Bond Case Briefs

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TIF - PENNSYLVANIA

GAI Consultants, Inc. v. Homestead Borough

Commonwealth Court of Pennsylvania - July 8, 2015 - A.3d - 2015 WL 4095523

The Borough of Homestead appealed from the entry of judgment against it by the Court of Common Pleas. The primary basis of the appeal was Homestead's contention that the four-year statute of limitations for contract actions barred claims asserted by Allegheny County, Steel Valley School District, and the Borough of Munhall (collectively, the Taxing Bodies) to require the Redevelopment Authority of Allegheny County (Authority) to reimburse property tax assessment appeal refunds for pre–2010 tax years pursuant to a tax increment financing (TIF) agreement. The trial court concluded that the TIF Agreement was a continuing contract and therefore the statute of limitations would not begin to run until the termination of the contractual relationship in 2018.

On appeal, Homestead argued that the four-year statute of limitations for contract actions prevented the Taxing Bodies from asserting claims for reimbursement of refunds of assessment appeals due before 2010. Homestead asserted that Section 13 of the TIF Agreement did not impose an obligation on the Taxing Bodies to demand reimbursement from the TIF Fund and instead the Authority had the obligation under the contract to pay a refund when "the Bank receives moneys which are required to be refunded to the taxpayer of the Pledged Parcels as the result of an assessment appeal or otherwise." Homestead argued that each failure of the Authority to cause a refund to be paid from the TIF Fund when the right to a refund came due created an immediate injury to the taxpayer, any Taxing Body that paid the refund from its general fund, and the Taxing Bodies collectively based on the resulting skewed accounting of TIF revenues and distributions. Thus, according to Homestead, the statute of limitations began to run on the day a taxpayer became entitled to a property tax refund and any claim for reimbursement by a Taxing Body more than four years after the determination by the Board lowering an assessment was barred.

Homestead argued that the trial court erred in concluding that the TIF Agreement is a continuing contract, and contended that it is in fact a complex contract with multiple, divisible duties, the breach of any one of which would be actionable and cause immediate damages to be suffered. Homestead asserted that the TIF Agreement did not satisfy the "test of continuity" because Section 13 of the TIF Agreement fixed the date of a determination by the Board to reduce an assessment as the specific date when the Authority is obligated to direct the payment of money from the TIF Fund to a taxpayer. Homestead argued that to interpret the TIF Agreement as a continuing contract and to allow a Taxing Body to assert a claim for reimbursement until 2022, four years after the expiration of the contract in 2018, would impermissibly burden the other Taxing Bodies by requiring them to make unforeseen adjustments to their budgeting and planning based upon lower than expected Net TIF Revenue distributions.

Homestead further argued that the Taxing Bodies cannot rely on either the discovery rule or the doctrine of *nullum tempus* to avoid the effect of the statute of limitations to bar their claims for reimbursement on pre–2010 assessment appeal refunds. Homestead argued that the discovery rule is inapplicable because the Taxing Authorities had all of the information necessary to know that the Authority was violating its obligations under the TIF Agreement, including annual accounting of the

TIF Fund that showed all reimbursements paid to Taxing Bodies for assessment refunds, at the time the violations occurred. Homestead also argued that the doctrine of *nullum tempus*, which provides that statutes of limitations do not bar actions brought by a state or its agencies, is inapplicable because the doctrine requires that the governmental party be acting pursuant to a mandatory obligation required by law, and the Taxing Bodies here were not constitutionally or statutorily compelled to participate in the TIF Agreement.

The appeals court agreed with the trial court that the TIF Agreement is an ongoing contract and that Section 13 of the TIF Agreement did not impose an obligation on the Authority to immediately pay refunds on tax assessment appeals or set a deadline for the Taxing Bodies to make claims for reimbursement on refunds paid. The TIF Agreement therefore met the test for a continuing contract, and the reimbursement claims were not barred by the statute of limitations.