest. *Greer v. Illinois Housing Development Authority,* 122 Ill. 2d 462, 492 (1988).

¶ 15 Mr. Hawkins claims the trial court erred when it concluded that he lacked standing to sue on behalf of Chicago property owners residing in SSAs other than SSA 45. He contends that he has standing because "the other SSAs are based on the same statute, and have the same defects as SSA 45." Further, Mr. Hawkins argues that he need not be subject to the other SSAs' taxes in order to have standing because the invalidity of SSA 45 and the other SSAs depend on the same underlying defects. In support of his contentions, Mr. Hawkins cites the Illinois Supreme Court's holding in *Getto v. City of Chicago,* 77 Ill. 2d 346 (1979); however, on review we find Mr. Hawkins' reliance on this case is misplaced.

¶ 16 In *Getto,* the supreme court considered whether the plaintiff had standing to sue the City of Chicago and Illinois Bell Telephone Company for erroneously collecting money from Bell customers in excess of the amounts due under the city's message tax. *Id.* at 349. In that case, the defendants argued that the plaintiff lacked standing because the taxes were levied against Bell rather than against the plaintiff. *Id.* The supreme court disagreed and reasoned that the plaintiff had standing because Bell, as the taxpayer, was passing the entire message tax onto its customers. *Id.* at 355. The supreme court held that Bell's subscribers, having fully borne the burden of the city's message tax, had a personal claim, status or right which was capable of being affected, and therefore, the plaintiff had standing to bring the claim. *Id.* at 355-56.

¶ 17 Unlike *Getto,* the present case does not involve circumstances where taxes levied against a service provider are passed on to consumers, nor does it involve a scenario where every taxpayer in the affected area is taxed under the same ordinance. Here, the owners of record are directly taxed pursuant to the ordinance establishing their respective SSA, and there is no

evidence suggesting that the taxes in one SSA, or the invalidity of those taxes, affect residents living in another. Consequently, Mr. Hawkins cannot be said to possess a real interest in an action or the outcome of an action brought on behalf of residents living outside of his own SSA. *Wellman*, 174 Ill. 2d at 344. Therefore, we cannot conclude that Mr. Hawkins has standing to sue on behalf of residents outside of SSA 45.

¶ 18 b. Statutory Compliance

¶ 19 Next, we turn to Mr. Hawkins' argument that the trial court erred in granting the City's motion to dismiss. Mr. Hawkins argues that dismissal was improper because the City's alleged failure to comply with the Tax Code rendered the Ordinance and SSA 45 void. Specifically, Mr. Hawkins argues that the application for SSA 45 was not signed by an owner of record pursuant to section 27—20 of the Tax Code, and the City did not record the Ordinance in the office of the recorder's grantor-grantee index within 60 days after the date it was adopted pursuant to section 27—40 of the Tax Code.

¶ 20 Mr. Hawkins' arguments present an issue of statutory construction, which is a matter that this Court reviews *de novo. Millennium Park Joint Venture, LLC v. Houlihan,* 241 Ill. 2d 281, 294 (2010). Likewise, the standard of review for a dismissal under section 2-619 of the Code is also *de novo*. *Kean v. Wal-Mart Stores, Inc.*, Ill. 2d 351, 361 (2009). A motion for involuntary dismissal pursuant to section 2–619 should be granted only where there are no material facts in dispute and the movant is entitled to dismissal as a matter of law. *King v. City of Chicago*, 324 Ill. App. 3d 856, 858–59 (2001). A section 2–619 motion admits all well-pleaded facts and the legal sufficiency of the complaint as true. *Id.* at 859. Specifically, section 2–619(a)(9) of the Code permits the dismissal of a claim when "the claim asserted *** is barred by other

affirmative matter avoiding the legal effect of or defeating the claim." *Poulet v. H.F.O., L.L.C*, 353 Ill. App. 3d 82, 89 (2004); 735 ILCS 5/2–619(a)(9) (West 2014).

¶ 21 Turning to Mr. Hawkins' arguments, it is well established that the primary objective of this Court when construing the meaning of a statute is to ascertain and give effect to the legislature's intent. *Michigan Avenue National Bank v. City of Cook*, 191 Ill. 2d 493, 503–04 (2000) (citing *Boaden v. Department of Law Enforcement*, 171 Ill. 2d 230, 237(1996)). In determining the intent of the legislature, we begin with the language of the statute, the most reliable indicator of the legislature's objectives in enacting a particular law. *Id.* at 504. The statutory language must be given its plain and ordinary meaning, and, where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. *Id.* One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Id*. Furthermore, when construing a statute, courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity, inconvenience, or injustice. *Id.*

¶ 22 We begin our analysis by examining the statute's requirement that SSA applications be signed by an owner of record residing in the proposed SSA. Section 27—20 of the Tax Code states:

"To propose the establishment of a special service area, other than one initiated by the corporate authorities, an application shall be filed with the chief elected official of the municipality or county explaining, at a minimum, the following: the name and legal status of the applicant; the special services to be provided; the boundaries of the proposed special service area; the estimated amount of funding required; and the stated need and local support for the

proposed special service area. The application must be signed by an owner of record within the proposed special service area. The corporate authorities may accept or reject the application." 35 ILCS 200/27—20 (West 2009).

¶ 23 On review, we note that the application for SSA 45 contains signatures from Peggie Applewhite and Raymond Bell who, at the time of application, both owned property within SSA 45. On appeal, Mr. Hawkins suggests that section 27—20 requires the applicant, Far South, to also be an owner of record; however, the plain language of the statute does not support this conclusion. The statute lays out the minimum requirements that an application for an SSA must meet; however, section 27--20 does not state that an applicant must be an owner of record. On the contrary, the statute provides that the application must only be signed by an owner of record within the proposed SSA. *Id.* Therefore, we find that the inclusion of Ms. Applewhite's and Mr. Bell's signatures in the application for SSA 45 satisfied the section 27—20 signator requirements.

¶ 24 Next, we turn to Mr. Hawkins argument that the Ordinance was not recorded pursuant to the Tax Code. Section 27—40 of the Tax Code states in pertinent part:

"No lien shall be established against any real property in a special service area nor shall a special service area create a valid tax before a certified copy of an ordinance establishing or altering the boundaries of a special service area, containing a legal description of the territory of the area, the permanent tax index numbers of the parcels located within the territory of the area, an accurate map of the territory, a copy of the notice of the public hearing, and a description of the special services to be provided is filed for record in the office of the recorder in each county in which any part of the area is located. The ordinance must be recorded no later than 60 days

after the date the ordinance was adopted. An ordinance establishing a special service area recorded beyond the 60 days is not valid." 35 ILCS 200/27—40 (West 2009).

¶ 25 The parties agree that on December 2, 2009, the Chicago City Council passed the Ordinance and that it was subsequently recorded in the Cook County Recorder's Office on December 28, 2009. Mr. Hawkins argues that the section 27—40 required the Ordinance be recorded in the office of the recorder's grantor-grantee index; however, we find no support for his argument based on the plain language of the statute. Section 27—40 only requires that the Ordinance be "filed for record in the office of the recorder in each county in which any part of the area is located." 35 ILCS 200/27—40 (West 2009). The record demonstrates, and the parties agree, that the Ordinance was recorded in the Cook County Recorder's Office on December 28, 2009. This was well within the 60 day time limit.

¶ 26 In response, Mr. Hawkins contends that the Ordinance was not recorded within the 60 day limit because the Ordinance is an encumbrance. He argues that encumbrances against property must be recorded in the grantor-grantee index against individual properties located in SSA 45 and that recording outside of the grantor-grantee index does not operate as constructive notice to subsequent purchasers of property located in SSA 45. These contentions are without merit.

¶ 27 First, an ordinance is not an encumbrance in and of itself. Reviewing courts have expressly stated that "unassessed property taxes cannot constitute an encumbrance on title at any point before the tax is levied pursuant to statute." *Rhone v. First American Title Insurance Co.*, 401 Ill. App. 3d 802, 814 (2010). Second, the Ordinance was recorded in the Cook County Recorder's Office. It is well settled that taxpayers are charged with knowledge of that which may be obtained from public records, and they have constructive notice of the ordinances of their city.

See *Haas v. Commissioners of Lincoln Park*, 339 Ill. 491, 498 (1930); see also *DuMond v. City of Mattoon*, 60 Ill. App. 2d 83, 87(1965). If this Court were to interpret the section 27—40 to require ordinances establishing SSAs be recorded in the grantor-grantee index against every property located within a proposed SSA, it would be administratively absurd and inconvenient. See *Michigan Avenue*, 191 Ill. 2d at 504 (In construing statutes courts presume the General Assembly did not intend absurdity or inconvenience).

¶ 28 Therefore, we find the City properly recorded the Ordinance pursuant to section 27—40 of the Tax Code. Because the remainder of Mr. Hawkins' claims are predicated on this Court's finding that the Ordinance was invalid, we need not address them upon reaching an opposite conclusion.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm the decision of the trial court.

Affirmed