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New Jersey Appellate Court Denies Tolling by Tax Court Under Frivolous Litigation Statute

The Appellate Division recently provided much-needed guidance in connection with the timing and potential tolling of claims under New Jersey's frivolous claims statute (N.J.S.A. 2A:15-59.1) and the accompanying Court Rule (*R*. 1:4-8). In its decision in *Wolosky v. Fredon Township et al.* (Docket No. A-2382-19, June 2, 2022), the Appellate Division vacated the Tax Court's award of sanctions against the plaintiff under New Jersey's frivolous claims statute. The *Wolosky* decision is reported and therefore is precedential.

The *Wolosky* case derives from plaintiff's challenge of the 2016 real property tax assessment of defendants Holensteins' residence (one of the Holensteins happened to be the tax assessor in Fredon Township). The plaintiff's complaint sought to increase the defendants' tax assessment. The defendants Holensteins claimed that the plaintiff's complaint was "baseless and asserted solely for improper purposes." In accordance with the statute and Court Rule 1:4-8, defendants' counsel sent plaintiff a letter advising him that his complaint was frivolous and filed with an intent to harass. The letter also advised that the Holensteins would seek sanctions and attorneys' fees if plaintiff did not withdraw the tax appeal within 28 days. After defendants filed the requisite motion to dismiss after the expiration of the 28 days, the Tax Court ruled the motion premature. After a trial on the merits in 2016, the Tax Court entered judgment affirming the defendants' tax assessment, but deferred any hearing on the frivolous claim until plaintiff exhausted all appeals despite the fact that Court Rule 1:4-8(b) requires that a motion for sanctions be made no later than 20 days following the entry of final judgment. In July 2018, the Appellate Division affirmed the Tax Court's decision, and 87 days later, in October 2018, the defendants' filed a motion for sanctions under Court Rule 1:4-8(b). In its published decision in *Wolosky v. Fredon Township*, 31 N.J. Tax 373 (Tax Ct. 2019), the Tax Court concluded that plaintiff's attempt to increase the property tax assessment on defendants' residence was "frivolous within the meaning of [Rule] 1:4-8 and N.J.S.A. 2A:15-59.1, and that at all times [plaintiff] acted in bad faith." The Tax Court awarded defendants counsel fees and costs in the amount of $45,589.35 against plaintiff.

Plaintiff appealed, asserting, among other things, that the Tax Court abused its discretion by extending the time to file a motion for sanctions by 679 days after entry of final judgment. In its decision, the Appellate Division initially noted two important tenets of New Jersey legal doctrine. The first being New Jersey's strong policy of restrained appellate review of issues relating to matters still pending in the trial court to avoid piecemeal litigation. The second being that New Jersey courts have "traditionally adhered strictly to the American Rule [wherein each litigant pays his own legal fees] because 'sound judicial administration will be best advanced by having each litigant bear his own counsel fees.'" In that regard, the court noted that "the frivolous litigation statute is interpreted restrictively" and "[s]anctions should be awarded only in exceptional cases." Relatedly, the court noted that the Court Rule "imposes a temporal limitation on any fee award, holding that reasonable fees may be awarded only from that point in the litigation at which it becomes clear that the action is frivolous."

The Appellate Division concluded that the Tax Court erred and therefore it vacated the attorneys' fee award because at the conclusion of the trial, the Tax Court never issued a formal order bifurcating the sanctions portion of the case from the rest of the matter (under Court Rule 4:38-2(a)), nor did it formally order a stay. The court noted that the Tax Court's "decision to wait until the appeal was completed, because only then would plaintiff's claim be 'completely untenable,' was misguided." Going further, it stated "[t]here is simply no procedure in place for the trial court's assertion that it needed to wait until this court issued its opinion [in the first appeal] before addressing the issue of sanctions, or that it could do so without an order bifurcating the issues." The court held that Court Rule 1:4-8 and N.J.S.A. 2A:15-59.1 are clear, that while the 20-day period may be relaxed in limited circumstances, a motion for sanctions must be filed with the court no later than 20 days following

the entry of final judgment and a finding must be made by the judge "during the proceedings or upon judgment that a complaint … of the nonprevailing person was frivolous." Therefore, according to the court, the Tax Court "mistakenly exercised its discretion by relaxing the time period to file by nearly two years."

The Appellate Division was also persuaded to vacate the award of counsel fees and costs because defendants represented on their case information statement filed in connection with plaintiff's initial appeal that there were "no remaining claims against any party, including any 'applications for counsel fees.'" Hence, based on the representations on their case information statement, the Appellate Division found that "the Holensteins waived any claim for frivolous litigation sanctions and counsel fees." The court additionally noted that "Defendants took no action to preserve their right to seek sanctions until well after the deadline to make such a filing had passed."

In short, the upshot of the Appellate Division's decision in *Wolosky* is that the 20-day period following the entry of final judgment at the trial court, absent a clear order of bifurcation, is the deadline by which a motion for sanctions has to be filed, assuming the required procedural steps were complied with. This assures that the appellate record will be complete and include the record of the application for sanctions that can be adjudicated on appeal in accord with New Jersey's long-standing practice that matters not be adjudicated in a piecemeal fashion.

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