

GARY ST. FLEUR, NICHOLAS	:	In the Court of Common Pleas
GETTEL, CASEY DURKIN, DAMIAN	:	of Lackawanna County
BIANCERELLI, RICH JOHNSON,	:	
ETHAN GREEN, ANGELA GILGALLON	:	
and MICHELLE McGOVERN,	:	
	:	
vs.	:	Civil Action - Law
	:	
THE CITY OF SCRANTON,	:	
MAYOR WILLIAM L. COURTRIGHT	:	
And BUSINESS ADMINISTRATOR	:	
DAVID BULZONI,	:	
Defendants	:	No. 17- <del>CR</del> -1403

MAURI B. KELLY  
 LACKAWANNA COUNTY  
 2017 AUG - 3 P 1:06  
 CLERKS OF JUDICIAL  
 RECORDS CIVIL DIVISION

5/23/17  
8/3/17

MEMORANDUM AND ORDER

Eight individual Plaintiffs commenced this mandamus action on March 2, 2017 against the Defendants City of Scranton (the City), Mayor William L. Courtright and the Scranton City Business Administrator, David Bulzoni. The Plaintiffs all allege that they are residents of the City of Scranton, Lackawanna County, Pennsylvania. Defendant Courtright is sued in his official capacity as Mayor of the City of Scranton and Defendant Bulzoni is named in his official capacity as Business Administrator of the City of Scranton. Essentially, Plaintiffs charge that the City is limited by state statute in the aggregate amount of revenues it receives from taxes levied and collected during any fiscal year and that, at least for the fiscal years of 2016 and 2017, the City has budgeted and/or collected amounts exceeding that statutory cap.

In response to the Complaint, the Defendants filed Preliminary Objections (1) in the nature of a demurrer, (2) for failure to join a necessary party, (3) for failure to comply with law, and (4) for insufficient specificity of a pleading. The issues have been fully briefed and argument was held on May 30, 2017. On June 26, 2017, Plaintiffs filed a Notice of

Related Supreme Court Decision and attached the decision of the Pennsylvania Supreme Court in City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1, 18 WAP 2016 (May 22, 2017). Defendants responded with the filing of a Supplemental Brief on June 28, 2017. The matter is now ripe for decision.

For the reasons which follow, the Preliminary Objections of the Defendants are **OVERRULED**.

I. Factual Background.

Plaintiffs allege that they are all residents of the City and, as such, are subject to various taxes levied by the City pursuant to 53 P.S. §6924.320 (Act 511). Plaintiffs further allege that the aggregate amount of all taxes imposed by the City under Act 511 during any fiscal year "shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in (the City)" as determined by the appropriate board established to determine market values of real estate within the City by twelve mils. 53 P.S. §6924.320(a). In a political subdivision within a county where no such market values have been determined by the appropriate board, then the aggregate amount of taxes shall not exceed an amount "equal to the product obtained by multiplying the latest total market valuation of real estate . . . as certified by the State Tax Equalization Board, by twelve mils." Id. (2016). The Complaint further alleges that the Lackawanna County Assessor's Office, while maintaining real estate assessment valuations for real estate taxes within Lackawanna County, does not maintain market valuation of real estate within the City. Complaint, ¶20, 21. The Complaint avers that the Pennsylvania State Tax Equalization Board maintains the total market valuation of real estate located within the City. Complaint, ¶22. Plaintiffs allege that according to the Pennsylvania State Tax Equalization Board, the total market

valuation of all property in the City in 2015 was \$2,273,875,550.00. Complaint, ¶23. The 2015 total market valuation of all property in the City represents the most recent released figures. Complaint, ¶24. The Complaint outlines the familiar formula utilized in calculating real estate taxes that one mil is the equivalent of one dollar for every one thousand dollars in assessed value. Thus, 12 mils equates to \$12 for every \$1,000 in value. Complaint, ¶26. Taking the 2015 market valuation for real estate in the City as certified by the Pennsylvania State Tax Equalization Board and factoring that figure by 12 mils, Plaintiffs allege that the current aggregate amount of all Act 511 taxes the City can impose in a fiscal year cannot exceed \$27,286,506.00. Complaint, ¶¶27, 28.

Plaintiffs allege that the City collected \$34,477,500 in Act 511 taxes for fiscal year 2015. Complaint, ¶29. Further, Plaintiffs allege that the City budgeted \$36,792,500.00 in Act 511 taxes for fiscal year 2016 and \$38,045,091.99 in Act 511 taxes for fiscal year 2017. Complaint, ¶¶30, 31.

The thrust of Plaintiffs' Complaint, then, is that the City has exceeded the statutory cap placed upon the amount of Act 511 taxes it can levy and collect. Plaintiffs seek a directive from this Court mandating that the Defendants, in the language of Act 511, "forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be." 53 P.S. §6924.320(b). Plaintiffs further seek a mandate that any "Tax monies levied and collected in any fiscal year in excess of the limitations imposed by this chapter . . . be deposited in a separate account in the Treasury of (the City) for expenditure in the following fiscal year." *Id.*

Defendants argue that the City is a Home Rule Charter municipality and, under the Home Rule Charter Law, 53 Pa.C.S. §2901, et seq., it is not subject to the statutory cap of Act

511. Defendants maintain that the City is not subject to "any limitation on rates of taxation imposed upon residents." 53 Pa.C.S.A. §2962(b). The City argues that "No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7)." 53 Pa.C.S. §2962(i). Defendants argue that Act 511 seeks to limit the rates of taxation imposed by municipalities to which it applies because of its direction that, in the event aggregate revenues materially exceed the Act 511 limitations, "the political subdivision shall forthwith reduce the rate or rates of such tax or taxes to stay within such limitations as nearly as may be." 53 P.S. §6924.320(b).

## II. Standard of Review.

We address the arguments of the parties within the context of preliminary objections. When considering preliminary objections, "all well-pleaded allegations and material facts averred in the complaint, as well as all reasonable inferences deducible therefrom, must be accepted as true." Wurth by Wurth v. City of Philadelphia, 584 A.2d 403, 407 (Pa.Cmwlth. 1990). We "need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." Penn Title Ins. Co. v. Deshler, 661 A.2d 481, 483 (Pa.Cmwlth. 1995) appeal denied, 670 A.2d 145 (Pa. 1995). Preliminary objections in the nature of a demurrer should be sustained "only where the facts in a pleading are clearly insufficient to establish the pleader's right to relief." HCB Contractors v. Liberty Place Hotel Associates, 652 A.2d 1278, 1279 (Pa. 1995). A demurrer is only to be sustained when, on the facts averred, the law says with certainty that no recovery

is possible. Jacobs v. Merrymead Farm, Inc., 799 A.2d 980 (Pa.Cmwlth. 2002).

### III. Discussion.

Based upon our reading of the Supreme Court's decision in City of Pittsburgh v. FOP, Fort Pitt Lodge No. 1, 18 WAP 2016 (May 22, 2017), we cannot say with certainty that no recovery is possible here by Plaintiffs. Our Supreme Court in City of Pittsburgh considered whether Pittsburgh, a home rule municipality, could amend its home rule charter to eliminate mandatory subjects of collective bargaining. While this is not what we are faced with here, the decision is instructive because it addresses the interplay between the Home Rule Charter Law, 53 Pa.C.S. §2901-2984, and a statute "applicable in every part of this Commonwealth." City of Pittsburgh, Slip Op. p.4. Of course, here we have the interplay between Act 511 and the Home Rule Charter Law, but Act 511 is a statute applicable in every part of this Commonwealth, and there seems no dispute about that.

The Pennsylvania Constitution provides that home rule charters and amendments thereto are subservient to the limitations imposed by the General Assembly. (Slip Op., p.9). Article IX, Section 2 of the Pennsylvania Constitution grants municipalities the right and power to "frame and adopt home rule charters," but also provides that "A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution by its home rule charter or by the General Assembly at any time." Pa.Const., Art. IX, Section 2. As noted by the Supreme Court in City of Pittsburgh, §2962 of the Home Rule Charter Law, which provides that statutes of general application "shall not be changed or modified" is such a legislatively imposed limitation. (Slip Op., p.9). Because Act 511 is a uniform statute applicable throughout the Commonwealth,

we conclude that its statutory cap cannot be superseded by the Home Rule Charter Law.

Contrarily, the City argues that §2962(b) grants the City the "power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute" and that "the governing body shall not be subject to any limitation on the rates of taxation imposed upon residents." 53 Pa.C.S. §2962(b). Additionally, Defendants argue that the Home Rule Charter Law supersedes Act 511 in the establishment of rates of taxation:

No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).<sup>1</sup>

53 Pa.C.S. §2962(i).

We conclude that the reasoning employed by our Supreme Court in City of Pittsburgh with respect to the relationship between Act 111 and the Home Rule Charter Law compels a similar result in this case when considering the inter-relationship of Act 511 and the Home Rule Charter Law. As noted in City of Pittsburgh, §§2962(c)(2), (5) and (e) of the Home Rule Charter Law places limitations on home rule municipalities. (Slip Op., p.13). "Section 2962(c)(2) precludes exercise of powers contrary to or in limitation or enlargement of powers granted by statutes applicable in every part of the Commonwealth." (Slip Op, pp. 13-14). In this case, Act 511 is applicable in every part of the Commonwealth. Additionally, §2962(e) provides that

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<sup>1</sup>Subsection (a)(7) relates to the fixing of rates of nonproperty or personal taxes levied upon non-residents.

"statutes that are uniform and applicable in every part of the Commonwealth shall remain in effect, and shall not be changed or modified." (Slip Op., p.14). Act 511 cannot be changed or modified through the Home Rule Charter Law. Additionally, our Supreme Court noted that the right to engage in home rule flows from Article IX, Section 2 of the Pennsylvania Constitution. (Slip Op., p.14). As the Supreme Court noted previously, the "General Assembly may limit the functions to be performed by home rule municipalities." Spahn v. Zoning Board of Adjustment, 977 A.2d 1132 (Pa. 2009) (internal citation omitted).

We therefore conclude, as did the Court in City of Pittsburgh, that "Pursuant to Article IX, Section 2 of the Pennsylvania Constitution, home rule charters are subservient to limitations imposed by the General Assembly." (Slip Op., p.15). Since Act 511 is a statute that is "uniform and applicable in every part of this Commonwealth," it "cannot be changed or modified" by the Home Rule Law. 53 Pa.C.S. §2962(e). Accordingly, because of our Supreme Court's analysis in City of Pittsburgh, we are unable to say with certainty that no recovery is possible for the Plaintiffs. The Defendants' preliminary objection in the nature of a demurrer will, therefore, be **OVERRULED**.

With respect to the remaining preliminary objections offered by Defendants, the arguments of the Defendants are not persuasive. Defendant Bulzoni is properly named at this point in the litigation. Additionally, we believe the Complaint is specific enough to apprise the Defendants of the nature of the claims against them and to prepare a defense. Indeed, the arguments raised by the Defendants in their preliminary objections buttresses our conclusion in this regard.

An appropriate Order follows.

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DAVID BULZONI,	:	
	:	
Defendants	:	No. 17-CR-1403

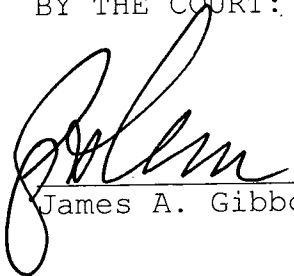
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ORDER

AND NOW, this 3<sup>rd</sup> day of August, 2017, upon consideration of the arguments and submissions of the parties and oral argument, IT IS HEREBY ORDERED THAT:

1. The preliminary objections of the Defendants are **OVERRULED**;
2. Defendants shall respond to the Complaint within twenty (20) days of the date of this Order.

BY THE COURT:

  
 \_\_\_\_\_, J.  
 James A. Gibbons

**cc: Written notice of the entry of the foregoing Order has been provided to each party by mailing time-stamped copies to:**

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