

GARY ST. FLEUR, NICHOLAS GETTEL, CASEY DURKIN, DAMIAN BIANCERELLI, RICH JOHNSON, ETHAN GREEN, ANGELA GILGALLON and MICHELE MCGOVERN
PLAINTIFFS

MAURIE B. KELLY
JUDICIAL RECORDS
CIVIL DIVISION CIVIL DIVISION

v.

2017-CV-

14103

THE CITY OF SCRANTON, MAYOR
WILLIAM L. COURTRIGHT and
BUSINESS ADMINISTRATOR DAVID
BULZONI,

DEFENDANTS

ACTION OF MANDAMUS

NOW COMES, Gary St. Fleur, Nicholas Gettel, Casey Durkin, Damian Biancerelli, Rich Johnson, Ethan Green, Angela Gilgallon and Michele McGovern (hereinafter collectively referred to as "Plaintiffs"), by and through their counsel John J. McGovern, Jr., Esquire, file the within Action of Mandamus, and in support thereof aver as follows:

PARTIES

1. Plaintiff, Gary St. Fleur, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
2. Plaintiff, Nicholas Gettel, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
3. Plaintiff, Casey Durkin, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
4. Plaintiff, Damian Biancerelli, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.

5. Plaintiff, Rich Johnson, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
6. Plaintiff, Ethan Green, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
7. Plaintiff, Angela Gilgallon, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
8. Plaintiff, Michele McGovern, is an adult competent individual residing in Scranton, Lackawanna County, Pennsylvania.
9. Defendant, the City of Scranton (the "City") is a duly incorporated City of the Class 2A, with offices at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503.
10. Defendant, William L. Courtright is the Mayor of the City with an office in City Hall at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503. Defendant Mayor Courtright is named in his official capacity in accordance with Pennsylvania Rule of Civil Procedure 1094(a).
11. Defendant, David Bulzoni is the Business Administrator of the City with an office in City Hall at 340 North Washington Avenue, in the City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania 18503. Defendant Business Administrator Bulzoni is named in his official capacity in accordance with Pennsylvania Rule of Civil Procedure 1094(a).

JURISDICTION and VENUE

12. Jurisdiction in this Honorable Court is based on 53 P.S. § 6924.320(b) which states:

“If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, 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. **Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection.** Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.”

53 P.S. § 6924.320(b) (2016) (emphasis added).

13. Venue in this Honorable Court is based on Pennsylvania Rule of Civil Procedure 1092(c)(2).

STATUTES and FACTS

14. The preceding paragraphs are incorporated as if fully set forth at length herein.
15. The City levies various taxes under 53 P.S. § 6901 et. seq. (collectively hereinafter referred to as “Act 511.”)
16. As residents of the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511.
17. As persons who conduct a trade or business in the City, each of the Plaintiffs were, are or may be subject to the various taxes levied by the City under Act 511.
18. According to 53 P.S. § 6924.320(a) of Act 511:

“The aggregate amount of all taxes imposed by any political subdivision under this section and in effect 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 such political subdivision, as determined by the board for the assessment

and revision of taxes or any similar board established by the assessment laws which determines market values of real estate within the political subdivision, by twelve mills. In school districts of the second class, third class and fourth class and in any political subdivision **within a county where no market values of real estate have been determined by the board for the assessment and revision of taxes, or any similar board, the aggregate amount of all taxes imposed under this section and in effect 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 such school district, or other political subdivision, as certified by the State Tax Equalization Board, by twelve mills.** In school districts of the third and fourth class, taxes imposed on sales involving the transfer of real property shall not be included in computing the aggregate amount of taxes for any fiscal year in which one hundred or more new homes or other major improvements on real estate were constructed in the school district.”

53 P.S. § 6924.320(a) (2016) (emphasis added).

19. The City is located within Lackawanna County, Pennsylvania.
20. The Lackawanna County Assessor’s Office maintains the real estate assessment valuations for real estate taxes within Lackawanna County including the City.
21. The Lackawanna County Assessor’s Office does NOT maintain the market valuation of real estate within the City.
22. The Pennsylvania State Tax Equalization Board maintains the total market valuation of real estate located within the City.
23. According to the Pennsylvania State Tax Equalization Board, the 2015 total market valuation of all property in the City was \$2,273,875,550.00.
24. The Pennsylvania State Tax Equalization Board has not released its 2016 or 2017 total market valuation of all the property in the City.
25. In calculating real estate taxes, one mill is equal to \$1.00 for every \$1,000.00 in value.

26. In calculating real estate taxes, 12 mills is equal to \$12.00 for every \$1,000.00 in value.
27. 12 mills multiplied by the Pennsylvania State Tax Equalization Board's total market valuation of \$2,273,875,550.00 for the City is approximately \$27,286,506.00.
28. Pursuant to 53 P.S. § 6924.320(a) the current aggregate amount of all Act 511 taxes the City can currently impose in a fiscal year cannot exceed \$27,286,506.00.
29. Pursuant to Page 11 of the City of Scranton, Financial Statements and Single Audit for the year Ended December 31, 2015, the City collected \$34,477,500.00 in Act 511 taxes.”¹
30. Pursuant to Revenues Section of the City of Scranton 2017 Operating Budget, the City budgeted \$36,792,500.00 in “Total Local Taxes (Act 511)” for its fiscal year 2016.
31. Pursuant to Revenues Section of the City of Scranton 2017 Operating Budget, the City budgeted \$38,045,091.99 in “Total Local Taxes (Act 511)” for its fiscal year 2016.
32. \$36,792,500.00 is greater than \$27,286,506.00.
33. \$38,045,091.99 is greater than \$27,286,506.00.
34. When a municipality exceeds the 53 P.S. § 6924.320(a) cap, statutory law specifically directs what the municipality must do. 53 P.S. § 6924.320(b) states:

“If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, **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.** Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection. **Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision**

¹ The last available audit is fiscal year 2015.

for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.”

53 P.S. § 6924.320(b) (2016) (emphasis added).

35. Plaintiffs notified the Defendants about the 53 P.S. § 6924.320(a) cap when Plaintiffs objected to the City’s request to increase its increase its 2017 Local Services Tax in the Court of Common Pleas at case number 2016-CV-7123.

36. Plaintiffs notified the Defendants about their obligations under 53 P.S. § 6924.320(b) when Plaintiffs objected to the City’s request to increase its 2017 Local Services Tax in the Court of Common Pleas at case number 2016-CV-7123.

37. The Defendants responded to Plaintiffs’ notification and objections by proceeding with their request and obtaining approval to increase the 2017 Local Services Tax despite knowledge of the cap and Plaintiffs’ objections.

38. When a municipality exceeds the 53 P.S. § 6924.320(a) cap, statutory law specifically directs what a Court of Common Pleas must order. 53 P.S. § 6924.320(b) states:

“If, during any fiscal year, it shall appear that the aggregate revenues from taxes levied and collected under the authority of this chapter will materially exceed the limitations imposed by this chapter, 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. **Any one or more persons liable for the payment of taxes levied and collected under the authority of this chapter shall have the right to complain to the court of common pleas of the county in an action of mandamus to compel compliance with the preceding provision of this subsection.** Tax moneys levied and collected in any fiscal year in excess of the limitations imposed by this chapter shall not be expended during such year, but shall be deposited in a separate account in the treasury of the political subdivision for expenditure in the following fiscal year. The rates of taxes imposed under this chapter for the following fiscal year shall be so fixed that the revenues thereby produced, together with the excess tax moneys on deposit as aforesaid, shall not exceed the limitations imposed by this chapter.”

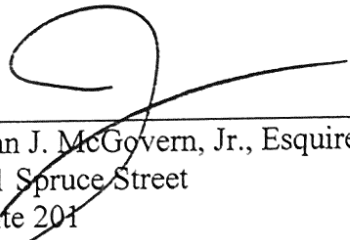
53 P.S. § 6924.320(b) (2016) (emphasis added).

39. The Defendants' refusal to acknowledge and follow the statutory cap under 53 P.S. § 6924.320(a) of Act 511 subjects the Defendants as well as the general public to illegal, excessive and unreasonable extractions by the City.

40. As such, the Plaintiffs request that this Honorable Court order: a) the City/Defendants forthwith reduce the rate or rates of such tax or taxes to stay within such 53 P.S. §6924.320(a) limitations as nearly as may be; b) deposit any Act 511 taxes collected in excess of the \$27,286,506.00 cap into a separate account for expenditure in fiscal year 2018; and c) adjust its Act 511 tax rates for fiscal year 2018 so that those Act 511 taxes collected, together with the excess money set aside for fiscal year 2018, not exceed the City's 2018 Act 511 aggregate cap.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court grant the Mandamus so desired.

Respectfully Submitted:



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