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Reverse Property Assessment Appeals: Commercial Properties Owners Have A Friend In The Pennsylvania Supreme Court.

In a landmark case titled Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District & Keystone Realty Advisors, LLC, No. 49 MAP 2016, issued July 5, 2017, the Pennsylvania Supreme Court (the "Court") constitutionally curbed the rights of taxing jurisdictions to file selective appeals often called reverse tax appeals under Pennsylvania's Consolidated County Assessment Law. This law is applicable to all counties in the commonwealth except Allegheny and Philadelphia Counties. At issue in Valley Forge was the practice of a number of Pennsylvania school districts to exercise their tax assessment appellate rights solely against large commercial properties, while excluding from reverse appeal all residential properties within the same jurisdiction. Typically under this practice, the school districts employ a third-party tax consultant who selects the commercial property targets and receives compensation based on a percentage of the increased tax revenue gained under the reverse appeal.

In Valley Forge, a group of apartment owners filed a declaratory judgment action seeking to establish that the Upper Merion Area School District's practice of exclusively targeting high-value, commercial properties selected by their tax consultant, Keystone Realty Advisors, LLC, violated the Uniformity Clause of the Pennsylvania Constitution. The trial court dismissed their complaint. The apartment owners saw another setback in the Pennsylvania Commonwealth Court. That court reasoning that the school district's economic desire to increase taxes provided a rational and lawful basis for exercising its appellate rights selectively against commercial taxpayers.

The apartment ownership group then appealed to the Pennsylvania Supreme Court. In Court, both sides sought out other interested parties to file briefs in support of their positions. Reed Smith represented a client supporting the apartment owners.

The Court unanimously reversed, finding that under the Uniformity Clause, all real property within a taxing jurisdiction of the commonwealth of Pennsylvania is a single class, and the Uniformity Clause does not permit the taxing jurisdictions, including school districts, to treat different real property sub-classifications within their jurisdictions in a disparate manner. The Court found that the Commonwealth Court misapplied the law in allowing taxing jurisdictions to disparately treat sub-classifications of real property if a rational basis for such treatment existed. The Court clarified that prohibition against disparate treatment of any sub-class of real property applies to any intentional or systematic enforcement of the tax laws and is not limited to wrongful conduct, as the Commonwealth Court had previously suggested. The Court agreed with the apartment owners that a Uniformity Clause violation exists if the taxing jurisdiction intentionally or systematically subjects only commercial property within its jurisdiction to a reverse tax assessment appeal. The Court also held that a taxpayer aggrieved by such conduct is not limited to raising the constitutional violation as a defense to an appeal. Rather, a taxpayer may bring an affirmative action to curb the unlawful conduct of a taxing jurisdiction.

This is big. Under this decision, a number of taxing jurisdictions in Pennsylvania are in violation of

the Uniformity Clause, as they have also targeted large commercial properties for reverse appeals. For property owners in Allegheny and Philadelphia Counties, it is likely that the rationale of Valley Forge will be equally applicable.

This decision doesn't mean that taxing jurisdictions are giving up their efforts to raise tax revenue from commercial properties. The Court left open the possibility that a taxing jurisdiction may set a monetary threshold applicable to all classes of real estate for filing a reverse appeal. That said, a monetary threshold that disparately impacts a sub-classification of real property, such as large commercial properties, may be equally suspect under the Uniformity Clause. Still, the decision reached by the Pennsylvania Supreme Court is a victory for fairness in assessments, an area where that term is often found lacking.

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