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2019 WL 4725184 (Table)

Only the Westlaw citation is currently available.

Supreme Court of New Jersey Petitions for Certification. This disposition is referenced in the Atlantic Reporter.

Supreme Court of New Jersey.

Michael S. BARTH, Plaintiff-Petitioner,

v.

BERNARDS TOWNSHIP, David Centrelli, Individually and in His Official Capacity as Bernards Township Assessor, Somerset County New Jersey, Somerset County Board of Taxation, Robert M. Vance, Individually and in His Official Capacity as Somerset County Tax Administrator, John M. Lore, Esq., Individually and in His Official Capacity as President of the Somerset County Tax Board, Defendants-Respondents.

C-73 September Term 2019

082827

September 20, 2019

ORDER

*1 A petition for certification of the judgment in A-004118-16 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

All Citations

Slip Copy, 2019 WL 4725184 (Table)

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2019 WL 1111133

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

Michael S. BARTH, Plaintiff-Appellant,

v.

BERNARDS TOWNSHIP, David Centrelli, Individually and in His Official Capacity as Bernards Township Assessor, Somerset County New Jersey, Somerset County Board of Taxation, Robert M. Vance, Individually and in His Official Capacity as Somerset County Tax Administrator, John M. Lore, Esq., Individually and in His Official Capacity as President of the Somerset County Tax

Board, Defendants-Respondents.

DOCKET NO. A-4118-16T4

Submitted February 26, 2019

Decided March 11, 2019

On appeal from the Tax Court of New Jersey, Docket No. 0368-2016.

Attorneys and Law Firms

Michael S. Barth, appellant pro se.

DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC, attorneys for respondents Township of Bernards and David Centrelli (Martin Allen, of counsel; Edward W. Purcell, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondents Somerset County New Jersey, Somerset County Board of Taxation, Robert M. Vance, and John M. Lore (Melissa H. Raksa, Assistant Attorney General, of counsel; Michelle Capistrano Foster, Deputy Attorney General, on the brief).

Before Judges Fisher and Suter.

Opinion

PER CURIAM

*1 Plaintiff was once the beneficiary of a farmland tax assessment because the property taxing authority believed he harvested maple syrup on his Bernards Township property. In 2014, that assessment was revoked and rollback taxes¹ were imposed, eventually leading to plaintiff's appeal to the Tax Court, which ultimately rejected plaintiff's position because he refused to permit

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an inspection of his property. After careful review of the record and the parties' arguments, we affirm the dismissal of his tax court action.

The relevant facts may be briefly summarized. In October 2014, the tax assessor informed plaintiff that his property did not qualify for the farmland assessment because plaintiff failed to provide proof demonstrating income through farming. The county board of taxation initiated a complaint, pursuant to N.J.S.A. 54:4-23.8, to invoke rollback taxes for 2013 and 2014 due to the property's change in status. Plaintiff was given notice and a hearing was scheduled, at the conclusion of which the county board entered a judgment assessing rollback taxes in the amount of \$ 4,953.99.

In January 2016, plaintiff appealed that determination to the Tax Court; he also sought relief against the township, the assessor, the county board, the county tax administrator, the president of the tax board, and tax board commissioners. Plaintiff claimed, among other things, that these defendants were liable for "abuse of process, harassment, and negligence." And he asserted the constitutionality of the procedures that led to the rollback assessment.

By motion, the Tax Court granted summary judgment in March 2016 dismissing with prejudice all plaintiff's claims for monetary damages. What remained was plaintiff's appeal of the rollback determination, as to which the township was the only remaining party.

The township moved in September 2016 to dismiss because plaintiff failed to provide answers to interrogatories or allow inspection of the property. The motion was granted but the action later reinstated. When plaintiff remained recalcitrant in discovery, the township again moved for dismissal. As the result of a hearing in January 2017, an order was entered that required plaintiff to provide the unanswered discovery requests and to allow an inspection of the property on February 28, 2017.

Plaintiff, however, refused to permit an inspection as ordered. Even though he had already been accommodated and the inspection delayed until the winter harvesting season, plaintiff claimed the inspection could not occur when ordered because the 2017 season abruptly ended due to unseasonably warm weather. The Tax Court granted the township's motion to dismiss with prejudice, concluding that plaintiff "intentionally failed to comply with the

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discovery order and that dismissal of the complaint [was] the appropriate sanction."

*2 Plaintiff appeals, arguing:

I. THE TAX COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANTS, DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT, AND DISMISSING PLAINTIFF'S COMPLAINT.

II. TAX COURT ERRED IN APPLYING GENERAL MOTORS CORP. v. CITY OF LINDEN, 150 N.J. 552 (1996) THAT IN EFFECT GRANTED A COMMON LAW RECOGNITION OF A KANGAROO COUNTY TAX BOARDS, AND AS A RESULT, SHOULD RESULT IN ALLOWANCE OF THE OWNER OF A FARM ORGANIZED AS AN LLC TO REPRESENT THEMSELVES PRO SE.

III. TAX COURT[] PROCEDURES WERE AS UNCONSTITUTIONAL SIMILAR TO THE SOMERSET COUNTY TAX BOARD.

IV. SUBSTITUTION OF COUNSEL SHOULD NOT BE PERMITTED WHEN COUNSEL ATTEMPTS TO MISLEAD THE COURT ON THE SEQUENCE OF SUBSTITUTION AND INTERFERENCE WITH DISCOVERY.

We find insufficient merit in these arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm substantially for the reasons set forth by Judge Patrick DeAlmeida in his thoughtful and well-reasoned opinions on the motions that produced the orders under review.

Affirmed.

Footnotes

1. Rollback taxes represent "an amount equal to the difference, if any, between the taxes paid or payable... and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district in the current tax year (the year of change in use) and in such of the two tax years immediately preceding, in which the land was valued, assessed and taxed [as farmland]" N.J.S.A. 54:4-23.8 *See also N.J. Tpk. Auth. V. Twp. of Washington*, 137 N.J. Super. 543, 547 (App., Div. 1975), *aff'd o.b.*, 73 N.J. 180 (1977).

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April 29, 2019

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New Jersey Supreme Court
R. J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Michael S. Barth v. Township of Bernards et al.
Appellate Division Docket No.: A-0004118-16T4
Supreme Court Docket No.

Dear Honorable Justices of the New Jersey Supreme Court,

Please accept this letter memorandum and appendix as consistent with the Rules of Court in support of the undersigned Notice of Appeal, Petition for Certification, and a Notice of Motion to file these pleadings as within time. The reasons are many for granting the relief requested and for the New Jersey Supreme Court hearing this matter.

This is an appeal of litigation that by admission of Bernards own legal counsel, should never have been initiated by Bernards. Nearly four years ago, Bernards' counsel admitted that his client filed a "roll-back complaint" against Barth on an incorrect understanding of the law. Specifically, Martin Allen stated his client David Centrelli filed a roll back complaint on a subsequent admitted incorrect assumption that no proof of income automatically entitled Bernards to roll-back. From Bernards own business records, while a farmer may not have provided proof of income, clearly there was no change in land use. (See e.g., PA1). Specifically, Bernards mistakenly filed a rollback claim in August 2014, for 2014 and 2013 when on October 30, 2014, they denied farmland assessment for 2015 on an income basis only, and not a change in farming activities. (Pa2). A memo addressed to Tax Court Judge DeAlmeida's also put him on notice on Appeal, when the notice spelled out that a filing of such a rollback complaint was

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impermissible as a matter of law. (PA3-4). Accordingly, the Somerset County Tax Board lacked subject matter jurisdiction to hear a roll back complaint filed by Bernards against Barth. The parade of horribles that followed Martin Allen's bad legal advice to David Centrelli were completely avoidable, starting with the many County Tax Board unconstitutional defects.

The New Jersey Department of the Treasury was critical itself of the Somerset County (deficient) Tax Board procedures. (PA5-6.) Specifically, the Treasury Department indicated the "notice" Barth received of a roll back complaint was unconstitutionally vague and deficient and suggested constitutional due process concerns be raised in a separate lawsuit.¹ When Bernards was pressed why Barth only received page 1 of a two-page complaint, Centrelli wrote, page two is "only the instructions." (Pa7-8). Neither Centrelli nor Vance were competent enough to know the "page 2" of the complaint cited incorrect and outdated statutory authority. Perhaps it is no surprise that incompetent Vance dropped the unconstitutional "complaint and notice" in the mail and as he said, went on vacation, and was not around to answer questions of his incompetence and the frivolous complaint filed until the morning of the so called hearing scheduled for the day after Labor Day. (Pa7-8, *See also* Pa9).

No surprise the Somerset county tax board's procedures were as unconstitutionally defective as was the unconstitutional notice. (Pa 10-13).

This included the fact that incompetent Vance failed to follow through on his statement he would have Bernards provide Barth with documents Bernards expected to rely upon at the Board hearing.

1. This included the fact that the Tax Board has no *voir dire* process for questioning of tax assessor complainants or witnesses, because the incompetent tax board president (Lore) did not know the difference in valuation witnesses and farmland assessment standards, and because he did not know that no proof of income did not automatically entitle a township to roll back, until Barth

¹ Subsequently the Tax Court seemed to have a foggy view of its own subject matter jurisdiction. The Treasury's Division of Taxation has certain authority over the County Tax Board, and has the ability to revoke Centrelli's assessor's license.)

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cited a case that Lore obviously looked at during a break in the so-called “proceeding”.

2. This included the fact that the same incompetent counsel Martin Allen who gave his client bad legal advice to file an unsupported roll back complaint, only asked his client valuation questions on direct examination, and on direct examination did not ask any farming activities questions for farmland assessment on direct examination.

3. This is also consistent with Martin Allen’s opening [incorrect] statement that he believed that no proof of income automatically entitled the township to roll back taxes.

4. This included the fact of what President Lore must have learned in some type of unconstitutional law class, that is, to hold up his hands to prohibit an objection by Barth, (to avoid being recorded), when Martin Allen, after Barth’s cross-examination of Centrelli’s direct testimony that was only on valuation, said in effect, “oh, I forgot to ask farmland assessment activity questions on direct”, when under basic principles, if counsel fails to ask questions on direct, and opposing counsel does not bring up on cross-examination, that initial counsel cannot bring up new topics on re-direct.

5. The Court can tell by Martin Allen’s own pleadings below that his client’s re-direct testimony on farmland assessment activity was declared net opinion by the County tax Board.

6. Finding of Centrelli’s opinion as net opinion is consistent with the subsequent documented recanting of Centrelli’s testimony before the County Tax Board, that is, Centrelli admitted he lied before the County Tax Board about farming activities on Barth’s property during the year’s in question, when in actuality Centrelli said Barth’s property was properly farmed all along. (This testimony was during the “re-direct” phase when Martin Allen admitted he forgot to ask farming activity questions on direct, and Barth didn’t ask on cross, and Barth objected to Allen attempting to ask new subjects on re-direct.)

Applying the New Jersey Supreme Court recent opinion In Re Accutane, 234 N.J. 340 (2018), because the only testimony Bernards presented to the county tax board on farming activities was ruled net opinion, and because valuation was not at issue, the county tax board finding of roll back taxes for Bernards is null and void. In addition, because Bernards introduced no evidence into

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the record before the County Tax Board, and because they had no competent testimony that was accepted on farmland assessment farming activities, and because counsel admitted the roll back complaint was filed on an incorrect understanding of the law, Bernards failed to satisfy its burden of proof before the county tax board. (Citation omitted.)

Of no surprise was that the County Tax Board refused to provide a copy of the recording of the hearing, that the tax board purchased equipment to record such “hearings”. (Pa 14-15).²

The Courts have widely held that where everything goes against a party, as here against Bernards, and a “tribunal” rules in favor of that party anyway, obviously something “is up.” Here as the record reflects, the County tax board also had a conflict of interest with the law firm representing Bernards, as the President of the Board, and the principle of the law firm representing Bernards, are Somerset county “co-workers,”³ and under Piscitelli v. City of Garfield Zoning Board of Adjustment, 2019 WL 1371557 (NJSC, March 27, 2019) an additional reason for declaring the Tax Board decision null and void. That conflict of interest appears consistent with Barth’s documented incident nearly decades earlier, where before the same board, the first thing Martin Allen said was that he and President Lore were talking (ex parte) about the case before the hearing. (See NJAD Pleadings Below.) All the law and facts supported finding for Barth except that President Lore had to bail-out his buddy’s legal mistake to avoid his buddy’s being responsible for advising his client to file a frivolous suit.

Not only were the County Tax Board procedures were unconstitutional, but Judge DeAlmeida’s tax court’s definition of “an appeal” of a county tax board decision is not of any

² The Court should demand an investigation into whether the administrator lied about there being a recording, in that the Attorney General’s Office appears to have a conflict of interest in its responsibility to protect the public, when the Attorney General’s office is more interested in trying to save the state from paying out monies for the corrupt acts of state officials.

³ Conflict of interest details were briefed below.

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constitutional due process to Barth, but rather the equivalent of a distorted civil double jeopardy, as it only gives Bernards a second bite at an apple after its blatant and perjured failure at a mock trial before the county tax board, and one that shifts the burden from Bernards to Barth is an unconstitutional mockery that the Tax Court seemed to embrace with loving arms.⁴ In effect, the tax court unconstitutionally creates subject matter jurisdiction for a tax board that does not constitutionally exist.

QUESTION PRESENTED

The main question in this case is whether there are adequate procedures to reverse the judgment of the Somerset County Tax Board, because if the Court does not accept this case and does not reverse the judgment of the Somerset County Tax Board, then by definition there are not adequate state procedures in place under General Motors Corp. v. City of Linden, 143 N.J. 336 (1996), and the matter should be certified to the United States Supreme Court under National Private Truck Council v. Oklahoma Tax Commission, 515 U.S. 582 (1995). This question merely scratches the surface of the underlying issues that relief on the page limitations would be needed to further brief the remaining sub-questions.

Perhaps at this conjuncture with all due respect, considering the Supreme Court's decision in Piscitelli, *supra*, it is not clear whether under General Motors Corp. v. City of Linden, 143 N.J. 336 (1996), this court can be independent in a review of a decision by Judge DeAlmeida, considering he was promoted by Chief Justice Rabner to an Appellate Division position (reference omitted), and that promotion was not by advice and consent, as would a federal district or federal appellate judge (reference omitted), and whether because of that seemingly lack of independence, whether since it appears there are not adequate state procedures, this matter should be certified to the United States Supreme Court as an exception for review under National Private Truck Council v. Oklahoma Tax Commission, 515 U.S. 582 (1995).

⁴ Ironically the Tax Court complained Barth filed a complaint with the Tax Court's own form, and based on defective forms before the County tax Board it is clear someone in the Tax Court administration "fell asleep at the wheel."

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There are a number of subsets questions to the Question presented that are laid out in principles described in this letter memorandum that are also reflected in the Appellate Orders on Appeal:

1. April 1, 2019 Order Denying Motion for Reconsideration (Pa16);
2. March 11, 2019 Order Affirming Tax Court Dismissal with Prejudice (Pa17);
3. December 7, 2016 Order denying Motion for Interlocutory Appeal (Tax Court Order Dismissing Complaint without prejudice). (Pa 19).
4. July 7, 2016 Order denying Motion for Interlocutory Appeal (Substitution of Counsel.) (Pa 20).
5. Note: Judge DeAlmeida explicitly told opposing counsel on a conference call to not send a copy of the Case Management Order to this party, and the Tax Court itself did not send this party a copy of the Case Management Order. Presumably Judge DeAlmeida did not want this party to appeal his defective case management order, as Judge DeAlmeida stated in effect, “he holds it against those that file interlocutory appeals of his orders.” (Reference omitted.)⁵

Those subset questions to the Question Presented are also equally laid out in principle of the Tax Court “Orders” “Appealed to the Appellate Division that include:

1. 2016/03/31 Order Dismissing Barth’s Complaint With Prejudice (Pa 21).
2. 2016/12/21 Tax Court Rule 4:23-5(a)(2) letter “subpoena” for Barth (only) to testify (Pa 22).
3. 2017/02/06 Case Management Order that Judge DeAlmeida intentionally kept from sending to Barth (Pa 23).
4. 2016/10/14 Order of Dismissal without Prejudice (Pa 25).
5. 2016/05/17 Order on (Martin Allen’s “Ex Parte”) Motion Granting Leave to substitute Counsel (TCNJ) (Pa 26).
6. 2016/03/04 Order Denying Barth’s Motion for Summary Judgement (Pa 27).

⁵ The Court should consider sending a referral to another body to investigate Judge DeAlmeida refusal to send this party a copy of his case management order. (Reference omitted.)

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7. 2016/03/04 Order Granting David Centrelli's Motion to Dismiss with Prejudice (Pa 28).

8. 2016/03/04 Order Granting State's Motion to Dismiss (Pa 30).

In many ways there is little to analyze of the Appellate Division reasoning in its rubber stamping the decisions of the Tax Court. However, the motion for reconsideration summarizes a sufficient number of the flaws below for this Court to find in favor of this party to be further briefed.

As the various Appellate Division orders show, there were a number of appellate judges who reviewed this case. In doing so, there seems to a flaw in the application of the Court rules for reconsideration when the Motion for Reconsideration is not presented to other judges other than the last two judges who ruled, when other judges who ruled favorably for this party on interlocutory motions were not given a chance to dissent from the two judge panel reaffirming their own rubber stamp of Judge DeAlmedia's final order.

The facts and law clearly show that the Appellate Division should have granted considering reconsideration is generally required when: "1. the court has expressed its decision based upon a palpably incorrect or irrational basis, or 2. It is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence." *See example, Granata v. Broderick, 446 N.J. Super. 449 (2016).*

The appellate division decision to affirm Judge DeAlmeida is obviously palpably incorrect, obviously irrational; and it is obvious that the decision failed to consider the relevant facts, failed to consider the procedural history, failed to apply existing case law, and failed to apply the correct standard of review.

For the most part, the appellate division decision rubber stamps a judicially created parade of horribles through what has become a cliché reference to Rule 2:11-3(e) (1) (E) "we find insufficient merit in these arguments to warrant further discussion in a written opinion..."

It is as if the decision went out of its way to distort the facts and procedural history for its own benefit, and not in the interest of justice.

The Appellate Division owed no deference to the tax court's interpretation of the law, and therefore to the extent a de

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nova review was required, the rubber stamped decision should be reversed. (Citation omitted.)

As the record shows, the facts and law clearly require a ruling in favor of this party. If the appellate division misplaced some pleadings as they alleged, the court should have asked that the matter be re-briefed, considering the considerable amount of time that transpired from the filing of the appeal to the decision at issue.

The following points presented in the motion for reconsideration show the parade of horrors in effect created by the judiciary and that should not be tolerated under the New Jersey Supreme Court decision in General Motors Corp. v. City of Linden, 143 N.J. 336 (1996) and the United States Supreme Court decision in National Private Truck Council v. Oklahoma Tax Commission, 515 U.S. 582 (1995). Neither of those cases were absolute in their holdings but with exceptions, and this case shows that New Jersey does not provide adequate remedies based on the true facts and true procedural history of this matter.

Point 1 – With all due respect, perhaps it is fair to say that basically the only fact the Appellate Division rubber stamp of Judge DeAlmeida decision was that plaintiff-appellant was the defendant in the initial cause of action before the Somerset County Tax Board.

Based on the record below, the rest of the court's decision is either a false or blatant distortion of the facts, procedural history, and the applicable law. The record supports this as follows:

1A. False and Distorted fact: "Plaintiff was once the beneficiary of a farmland tax assessment because the property taxing authority believed he harvested maple syrup on his Bernards Township Property."

1B1. Truth: Plaintiff received farmland assessment under New Jersey law because the taxing authority had inspected the property on multiple occasions, and the farming activities included maple sap harvesting, Christmas trees, chicken eggs, was under a United States Government contract that had continuing obligation, and also since entered into another United States Government contract.

1B2: Truth: The decision's reference to the word "believed" is a distortion of the word's meaning, as in actuality,

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the taxing authority had been inspecting the property all along as part of the farmland application process, and admittedly filed a roll back complaint in error because it was not based on a change in the land use, but only for lack of proof of income. It is not clear why the Appellate Division created its own fiction other than relying on recanted and perjured testimony of the current Bernards Township Tax Assessor. (When Bernards had a competent Assessor, they at least employed an expert Forester as on numerous occasions as the assessors that “value homes” have no substantive knowledge of farming activities. Pa 41-43)

2A: False and Distorted Fact: County board of taxation initiated a complaint, pursuant to N.J.S.A. 54:4-23.8 to invoke rollback taxes for 2013 and 2014 due to the property’s change in status”

2B.1: Truth: The Tax assessor, in violation of New Jersey statutory law, initiated a rollback tax complaint under his and Martin Allen’s own admitted mistaken theory that because plaintiff failed to provide proof of income, the township was automatically entitled to roll back taxes. N.J.S.A. 54:4-23 does not allow for a rollback complaint when there is no change in the property’s status as Centrelli admitted here, and his denial of farmland assessment based on insufficient income shows that.

2B.2: Truth: The subject year at issue was the year Judge DeAlmeida was personally informed by New Law Advisory No. 2013-11, Issued May 8, 2013, that noted the law raised the minimum gross sales from \$500 to \$1,000 for years for tax years commencing with tax year 2015, the transition year at issue in this case, and that lack of proof of income because of the raised threshold does not justify rollback. Judge DeAlmeida may have been negligent in not advising judges and staff of the new law as the Advisory on page 4 asked of him. (PA 3-4)

2B.3: Truth: Before the County Tax Board, Martin Allen admitted he was not aware of case law that failure to provide proof of income did not entitle the township to automatic roll back taxes. (Even the Board President had to take a recess to look up the case that Barth cited to show Allen was in error.)

2B.4: Truth The tax assessor’s own form shows there was no change in farming activities as the tax assessor denied farmland

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assessment on the basis of income, not a change in the property status.

3A: False and Distorted Fact: "Plaintiff was given notice"

3B: Truth: Plaintiff was not given notice that comported with even the most minimal due process.

1. Tax Board lacked subject matter jurisdiction over Tax Assessor's rollback claim that was solely based on farmer not providing proof of income when tax assessor indicated there no change in the agriculture use of the subject property.
2. Township tax assessor did not have statutory or actual authority to file a false roll back complaint that was based on incorrect application of law.
3. Centrelli caused a defective complaint form to be sent to Barth (the form sent had only page 1 of a 2 pages of the form, and that upon questioning, Centrelli said page 2 was "only the instructions", except that if Centrelli was qualified, he would have known the statute changed the days of notice required.)
4. Complaint form was defective as it did not indicate the basis of the roll back. (This defect is consistent with Martin Allen's admission before the county tax board that he had a mistaken belief that no proof of income automatically entitled a township to roll back taxes.)
5. Mailing of complaint form only gave Barth 10 days to be aware that the Tax Board was holding what they considered to be a hearing, when 15 day notice was required by statute
6. The Tax Board improperly noticed meeting was scheduled the day after a National Holiday that was prejudicial to Barth as the County Board administrator admitted as he said he had placed the complaint form in the mail on his way out the door to go on vacation, and as he admitted he was not around to answer questions until the scheduled day of the "hearing" why the defective "notice" did not comport with the number of days required under statutory law.
7. According to the New Attorney General, the County administrator was not authorized to reschedule the date of the defectively noticed meeting.
8. The county administrator who called on the morning of the scheduled meeting indicated (he called because he admitted the complaint form did give the adequate "notice" as required by law), he would instruct the tax assessor to provide the landowner the

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documentation the tax assessor expected to rely upon at the “hearing” (as otherwise the roll back complaint was illegally based on no proof of income as the town admitted there was not a change in land use.)

9. The township did not provide the documents that the administrator indicated the township would provide (The administrator had initiated its call to reschedule the hearing on the same morning the hearing was scheduled. The Tax assessor later testified that photograph evidence he had previously taken of the property was destroyed, but then again the Centrelli admitted he lied before the county tax board.)

10. Note: as the Township incorrectly filed a complaint for rollback and admitted it was incorrectly based on lack of income, and not that the land use changed, the law does not require a party to establish a defense to a unknown-non-existing claim that Centrelli admitted did not exist, when Centrelli subsequently admitted he lied to the county tax board in his testimony, to compensate for the fact that he and Martin Allen filed the rollback on a misunderstanding of the law.

4A: False and Distorted Fact: Plaintiff was given a hearing

4B: Truth: The Court appears enamored with semantics of catch words like notice and a hearing, when in actuality, not only was plaintiff not given adequate notice, Plaintiff was not given an adequate hearing that comported with even the most minimal due process.

1. Tax Board would not rule on Barth’s initial motion that Township failed to state a claim when Martin Allen started the “hearing” with the statement that the township was automatically entitled to roll back for lack of proof of income, and in his mind, the rest was “smoke and mirrors.” (His client admitted there was no change in land use from farming.)

2. Board would not permit voir dire questioning of tax assessor qualification as an expert witness, as the Board chair claimed all tax assessor are qualified to testify as an expert, that shows that the board was equally confused as Martin Allen on the law for roll-back, in that while a tax assessor may be qualified on issues of valuation, the issue of roll back as a matter of law is not based on valuation, and the tax assessor admitted on cross examination he was not qualified to testify on farming activities or USDA contracts, at which point the board president granted this party’s

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motion to strike the tax assessor's non-valuation testimony as net opinion. Applying the recent New Jersey Supreme Court decision In Re Accutane Litigation (citation omitted), because Centrelli was unqualified to testify about roll back, the decision of the County Tax Board is null and void.

3. The Board would not allow an objection to farming questions Martin Allen tried to pose to Centrelli on redirect. The objection was based on the fact that since Martin Allen only asked valuation questions on direct examination of Centrelli (consistent with his mistaken theory of lack of income only and roll-back), and Barth did not ask Centrelli farming activity questions on initial cross examination, that Allen was not allowed to ask Centrelli farming questions on re-direct, when as Martin Allen stated, he forgot to ask farming questions on direct examination. (His mistake is consistent that he improperly prepared for the hearing because he misunderstood the law on the elements of a roll-back complaint.)
4. Not only was discovery not permitted, but the tax assessor stated he had taken pictures of the subject property during his last inspection, but that the photos were destroyed (spoliation of evidence was prejudicial to the landowner).
5. Board changed the burden of proof where as a matter of law, as the tax assessor bore the burden to prove the change of use, and admitted he was not qualified to testify about farming, and he later admitted he lied on the witness stand, and stated there had not been any change in the land use but that the property was still being actively farmed).
6. It became obvious of Centrelli's incompetence when he testified maple sap harvesting took place in the summer time, although Centrelli later admitted he lied about his made up testimony before the tax board on farming, that was consistent with someone who erroneously filed a roll back on a misunderstanding of the law.
7. Board President held up his hands to deny objections to avoid being recorded on the County recording device; the tax boards recording that was subsequently erased, deleted, destroyed or hidden by the county administrator.
8. Tax assessor failed to meet his burden of proof for roll back taxes as his testimony for anything other than valuation was stricken as net opinion, and valuation was not an element for roll-back taxes when tax assessor subsequently admitted he made up

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lies before the tax board, and admitted that the property was still being actively farmed.

9. The Board administrator deleted, erased, destroyed or hid the recording of the hearing

10. Centrelli subsequently admitted he lied before the tax board and neither he nor Martin Allen communicated that to the Board to correct the record.

11. The County Tax board granted the roll back complaint even though there was no basis in fact or law, and was based on an admitted incorrect application of law and an admitted perjured testimony.

12. The fact that the tax Board President and the Principal of the law firm representing the tax assessor were co-workers on County Boards shows a conflict of interest when here there was no basis in law or fact to approve the roll back. The pending New Jersey Supreme Court decision in Piscitelli v. City of Garfield Zoning Board of Adjustment, certification granted 235 N.J. 392 (2018) may give more guidance on this area.

13. Note: Centrelli also admitted he violated the law when stated he subsequently reached an agreement with the county tax board administrator on how to deal with Centrelli's mistake in issuing a determination of the farmland assessment of the subject property the following year. One can hardly be expected to appeal such a determination to the board that is supposed to handle the appeal when the board advised the tax assessor how to violate the law for issuing late assessment determinations.

Kangaroo Court: The New Jersey Supreme Court has previously described a kangaroo court in terms of a mock court in which principles of law and justice are disregarded or perverted, a court characterized by irresponsible, unauthorized, or irregular status or procedures. (Citation omitted.) The kangaroo court proceedings in the county tax board may be a more subtle but no less real deprivation of due process of law because from the list of horrors listed above, other than semantics, this party did not receive any notice or fair hearing or minimal due process protections. Not to read into the court's decision, but it does seem that if on reconsideration the court agreed the county tax board hearing was a deprivation of basic due process rights, that plaintiff would be entitled to summary judgment in the tax court, and much

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of the tax court proceedings were avoidable. Accordingly, the list of horribles noted above support reconsideration.

Tax Court Procedures were as Unconstitutional Similar to the Somerset County Tax Board: Just as the decision engaged in semantics that receipt of a defective piece of paper is a “notice” and a meeting plagued by mockery of the law is a “hearing,” so is the semantics that because a party can file a complaint in Tax Court that party received the right to an appeal. Accordingly, since a party cannot appeal a tax board determination under Judge DeAlmedia and this court’s opinion, one could conclude that the applicable tax court procedures are as unconstitutional as the county tax board. Although a cursory review of the tax board history should have been an end to this matter through plaintiff’s motion for summary judgement, the continuation of the record that shows that the parade of horribles created by the Judiciary requires a grant of the Motion for Reconsideration as follows:

5A. False and Distorted Fact: “he refused to permit an inspection of his property.”

5B. Truth: The taxing authority was allowed to inspect and did inspect the property on numerous occasions in its normal farmland inspection cycle. When the roll back was initiated, the tax assessor never claimed he was denied the right to inspect the farming activities. The tax assessor testified he did inspect the property during the roll back meeting, and later admitted he lied about what he saw, even after his testimony on non-valuation was stricken as net opinion.

That inspection of the property is quite different than the taxing authority sending a separate threatening letter to residents that unless you let the government into your house, the taxing authority will assume a resident remodeled their house without permits. Even the New Jersey Department of Treasury found the taxing authorities letter offensive and in violation of Civil Rights.

It is not clear if the decision at issue here is applying the old riddle what came first, “the chicken or the egg,” as here for roll back, what comes first is whether the tax assessor has to prove whether a property has a change in use, and then file a roll-back complaint, or file a roll back complaint because the tax assessor didn’t do their due diligence, and then find out whether the property has a change in use. For roll-back as here, if the tax assessor files a roll back complaint on the ignorance of the law that

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lack of income alone does not justify roll back, the tax assessor loses when the tax assessor knew all along that there was no change to the land use.

6A: False and Distorted Fact: plaintiff remained recalcitrant in discovery

6B.1: Truth: Judge DeAlmeida was recalcitrant in not applying the court rules as Judge DeAlmeida specifically told counsel Martin Allen during a telephone conference not to provide Barth with a copy of his discovery order that was yet to be issued, and neither Judge DeAlmeida, nor his staff, nor the Tax Court, etc. provided a copy of Judge DeAlmeida's discovery order to Barth until Barth complained at a later date he had not received the Order, and then many of the dates set forth on the Order had already passed with prejudice to Barth.

6B.2: Truth: It appears Judge DeAlmeida did not provide Barth with a copy of his discovery order until after some of the dates had already past, because as Judge DeAlmeida said, he holds it against those who appeal his orders on an interlocutory basis.

6B.3: Truth: Judge DeAlmeida ignored the court rules by refusing to order Bernards initial counsel of record to appear and answer why he did not file a motion for substitution of counsel as required by the court rules, as to the extent that counsel of record, abandoned the case and refused to cooperate, Barth's rights to pursue discovery was prejudiced (even though Centrelli already admitted that any exculpatory photos he had were already destroyed).

6B.4 Truth: Bernards counsel Martin Allen was recalcitrant in not following the court rules. Martin Allen and his law firm was not counsel of record and yet sent Barth a discovery request, and even noting in his own letter that he and his law firm was not counsel of record but attempted to threaten Barth if Barth did not respond to their discovery request. As noted above, Bernards counsel of record abandoned the case and indicated he refused to cooperate in any discovery that prejudiced Barth.

6B.5: Truth: Martin Allen then attempted to violate Judge DeAlmeida discovery order by attempting to deviate from the substance of Judge DeAlmeida's order, that is, Allen advised his client to bring people to an inspection who were not authorized in Judge DeAlmeida's Order. Martin Allen, even having a copy of

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that Order well in advance of Barth, did not ask Judge DeAlmeida to modify his order.

6B.6: Truth: Nothing in the case history or Court Opinion suggests that Barth had an obligation to respond to an attorney's discovery request whose firm was not the attorney of record of the case.

6B.7: Truth: Bernards Tax Assessor recanted his testimony before the Somerset County Tax Board, and based on Centrelli's admitted perjury before that Board, Barth asked Martin Allen to refresh what interrogatories were still required. (Pa 45).

7A: False and Distorted Fact: Plaintiff... refused to permit an inspection as ordered.

7B.1: Truth: Plaintiff did not receive the discovery order as required by court rules because Judge DeAlmeida intentionally undertook it upon himself to ensure that plaintiff not receive a copy of the order in a timely basis so that Plaintiff could not file an interlocutory appeal.

7B.2: Truth: Judge DeAlmeida's Order specified who could conduct the discovery and Martin Allen attempted to have people to join the inspection who were not authorized in Judge DeAlmeida's Order. Martin Allen did not seek relief to modify the Order.

8A: False and Distorted Fact: Even though he had already been accommodated

8B.1: Truth: Township did not want to inspect the property any earlier because of the requirement for the tax assessor's purported obligation to certify certain matters. The tax assessor and Martin Allen indicated they could not inspect the property earlier.

8B.2. Truth: Judge DeAlmeida's had a mistaken and misplaced theory that Barth should act as the Township expert and witness.

Substitution of Counsel – It is not clear the decisions rubber stamp on this matter as Judge DeAlmeida provided no rationale basis for granting the substitution considering no counsel of record made a motion for substitution that was served on Barth. The following supports the reconsideration:

1. Counsel of record abandoned the case and the rules require the court to order counsel to appear to answer why counsel abandoned the case.

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2. Counsel looking to be substituted is required to file a motion if no consent, and counsel of record never filed such a motion.
3. Martin Allen, whose law firm was not counsel of record, attempted to threaten plaintiff that if plaintiff did not consent to substitution, Martin Allen, who was not counsel of record would file a motion for substitution. The record supports that Martin Allen who was not counsel of record made an *ex parte* motion to Judge DeAlmeida for substitution of counsel.
4. Martin Allen conceded that his client filed a roll back complaint on a misunderstanding of the law and Martin Allen admitted he was wrong as the roll back complaint was only based on no proof of income, not change of use of land.
5. Martin Allen on a mistaken understanding of the law attempted to proffer an unqualified witness, whose witness opinion was struck as not opinion
6. Martin Allen's client admitted he committed perjury before the county tax board and Martin Allen did not ask that the record be updated.
7. Martin Allen client negotiated a deal with the County Tax Board on how Centrelli could violate the law in a future period that impacts the current case.
8. Martin Allen advised his client to attempt reach settlement with Barth that included as part of settlement offer that Barth agree to allow Centrelli to violate the law in a future period
9. Martin Allen and the law firm he was associated with was not counsel of record and engaged in *ex parte* conversation with the Tax Court chambers for substitution of counsel
10. This is a pattern as in a previous matter that Barth had with the County Tax Board, Martin Allen started out the "hearing" that he and the president of the Board were talking about the case before the hearing.
11. Martin Allen and the law firm he was associated with was not counsel of record and sent Barth harassing letters when another law firm was the counsel of record
12. Martin Allen attempted to have his client violate Judge DeAlmeida's discovery order.
13. The law firm that Martin Allen worked for had a conflict of interest with the County Tax Board President.

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CONCLUSION

For the foregoing reasons, the undersigned requests that the Court hear this matter or certify the matter for review by the United States Supreme Court.

Respectfully submitted,

/sMichael S. Barth/s

C:

N.J. Attorney General DiFrancesco Bateman
Michelline Capistrano Foster 18 Mountain Blvd.
25 Market St. Warren, NJ 07059
Trenton, NJ 08611

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May 25, 2019

Michael S. Barth
P.O. Box 832
Far Hills, New Jersey 07931
(917) 628-6145

New Jersey Supreme Court
R. J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Michael S. Barth v. Township of Bernards et al., Appellate
Division Docket No.: A-0004118-16T4, Supreme Court Docket
No.

Dear Honorable Justices of the New Jersey Supreme Court,
Please accept this letter pleading in response to
defendants' opposition to the Petition for Certification in the above
referenced matter. Defendants' misleading opposition actually
gives more reasons to grant the Petition.

As to Mr. Allen's reference to whether he or Mr. Centrelli
behaved improperly in this matter, for one, neither provides an
affidavit to the contrary, and moreover neither deny the facts that
were presented, rather it appears Mr. Allen's proffer is based on
the legal theory that exists only in his mind. For example, he does
not deny Mr. Centrelli recanted his testimony before the county tax
board, but rather it appears in his mind, perjury is allowed before
the county tax board under New Jersey common law. Mr. Allen
does not deny he entered into ex parte conversations with tribunals
on the merits, rather in his mind he behaved properly because it
seems this has become his common practice. Mr. Centrelli did not
deny he conspired with the County Tax Administrator to deprive
farmer of subsequent farmland assessment because of Centrelli
failure to comply with the state statute, rather in Mr. Allen's mind,
this is legal because Centrelli admitted his enterprise during
settlement discussion. However, case law is clear, Centrelli's
admission of an enterprise with a county tax board representation
during settlement discussion is not something that should be
withheld from the courts to extent it was made "buy silence" of his
failure to comply with statutory law and therefore to obstruct

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justice. See Notes N.J.R 408 Settlements Offers and Negotiation, Obstruction of Justice. Ironically Mr. Allen goes to lengths to ask the Court to relax the rules for his material mistakes and errors, when as his client admits he filed a false claim for roll-back, and recanted his testimony, and stated that the property had been properly farmed all along, shouldn't Mr. Allen ask the Court to reverse the County Tax Board decision for the efficient administration of the Court system?

The same seems to be true where the New Jersey Attorney General attempts to weigh in, or mislead the court in this area. It is not clear whether the misleading proffers are the result of additional new individuals, writing the state's brief, or since even Judge DeAlmedia indicated counsel represented the Division of Taxation, that has supervisory and other responsibility over both the county tax board individuals and Mr. Centrelli, whether the New Jersey Supreme Court should ask a separate department within the New Jersey Attorney General Office to brief the matter.

The Attorney General attempts to mislead the court in their brief seems to go to excessive bounds. For example, surprisingly the state admits in its brief that the "notice" that farmer received was deficient, however, the state claims that a rescheduling of a "hearing" cured all the defects, while at the same time they admit in their brief that the Treasury department indicated the form of notice was defective, and that the defective form was never corrected, and also that the Administrator had no power to reschedule the hearing to the benefit of Centrelli and Martin Allen.

Moreover, the state seems to go to great lengths in its brief to attempt to mislead the court on the sequence of events on the county's tax board distorted process on the acceptance on Mr. Centrelli as an "expert". Nowhere does the record say that the Board accepted Mr. Centrelli as an expert on a "wide range of issues," because all the Board did was to accept Centrelli as an "expert" It wasn't until on cross examination of redirect when Barth made a motion to strike Centrelli's testimony as net opinion on farmland assessment that the Board struck Centrelli's testimony as net opinion that Barth had the first opportunity to ask Centrelli of his qualifications, as on Martin Allen's direct testimony, he only asked valuation questions, that was consistent with his mistaken understanding that proof of income alone does not entitle a town to roll back. As stated on numerous, Martin Allen stated his case

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before the County Tax Board was based on lack of income alone entitled Bernards to roll back. Moreover, what is notice that a farmer was denied farmland assessment? When a farmer as here received farmland assessment, that tax assessor signs off on the form and sends the approval back to the farmer. Here as the record shows, in October, 30, 2014, landowner received the first notice that the farmland assessment was denied for not having proof of income, and no other reasons related to farming activities.

(Plaintiffs Appendix filed April 30, 2019 Pa1)That is consistent with Centrelli's recanted testimony that the property was properly being farmed all along. The law does not allow Centrelli to file a false roll back complaint before that on Martin Allen's mistaken theory.

Not surprising neither defendant ever states that Bernards ever satisfied its burden of proof before the County tax Board, as one would be hard pressed on Martin Allen's admitted mistaken tactics, filing a roll back on income only, failure to ask farmland assessment questions on direct examination, his client's testimony stricken as net opinion as he admitted he was not qualified to testify about farmland assessment activities, his client recanting his testimony and stating the property was properly farmed all along, his client saying "exculpatory" evidence (photos he alleged to have taken) were deleted by a virus on his Township computer (the Township having denied such a virus existed in an OPRA request), failure to apply with the statutory notice requirement for a hearing, failure to correct a defective roll back complaint form that was admitted by the state defendants, failure to submit any evidence into the record at the county tax board, the county tax board erasing recording of the hearing so transcripts could not be made (county administrator admitted he intended to record the hearing), etc.

The rest of defendants' objections don't even deserve merit.

Respectfully submitted,

/s Michael S. Barth/s

C:

Martin Allen, Esq.

Michelline Capistrano Foster, Esq.

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Subject: RE: Bernards Township v. Barth, Filed on or about August 26, 2015
Date: Tue, 1 Sep 2015 08:56:25 -0400
From: Dave Centrelli <d.centrelli@bernards.org>
To: "REDACTED"
Cc: Robert Vance <Vance@co.somerset.nj.us>, Karen Leo <KLeo@bernards.org>

Mr. Barth,

The second page is the instructions. Please find a copy attached.

David Centrelli, CTA
Assessor, Bernards Township
908-204-3082 Fax 908-766-1644
d.centrelli@bernards.org

-----Original Message-----

From: REDACTED
Sent: Tuesday, September 01, 2015 6:48 AM
To: Dave Centrelli; vance@co.somerset.nj.us
Cc: Township Committee; freeholdersoffice@co.somerset.nj.us
Subject: Bernards Township v. Barth, Filed on or about August 26, 2015

September 1, 2015

Dear Mr. Centrelli and Mr. Vance

Re: Bernards Township v. Barth

Yesterday I received a partial copy of your "complaint" filed on or about August 26, 2015 on behalf of Bernards Township in the above matter. This matter appears to be scheduled to be heard in a few days at the Somerset County Board of Taxation on the day after Labor Day, September 8, 2015.

Not certain your intent to file the last week of August before Labor Day when many New Jerseyans are out of town. For example, I received from you what appears to be only "Page 1 of 2" of a complaint form in the envelope from you. I called the New Jersey Division of Taxation at 609.292.7975 to obtain a copy of

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what the second page should constitute that appears you omitted. Siry of the New Jersey Division of Taxation indicated the section that handles that form was not in yesterday. Therefore I could not obtain details what the second page you omitted from the complaint might contain. Please let me know who might be the counsel of record in this matter as will ensure they receive copies of any future filings. In response to your complaint I anticipate filing a complaint in United States District Court that will include related claims outside the jurisdiction of the Somerset County Board of Taxation including injunctive relief staying your proceeding until applicable due process concerns are addressed. Respectfully, Michael Barth REDACTED

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Subject: Bernards v. Barth
Date: Mon, 07 Sep 2015 00:13:39 -0400
From: REDACTED
To: vance@co.somerset.nj.us, d.centrelli@bernards.org
Cc: townshipcommittee@bernards.org

Dear Mr. Vance,

Please accept this email to let you know that I have not heard back from your office on the question why you are not abiding by the 15 day notice requirement codified over 23 years ago under N.J.S.A. 54:4-63.12 related to the complaint your office mailed to my address. I left a voice mail message at your office on Friday September 4, 2015 based on the telephone number you provided.

This 15 day and not 5 day notice requirement appears clear based on page 463 of the Handbook for New Jersey Assessors where it also appears clear that both you and Mr. Centrelli received. (Pages 1-3). Accordingly please confirm you have a copy of that Handbook.

This question arose when I received an envelope from your office last week that had only 1 of a 2 page complaint signed by Mr. Centrelli representing Bernards Township. Mr. Centrelli then subsequently emailed me the "second page instructions" from a form that is seemingly at least over a decade old. (Pages 4-5)

That page that Mr. Centrelli sent references a 5-day notice requirement that according to information both you and Mr. Centrelli should have received is no longer valid and was changed to 15 days 23 years ago.

Please indicate whether you have any information to suggest that the 15 day notice requirement as published in West digest is invalid (Page 208-209 attached, partial citation omitted)(Page 6).

Presumably you also have access to the change in law approved and effective January 18, 1992. (Page 7)

Please note I object to you conducting a hearing on this matter on

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Tuesday 8, 2015 before the Somerset County Board of Taxation as improperly noticed. It appears anything decided at that hearing to my detriment is at a minimum null-and void

I also object in advance to allowing Mr. Centrelli to testify as an expert in any capacity related to this matter.

I'll copy by regular mail the Director of the New Jersey Division of Taxation who has jurisdiction over tax assessors and the New Jersey Attorney General's office that represent the Judiciary that has oversight over the Somerset County Tax Board.

My apologies on the brevity of this note but unfortunately the lack adequate notice precipitates the sending of this brief note.

Michael Barth
REDACTED

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Subject: Bernards v. Barth
Date: Mon, 12 Oct 2015 23:44:25 -0400
From: EMAIL ADDRESS REDACTED
To: vance@co.somerset.nj.us

Via Certified Mail 7012 3050 0000 5851 4214 (and email Mr. Vance)

Michael Barth
PO Box 832
Far Hills, N.J. 07931
REDACTED

October 12, 2015

Mr. Robert M. Vance
County Tax Administrator
Somerset County Board of Taxation
27 Warren Street, 4th Floor
P.O. Box 3000
Somerville, New Jersey 08876-1262

Re: Bernards Township v. Barth

Dear Mr. Vance,

Please accept this letter in response to a hearing scheduled Tuesday, October 13, 2015 in the above referenced matter (D1). Please note I am NOT in receipt of any proofs you indicated I would receive from plaintiff in the above mentioned matter currently scheduled to be heard a second time at 1:00 pm on October 13, 2015, the day after a State Holiday – Columbus Day.

You may recall your promise from September 8th when you called my cell phone and stated to me that Bernards Township would be in contact with me concerning providing those proofs or evidence in support of their complaint (albeit an incomplete complaint). You may recall your call was in response to my previously unanswered email and phone communications to your office expressing concern about the hearing scheduled in this matter that was improperly noticed according to N.J.S.A. 54:4-63.12 (please see attachments D2-D9).

That initial hearing September 8, 2015 (the day after Labor Day) was improperly noticed according to N.J.S.A. 54:4-63.12 that requires a 15 day notice.

You may recall I received an incomplete complaint form from your office only 5 business days before that day-after Labor Day hearing. You may recall that plaintiff's "complaint" only contained "page 1 of 2". In response to my email expressing concern of the incomplete "complaint form" Mr. Centrelli sent me an email including an attachment that in his words were "only the instructions" (Please see attachment D6).

Those "instructions" Mr. Centrelli provided appeared based on a law that was changed nearly 23 years ago (D8). Those instructions as part of page 2 of his "complaint" referenced a five-day notice requirement that was amended to 15-days.

Presumably Mr. Centrelli has now confirmed the change in law 23 years ago as it appears he may have had a colleague from another township call Trenton to verify that changed based on information I received from Trenton.

Your letter of September 24, 2015 I received from your office still contains only a partial "complaint" (page 1 of 2 only) so presumably the second page still contains "instructions" now outlawed.

As this Board is probably aware, the New Jersey "Freeze Act" found at N.J.S.A 54:3-26 is designed to prevent the abuse of the tax court system and avoid unnecessary tax court appearances by taxpayers. Otherwise, according to the statute and case law, a taxpayer is being harassed by the tax assessor (citation omitted).

Calling at 10:47 am on the same day before a required court appearance at 1PM as you did on September 8 does not erase the fact that I was basically required to unnecessarily attend court that same day.

You indicated the 14 day requirement was not met because you

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were in a rush to go on vacation that August 28, the day of the date of your initial letter.

While you were on vacation and your office was not responding to my communications, I had to unnecessarily prepare over a Federal and State Holiday for a court appearance that was based on your office working with Bernards Township to send an improper "summons-and complaint" with a date scheduled contrary to current law, and based on an outdated law.

I do appreciate your earlier guidance that Mr. Centrelli would be providing his basis for his complaint. That guidance in theory appears consistent with New Jersey decision law that the burden of proof in this matter is on Bernard Township (citation omitted.) That guidance appeared consistent with the New Jersey and United States Constitution requirements of due process that thus far in non existence in this matter from both the initial and continuing defective "notices" and now the lack of proof you stated Mr. Centrelli would provide.

In closing, please give me a call either indicating you will dismiss plaintiff's "complaint-with-prejudice" or alternatively, with all due respect, please consider recusing yourself in this matter.

The law was ignored when the initial "notice" was sent and now somehow your word is being ignored without explanation from your office why no proofs were provided to me that you stated I would receive when you last called me to reschedule this matter.

Alternatively please stay these proceedings pending interlocutory appeal. As noted before I do not waive any counter-claims or concede allowing Mr. Centrelli to testify as an expert in any capacity.

A copy of this letter memo is being provided to the New Jersey Division of Taxation and the New Jersey Attorney General's office that have jurisdiction over various aspects of the rules and licensing governing this process.

Respectfully submitted,

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Michael Barth
REDACTED

Attachments

Cc:

Mr. John Jay Hoffman
New Jersey Attorney General
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 080
Trenton, New Jersey 08625

Mr. Robert A. Romano
New Jersey State Treasurer
Department of the Treasury
P.O. Box 002
Trenton, NJ 08625-002

Ms. Denise Szabo
Bernards Township Clerk
1 Collyer Lane
Basking Ridge, NJ 07920

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Via Email and Personal Delivery
October 27, 2015

P.O. Box 832
Far Hills, NJ 07931
REDACTED

Somerset County Board of Taxation
27 Warren Street, 4th Floor
P.O. Box 3000
Somerville, N 08876-1262

Re: Bernards and Centrelli v. Barth

Dear Commissioners,

Thank you for the opportunity to file this letter memo in support of procedural and substantive arguments in opposition to the Bernard's Township Complaint that was heard on October 13, 2015. The following summarizes the history and facts that conclude why this matter should be dismissed with prejudice and relief granted to Defendant:

Pre October 13, 2015 Hearing

1. Plaintiff signed ¹¹ "com plaint" dated August 25, 2015 for roll-back taxes for 2014. (See inadequacy below.)
2. It is unclear whether opposing counsel guided plaintiff in the filing of that complaint.
3. Complaint mailed to defendant in violation of statutory requirement of 15 days notice. N.J.S.A 54:4-6.
4. Defendant received the incomplete complaint 5 business days before the originally scheduled September 8, 2015 hearing (Law requires 15 days.)
5. Defendant's Counsel blamed the County Board for that error. (He passed that blame on the Board during the hearing of October 13.)
6. Only page 1 of 2 of the Complaint was mailed to defendant. (See insufficiency of notice below).
7. Plaintiff subsequently emailed defendant the second page stating the second page was ¹¹ "only the instructions".
8. Those instructions, page 2 of 2 of the complaint, were based

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on outdated New Jersey law. (See insufficiency of notice below. Not clear if plaintiffs counsel if advised plaintiff in completing the complaint was aware the errors contained within the complaint.)

9. Plaintiff failed to respond to plaintiffs inquiry whether defendant was represented by counsel in this matter.

10. The County Board of Taxation contacted defendant a couple hours before the scheduled hearing on September 8, 2015, to reschedule the hearing until October 13, 2015. (See *below* where ¹¹ "Freeze Act" designed to avoid multiple court appearances - citation omitted.)

11. The Board stated during that same call of September 8 that plaintiff would be in contact with defendant and provide defendant with plaintiffs proof that plaintiff expected to rely upon at the hearing. (See *below* as defendant never received that information from plaintiff or his counsel.)

12. Plaintiff again caused the Board to send only the same page 1 of 2 of the complaint form - presumably page 2 of the complaint form is still based on outdated law. (Date and signature of second complaint was the same as the first.) (See insufficiency of notice below.)

13. Plaintiff never provided defendant with the proofs that the Board stated plaintiff would provide defendant (see insufficiencies noted below)

14. On the day of hearing, a couple of hours before the hearing, the Board stated in an email that defendant should reach out to plaintiff for the proofs plaintiff expected to rely upon at the hearing later that same day (the Board did not recommend defendant contact plaintiffs counsel that had yet to be identified).

Hearing of October 13, 2015

15. The Commissioners agreed defendant could audio record the hearing

16. Defendant objected to swearing in of plaintiff Centrelli as an expert witness.

17. Defendant objected to the hearing based on the fact that plaintiff had not provided proofs that the Board stated on September 8 would be provided by the plaintiff to the defendant. Defendant argued the hearing should be adjourned for the reasons stated above.

18. Plaintiffs counsel stated that the only issue before the Board was that since defendant allegedly did not provide proof of income

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for 2014 that the Township Defendant was automatically entitled to roll-back taxes and therefore plaintiff argued they didn't need to provide any other proofs or evidence as instructed by the Board.

19. Defendant cited South Brunswick Township v. Bellemead Development Corporation, 8 N.J. Tax 616, (Tax Ct. 1987) that held property was not subject to rollback taxes for not showing proof of income. Defendant then asked that the complaint be immediately dismissed.

20. The Board granted leave for defendant to file arguments on the procedural and substantive aspects of this matter.

21. The Board admitted plaintiff Centrelli as an expert witness in the matter over defendant's objection. The Board took the position that Mr. Centrelli "as a tax assessor" had an absolute right to testify before the Board on a broad and almost unlimited range of issues as compared to Defendant's objection that the right for Mr. Centrelli to testify as an expert was a presumption at best and not absolute; and that Mr. Centrelli was not qualified to testify as an expert shown in part by his lack of knowledge and expertise of the areas at issue and that Mr. Centrelli should have first been asked qualifying questions. (*See below* where Centrelli admitted he was not an expert in the subject matter of his testimony.)

Direct Examination

22. Mr. Centrelli indicated he inspected the property during the early fall of 2014.

23. Mr. Centrelli admitted the property was "previously" under a "WHIP" program. (*See* judicial notice below)

24. Mr. Centrelli admitted he was not an expert in the understanding of the WHIP program. (*See below* where WHIP Program, Wildlife Habitat Incentive Program, was part of the 2008 United States Farm Bill.)

25. Mr. Centrelli admitted if the property was still under the WHIP program that it would qualify for farmland assessment without proof of income and therefore would not be subject to roll-back taxes.

26. Alternatively, Mr. Centrelli admitted if proof of income and nothing else was provided then the property would have qualified for farmland assessment and not be subject to roll-back taxes. (Thus admitting property actively engaged in farming activity.)

27. Mr. Centrelli indicated the farmland application also included activities related to Maple Sap, Christmas Trees and Chickens

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28. Mr. Allen made no motion to introduce any documentation or exhibits into Evidence.

Cross Examination

29. Mr. Centrelli admitted he did not know what the maple syrup season was in New Jersey or whether it was during the late winter months outside the period he indicated he inspected the property; and that he was not an expert on the subject (See Judicial notice of United States Department of Agriculture below)

30. Mr. Centrelli admitted he was not an expert in Maple Sap/Syrup practices.

a. *See also below:* Mr. Centrelli attempted to state he had seen {/taps" in maple syrup trees on other property in the summer to support why he didn't see taps in the trees when he inspected the subject property in early October. However If Mr. Centrelli was actually an expert as defendant is in this area, Centrelli would have known that leaving {/spiles" in maple trees outside the maple season is actually harmful to the trees in that maple trees {/heal themselves" by sealing up the holes where the spiles were tapped into the trees once the taps are removed and that leaving spiles in the tree year-round prevents the tree from healing itself or sealing the tap holes; and therefore leaving spiles in a tree year round only invites disease into the trees in the offseason through any spiles left in the trees and that those taps in the trees cannot be used in future periods anyway as they seal up with the tap in the tree. If he was a qualified expert he would have also known October is not the maple syrup season in New Jersey. (citations omitted)

31. Mr. Centrelli admitted that even if Christmas Trees were planted according to industry standards he would deny the application. (*See* inadmissible net opinion discussion below)

32. Mr. Centrelli admitted he lost any photos that he took of the property during that inspection in early fall 2014. (Thus Mr. Centrelli eliminates information that what would have been helpful to further show the land was devoted to agriculture purposes during the period at question.)

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33. Mr. Centrelli apparently could not identification chickens free-ranging on the subject property.

Redirect

34. Defendant objected to attempts to enter new testimony by plaintiff on redirect

35. Mr. Allen stated he forgot to go over "valuation" on his direct examination. (Thus under rules of evidence plaintiff is precluded from bringing up new items on redirect. Citation omitted.)

36. Mr. Allen attempted to elicit additional testimony about whether Mr. Centrelli inspected the property a year later in 2015. (Complaint was for 2014 and not 2015 and thus any such purported testimony precluded as a matter of law - citation omitted.)

37. The Board upheld Defendant's motion to strike Mr. Centrelli's testimony on redirect.

38. Mr. Allen made no motion to introduce any documentation or exhibits into Evidence.

Inadequate Notice Due and Inadequate Opportunity to be Heard: The New Jersey Freeze Act is designed to avoid harassment of tax payers. Twice hailing someone into court because plaintiff or plaintiffs counsel is unfamiliar with the applicable area of law is basically harassment under New Jersey law. Further, notice must be "adequate" to satisfy due process concerns under the New Jersey State Constitution. Sending a "notice" for a hearing under the time required by law is not adequate notice. Sending only 1 page of a 2 page complaint is not adequate notice. Sending a complaint with references to laws that were changed 20 years ago is not adequate notice. Promising proofs before a hearing and not providing them is not adequate notice. Plaintiffs counsel and the Board administrator blaming each other for the inadequacies described above do not negate the fact that every aspect of plaintiffs case translates to inadequate notice. Therefore the plaintiffs complaint should be dismissed with prejudice.

Plaintiffs case failed during Mr. Allen's opening remarks: Mr. Allen introduced his client's case by saying his entire case rested upon the theory that if defendant did not show proof of income for the year at issue, Township was automatically entitled to roll-back taxes. Mr. Allen's theory has already been plainly rejected and the case should have been automatically dismissed at the onset and the complaint never filed. *See; South Brunswick Township v.*

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Bellemead Development Corporation, 8 N.J. Tax 616, (Tax Ct. 1987) (Not subject to rollback taxes even though failing to meet the income requirements under the Farmland Assessment Act N.J.S.A 54-23

Plaintiff Failed to Meet the Burden of Proof and Showing: The Burden of proof to establish a change in use so as to subject it to rollback tax is on Bernards. N.J.S.A. 54:4-23.8. *See Belmont v. Wayne Tp.*, 3 N.J. Tax 382 (Tax Ct. 1981) Mr. Centrelli failed to meet its burden of proof. He was admittedly not qualified in the areas he attempted to testify in his direct testimony. His direct testimony did not include any testimony on valuation. His re-direct was prohibited under the rules of evidence and was stricken from the record. He also admitted he was not qualified to testify on all the areas his case subsequently relied. He admitted he was not an expert in maple sap practices. His views on Christmas trees were net opinion (see below). He also failed to produce photos he stated he took of the property instead blaming a "virus" as the reason his computer lost "any photos" that could have helped defendant prove what Mr. Centrelli indicated he did not observe, for example free range chickens on the property that Mr. Centrelli admitted could be housed in a large horse trailer that is on the subject property. Mr. Centrelli's testimony in effect was completely arbitrary in-admissible net opinion.

Inadmissible Net Opinion: Plaintiff testified that even if the Christmas trees on the subject were planted consistent with industry standards he would not approve the spacing as part of a farmland assessment application. Plaintiff already indicated he wasn't an expert in any areas of the farm use, maple syrup, Christmas Trees, Chickens, WHIP program. For example, he did not know what was the maple syrup season to adequately inspect the property for maple syrup activity. If Plaintiff takes a position opposite to industry standards and offers no basis for his opinion, his opinion is "net opinion" and further support he was not qualified to testify and that he did not satisfy his burden of proof required. Ironically Mr.

Centrelli made some seemingly bizarre references that unless a Christmas tree is fully grown; it is not a Christmas tree if the tree was still in the growing cycle.

Tax Assessor Was Not an Expert Witness - Presumption: Mr. Allen fails in his attempts for the Board to presume Mr. Centrelli

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has an absolute right to testify as an expert in any capacity before this Board related to this case. Unfortunately for Mr. Allen's Little Egg Harbor he cites does not stand for such a position (*citing* Little Egg Harbor Tp. V. Bosnangue 316 N.J. Super. 271 (A.O. 1998). While there might have been a presumption Mr. Centrelli could testify as an expert on valuation, Mr. Allen did not ask Mr. Centrelli any such valuation questions on direct examination nor did defendant ask Mr. Centrelli such valuation questions on cross-examination. The commissioner's holding up to his hand like a "stop- sign" to initially preclude objections to Mr. Allen questions on re-direct does not negate the fact that Mr. Allen was not permitted under the rules of evidence to ask valuation questions on re-direct because he may have forgotten to ask those questions on direct. (Citation omitted.) Unfortunately for Mr. Allen, his reliance on Little Egg Harbor is moot because he didn't ask valuation questions that might have been a basis for qualifying Mr. Centrelli as an expert witness for valuation purposes only. Clearly the Board Commissioner himself indicated that Mr. Centrelli admitted he was not an expert on the areas he attempted to testify in this matter. The Board upheld defendant's objection to Mr. Centrelli's testimony on redirect and sustained defendant's motion to strike Mr. Centrelli testimony on redirect.

"WHIP" Wildlife Habitat Incentive Program (Farm Bill of 2008) Satisfied Assessment Requirements: Mr. Centrelli admitted that the property was subject to the WHIP program yet that he was not familiar with the program. The Board can take Judicial Notice that the "WHIP" program, is part of the United States Farm Bill of 2008. Under the Wildlife Habitat Incentive Program, farmers are paid to complete AND maintain the work described under the contract. Under the Federal Law, defendant had a duty to complete AND also has a future obligation to maintain the work described in the program during the year at issue that Mr. Centrelli indicated the property was subject to WHIP program. While Mr. Centrelli was not an expert in any aspect of this application (as counsel for plaintiff did not ask valuation questions on direct); by Mr. Centrelli own admission and judicial notice of the provisions of the farm bill the property is still entitled to farmland assessment and not subject to roll back taxes (with or without proof of income as Mr. Centrelli testified).

Defendant should be Qualified to Testify as an Expert Should

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the Board Reconvene on this matter: Mr. Centrelli misled this tribunal on all aspects of farming he admitted he was not an expert. Providing misleading testimony is not the role of an expert witness. (Citation omitted.) A successful maple syrup season depends on the proper combination of freezing nights with temperatures below 25 and warm day time temperatures around 40 degrees for sap to run. *See e.g., Penn State Environmental Law Review, 17 Penn St. Envl. L. Rev 81.* This is why Mr. Centrelli would not see maple sap operations in October. A prolonged cold period below 25 degrees is required to produce sap. Citation omitted. In New Jersey, sap generally begins to flow in early February or around "President's day". U.S.D.A. citation omitted.

Moreover, industry standards for planting Christmas trees are for good cause, that is, they are spaced to be able to grow and allow the Farmer to maintain the trees that grow from small to large trees.

For the foregoing reasons, plaintiffs complaint should be dismissed and based on the plaintiffs own testimony the defendant should be granted farmland assessment and that the Board should extend the time and grant that retro- active application of farmland assessment.

The complaint filed by plaintiff appears for no reason other than harassment. Accordingly defendant will file Tort Claim Notice within 90 days allowed.

Michael Barth

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