

LARRY W. PALMER, ALDINE T., BLAIR COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (SHEETZ, INC.), Plaintiffs v. FRANKLIN COUNTY BOARD OF ASSESSMENT AND REVISION OF TAXES, Defendant, C.P. Franklin County Branch, Civil Action - Law, No. 1999-20287

*Palmer V. Franklin County Board Of Assessment And Revision Of Taxes*

*Standard of Pleadings - Mandamus*

1. Plaintiff has the burden of moving his cause of action forward.
2. The material facts on which a cause of action or defense is based shall be stated in a concise and summary form, but the court has broad discretion in determining the amount of detail necessary.
3. Mandamus compels and official to perform a ministerial act or mandatory duty as opposed to a discretionary act.
4. A writ of mandamus may be issued only where there is (1) a clear legal right in the plaintiff, (2) a corresponding duty in the defendant, and (3) a lack of any other appropriate and adequate remedy.
5. Because mandamus is only granted at the court's discretion, the court may not issue a writ a mandamus if the object to be sought is unjust, oppressive, or would injure the general public's interests.
6. Where the plaintiffs caused a seven year delay, the court will not issue a writ of mandamus requiring defendants to reassess real property taxes because the property has changed in seven years and the public would be injured if taxes were raised to pay back taxes to plaintiff.

*John C. Hansberry, Esquire*, counsel for plaintiff  
*Jan G. Sulcove, Esquire*, counsel for defendant  
*Welton J. Fischer, Esquire*, solicitor for defendant

OPINION AND ORDER

WALKER, P.J., November 18, 1999:

**Factual and Procedural History**

Plaintiff owns real property in Franklin County upon which Sheetz, Inc. has constructed convenience stores and improvements such as gasoline pumps, parking areas, and lighted canopies. On August 28, 1992, Sheetz, as lessee, filed

assessment appeal forms for these properties. In all three appeals, Sheetz alleged that "the building assessment improperly assesses personal property as real property and is therefore invalid".

At the time of these appeals, Sheetz was contesting a tax assessment in Blair County which raised the issue of the taxability of the canopies at the Sheetz stores. Sheetz argued that the canopies were personal property and therefore not taxable. Sheetz requested a continuance of the appeal hearings scheduled in October 1992 for the properties in Franklin County pending the outcome of the case in Blair County. Sheetz reasoned that the issue raised in the Blair County case would be dispositive of the issue raised in the Franklin County appeals. Subsequently, the Commonwealth Court, on April 13, 1995, held that the canopies were part of the real property and taxable as real estate in the Blair County case. The Pennsylvania Supreme Court denied allocatur on October 2, 1995.

On May 11, 1998, Sheetz requested that defendant schedule hearings on the appeals for the years 1993 through 1998. The defendant has not scheduled hearings, arguing that the Commonwealth Court had determined the issue regarding the taxability of the canopies. On May 27, 1999, plaintiff filed a complaint in mandamus seeking hearings on the 1993 through 1998 appeals or in the alternative, an order requiring defendant to issue decisions regarding these appeals. By stipulation, Chambersburg Area School District was permitted to intervene in this matter. Defendant and intervenor filed preliminary objections to the complaint in the nature of a demurrer. Plaintiff filed a motion to strike preliminary objections. An argument on the preliminary objections was held on November 4, 1999.

**Discussion**

Plaintiff has the burden of moving its cause of action forward. *Potter Title & Trust Co. v. Frank*, 298 Pa. 137, 140 (1929). In *Potter*, the court stated that "it is the plaintiff's duty

to proceed with his cause within a reasonable time. He is the actor, and must act, or fail of his action". *Id.* The court also acknowledged that the defendants could have moved the case along but were not obligated to do so. *Id.*

In this case, plaintiff has failed to move its cause of action along. Sheetz filed its first tax assessment appeal on August 28, 1992. At the request of Sheetz, the hearings were continued until the Blair County case was decided. The Commonwealth Court rendered its decision on the taxability of the canopies on April 13, 1995, and the Pennsylvania Supreme Court denied allocatur on October 2, 1995. It was not until May 1998 that Sheetz then requested that defendant schedule hearings on its appeal. Eventually, on May 27, 1999, plaintiff filed its complaint in mandamus. Because there was no activity on plaintiff's part from August 1992 to May 1998, plaintiff did not meet its burden to move the lawsuit forward.

Pursuant to Pa.R.C.P. 1019(a), the "material facts on which a cause of action or defense is based shall be stated in a concise and summary form". The court has broad discretion in determining the amount of detail that must be included in the pleadings because the standard of pleading "is incapable of precise measurement". *United Refrigerator Co. v. Applebaum*, 410 Pa. 210, 213 (1963).

The court is unable to decipher if Sheetz is appealing any issue other than the canopies being included in the assessment as real property rather than personal property. If Sheetz wanted to appeal issues other than the taxability of the canopies, Sheetz should have been specific about what it was appealing rather than referring generically to personal property. Furthermore, plaintiff's complaint in mandamus is not well pled. Seven years after filing the first appeal, the court has no idea what the basis for plaintiff's cause of action is. Therefore, the court finds that Sheetz is only appealing the issue regarding the taxability of the canopies issue which has previously been decided by the Commonwealth Court. Because Sheetz has failed to move this case along by waiting seven years to file a

complaint, Sheetz will not be permitted to amend its complaint in mandamus.

Mandamus is an extraordinary remedy which is designed to compel an official to perform a ministerial act or mandatory duty as opposed to a discretionary act. *Africa v. Horn*, 701 A.2d 273, 275 (Pa. Cmwlth. 1997); *Green v. Tioga County Board of Commissioners*, 661 A.2d 932, 934 (Pa. Cmwlth. 1995). Mandamus "takes an official by the coat lapel and orders him to do what, up to that moment, he has felt he had no right to do and was under no compulsion to do." *Zaccagnini v. Borough of Vandergrift*, 395 Pa. 285, 289 (1959). The purpose of mandamus is to enforce those rights already established, not to establish legal rights. *Africa*, 701 A.2d at 275. A writ of mandamus may be issued only where there is (1) a clear legal right in the plaintiff, (2) a corresponding duty in the defendant, and (3) a lack of any other appropriate and adequate remedy. *Id.*

Mandamus is not a matter of right but is only granted at the court's discretion. *Keith v. Commonwealth, Pennsylvania Board of Probation and Parole*, 76 Pa. Cmwlth. 544, 548 (1983). The court may decide not to issue a writ of mandamus for several reasons. "If the object sought to be attained is unjust or oppressive, the court will refuse to entertain the proceedings". *Commonwealth ex rel. Coghlan v. Council of City of Beaver Falls*, 355 Pa. 164, 168 (1946). Furthermore, the court may refuse to issue the writ of mandamus if the general public's interests would be injured. *Travis v. Teter*, 370 Pa. 326, 335 (1952). In another case, the Superior Court stated that

"if public injury or embarrassment might result from the issuance of the writ, the court may properly refuse it. Under the guise of enforcing the public right, the writ will not issue if in fact it will operate to the detriment rather than to the benefit of the general public".

*Gorski v. Dickson City Borough School District*, 178 Pa. Super. 158, 165 (1955) (quoting 34 Am. Jur. 830, §35).

In this case, over seven years after the filing of the first appeal, plaintiff seeks to have hearings regarding the 1993 through 1998 appeals. In the alternative, plaintiff seeks an order requiring defendant to issue a decision concerning the appeals. On the assessment appeal forms, Sheetz stated that "the building assessment improperly assesses personal property as real property and is therefore invalid".

It is unfair to require defendant to review the tax assessments from seven years ago when the plaintiff caused this lengthy delay. The properties at issue have changed since the first appeal was filed. It would also be unfair to expect defendant to reconstruct the premises from seven years ago in order to reassess the property when plaintiff caused the delay. The tax money paid by Sheetz during the years subject to the appeal has been spent by the county and the school district. Furthermore, the general public would be injured if the county has to raise taxes in order to pay back taxes to Sheetz after seven years of inactivity attributed to the plaintiff. As a result, the court, in its discretion, will not grant a writ of mandamus because it would be unfair to defendant and intervenor as well as detrimental to the general public since so much time has passed.

#### ORDER OF COURT

November 18, 1999, after consideration of defendant and intervenor's preliminary objections, plaintiff's motion to strike, the briefs submitted to the court, and the arguments made by the parties, the defendant and intervenor's preliminary objections are sustained.

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