DOUGLASS VILLAGE RESIDENTS GROUP, BY JOSEPH AND KAY GALLAGHER, HAROLD HILLMAN AND DONNA HILLMAN v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS AND DOUGLASS VILLAGE, LLC

Real Property – Chattels – Fixtures – Property Tax

1. Chattels in real estate are divided into three categories: 1) those which are manifestly furniture, as distinguished from improvements and not peculiarly fitted to the property with which they are used, 2) those which are so annexed to the property that they cannot be removed without material injury to the real estate or to themselves, and 3) those which, although physically connected to the real estate, are so affixed as to be removable without destroying or materially injuring the chattels themselves or the property to which they are annexed.

2. A fixture is an article in the nature of personal property which has been so annexed to the realty that it is regarded as part and parcel of the land.

3. The considerations to be made in determining whether or not a chattel becomes a fixture included 1) the manner in which it is physically attached or installed, 2) the extent to which it is essential to the permanent use of the building or other improvement, and 3) the intention of the parties who attached or installed it.

4. Improvements to the leased land on which a mobile home sits, even if essential to the enjoyment of the mobile home, can be taxed to the landowner as part of the land, and not the owner of the mobile home, regardless of ownership of the improvements.

Summary: In the case sub judice, the plaintiffs appealed the Berks County Board of Assessment Appeals denial of an argument that the plaintiffs, who were residents of a trailer park, were being improperly assessed property taxes for garages and porches that were attached to the land and owned by the landowner. First, the court determined that the garages and decks involved were real property, and therefore taxable, because they were installed and attached to the ground, because they were essential to the permanent use of the mobile home or the land, and because the landowner's intention was to make the property attractive to prospective tenants. Then the court reasoned that garages and decks were permanently affixed to the land, whereas mobile homes were, of course, movable. The garages and decks were not permanently attached to the mobile homes, and the transfer of those mobile homes to a third party would transfer a certificate of title, not of deed. The court found no provision in the assessment law for assessing any structures, such as garages and decks, to anyone other than the landowner. Thus the court ruled that the taxes for those garages and decks must be assessed to the landowner.

DOUGLASS VILLAGE RESIDENTS GROUP, BY JOSEPH AND KAY GALLAGHER, HAROLD HILLMAN AND DONNA HILLMAN, Represented Parties v. BERKS COUNTY BOARD OF ASSESSMENT APPEALS, IN MANDAMUS, Defendant and DOUGLASS VILLAGE, LLC, Additional Party, IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, CIVIL ACTION – LAW NO. 12-5131

Paul A. Prince, Esquire, attorney for Represented Parties, Douglass Village Residents Group, by Joseph and Kay Gallagher, Harold Hillman and Donna Hillman

Edwin L. Stock, Esquire, attorney for Defendant, Berks County Board of Assessment Appeals

Douglass Village, LLC, Additional Party, did not participate at trial

The Berks County Board of Assessment Appeals (hereinafter "Board") has appealed this Court's Order entered April 29, 2013 in favor of Douglass Village Residents Group, by Joseph and Kay Gallagher, Harold Hillman and Donna Hillman (hereinafter "Residents Group"), and against Douglass Village, LLC, (hereinafter "Landowner"). The Residents Group is a class action group consisting of 63 mobile homeowners renting lots from Landowner. This Court was called upon to determine whether garages and decks, constructed and made appurtenant to the mobile homes, at a cost to the mobile homeowners, should be taxable as realty, and if so, should be borne by the individual residents of the Residents Group or by Landowner. This Court found that the garages and decks should be taxed as realty and should be taxed to Landowner as part of the land.

Douglass Village is a mobile home park situate in Douglass Township, Berks County, Pennsylvania, in the Boyertown Area School District. To become a resident of Douglass Village, an individual purchases a mobile home from Landowner, receiving a certificate of title. (N.T. pp. 34-35.) He also enters into a written lease agreement[1] for rental of the site where the mobile home will be located. The site includes two (2) parking spaces on a macadam base, (N.T. p. 25), and utility hookups.

Within the lease are provisions for the construction of a garage appurtenant to the mobile home. The garage is constructed by a contractor hired by Landowner at a cost ultimately borne by the mobile homeowner. According to testimony, all mobile homeowners are required to have a one (1) car garage but have an option for a two (2) car garage, at additional cost. (N.T. p. 26). The garages in the village are uniform, (N.T. p. 19), of wooden frame construction, bolted to a cement slab, with shingle roofing. The garage is attached to the mobile home by a partition or "A-frame" roof, (N.T. p. 16), an upper wall stud, (N.T. p. 17), and nails.

The lease also permits mobile homeowners to have decks. Some decks can be purchased from the mobile home manufacturer. Many, however, are independently constructed by contractors. Those decks are free standing decks, constructed of wood on cement piers. (N.T. p. 22). The decks are not uniform. The garages and decks, as well as landscaping, enhance the quality of life for the mobile homeowners in the village.

On or about March 29, 2012, the Residents Group filed an assessment appeal as a class, making several contentions, including arguments that the mobile homeowners were improperly being assessed property tax for garages and "porches," attached to the land and owned by Landowner. The representative parties of the class then filed a Motion for Certification of a class action. The Board granted class action standing after hearing held on December 20, 2010.

1 Unfortunately, a copy of the lease was not offered into evidence by either participating party. The Court's understanding of the lease, therefore, is limited to what was established through the testimony of Joseph Gallagher, one of the mobile homeowners.

Regarding the merits of the appeal, the Board held a hearing on June 20, 2011, but inexplicably took no further action. As a result, the Residents Group filed a Complaint in mandamus,[2] seeking an order compelling the Board to render a decision on the merits of the appeal. On February 14, 2012, this Court granted the Residents Groups' Motion for Preemptory Judgment, and ordered the Board to decide the assessment appeal on or before March 19, 2012.

On March 19, 2012, the Board entered its ruling, denying any reduction in the assessment, resulting in Residents Group filing the within timely appeal. The Residents Group then moved to have Landowner included as a party to the proceedings, which was granted by this Court on January 14, 2013. Shortly thereafter, the Residents Group and the Board reached an agreement on the fair market value of the individual mobile homes for tax years 2010 through 2013, inclusive, concurrently requesting that the Court determine whether the garages and decks should be taxable as realty and, if so, whether the tax should be assessed to the Landowner or to the individual mobile homeowners. Trial on this limited issue was held on April 18, 2013.

The County Assessment Law,[3] governs the assessment of real property, including "all house trailers and mobile homes permanently attached to land or connected with water, gas, electric or sewage facilities;..."[4]

Section 8821(a) of the County Assessment Law[5] further sets forth:

> **(a) Duty.**--It shall be the duty of the county assessment office to assess all mobile homes and house trailers within the county according to the actual value thereof. All mobile homes or house trailers which are subject to taxation as real estate as provided in this chapter shall be assessed and taxed in the name of the owner. The land upon which the mobile home or house trailer is located at the time of assessment shall be assessed separately and shall not include the value of the house trailer or mobile home located thereon.

The initial question is whether the subject garages and decks are considered real property and, therefore, taxable.[6] In Appeal of Sheetz, Inc., 657 A.2d 1011, 1012-13 (Pa.Cmwlth. 1995), petition for allowance of appeal denied, 542 Pa. 653 666 A.2d 1060 (1995), the Commonwealth Court was called upon to determin

2 Court of Common Pleas of Berks County, No. 11-26774.

3 The Third Class County Assessment Board Law, Act of June 26, 1931, P.L. 1379, No. 348, 72 P.S. §§ 5342-5350k, repealed by Section 6(1)(i) of the Act of October 27, 2010, P.L. 895, No. 93 effective January 1, 2011, applies to the assessment for tax year 2010. The Consolidated County Assessment Law, 53 Pa. P.S.A. §§ 8801-8868 also effective January 1, 2011, replaced the Third Class County Assessment Board Law. The Consolidated County Assessment Law applies to the assessments f tax years 2011 through 2013 inclusive.

4 53 Pa.C.S.A. § 8811, applicable for assessment years 2011 through 2013. The language for the law applicable for tax year 2010, contained in 72 P.S. § 5020-201 is identical, except that mobile homes are referred to as "mobile homes buildings."

5 53 Pa.C.S.A. § 8821.

6 Both of the participating parties at trial agree that the garages and decks, being affixed to the land, are taxable as real property.

whether a gasoline pump canopy was taxable as realty. The Court provided the following overview on the law:

> In *Clayton v. Lienhard*, 312 Pa. 433, 167 A. 321 (1933), the Supreme Court stated that "chattels" used in connection with real estate are divided into three categories:
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> Chattels used in connection with real estate are of three classes: First, those which are manifestly furniture, as distinguished from improvements and not peculiarly fitted to the property with which they are used; these always remain personalty. Second, those which are so annexed to the property that they cannot be removed without material injury to the real estate or to themselves; these are realty, even in the face of an expressed intention that they should be considered personalty-to them the ancient maxim "Quiequid plantatur solo, solo cedit" applies in full force.[FN5] Third, those which, although physically connected with the real estate, are so affixed as to be removable without destroying or materially injuring the chattels themselves, or the property to which they are annexed; these become part of the realty or remain personalty, depending upon the intention of the parties at the time of the annexation; in this class fall such chattels as boilers and machinery affixed for the use of an owner or tenant but readily removable.... (Citation omitted.)
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> FN5. Whatever is affixed to the soil, belongs to the soil.
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> In addressing whether chattel or an article of property becomes so affixed to the land that it becomes part of the real estate, we stated in *Gore v. Bethlehem Area School District*, 113 Pa.Commonwealth Ct. 394, 398, 537 A.2d 913, 915 (1988) that:
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> A fixture is an article in the nature of personal property which has been so annexed to the realty that it is regarded as part and parcel of the land. Black's Law Dictionary 575 (5th Ed.1979). The considerations to be made in determining whether or not a chattel becomes a fixture include (1) *the manner in which it is physically attached or installed,* (2) *the extent to which it is essential to the permanent use of the building or other improvement, and* (3) *the intention of the parties who attached or installed it. McCloskey*, 101 Pa.Commonwealth Ct. at 113-4, 515 A.2d at 644 citing Clothier, The Law of Fixtures in Pennsylvania, 32 Pa. B.Q. 66, 66-67 (1960-61). (Footnote omitted.) (Emphasis added.)
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> *See also J.W. Dobbins v. Lacefield*, 35 Ark.App. 24, 811 S.W.2d 334 (1991); *Michigan National Bank v. City of Lansing*, 96 Mich.App. 551, 293 N.W.2d 626 (1980).

(Footnote omitted.)

In applying the Gore three (3) prong test, this Court found that the garages and decks are fixtures, part of the realty, and taxable. On the first question, the manner

in which the garages and decks are installed, the permanence is apparent. Both the garage and deck structures are physically attached to a concrete slab embedded in the ground. Removal would require a dismantling of the structures, resulting in some destruction of the materials. Unlike the mobile home, whose design facilitates relocation, removal of a garage or deck would, in essence, be a "tearing down" of the structure. Remaining behind would be the concrete slabs with protruding bolts.

Next, the Court must consider whether the garages and decks are "essential to the permanent use" of the mobile home or the land. The garages and decks contribute substantially to the residents' enjoyment of the home. Garages provide shelter from the elements for automobiles. Garages are also typically used for storage and workshops. Decks provide an area for outdoor entertainment and relaxation. Most homeowners and this Court consider these features essential components of the living experience.

Finally, this Court must consider the intention of the parties who installed the garages and decks. The presence of the garages and decks, important to the mobile homeowners for reasons already set forth, is also important to the interest of Landowner. Landowner wants to present an attractive living community to prospective tenants. In furtherance of this goal, Landowner requires uniformity of the garages and controls the nature and quality of the construction by insisting on use of its chosen contactors. Despite the ever present option of relocation available to mobile homeowners, the village presents the perception of permanence, the perception being substantially assisted by the presence of the garages and decks.

This Court finds that the garages and decks are affixed to the property and should be taxable as realty.

Turning then to the second question, this Court observes that the law on assessment for mobile homes is limited to "all house trailers and mobile homes," and does not make any separate reference to appurtenances or supporting structures such as garages or decks. Accordingly, to be assessed under this authority, an existing garage and deck would have to be considered to be part of the mobile home. This is not supported by the law. Under § 398.2 of the Manufactured Home Community Rights Act,[8] cited by the Board for the proposition that the garage and deck assessment should be borne by the mobile homeowner, "manufactured homes" include homes defined under § 5402(6) of the National Manufactured Housing Construction

7 In Sheetz, the Commonwealth stated in a footnote:

> The degree of attachment necessary to evidence an intent of permanence is not high. As one commentator has pointed out:
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> > It is easiest to satisfy the mechanical approach suggested by the annexation factor that the item is cemented, bolted, or welded into place, so the realty and the fixture are united.
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> 5 Powell on Real Property § 652[2] p. 57-32 (emphasis added).... Sheetz, 657 A.2d at p. 1014, n. 7.

8 68 Pa. § 398.1, et seq.

and Safety Standards Act of 1974,[9] and mobile homes defined in § 102 of the Motor Vehicle Code.[10]

42 U.S.C.A. § 5402(6) states:

> (6) "manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle;

Mobile home is defined under § 102 of the Motor Vehicle Code as:

> **"Mobile home."** A trailer designed and used exclusively for living quarters or commercial purposes which exceeds the maximum size limitations prescribed by this title for operation on a highway and is only incidentally operated on a highway.

Nothing contained within these definitions support the notion that the garages or decks are contained in the definitions of the Act. Manufactured homes are constructed for mobility, as evidenced in § 5402 by references to the terms "transportable," "traveling mode" and "built on a permanent chassis." The inclusion of mobile homes or "trailers" in the Motor Vehicle Code identifies the mobile home as a motor vehicle, even if only "incidentally operated on a highway." Conversely, the design for the garages and decks incorporates no consideration for portability. The appurtenances are permanently affixed to cement slabs. Removing or transporting these appurtenances would not differ from the removing or transporting of any other type of structure, namely by dismantling the structure and taking it in pieces to the new location. Accordingly, the garages and decks are not "mobile" and do not fall within the definition of a mobile home.

This Court also notes that there is no permanent affixation of the garages and decks to the mobile homes. Detachment of the mobile home from the garage, would create some damage to the garage, established to be repairable at a cost of Five Hundred Dollars ($500.00), (N.T. p. 17), but the damage would be minor and uneventful. The decks have no attachment to the mobile homes whatsoever. The

9 National Manufactured Housing Construction and Safety Structures Act of 1974 (Public Law 93-383, 42 U.S.C.A. § 5402(6).

10 75 Pa.C.S. § 102.

physical conditions present show that the garages and decks are part of the land, not part of the mobile home.

Further, transfer of the mobile home to a third party would be by certificate of title, not by deed. The transfer of title would not include a transfer of ownership of a garage or deck, which would have to be finalized in some other manner.

The Board appears to argue that the mere fact that the garages and decks a affixed to the land, and arguably not part of the mobile home, is not dispositive. The connection of the appurtenances to the land is similar to that of the mobile homes for mobile homes are likewise not taxable as realty until they are "permanently attached to land or connected with water, gas, electric or sewage facilities."[11] The garages and decks have a like degree of permanence, are also "owned" by the mobile homeowner, and, along with the mobile home, are all considered components of the residence

This Court finds, however, that no provision is made in the assessment law fo assessing buildings, decks, or other appurtenances or fixtures to anyone other than the Landowner upon which the structure is affixed. As stated, provisions assigning tax liability to the mobile homeowners is specifically limited to the assessment on the mobile homes themselves and does not incorporate any other structures or appurtenances.[12] Further, under these facts, determination of ownership appears to be of no consequence. The case of Tech One Associates v. Board of Property Assessment, Appeals and Review of Allegheny County, 53 A.3d 685 (Pa. 2012), is instructive. The Pennsylvania Supreme Court considered whether the uniformity clause of the Pennsylvania Constitution "requires an improved property encumbered with a long term lease, which grants the lessee ownership of buildings and other improvements on the land, to be taxed in the same manner as a similar, but unencumbered, property." Id. at p. 694. In Tech One, a lessee constructed a shopping center, movie theatre and restaurant on land owned by the appellant. Under the terms of a long term lease, the buildings and surrounding improvements to the land were owned by the lessee. In part because lessee, not appellant owned the improvements, appellant argued that the assessment of its land should not be increased by the value of the improvements, citing the "economic reality test" set forth by the Pennsylvania Supreme Court in Re: Appeal of Marple Springfield Center, Inc., 530 Pa. 122, 607 A.2d 708 (199 The court held, inter alia, that the mere fact that the "shopping center buildings a other improvements to the land...were owned by lessee as leasehold interest does not alter the fact that they are proper subjects of taxation. Id. at p. 699. While the holding in Tech One did not directly address the issue at bar, it was implicitly understood that the assessment law required that improvements to the land be taxed to the landowner as part of the land, regardless of ownership of the improvemer This Court also notes that ownership of the garages and decks were not establish at time of trial, and an argument could be made that the garages and decks are actually owned by Landowner. It is noteworthy that the mobile homeowners did not

11 53 Pa.C.S.A. § 8811.

12 53 Pa.C.S.A. § 8821(a). See also 72 P.S. § 5020-407 for the 2010 tax assessment.

purchase the garages and decks through an agreement of sale, the agreement for construction being part of the lease.

In essence, the garages and decks are affixed to the land, a part of the land and subject to taxation, based on fair market value. Being part of the land, the taxes st be borne by the owner of the land.

This Court respectfully requests Your Honorable Court AFFIRM the Order entered on April 29, 2013, and DISMISS the appeal of the Berks County Board of Assessment Appeals.