

TESTIMONY OF WILLIAM J. SWEENEY, JR. ON BEHALF OF FREMONT RIVERVIEW, LLC IN OPPOSITION TO H. J. No. 40 -- RESOLUTION CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DENY THE CLAIM AGAINST THE STATE OF FREMONT RIVERVIEW, LLC

- This matter involves a lease between Fremont Riverview LLC and the State of Connecticut at 99-101 East River Drive East Hartford, Connecticut. Under the lease the state is obligated to pay base rent and certain "additional rent" based on increases in the Claimant's real property taxes. The lease in pertinent part provides that:

The LESSEE shall be relieved of all liability for increased taxes based on any revaluation of the subject premises by the municipality unless the LESSOR gives written notice by certified mail to the Department of Public Works Commissioner within thirty (30) days of notice to the LESSOR by the municipality of the revaluation so as to permit the LESSEE to contest such revaluation if the Commissioner determines it to be appropriate...

- The statute that precisely governs this situation, 4b-26, entitled "State realty contracts, compliance and enforcement. Tax escalation clauses; Attorney General's duties," requires "notice" without any qualifying language.

(c) In any lease containing a tax escalation clause, there shall be a provision that the state shall be relieved of all liability for increased taxes unless the landlord shall notify the commissioner of any pending increase in sufficient time to permit the state, on behalf of the landlord, to contest such increase if the commissioner determines it to be appropriate.

It is undisputed that notice was provided to the commissioner; payments were made by the state to Fremont, which payments reflected the increased taxes owed to the Town. In this matter, Fremont, pursuant to statute, seeks permission from the Judiciary Committee for permission to bring this matter to the Superior Court.

Legal Issues

- Claims commissioner has no authority to grant summary judgment (4-151a) in case where the value is in excess of \$5,000. The claim in question is in excess of \$300,000.00.
- The granting of summary judgment by the Claims Commissioner is a ruling that finds no subject matter jurisdiction based on 4b-26 when the issues raised are really personal jurisdiction issues that can be waived and do not deprive the Claims Commissioner of jurisdiction.

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- The issue here is,
Does failure to notify the DPW Commissioner by registered mail or certified, when 4b-26 only requires notice without the requirement of registered or certified mail, subject the matter to Summary Judgment?
 - Courts have consistently stated defects in process do not deprive a court of subject matter jurisdiction.
 - Facts showing the service of process in time, form and manner sufficient to satisfy the requirement of mandatory statutes in that regard are essential to jurisdiction over the person. Bridgeport v Debek, 210 Conn. 175, 179,180 (1989).
 - Significant legal issues are raised by this case and the present outcome should not be determined by this legally flawed ruling.

Facts

- Hundreds of thousands of dollars are at stake in this commercial real estate setting.
- The state is being allowed to avoid its full financial responsibility without showing that the intent of the statute, to give the state sufficient time to contest the increase on behalf of the landlord has been effected.
- State has waived its claim: it received notice, it did not contest and in fact made payment at the increased rate reflective of the tax increment authorized by the town of East Hartford until it presumably was advised of the loop hole.

Conclusion

The issue raised, notice by registered mail vs. by regular mail, is no more than a defect in process, it is not an issue of subject matter jurisdiction.

This is an issue that properly belongs in the Superior Court.

Accordingly, on behalf of Fremont Riverview, I respectfully urge the Committee to reject the recommendation and decision of the Claims Commissioner in this matter and permit the issue to be presented to the Superior Court.

Thank you for your attention and I would be happy to answer any questions that you may have.

with the commissioner, such audit may also be conducted after the negotiations have ended, if a contract is consummated with the commissioner.

(P.A. 75-425, S. 3, 57; P.A. 77-614, S. 19, 73, 610; P.A. 83-7; P.A. 84-489, S. 2, 5; P.A. 85-301, S. 8, 13; P.A. 86-251, S. 1, 2; P.A. 87-496, S. 22, 110; P.A. 98-235, S. 3; P.A. 99-75, S. 2; P.A. 01-172, S. 1; P.A. 03-215, S. 9.)

History: P.A. 77-614 substituted secretary of the office of policy and management for commissioner of finance and control and commissioner of administrative services for public works commissioner; P.A. 83-7 replaced alphabetic Subdiv. indicators with numeric Subdiv. indicators and required the commissioner to prepare an annual inventory of improved, unimproved and underutilized land owned by the state; P.A. 84-489 added requirement that commissioner identify buildings of historic, architectural or cultural significance that would be suitable for state needs; P.A. 85-301 excluded the legislative department from the commissioner's authority and made technical changes; P.A. 86-251 inserted new Subdiv. (4) concerning total cost basis projects, renumbering prior provisions as necessary; P.A. 87-496 replaced administrative services commissioner with public works commissioner; Sec. 4-26c transferred to Sec. 4b-24 in 1989; (Revisor's note: In 1997, the words "the Office of" were added editorially by the Revisors in a Subdiv. (1) reference to the Secretary of the Office of Policy and Management for consistency with customary statutory usage); P.A. 98-235 amended Subdiv. (4) to authorize commissioner to designate total cost basis projects for installation of mechanical or electrical systems in existing state facilities; P.A. 99-75 amended Subdiv. (3)(A) by substituting "five hundred thousand dollars" for both references to "two hundred fifty thousand dollars"; P.A. 01-172 amended Subdiv. (4) to add Subpara. (C) re demolitions, substitute "which may include such project elements" for "which includes such project elements", "for the project" for "therefor" and "acceptable product" for "acceptable facility", and insert and delete "if applicable" in various provisions; P.A. 03-215 amended Subdiv. (4) to require that private developers be selected and recommended by award panels and provide that no contract estimated to cost more than five hundred thousand dollars may be awarded to a person who is not prequalified, effective October 1, 2004.

Sec. 4b-25. (Formerly Sec. 4-126b). Acceptance of title transfer on acquisition of property. The Commissioner of Public Works, whenever authorized to acquire property, shall have the power, in acquiring property either for the Department of Public Works or for other state agencies, to accept a transfer of title from the owner whether the premises acquired are occupied by tenants or vacant.

(1967, P.A. 763; P.A. 77-614, S. 73, 610; P.A. 87-496, S. 26, 110.)

History: P.A. 77-614 replaced public works department and commissioner with department and commissioner of administrative services; P.A. 87-496 replaced administrative services commissioner and department with public works commissioner and department; Sec. 4-126b transferred to Sec. 4b-25 in 1989.

Sec. 4b-26. (Formerly Sec. 4-26d). State realty contracts, compliance and enforcement. Tax escalation clauses; Attorney General's duties. (a) The expert members of the staff of the commissioner shall be responsible for ensuring that sellers, lessors, and contractors strictly comply with all agreed plans, specifications, requirements and contractual terms.

(b) The Attorney General shall be responsible for determining the legal sufficiency of all contracts and leases, both as to substance and to form, and said Attorney General shall enforce all terms of all agreements, including, but not limited to, the obligations of all landlords to meet the terms of leases.

(c) In any lease containing a tax escalation clause, there shall be a provision that the state shall be relieved of all liability for increased taxes unless the landlord shall notify the commissioner of any pending increase in sufficient time to permit the state, on behalf of the landlord, to contest such increase if the commissioner determines it to be appropriate.

(d) The Attorney General shall determine when to take any such appeal and shall be responsible for perfecting and prosecuting such appeal.

(P.A. 75-425, S. 4, 57.)

History: Sec. 4-26d transferred to Sec. 4b-26 in 1989.

Sec. 4b-27. (Formerly Sec. 4-26i). Disclosure of state realty needs. Unauthorized disclosure class A misdemeanor. No person affiliated with any requesting agency shall discuss outside of that agency its real estate needs or interests prior to formal