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Menno Haven v. Board of Assessment

MENNO HAVEN, INC., Petitioner, v. FRANKLIN COUNTY BOARD OF ASSESSMENT AND REVISION OF TAXES, Respondent
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, Misc. 1998-CC, Page 338

Amendments to Pleadings - Statutory Appeals Jurisdiction, Discretion of Court, Unreasonable Delay, Prejudice, New Cause of Action; Exemption and Valuation Appeals

1. The Court should liberally allow amendments to pleadings except where surprise or prejudice to the other party will result, or where the amendment is against a positive rule of law.

2. The Court is not precluded from referring to the Pennsylvania Rules of Civil Procedure as persuasive precedent for cases under the common pleas courts' statutory appeals jurisdiction.

3. The right to amend pleadings rests within the sound discretion of the Court and the exercise of that jurisdiction will not be disturbed absent abuse of discretion.

4. A period of three and one half years between the original petition for appeal and the motion to amend petition for appeal is a period of unreasonable delay when no substantive motions, preliminary objections or answers were filed.

5. Refusal to allow an amendment solely on the basis of unreasonable delay and nothing more is abuse of discretion.

6. The later a petition for leave to amend is filed, the more it can be presumed prejudice will flow from its grant, and the less actual prejudice need be demonstrated.

7. Tax exemption and assessment valuation appeals before the trial court are heard de novo.

8. No authority exists prohibiting the Court from using the fact that Petitioner Menno Haven failed to raise the issue of exemption at the original hearing or on its original petition as a factor establishing prejudice against the Taxing Authorities.

9. The Taxing Authorities would be extremely prejudiced if this Court were to grant Petitioner Menno Haven leave to amend its petition for appeal when the petitioner waited three and one half years to amend its petition, waited three and one half years to even claim tax exemption, and the revenue represented by taxes paid by Menno Haven on non-exempt real estate have already been budgeted and expended for necessary municipal services from which Menno Haven has benefited.

10. An amendment to a petition for appeal should be allowed where the amendment does not introduce a new cause of action.

11. A new cause of action does not exist if the petitioner's amendment merely adds to or amplifies the original complaint.

12. A new cause of action does exist if the original petition states a cause of action showing that the petitioner has a legal right to recover what is claimed in the original petition.

13. Petitioner Menno Haven's claim for total tax exemption is different theory than the petitioner's original claim for reduction in the valuation assessment.

Appearances:

Donald R. Reavey, Esq., *Counsel for Menno Haven, Inc.*

Jan G. Sulcove, Esq., *Counsel for CASD*

Welton J. Fischer, Esq., *Counsel for County of Franklin*

Thomas J. Finucane, Esq., *Counsel for Borough of Chambersburg*

OPINION

Walker, P.J., December 9, 2002

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Procedural History

In August of 1998, Petitioner Menno Haven filed an appeal before the Franklin County Board of Assessment and Revision of Taxes seeking a reduction of the assessments of its numerous properties in the Borough of Chambersburg and Greene Township. The Board conducted a hearing and later notified Menno Haven of its decision not to change the assessments.

In December of 1998, Petitioner Menno Haven timely filed a petition for appeal from the decision of the Franklin County Board of Assessment and Revision of Taxes.

In May of 2002, about three and one half years after the original petition was filed, Petitioner Menno Haven filed a motion to amend petition for appeal from the decision of the Franklin County Board of Assessment and Revision of Taxes. Along with this motion, the petitioner filed a brief in support of its motion to amend. Subsequently, Respondent Franklin County Board of Assessment and Revision of Taxes (Taxing Authorities) filed an answer to petitioner's motion and a brief in opposition to petitioner's motion to amend. Petitioner Menno Haven filed a response to the Taxing Authorities' brief in opposition to petitioner's motion to amend.[1]

Oral arguments were set and conducted on October 4, 2002. At the conclusion of the arguments presented by both parties, this court asked both parties to submit letter briefs outlining and supporting their arguments to the court. Petitioner Menno Haven timely filed a letter brief. Respondent Taxing Authorities alerted the court that they would not be submitting a letter brief to the court in support of their contentions.

Factual Summary

Petitioner is Menno Haven, Inc. primarily located in Chambersburg. The petitioner is the owner of the premises known as Menno Village, located at 2075 Scotland Avenue in the Borough of Chambersburg and Greene Township in Franklin County. The petitioner was informed that the assessment of the parcels in question was fixed for the taxable year 1999 at approximately $1.67 million.

Petitioner Menno Haven filed an appeal before the Franklin County Board of Assessment and Revision of Taxes seeking a reduction of the assessments of its numerous properties in the Borough of Chambersburg and Greene Township. On October 14, 1998, the Board conducted a hearing, which was tape-recorded and later reduced to a transcript. Soon after, Petitioner Menno Haven was notified of the decision of the Board not to change the assessments.

In December of 1998, Petitioner Menno Haven timely filed a petition with this Court for appeal from the decision of the Franklin County Board of Assessment and Revision of Taxes. In its appeal, Menno Haven alleged that the assessments fixed by the Taxing Authorities were excessive, improper and contrary to the law because they assessed Menno Haven differently than similarly situated property owners, the assessments violated the uniformity clause of the Pennsylvania Constitution, the assessments violated the required equality of tax treatment guaranteed by Pennsylvania Statutory and Constitutional law, the assessments were based upon appraisals that did not represent the actual values of its properties, among others. In the *ad damnum* clause, Petitioner Menno Haven requested this Court to reverse the Board's decision and reduce the assessments fixed by the Taxing Authorities.

As the record indicates, no substantive motions, no preliminary objections and no answers to the petition were filed for three and one half years.[2] This Court is unaware of any such activity dealing with this matter. In May of 2002, Petitioner Menno Haven, with the advice of new counsel, filed a motion to amend the petition for appeal from the decision of the Franklin County Board of Assessment and Revision

of Taxes.

In its brief in support of its motion to amend, the petitioner maintained that this Court should grant leave to amend the petition for appeal because the amended petition was not prejudicial or a surprise to the Taxing Authorities and the amended petition raised no new causes of action. The petitioner attached the proposed amended petition to its motion. The amended petition added twenty-three (23) new paragraphs, which petitioner argued merely clarified its position in the original petition. These new paragraphs address a possible exemption claim the petitioner may or may not have under Act 55. These new paragraphs address whether Petitioner Menno Haven could be established as purely public charity and, therefore, exempt from real estate taxes. The Court in this opinion does not address the viability of such a claim.

In its answer, Respondent Taxing Authorities averred that the amended petition was a surprise since Petitioner Menno Haven filed its original petition three and one half years earlier and never mentioned exemption. The Taxing Authorities also averred that the amended petition set forth an entirely new theory of recovery and raised new issues of law and fact not contained in the original petition. The Taxing Authorities also raised new matter, which this Court does not address for the reasons stated earlier.

In its brief in opposition to petitioner's motion to amend petition for appeal, Respondent Taxing Authorities argued that they would be prejudiced if this Court granted petitioner leave to amend its petition for appeal. The Taxing Authorities maintained that it would be prejudiced because the petitioner never mentioned tax exemption under Act 55 for three and one half years, the petitioner never raised the issue of tax exemption at the hearing in front of the Board nor in its original petition for appeal, and revenue sought by Menno Haven has already been budgeted and expended for municipal services for which Menno Haven has benefited.

In support of these contentions, the Taxing Authorities proffer that the concept of liberality does not apply because the Rules of Civil Procedure do not apply in cases where the Common Pleas Court is acting as an appellate court. The Taxing Authorities also state even if the Rules of Civil Procedure apply, Rule 1033 of the Pennsylvania Rules of Civil Procedure fundamental purpose is to cure technical defects and this is not a technical defect.

The Respondent Taxing Authorities also argued that the amended petition does raise a new cause of action because the petitioner never raised the issue of tax exemption until its motion to amend the petition for appeal and the petitioner is introducing an entirely new theory of recovery. The amended petition did not merely clarify the petitioner's original theory in the original petition for appeal, but it raised an entirely new cause of action, which the Taxing Authorities claimed resulted in surprise and prejudice.

In its reply to the brief of the Taxing Authorities in opposition to petitioner's motion to amend petition for appeal, Petitioner Menno Haven asserted that the fact that the issue of tax exemption was not raised in front of the Board has no bearing on this Court. The petitioner argued that under the Fourth to Eighth County Assessment Law, 72 Pa. C.S.A. § 5453.103 *et seq.*, this Court must hear the petitioner's appeal *de novo*. Since this Court should hear this case *de novo*, the record of the hearing in front of the Board is not a factor to this Court. As a result, the amendment to the petition cannot be hindered because tax exemption was not raised below. In addition, the petitioner argued that the Taxing Authorities cannot be prejudiced because no discovery had been conducted and no trial date has been set.

Oral arguments were conducted in this Court on October 4, 2002. At the conclusion of the arguments, the Court asked the parties to submit letter briefs in support of their respective arguments. Petitioner Menno Haven timely submitted its letter brief. Respondent Taxing Authorities decided not to submit a letter brief, but instead to rely on its previous pleadings before the Court.

This Court has considered the petitioner's motion to amend and the pleadings and arguments from all the parties. This opinion and order results from that review.

Issue

SHOULD THIS COURT ALLOW PETITIONER MENNO HAVEN LEAVE TO AMEND ITS PETITION FOR APPEAL FROM THE DECISION OF THE FRANKLIN COUNTY BOARD OF ASSESSMENT AND REVISION OF TAXES ORIGINALLY FILED IN DECEMBER OF 1998?

Discussion

Before the Court is Petitioner Menno Haven's motion to amend its petition for appeal from the decision of the Franklin County Board of Assessment and Revision of Taxes. In its decision, the Court has considered Petitioner's motion to amend its petition for appeal from the decision of the Franklin County

Board of Assessment and Revision of Taxes, Petitioner's brief in support of its motion to amend petition for appeal, Petitioner Menno Haven's proposed amended petition attached to its motion to amend, Respondent Taxing Authorities' brief in opposition to petitioner's motion to amend petition for appeal, Respondent Taxing Authorities' answer to petitioner's motion to amend petition for appeal, Petitioner Menno Haven's reply brief to the brief of Taxing Authorities in opposition to petitioner's motion to amend petition for appeal, the letter brief of Petitioner Menno Haven requested by the Court after oral arguments, which took place on October 4, 2002, and the applicable law.

This Court is presented with the issue of whether to allow Petitioner Menno Haven leave of Court to amend its petition for appeal from the decision of the Franklin County Board of Assessment and Revision of Taxes originally filed in December of 1998.

Petitioner Menno Haven argues that this Court should grant it leave to amend its petition for appeal because the amended petition does not result in prejudice or unfair surprise to the Respondent Taxing Authorities. To support its contention, Petitioner Menno Haven cites Rule 1033 of the Pennsylvania Rules of Civil Procedure, Noll v. Harrisburg Area YMCA, *et al*, 643 A.2d 81, 537 Pa. 274 (Pa. 1994), and Mistick Incorporated v. City of Pittsburgh, 646 A.2d 642, 186 Pa. Cmwlth. 294 (Pa. Commw. Ct. 1994).

Rule 1033 of the Pennsylvania Rules of Civil Procedure states:

> A party, either by consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of the party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence submitted.

Pa. R. Civ. P. 1033 (1947).

Respondent Taxing Authorities does not consent to Petitioner's motion to amend, thus petitioner is forced to seek permission from this Court.

Both Noll v. Harrisburg Area YMCA and Mistick, Incorporated v. City of Pittsburgh stand for the proposition that the Court should liberally allow amendments to pleadings except where surprise or prejudice to the other party will result, or where the amendment is against a positive rule of law. *See* Noll, 643 A.2d at 84, 537 Pa. at 280; and Mistick, 646 A.2d at 644, 166 Pa. Cmwlth. at 298. This is often referred to as the concept of liberality, which comes from the Pennsylvania Court's interpretation of Rule 1033 of the Pennsylvania Rules of Civil Procedure. In essence, the petitioner argues that the Court must allow the petitioner leave to amend its petition for appeal if the amended petition does not result in unfair surprise or prejudice to the other party.

Respondent Taxing Authorities argue that the concept of liberality does not apply in this case. The Taxing Authorities cite Pennsylvania Liquor Control Board v. Kayden Corp, 505 A.2d 393, 95 Pa. Cmwlth. 306 (Pa. Commw. Ct. 1986), where the Commonwealth Court stated "the Rules of Civil Procedure do not specifically govern matters which come under the common pleas courts' statutory appeal jurisdiction." Kayden Corp, 505 A.2d at 394, 95 Pa. Cmwlth. at 308, *citing* Pennsylvania Liquor Control Board Appeal (Dinardi), 480 A.2d 338, 340, 84 Pa. Cmwlth. 598 (Pa. Commw. Ct. 1983). Since this case comes before the Court on a petition for appeal, the Pennsylvania Rules of Civil Procedure and the concept of liberality do not apply.

The Court does not share the Taxing Authorities complete shut down interpretation. The purpose of the decisions in Dinardi and Kayden Corp. was to fix dates for timing of appeals consistent with the Pennsylvania Rules of Appellate Procedure. Respondent Taxing Authorities does not cite any authority, nor did the Court find any authority on its own, which precludes the Court from referring to the Pennsylvania Rules of Civil Procedure as persuasive, but not binding, precedent. In that regard, the right to amend pleadings rests within the sound discretion of the Court and the exercise of that discretion will not be disturbed absent abuse of discretion. *See* Hamilton v. Bechtel, 657 A.2d 980, 441 Pa. Super. 390 (Pa. Super. Ct. 1995). *See also* Junk v. East End Fire Department, 396 A.2d 1269, 1277, 262 Pa. Super. 473, 490 (Pa. Super. Ct. 1978) *superseded by* statute on other grounds.

Petitioner Menno Haven maintains that the Taxing Authorities cannot claim prejudice as a result of the amended pleading because the matter has not yet been scheduled for trial and discovery is not closed. The petitioner asserts that prejudice would not result if the Court granted the Taxing Authorities adequate time to respond to petitioner's proposed amended petition.

As expected, the Taxing Authorities contest the petitioner's argument that the amended petition does not result in prejudice towards the Taxing Authorities. First, the Taxing Authorities assert that they are prejudiced because the original petition for appeal was filed in December of 1998 and petitioner seeks to

amend its petition almost three and one half years later. The Taxing Authorities claim that they are prejudiced by the proposed amended pleading because of unreasonable delay.

The Court realizes that a period of three and one half years is an unreasonable period of delay. Petitioner Menno Haven had more than ample time to "clarify" its petition. Yet, the petitioner failed to "clarify" its petition for appeal, or file any other motion until May of 2002. The Court cannot imagine that it would take three and one half years to clarify a petition for appeal, especially a petition of such importance and significance. However, refusal to allow an amendment solely on the basis of unreasonable delay and nothing more is an abuse of discretion. Mistick, 646 A.2d at 644, 166 Pa. Cmwlth. at 298-299. Although, the Commonwealth Court has provided that the later a petition for leave to amend is filed, the more it can be presumed prejudice will flow from its grant, and the less actual prejudice need be demonstrated. *See* Newcomer v. Civil Service Commission of Fairchance Borough, 515 A.2d 108, 111, 100 Pa. Cmwlth. 559, 566 (Pa. Commw. Ct. 1986). As a result, the Court must consider other evidence of prejudice.

Respondent Taxing Authorities also point out that Petitioner Menno Haven never raised the argument about exemption at the original hearing or in its original petition for appeal. The Taxing Authorities had no opportunity to present testimony on, cross examine witnesses about, or consider the tax exemption argument in their preparation for or participation in the hearing. The Taxing Authorities cite School District of the City of Erie v. Hamot Medical Center, 602 A.2d 407, 144 Pa. Cmwlth 668 (Pa. Commw. Ct. 1992) where the Commonwealth Court interpreted the procedures under the General County Assessment Law and established that under the General County Assessment Law exemptions appeals would be treated differently than valuation appeals. *See* Hamot Medical Center, 602 A.2d at 408, 144 Pa. Cmwlth. at 672.

In Hamot Medical Center, the Court found that an appeal in a Third Class County exemption case to the trial court is governed by Local Agency Law, 2 Pa. C. S. A. § 754, which provides that the trial court shall review the record before the Board to determine whether its findings are supported by substantial evidence. The Commonwealth Court concluded that § 754 empowered the trial court to hear an appeal *de novo* only if it (trial court) determines that the record before the local agency was complete.

Respondent Taxing Authorities concludes that since the record from the hearing in front of the Board is complete, the Court has no need or authority to hear the appeal *de novo*. Since the petitioner failed to raise the issue of exemption before the Board, the Court should not even consider any claims of exemption brought by Petitioner Menno Haven.

In its reply brief, Petitioner Menno Haven points out that the Hamot Medical Center decision was later qualified. In Wellsboro Area School District v. Tioga County Board for the Assessment and Revision of Taxes, the Commonwealth Court found that the Local Agency Law 2 Pa. C. S. A. § 751 *et seq*. is only applicable to the extent it is not inconsistent with another statute permitting appeals from a local agency's decision. Wellsboro Area School District v. Tioga County Board for the Assessment and Revision of Taxes, 651 A.2d 592, 594 (Pa. Commw. Ct. 1994).

More specifically, § 751(b) states:

> The provisions of this subchapter shall apply to any adjudication which under any existing statute may be appealed to a court of record, but only to the extent not inconsistent with such statute.

2 Pa. C. S. A. § 751(b) (1978).

The Court in Wellsboro Area School District concluded that § 754 of the Local Agency Law inconsistent with § 704 of the Fourth to Eighth Class County Assessment Law. *See* Wellsboro, 651 A.2d at 594. *See also* 72 Pa. C.S.A. § 5453.704(a) (1989).

Franklin County is classified as a Fifth Class County. The Fourth to Eighth Class County Assessment Law applies to all fourth, fifth, sixth, seventh and eighth classes of counties in the Commonwealth. *See* 72 Pa. C.S.A. § 5453.103 (1943).

The Court in Wellsboro stated that § 704(a) of the Fourth to Eighth Class County Assessment Law governs the scope of the trial court's review of exemption decisions of county board of assessments and revision of taxes. Section 704(a) of the Fourth to Eighth Class County Assessment Law provides:

> Any person who shall have appealed to the board for relief from any assessment, who may feel aggrieved by the order of the board in relation to such assessment, may appeal from the order of the board to the court and thereupon the court shall proceed at the earliest convenient time to be by them appointed, of which notice shall be given to the board to hear the said appeal and the proofs in the case, and to make such orders and decrees determining from the evidence submitted at the hearing. 72 Pa. C.S.A. § 5453.704(a) (1989).

The Court, in interpreting § 704 (a) stated:

> [Section 704(a)] clearly provides that the appeal from the order of the Board is by way of a petition which is to set forth the facts of the case and, thereafter, the court is to hear the appeal and the proofs in the case and to make such orders from the evidence submitted at the hearing. The foregoing language can have no meaning other than that a trial court is to hold a hearing *de novo*. Wellsboro, 651 A.2d at 594.

It is important to note at this point that this case comes before the court as an assessment valuation appeal, rather than an appeal from the Board denying exemption. Regardless, under § 704, assessment valuation appeals before the trial court are also heard *de novo*. *See* Green v. Schuylkill County Board of Assessment Appeals, 772 A.2d 419, 565 Pa. 185 (Pa. 2001).

Accordingly, the Taxing Authorities argument that this Court does not have the need or authority to hear the matter *de novo* is inconsistent with the applicable law. Nevertheless, no authority exists prohibiting the Court from using the fact that Petitioner Menno Haven failed to raise the issue of exemption at the original hearing or in its original petition as a factor establishing prejudice against the Taxing Authorities.

Respondent Taxing Authorities also argues that they would suffer severe economic prejudice if the motion to amend were granted. The Taxing Authorities maintain that if the petitioner had raised the issue of exemption at the original hearing or in its original petition to this Court, the revenues represented by taxes paid by Menno Haven on non-exempt real estate would not have been included in the annual budgets of the taxing authorities and expended for necessary municipal services from which Menno Haven has benefited. Accordingly, the Taxing Authorities asserted that granting Menno Haven the right to amend would be extremely prejudicial to the Taxing Authorities.

The Court agrees with the Taxing Authorities. Petitioner Menno Haven wishes the Court to turn back the clock so it can seek exemption under Act 55 as a purely public charity. Regardless of the validity of Menno Haven's tax exemption claim, this Court believes that the Taxing Authorities should not be prejudiced because Menno Haven sat on an issue which was clearly identifiable in December of 1998. Petitioner Menno Haven would have the Court punish the Taxing Authorities for Menno Haven's lack of action. Petitioner Menno Haven, at the time it filed its original petition to the Board, had the opportunity to claim exemption, but it did not. The petitioner does not mention anything about exemption in its original petition for appeal to this Court. Yet, the petitioner had a real incentive to do so. Petitioner Menno Haven gave no notice whatsoever to the Board that it would seek tax exemption until three and one half years later after those funds would have been expended.

Consequently, the Taxing Authorities would be extremely prejudiced if this Court were to grant Petitioner Menno Haven leave to amend its petition for appeal when the petitioner waited three and one half years to amend its petition, waited three and one half years to even claim exemption, and the revenue represented by taxes paid by Menno Haven on non-exempt real estate have already been budgeted and expended for necessary municipal services from which Menno Haven has benefited.

As a result, Petitioner Menno Haven's Motion to Amend Petition for Appeal from the Decision of the Franklin County Board of Assessment and Revision of Taxes is DENIED because the Taxing Authorities would be extremely prejudiced.

In its motion to amend the petition for appeal, Petitioner Menno Haven also claims that the amended petition raises no new causes of action. The petitioner claims that its original petition challenged the amount of the assessment imposed on the petitioner. Similarly, the amended petition challenges the amount of the assessment. It argues that the amended petition merely clarifies certain terms of its original petition.

An amendment to a petition for appeal should be allowed where the amendment does not introduce a new cause of action. *See* Junk v. East End Fire Department, 396 A.2d 1269, 1277, 262 Pa. Super. 473, 490 (Pa. Super. Ct. 1978), *superseded by* statute on other grounds. A new cause of action does not exist if the petitioner's amendment merely adds to or amplifies the original complaint. Junk, 396 A.2d at 1277, 262 Pa. Super. at 490 *citing* Wilson v. Howard Johnson Restaurant, 219 A.2d 676, 421 Pa. 455 (Pa. 1966). A new cause of action does arise if the amendment proposes a different theory than the one previously raised. Junk, 396 A.2d at 1277, 262 Pa. Super. at 490 - 491.

Petitioner Menno Haven proffers that paragraph eight (8) subsections (d) through (g) include exemption. Paragraph eight (8) subsections (d) through (g) provide:

> The assessments for the premises known as Menno Village and identified above, 2075 Scotland Avenue, Chambersburg Borough and Greene Township, Franklin County,

> Pennsylvania as fixed by the Franklin County Board of Assessment and Revision of Taxes, are excessive, improper, unjust, and contrary to law for the following reasons:....
>
> (d) The impact of the assessments bear unequally on the Petitioner when compared to assessments of properties of the same class;
>
> (e) When related to assessments of similarly situated property owners, the assessments of the property of the Petitioner are arbitrary and capricious;
>
> (f) The assessments violate uniformity clause of the Pennsylvania Constitution;
>
> (g) The assessments violate the required equality of tax treatment guaranteed by Pennsylvania Statutory and Constitutional Law.

Petitioner's Original Petition for Appeal, p. 3, filed on December 11, 1998.

Petitioner Menno Haven maintains that similarly situated property owners are taxed differently than the petitioner. The petitioner cites the Shook Home for the Aged and the Chambersburg Hospital as examples of similarly situated property owners enjoying tax exemption while the petitioner does not. The petitioner argues that since the original petition seeks similar tax treatment to that of similarly situated neighbors, no new cause of action is alleged in the amended petition. The petitioner refers to the amended petition as an amplification of the existing claims in the original petition.

The Court does not share this belief. The petitioner claims that the amended petition is only an amplification of the original petition. Yet, the original petition never mentions exemption while the amended petition contains twenty-three new paragraphs about tax exemption. Until this amended petition, Petitioner Menno Haven never mentioned that it was seeking tax exemption as a purely public charity, but this claim existed all during this time. The original petition never mentioned that Menno Haven was qualified under the Internal Revenue Code as a federally tax exempt charitable organization. It never mentioned that Menno Haven possesses valid Pennsylvania charitable sales tax exemption. It never mentions any of the elements of a purely public charity. It never cites Act 55. In essence, this Court does not see how the petitioner is not seeking a new cause of action.

More telling is the *ad damnum* clause of the original petition. The clause states "the petitioner respectfully requests that [this] Honorable Court reverse the decision of the Franklin County Board of Assessment and Revision of Taxes, reduce the assessments and thereafter make all necessary orders to effectuate that decision." A new cause of action does exist if the original petition states a cause of action showing that the petitioner has a legal right to recover what is claimed in the original petition. *See* Junk, 396 A.2d at 1277, 262 Pa. Super. at 490 *citing* Wilson v. Howard Johnson Restaurant, 219 A.2d at 678-679, 421 Pa. at 460.

The *ad damnum* clause does not indicate that the petitioner is seeking tax exemption. In reality, the clause only states that the petitioner was seeking a reduction in the tax assessments. If the petitioner was seeking tax exemption, it would have mentioned tax exemption, at the very least, in its prayer for relief. We can look to a negligence case as a good analogy. The defendant in a negligence case would ask the Court for a total bar of recovery from the defendant if the defendant thought the defense existed. Likewise, if the defendant thought the plaintiff was partly at fault, the defendant would ask for a reduction in the amount of damages awarded to the plaintiff. These are two different theories of defense.

Similarly, Petitioner Menno Haven would have asked the Court for total tax exemption if the petitioner had thought the claim existed at the time it filed its original petition for appeal. Instead, the petitioner asked the Court to reduce the amount of the assessment. Quite different from asking for complete tax exemption. Petitioner Menno Haven's claim for total tax exemption is a different theory than the petitioner's original claim for reduction in the assessment because of an error in valuation.

As a result, the petitioner's argument that the amended petition does not raise a new cause of action is invalid. Petitioner Menno Haven's Motion to Amend Petition for Appeal from the Decision of the Franklin County Board of Assessment and Revision of Taxes is denied because the Amended Petition sets forth a new cause of action and claim for relief not contained or mentioned in the Original Petition.

Conclusion

Petitioner Menno Haven's Motion to Amend Petition for Appeal from the Decision of the Franklin County Board of Assessment and Revision of Taxes is DENIED for the following reasons:

> The Taxing Authorities would be extremely prejudiced if this Court granted Petitioner Menno Haven leave to amend petition for appeal when:

Petitioner Menno Haven waited three and one half years to amend its petition;

Petitioner Menno Haven waited three and one half years to claim tax exemption under Act 55;

Petitioner Menno Haven never mentioned tax exemption at the original hearing (October 14, 1998) or in its Original Petition;

The Taxing Authorities have not had an opportunity to investigate, question, or prepare for the tax exemption argument because the petitioner did not raise the issue of tax exemption; and

The revenue represented by taxes paid by Menno Haven on non-exempt real estate has already been budgeted and expended for necessary municipal services from which Menno Haven has benefited.

and;

The amended petition raises a new cause of action and asks this Court for a claim for relief not contained or mentioned in the original petition.

ORDER OF COURT

December 9, 2002, after hearing argument on the issues, a review of the letter/briefs in support thereof, and the applicable law, the Court holds that Petitioner Menno Haven's Motion to Amend Petition for Appeal from the Decision of the Franklin County Board of Assessment and Revision of Taxes is hereby denied.

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[1] Respondent also addressed other matters in its answer to petitioner's motion to amend. This New Matter need not be addressed since this Court is denying Petitioner's motion to amend petition for appeal.

[2] This Court does recognize two withdrawals of appearance motions and two entries of appearance motion were filed during this three and an half year span. The first in August of 1999 and the second in April of 2002, which lists Louis Capozzi, Jr. Esquire and Donald R. Reavey, Esquire as counsel of record for the petitioner.