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2019 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Palma v. Luker
2019 WL 1330332 (S.D. Tex., March 25, 2019)

Issues: Federal courts

Palma filed unsuccessful protests with the ARB in two years and appealed the ARB orders to state district court. He advanced a curious theory that his property could not be taxed because it had been "ceded" to him by the state. He lost both cases. He then tried filing suit in federal court naming individual ARB members and the ARB's lawyer as defendants. Basically, he sought to relitigate the state courts' decisions, but he threw in claims to the effect that sections of the Tax Code were unconstitutional and that the ARB members were not properly trained. In response to a motion from the defendants, the federal district court dismissed the case.

The court's brief, disdainful opinion explained that under the "Rooker-Feldman doctrine," a federal court may not relitigate matters that have already been decided by state courts. Palma was merely trying to disguise his state-court claims to get into Federal court, but his revised claims were "inextricably intertwined" with the claims decided by the state courts. The opinion also cites the Tax Injunction Act, 28 U.S.C.A. §1341, which prohibits a federal district court from considering most state and local tax disputes.

Grimes County Appraisal District v. Harvey
2019 WL 1285124 (Tex. App. – Houston [1st Dist.], March 21, 2019, no pet. hist.) (to be published)

Issues: Tax payment during appeal; ARB orders

Harvey claimed an open-space agricultural appraisal for his land and protested when the appraisal district appraised it at market value in 2016. For some unexplained reason, the ARB did not hear the protest before the delinquency date for 2016 taxes. When the ARB did meet to hear the protest, the district pointed out that Harvey had not paid any 2016 taxes at all. Harvey did not dispute that fact. The ARB dismissed the protest using the comptroller's form, Order Determining Protest or Notice of Dismissal." Harvey sued the

district and the district moved for the case to be dismissed. When the trial court denied the motion, the district appealed.

The court of appeals reversed the trial court and dismissed the case. Harvey argued that because the ARB had not conducted a hearing, he should be excused from making any payment because he didn't know how much to pay. The court of appeals dismissed that argument noting that there was no dispute about the fact that Harvey owed something. Under §42.08 of the Tax Code, his failure to pay meant that his suit had to be dismissed. Harvey next tried arguing that the ARB had somehow excused his failure to pay by convening a hearing and issuing a notice of dismissal. Again, the court disagreed and explained that the ARB had clearly dismissed the Harvey's protest without determining its merits. Harvey's due-process rights were protected because he had the right to protest the appraisal and appeal an ARB determination. But he failed to take the steps necessary to preserve and use those rights.

Nueces County v. Sundial Owner's* [sic] *Association
2019 WL 1285301 (tex. App. – Corpus Christi-Edinburg, March 21, 2019, no pet. hist.) (not reported)

Issues: Suit to compel tax refund

SOA paid 2013-2014 taxes on several condominiums. Later it demanded a refund of its payments, claiming that the notices of appraised value, although sent to SOA's address, had misstated the owner's name. According to SOA, that misidentification of the owner led to its "erroneous" payment. When the tax office refused its request, SOA sued the taxing units, demanding a refund under §31.11(k) of the Tax Code. The taxing units asked the trial court to dismiss the case. When the court refused, they appealed.

The court of appeals ruled that the case should not be dismissed. The court of appeals noted that §31.11(k) waives taxing units' governmental immunity and allows a taxpayer to sue for a refund. That provision was added to the Code in 2013 and became effective in June of that year. It was applicable to SOA's claims. The taxing units argued that SOA's suit was barred because there were delinquent taxes on the condominiums for 2015 and 2016, but the court ruled that payments for those later years were not required in connection with SOA's suit for refunds of taxes that it paid for 2013-2014. The taxing units argued that SOA should not receive a refund of taxes paid voluntarily. The court explained that that argument was addressed to the merits of SOA's claim, not to whether the courts had jurisdiction to consider that claim. It was not a grounds for simply dismissing SOA's suit. Section 31.11(k) waives governmental immunity for a suit, even if the suit is ultimately not successful. The taxing units next claimed that SOA should have filed a failure-to-deliver-notice protest under §41.411. Again, the court of appeals disagreed. It concluded that SOA did not have to file a §41.411 protest. It could raise the notice issue in a suit for a tax refund. SOA not raise any alleged error by the appraisal district in that suit, but it could argue that it paid the taxes erroneously. The court sent the case back to the trial court for further proceedings.

Russell v. Dallas County
2019 WL 911713 (Tex. App. – Dallas, February 25, 2019, no pet. hist.) (not reported)

Issues: Delinquent tax lawsuits

Taxing units sued Russell and others for delinquent 1997-2006 taxes. Russell, acting pro se, filed an answer denying that he had owned the property prior to 2006. Twelve days before trial, the taxing units filed amended pleadings seeking to foreclose various non-tax liens including demolition liens. Two days before trial, Russell attempted to file amended pleadings including a counterclaim. This time he denied owning the property prior to 2017. He did not request leave from the court to file his amended pleadings and did not seek a continuance of the trial. At trial, the court excluded Russell's amended pleadings and entered judgment for the taxing units. The judgment was in rem as to Russell, i.e., he was nor adjudged to be personally responsible for the taxes. Russell appealed.

The court of appeals upheld the trial court's judgment and the decision not to accept Russell's amendment. The higher court explained that under Rule 63 of the Texas Rules of Civil Procedure, a party may not amend his pleadings within seven days of a scheduled trial unless he obtains leave from the trial court. The fact that the Thanksgiving holiday came shortly before the trial did not change that. The trial judge could have reasonably concluded that Russell's attempt to assert a counterclaim and raise new defenses two days before trial was surprising and prejudicial to the taxing units. Russell's due process rights were not violated because he had the opportunity to offer evidence at the trial, but he chose not to do so. Further he waived any due-process argument by failing to raise it in the trial court.

Gutierrez v. City of Laredo
2019 WL 691443 (Tex. App. – San Antonio, February 20, 2019, no pet hist) (not reported)

Issues: Exhausting remedies

The appraisal district determined that improvements had been omitted from its appraisal of Gutierrez's real property. The district picked up the omitted improvements and notified Gutierrez. She filed a protest but filed it too late. The ARB did not consider it. The taxing units assessed taxes on the omitted improvements, but Gutierrez did not pay. The taxing units sued her, and she tried claiming that the improvements had not really been omitted. The trial court entered summary judgment for the taxing units, and Gutierrez appealed.

The court of appeals affirmed the judgment for the taxing units. The court of appeals explained that Gutierrez should have filed a protest with the ARB concerning the district's back-appraisal of the improvements. That protest should have been filed within thirty days after the district delivered notice to Gutierrez. She could not challenge the district's action in a delinquent-tax lawsuit. Gutierrez argued that some courts have allowed property owners to bypass ARBs and take their claims directly to court if the issue to be decided was purely an issue of law. The court responded by pointing out that Gutierrez's claims involved factual issues that should have been raised before the ARB.

Kilgore Independent School District v. Axberg
2019 WL 508963 (Tex. App. – Texarkana, February 11, 2019, no pet. hist.) (to be published)

Issues: Homestead exemptions

In 2015, the legislature was in a big hurry to increase the school-tax homestead exemption from $15,000 to $25,000 and to apply the increase to that year. The bill to increase the exemption was passed and signed by the governor in June. The increase, however, required a constitutional amendment, and that couldn't happen until the voters had an opportunity to approve it in the November election. The bill included a provision to prevent school districts from diminishing its effect by ending or reducing any optional percentage homestead exemptions that they were granting. The proposed constitutional amendment, SJR 1, which was approved by the voters in November, gave the legislature the authority to prevent a school district from repealing or reducing a percentage exemption. The amendment stated that it took "effect for the year beginning January 1, 2015." The enabling bill said that it took effect on the date that the constitutional amendment took effect. The Kilgore ISD, however, reasoned that it could repeal its percentage homestead exemption if the board of trustees acted between the date on which the bill was enacted and the November election. The board acted, and the district assessed its 2015 taxes without the percentage exemption. Several homeowners in the district, including Axberg sued the district. Then the state joined the suit, also claiming that the district had no authority to repeal the exemption. The trial court entered summary judgments for the state and the taxpayers, and the district appealed.

The court of appeals affirmed the judgment for the state. The higher court explained that, when it was approved by the voters, the constitutional amendment operated retroactively from January 1, 2015 and prevented the district's repeal of the exemption. Constitutional amendments can operate retroactively when that is what the legislature intends and when no vested rights are impaired. Here, the legislature did intend the amendment to be retroactive. The district had no vested right to repeal the exemption. The bill, by its own terms, took effect at the same time as the amendment, so it was also retroactive. Together, the bill and the amendment prevented the district from repealing the exemption any time in 2015.

The court of appeals reversed the trial court's summary judgment for the taxpayers for technical reasons. The taxpayers had not provided evidence that they owned homesteads in the district or that they had paid the 2015 taxes assessed by the district.

Harris County v. Falcon Hunter, LLC
2019 WL 470400 (Tex. App. – Houston [14th Dist.], February 7, 2019, no pet hist.) (not reported)

Issues: Delinquent-tax penalties and interest; governmental immunity

Falcon Hunter paid delinquent 2012 taxes in April of 2013 and paid about $18,000 in additional penalties, interest and fees. Three years later, Falcon hunter demanded that the tax office return the additional amounts on the grounds that the tax office had misdelivered its 2012 tax bill. When the tax office did not refund the money, Falcon Hunter filed suit. The taxing units responded that they were immune from the suit, that the trial court lacked jurisdiction to consider it, and that it should be dismissed. When the trial court refused to dismiss the case, the taxing unit's appealed.

The court of appeals reversed the trial court's order and dismissed the case. The court of appeals explained that local governments are immune from lawsuits unless their immunity is waived in a clear and unambiguous statute. Section 31.11 of the Tax Code allows a taxpayer to sue a tax collector to secure the return of an overpayment or erroneous payment of *taxes*, but not to recover penalties, interest or other payments. The statute that addresses waivers of penalties and interest when tax bills are not delivered is §33.011. But Falcon Hunter had not pleaded that it had made a request for waiver within 180 days of the delinquency date as required by §33.011. Further, §33.011 does not waive the immunity of taxing units or tax collectors. Thus, there was no statutory waiver of the taxing units' immunity.

Son v. Wells Fargo Bank
2019 WL 317251 (W.D. Texas, January 24, 2019)

Issues: Deferred homestead taxes

Wells Fargo held a deed of trust on Son's homestead. Son turned 65 and filed an affidavit to defer collection of her taxes. Wells Fargo paid the taxes and claimed the amount paid as an escrow shortage. After several years of that, Son stopped paying her Mortgage, and Wells Fargo took steps to foreclose. Son sued Wells Fargo in federal court alleging, among other things that the payment of taxes was a breech of contract. Wells Fargo sought dismissal on the grounds that Son had not even stated a claim upon which the court could grant relief. The trial court agreed. The judge's opinion explained that the deed-of-trust agreement required Son to pay her taxes timely. That obligation was necessary to protect Wells Fargo from tax liens that would be superior to its deed of trust. When Son failed to pay, Wells Fargo had the right to pay the taxes and then collect from Son. Son alleged that Wells Fargo was trying to make her default on the deed of trust so that it could foreclose. The judge's opinion, however, explained that Wells Fargo's motivations for enforcing its contractual rights were irrelevant.

Attorney General's Opinions