

SUPREME COURT OF CONNECTICUT

Kettle Brook Realty, LLC v. Town of E. Windsor, 324 Conn. 544

153 A.3d 1247 (2017) · No. SC 19555 · Decided January 24, 2017

SUMMARY

The Connecticut Supreme Court held that a municipal tax appeal under General Statutes § 12-117a is commenced upon service of the appeal papers on the municipal taxing authority, rather than upon filing with the Superior Court. Because the plaintiff served the Town of East Windsor after the statutory two-month period had expired, the court affirmed dismissal of the appeal as untimely.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Rogers, C. J.; Palmer, J.; Eveleigh, J.; Robinson, J.; Mullins, J.
JURISDICTION	Connecticut
DECIDED	January 24, 2017
DOCKET	SC 19555
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from the Appellate Court's judgment affirming the Superior Court's dismissal of its municipal property tax appeal as untimely. The Supreme Court granted certification limited to whether the appeal was timely commenced under General Statutes § 12-117a.
STANDARD OF REVIEW	The timeliness of the tax appeal under § 12-117a and the resulting subject matter jurisdiction question were reviewed as legal issues.
PRECEDENTIAL VALUE	published, precedential Connecticut Supreme Court opinion
PARTIES	Kettle Brook Realty, LLC v. Town of East Windsor

TOPICS

[property tax](#)[municipal law](#)[subject matter jurisdiction](#)[statutory interpretation](#)[appellate procedure](#)

PRACTICE AREAS

[property tax](#)[municipal law](#)[civil procedure](#)[statutory interpretation](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether a municipal property tax appeal under General Statutes § 12-117a is commenced by filing the appeal documents in Superior Court or by serving the appeal on the municipal taxing authority.
2. Whether the plaintiff's tax appeal was timely when it filed the appeal within two months of the mailing of the board's decision but served the town after that period expired.

HOLDINGS

1. A municipal tax appeal under § 12-117a is commenced upon service of the appeal papers on the municipal taxing authority, not merely upon filing the appeal documents with the Superior Court.
2. The plaintiff's tax appeal was untimely because the town was not served within two months after the mailing of the board's decision.

KEY QUOTATIONS

“Any person . . . claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom . . . to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court.”

FACTUAL BACKGROUND

Kettle Brook Realty owned real property in East Windsor and sought a reduction in its assessed value for the October 1, 2012 grand list. The Board of Assessment Appeals denied the request on April 29, 2013, and the town assessor mailed notice of that decision on May 1, 2013. The plaintiff filed its appeal in Superior Court on June 28, 2013, but the town was not served until July 10, 2013, after the two-month statutory period had expired.

PROCEDURAL HISTORY

After the Town of East Windsor Board of Assessment Appeals denied the plaintiff's request to reduce its property's assessed value, the plaintiff filed a complaint in Superior Court on June 28, 2013, but did not serve the town until July 10, 2013. The Superior Court dismissed the appeal for lack of subject matter jurisdiction because service occurred outside § 12-117a's two-month period. The Appellate Court affirmed, and the Supreme Court affirmed the Appellate Court.

DISPOSITION

affirmed

CASES CITED

- Kettle Brook Realty, LLC v. East Windsor, 158 Conn. App. 576, 579, 119 A.3d 1276 (2015)
- Chestnut Point Realty, LLC v. East Windsor, 158 Conn. App. 565, 119 A.3d 1229, cert. granted, 319 Conn. 928, 125 A.3d 203 (2015)
- Chestnut Point Realty, LLC v. East Windsor, 324 Conn. 528 (2017)

- Kettle Brook Realty, LLC v. East Windsor, 319 Conn. 928, 125 A.3d 202 (2015)

OPINION

ROGERS, J.

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***** KETTLE BROOK REALTY, LLC v. TOWN OF EAST WINDSOR (SC 19555) Rogers, C. J., and Palmer, Eveleigh, Robinson and Mullins, Js.* Argued October 18, 2016—officially released January 24, 2017 Daniel J. Klau, with whom, on the brief, was Jonathan M. Starble, for the appellant (plaintiff).

Richard C. Robinson, with whom were Laura A. Cardillo and, on the brief, Joshua A. Hawks-Ladds, for the appellee (defendant). Opinion ROGERS, C. J. This case raises the issue of whether a municipal tax appeal brought pursuant to General Statutes § 12-117a1 is commenced, for purposes of meeting the limitation period prescribed by that statute, by the filing of the tax appeal with the Superior Court or, rather, upon the service of the appeal on the municipal taxing authority.

The plaintiff, Kettle Brook Realty, LLC, appeals from the judgment of the Appellate Court affirming the trial court’s dismissal of its tax appeal due to untimeliness.² Kettle Brook Realty, LLC v. East Windsor, 158 Conn. App. 576, 579, 119 A.3d 1276 (2015).

The plaintiff claims that, under the plain language of § 12-117a, its appeal was timely commenced upon the filing of its appeal documents in the Superior Court, even though the appeal was not

served on the defendant, the town of East Windsor (town), until a date beyond the expiration of the two month appeal period.

We disagree and, accordingly, affirm the judgment of the Appellate Court. The following procedural history is relevant. The plaintiff owns real property in the town. After the property was assessed for purposes of the October 1, 2012 grand list, the plaintiff appealed to the Board of Assessment Appeals of the Town of East Windsor (board) to request a reduction in the property's assessed value.

On April 29, 2013, the board denied that request and, on May 1, 2013, the town's assessor mailed notice of the board's decision to the plaintiff. On June 28, 2013, the plaintiff filed a complaint in the Superior Court, alleging that the property had been overvalued.

The complaint was accompanied by a citation and recognizance and bore a return date of July 23, 2013. On July 10, 2013, a marshal served the complaint, citation and recognizance on the town. On July 17, 2013, the marshal filed the return of service with the court.

On August 14, 2013, the town filed a motion to dismiss the appeal, arguing that the trial court lacked subject matter jurisdiction because the plaintiff did not serve the appeal papers on the town within the two month period allotted by § 12-117a.

After a hearing, the court granted the town's motion and dismissed the appeal. The plaintiff thereafter appealed from the dismissal of its appeal to the Appellate Court. The Appellate Court agreed with the trial court that the appeal was untimely pursuant to § 12-117a because the plaintiff did not serve the town within two months of the date that the board had mailed notice of its decision denying a change to the assessment of the plaintiff's property.

Id. In support of its decision, the Appellate Court relied on its reasoning in the companion case of *Chestnut Point Realty, LLC v. East Windsor*, 158 Conn. App. 565, 119 A.3d 1229, cert. granted, 319 Conn. 928, 125 A.3d 203 (2015), which was decided the same day.

In *Chestnut Point Realty, LLC*, the Appellate Court, in affirming the trial court's dismissal of the plaintiff real estate company's tax appeal, relied on the plain language of § 12-117a, case law governing the commencement of a civil action, public policy considerations and a number of consistent trial court decisions to which, the Appellate Court reasoned, the legislature presumably had acquiesced.

Id., 569–74. The appeal in the present case, as well as the appeal by the plaintiff in *Chestnut Point Realty, LLC*, followed. The procedural history of this case, and the arguments presented on appeal, are identical to those in the companion case of *Chestnut Point Realty, LLC v. East Windsor*, 324 Conn. 528, A.3d (2017), which we also decide today.

For the reasons explained in that opinion, we conclude that the Appellate Court properly affirmed the trial court's judgment dismissing the plaintiff's tax appeal as untimely. The judgment is affirmed. In this opinion the other justices concurred. * This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Palmer, Eveleigh and Robinson, and Judge Mullins.

Although Justice Robinson was not present when the case was argued before the court, he has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this decision. 1 General Statutes § 12-117a provides in relevant part: "Any person... claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom... to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court.

Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action...." 2 We granted the plaintiff's petition for certification to appeal, limited to the following question: "Did the Appellate Court properly conclude that the plaintiff's property tax appeal was not timely commenced under... § 12- 117a?" Kettle Brook Realty, LLC v. East Windsor, 319 Conn.

928, 125 A.3d 202 (2015).