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Summary of County of Clark v. LB Properties, Inc., 129 Nev. Adv. Op. 96

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STAUTORY INTERPRETATION LAW: RETROACTIVITY
PROPERTY LAW: TAX VALUATION

Summary

The Court determined whether a regulation promulgated by the Nevada Tax Commission to value remainder parcels of real property for tax abatement purposes applies retroactively, and if so, whether it violates Article 10, Section 1 of the Nevada Constitution.

Disposition

Because the regulation was not enacted until 2007, and the valuation at issue occurred prior to that time, the district court erred when it applied the regulation retroactively. The method actually used in assessing the property was more equitable than the new method and it did not conflict with any then existing statute or practice, thus the method used did not violate the Nevada Constitution.

Factual and Procedural History

In 2005, the Nevada Legislature enacted a law that caps real property taxes by providing partial tax abatements calculated with reference to assessed valuations for the preceding fiscal year on remainder parcels of real property.² The Legislature delegated responsibility to the Nevada Tax Commission (“NTC”) to regulate the specifics of this process.³

In 2007, the NTC enacted a regulation that created a formula for calculating remainder-parcel property values.⁴ The new formula calculated the value of the remainder-parcel by essentially subtracting the new parcel’s value from the old, larger parcel(s)’ value for the relevant year, whereas the pre-2007 method determined the value by treating the remainder-parcel as if it was its own separate piece of property for the relevant year.⁵

LB Properties (“LB”) owned the parcel at issue. This parcel was divided from a larger parcel, and the parties agreed that it was a “remainder-parcel” pursuant to NEV. REV. STAT. 361.4722(6). The Clark County Assessor used the pre-2007 valuation method, because the land was valued before NEV. ADMIN. CODE § 361.61038 was enacted.

LB appealed the County’s assessment to the NTC. The NTC assigned an administrative law judge to the case. The judge decided that NEV. ADMIN. CODE § 361.61038 (the “Regulation”) should apply retroactively. The NTC, however, did not agree, thus it upheld the original assessment. LB appealed the NTC’s decision and the district court agreed with the administrative law judge, and reversed the NTC. Clark County, Nevada (“the County”) appealed the district court’s decision.

¹ By Lee Gorlin

² NEV. REV. STAT. § 361.4722 (2013). Remainder parcels are any remaining property “after the creation of new parcels of real property” from “one or more existing parcels of real property, if the use of that remaining parcel has not changed from the immediately preceding fiscal year. NEV. REV. STAT. § 361.4722(6).

³ NEV. REV. STAT. § 361.4722(5).

⁴ NEV. ADMIN. CODE § 361.61038 (2013)

⁵ The actual formulas are very complex; this is merely an oversimplified summary.

Discussion

Retroactive Application of the Regulation

Typically, the law does not favor retroactivity.⁶ The creators of a regulation must show a clear intent to apply the Regulation retroactively in order to do so.⁷ If a regulation is interpretive, meaning it construes, but does not expand upon, a statute, it may be applied to preexisting issues, if it is a first-time interpretive regulation.⁸ If a regulation is legislative, meaning that it is adopted under power delegated by the Legislature and establishes new standards of conduct, rights, or duties⁹, it is extremely unlikely that the Regulation may be applied retroactively.

LB argued that the Regulation was interpretive, and thus should be applied retroactively. The County, and the Nevada Supreme Court disagreed because the NTC created the Regulation under the express rights granted by NEV. REV. STAT. ANN. § 361.4722(5), and it established a new substantive rule for assessing and valuing remainder-parcels. The Court held that the regulation is therefore legislative, not interpretive, and is not afforded retroactive effect without clear intent. There was no evidence of any such intent.

Legality of the Assessor's Method

Because the assessor did not use an applicable regulatory method of assessment, (because there was none at the time), the Court had to determine whether the method was allowable under Nevada law. LB argued that the Assessor's method violated Nevada Law because it did not follow a "method formally promulgated" by an agency. Although the district court agreed, the Nevada Supreme Court found that the Assessor's method did violate the law simply because it was not pursuant to a regulation.

The Court has previously held that it is illegal for an assessor to "substantially deviate from statutorily mandated methods of assessing land."¹⁰ Rather, Nevada's Constitution requires uniformity throughout the State with regard to the methods used for assessing taxes.¹¹ The Court in those cases, however recognized that it is impossible to devise an absolute formula because of the variations in each property.¹² Additionally, the Court concluded that because the law "encourages consideration of property attributes 'such as zoning, location, water rights, view, and geographic features'¹³, . . . valuations should account for all relevant attributes—perhaps

⁶ Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988).

⁷ State ex rel. State Bd. Of Equalization v. Barta, 124 Nev. 612, 622, 188 P.3d 1092, 1099 (2008).

⁸ Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 744 n.3 (1996). There are, however instances where even first-time interpretive regulations may not be applied retroactively. Pauly v. U.S. Dep't of Agric., 348 F.3d 1143, 1152 (9th Cir. 2003).

⁹ Jerri's Ceramic Arts, Inc. v. Consumer Prod. Safety Comm'n, 874 F.2d 205, 207 (4th Cir. 1989); Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. Of Review, 983 A.2d 1231, 1236 (Pa. 2009).

¹⁰ See Barta, 124 Nev. at 620-21, 188 P.3d at 1098; State ex rel. State Bd. Of Equalization v. Bakst, 122 Nev. 1404, 1414-15, 148 P.3d 717, 725 (2006).

¹¹ Bakst, 122 Nev. at 1413, 148 P.3d at 724.

¹² *Id.* at 1412, 148 P.3d at 723.

¹³ NEV. REV. STAT. 361.228(3)(2013).

even where consideration of a particular attribute is not codified by statute or regulation.” The Court held that the Assessor’s method was likely more equitable than the new method required by the regulation, thus the Assessor’s method did not violate the Nevada Constitution.

Conclusion

Although the NTC passed a regulation in 2007 promulgating a new valuation method for assessors to use in valuing remainder-parcels, the Clark County Assessor did not violate the law when using an older method before the regulation was enacted, because the regulation was legislative in nature and thus was not applied retroactively. The Assessors’ method was not unconstitutional because the Assessor did not disregard an existing statutory method.