IN THE SUPREME COURT OF THE STATE OF NEVADA

THE HOWARD HUGHES CORPORATION, A DELAWARE CORPORATION, AND HOWARD HUGHES PROPERTIES, INC., A NEVADA CORPORATION,
Appellants,
vs.
CLARK COUNTY BOARD OF COMMISSIONERS, THE CLARK COUNTY ASSESSOR; AND THE CLARK COUNTY TREASURER,
Respondents.

No. 44139

FILED

JUL 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint for lack of subject matter jurisdiction. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our discussion.

Taxpayers seeking to challenge their property tax valuation in district court must first fulfill three prerequisites. First, they must pay the increased property tax under protest.[1] Second, the taxpayers must exhaust all remedies in the county and state boards of equalization before filing suit in district court.[2] Third, the taxpayers must file their action

[1]NRS 361.420(1); see Washoe County v. Golden Road Motor Inn, 105 Nev. 402, 404, 777 P.2d 358, 359 (1989).

[2]NRS 361.420(2) (requiring a property owner to have been "denied relief by the State Board of Equalization" before filing suit in district court).

within three months of either payment of the tax under protest or the decision of the board of equalization, whichever is later.[3] A failure to satisfy these prerequisites deprives the district court of subject matter jurisdiction.[4] Appellants, the Howard Hughes Corporation and Howard Hughes Properties, Inc. (collectively Hughes), did not fulfill these prerequisites, and, therefore, we conclude that the district court correctly dismissed the case.

Applicability of NRS 361.420 prerequisites

Hughes first argues that these prerequisites need not be exhausted in cases of clerical error or mistake. Relying upon a 1977 Attorney General's opinion, Hughes contends that in instances of error or mistake a taxpayer may apply directly to the Board of County Commissioners pursuant to NRS 354.250 and then proceed to district court.[5] Hughes applied to the Board of County Commissioners for relief, but the Board took no action. As a result, Hughes claims the district court should have considered its claim on the merits.

However, this Attorney General's opinion was premised on NRS 361.760, which has since been repealed by the Legislature.[6] NRS 361.760 had permitted aggrieved taxpayers to pursue refunds under the general refund procedures in NRS Chapter 354. After the repeal of NRS 361.760, this option no longer exists for taxpayers wishing to challenge

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[3]NRS 361.420(3).

[4]State, Dep't of Taxation v. Scotsman Mfg., 109 Nev. 252, 254, 849 P.2d 317, 319 (1993).

[5]77-217 Op. Att'y Gen. 2380, 2381 (1977).

[6]1981 Nev. Stat., ch. 427, § 30.6, at 812.

SUPREME COURT
OF
NEVADA

(O) 1947A

their property valuation. Instead, taxpayers may only challenge the valuation in district court after meeting the prerequisites listed in NRS 361.420.[7] Because Hughes failed to pay the increased taxes under protest, exhaust its remedies in the county and state boards of equalization, and file suit within three months, the district court properly dismissed its complaint.

Hughes further argues that under Metropolitan Water v. State Department of Taxation, this court may ignore the NRS 361.420 requirements where enforcing those requirements would deny taxpayers the opportunity to challenge their tax liability.[8] Hughes' reliance upon Metropolitan Water is unavailing because our decision to suspend the prerequisites in that case was based upon the taxpayers' lack of knowledge about the improper calculation of their tax liability.[9] Here, Hughes received notice of the revaluation when it received an increased property tax bill and had ample opportunity to pay under protest and mount a timely challenge to the revaluation in the board of equalization. Hughes

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[7]Scotsman, 109 Nev. 3d at 254-255, 849 P.2d at 319 (providing that statutory procedures must be exhausted before commencing suit in district court.)

[8]99 Nev. 506, 509, 665 P.2d 262, 264 (1983).

[9]Id. In Metropolitan Water, the taxpayer learned in 1979 that its tax assessments over the last 38 years were based on a method of calculation different from other similarly situated taxpayers. Enforcing the NRS 361.420 requirements, we reasoned, would have deprived the taxpayer of any opportunity to challenge the discriminatory assessments because the taxpayer had no notice until long after the statute of limitations passed. Id. This is not the case here.

chose not to do so. Enforcing the NRS 361.420 prerequisites, then, did not deny Hughes an opportunity to challenge its property tax liability.

The NRS 361.420 appeals procedure does not violate due process

Finally, Hughes claims that the appeals procedure under NRS 361.420 is unconstitutional because the taxpayer receives no notice of the revaluation prior to the hearing before the Board of County Commissioners. As a result, Hughes argues, no safeguards ensure that the Board conducts a full investigation to determine the correctness of the revaluation. Hughes contends that the absence of such safeguards violates due process and permits it to seek redress directly in the courts. We disagree.

"[I]t is well established that a State need not provide predeprivation process for the exaction of taxes."[10] To allow taxpayers to litigate their liabilities before payment "might threaten a government's financial security, both by creating unpredictable interim revenue shortfalls against which the State cannot easily prepare, and by making the ultimate collection of validly imposed taxes more difficult."[11] As a result, a post-deprivation appeals process is constitutional in cases involving taxation.

Furthermore, post-deprivation appeals ensure that the Board of County Commissioners can work efficiently and effectively. The Board notes that thousands of clerical or typographical errors are corrected each year, making it impractical and financially untenable to require a full

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[10]McKesson Corp. v. Florida Alcohol & Tobacco Div., 496 U.S. 18, 37 (1990).

[11]Id.

SUPREME COURT
OF
NEVADA

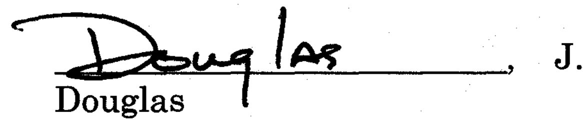
(O) 1947A

adversarial hearing merely for the purpose of correcting a clerical or typographical error. In addition, although taxpayers do not receive notice prior to revaluation, they are promptly notified by the circulation of a revised tax bill.

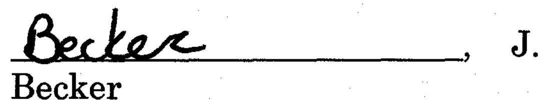
Conclusion

The undisputed facts indicate that Hughes failed to pay taxes under protest, failed to challenge the revaluation of its property before the board of equalization, and failed to bring suit within three months of its last payment. Thus, the district court did not err when it dismissed Hughes' action. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Douglas



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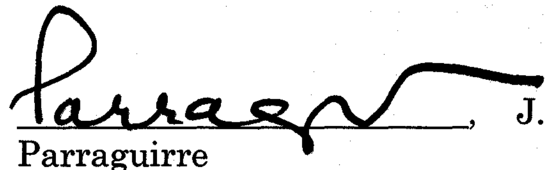

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Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Kummer Kaempfer Bonner & Renshaw/Las Vegas
Paul D. Bancroft & Associates
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk