

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CITY OF PHILADELPHIA; and	:	
SCHOOL DISTRICT OF	:	
PHILADELPHIA	:	CIVIL ACTION
	:	
vs.	:	
	:	
STEPHEN FREMPONG ATUAHENE;	:	
AGNES FREMPONG ATUAHENE;	:	
DICKSON ATUAHENE; and F.A.	:	No. 97-4520
INVESTMENT GROUP, INC.¹	:	

MEMORANDUM AND ORDER

AND NOW, to wit, this 3rd day of December, 1997 upon consideration of “Defendants Motion for Reconsideration of this Court Order of October 27, 1997 Entered On October 28, 1997” (Document No. 20, filed November 7, 1997) filed by defendant Stephen Frempong Atuahene, **IT IS ORDERED** that Defendants’ Motion for Reconsideration is **DENIED**.

Defendants’ Motion for Reconsideration is denied for the following reasons:

The standards for granting a Motion for Reconsideration are quite stringent. “A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of” or as an attempt to relitigate “a point of disagreement between the Court and the litigant.” Waye v. First Citizen’s Nat’l Bank, 846 F. Supp. 310, 314 n. 3 (M.D. Pa.) aff’d by 31 F.3d 1175 (3d Cir. 1994). Nor should it be used to “put forth additional arguments which . . .the party neglected to make before judgment.” Id. at 314. A motion for reconsideration may only be granted if “(1) there

¹ Although not listed in the caption, F.A. Realty Investors Corp. is a defendant in one of the cases, October Term No. 66116 T.L.D., filed in the Court of Common Pleas of Philadelphia County, Pennsylvania, which was included in defendants’ Notice of Removal.

has been an intervening change in controlling law; (2) new evidence, which was not available, has become available, or (3) it is necessary to correct a clear error of law or prevent a manifest injustice.” Burger v. Mays, No. 96-4365, 1997 WL 611582, *2 (E.D. Pa. Sept. 23, 1997). See also Harsco v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) cert. denied 476 U.S. 1171 (1986). In their Motion, defendants argue that the Court made clear errors of law in its Order of November 28, 1997, by which the removed cases were remanded to the Court of Common Pleas, Philadelphia County, Pennsylvania (“the Order”). However, defendants have failed to show any clear errors of law or indicated any other reason why the Court should reconsider the Order.

A. Exceptions to the Tax Injunction Act

Defendants contend that several exceptions to the Tax Injunction Act, 28 U.S.C. § 1447(c) (“the Act”), apply to this case and give this Court subject matter jurisdiction. Defendants could have raised all of these points before the Court issued its Order, and they are therefore inappropriately included in the Motion for Reconsideration. They are also without merit.

First, defendants argue that because F.A. Investment Group, Inc., one of the defendants, and F.A. Management Group, Inc. have filed petitions in bankruptcy,² this Court retains subject matter jurisdiction. It is true that federal bankruptcy courts retain subject matter jurisdiction over state tax cases which arise in the administration of a bankruptcy estate. Federal district courts may hear appeals from the bankruptcy court decisions in those cases despite the Tax Injunction Act. See California State Bd. of Equalization v. Goggin, 191 F.2d 726 (9th Cir. 1951). However, the instant case did not arise from the administration of a bankruptcy estate, nor is it an appeal from a

²Although F.A. Management Group, Inc. is not a defendant in this action, defendants argue that its bankruptcy is relevant because the corporation holds “equity” in all of the properties at issue.

bankruptcy court. Therefore, this Court does not have subject matter jurisdiction by reason of the bankruptcy of one of the defendants.

Second, defendants argue that there is an exception under the Act which allows a federal district court to hear a case involving state taxation if it is filed under 28 U.S.C. § 1983. In support of this contention, defendants cite Northwood Apartments v. LaValley, 649 F.2d 401 (6th Cir. 1981) vacated without opinion 454 U.S. 1118 (1981). However, Northwood is not good law. The decision was vacated by the Supreme Court in light of its decision in Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100 (1981). In Fair Assessment, the Supreme Court held that comity prevents federal district courts from hearing § 1983 cases alleging unconstitutional state taxation practices. When Northwood was remanded, the Sixth Circuit held, in accordance with Fair Assessment, that the Tax Injunction Act deprived the district court of subject matter jurisdiction. Northwood Apartments v. LaValley, 673 F.2d 159 (6th Cir. 1982). In addition, defendants in the instant case did not file a § 1983 case. They removed a case filed under Pennsylvania law.

Third, the defendants cite 49 U.S.C. §11503(c) which creates an exception to the Tax Injunction Act allowing federal district courts to hear cases involving state taxation practices which discriminate against railroads.³ Contrary to defendants' argument, this exception applies only to rail carriers. It does not support defendants' Motion for Reconsideration.

B. Matters Addressed in the Order of November 28, 1997

Several of defendants' contentions were fully addressed in the Court's Order of November 28, 1997. Defendants have not produced any new evidence and there has been no intervening change

³ This section of the United States Code has been amended and renumbered. The relevant language is now found at 49 U.S.C. §11501(c).

in the controlling law that would cause the Court to reconsider its ruling. Nor have defendants shown that the Order was based on a clear error of law or that it created a manifest injustice.

The Court ruled in the Order that the Tax Injunction Act prevents a federal court from “ordering injunctive or declaratory relief or awarding damages in cases involving state tax collection.” Order at 3. This is an accurate statement of the application of the Tax Injunction Act. The Act applies to types of relief other than injunctions. See California v. Grace Brethren Church, 457 U.S. 393 (1982) (Tax Injunction Act prevents declaratory relief); Sipe v. Amerada Hess Corp., 689 F.2d 396, 404 (3d Cir. 1982) (comity and Tax Injunction Act prevent district court from awarding damages) (citing Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981)), see also Them v. Delaware County Council, No. 95-1969, 1995 WL 555869 (E.D. Pa. Sept. 18, 1995) (“[I]f a plain, speedy and efficient remedy is available in state court, the [Tax Injunction] Act creates a complete barrier to jurisdiction in the district court, even though federal questions, including constitutional questions, may be involved.”).

In the Order, the Court also found that the Philadelphia Civil Court Rules provide a “plain, speedy, and efficient” remedy in state court for defendants’ claims. Order at 4. Defendants argue in their Motion that the “lack of appellate right under the state statute” means that the state remedy is not “plain, speedy, and efficient.”⁴

⁴Defendants are apparently referring to the citation in the Order to Shapiro v. Center Township, Butler County, 632 A.2d 994 (Pa. Commw. Ct. 1993). Shapiro involved the filing of a writ of scire facias in the Court of Common Pleas to object to a municipal lien. Under that procedure, a defendant files an “affidavit of defense” rather than “appealing” a municipal lien. An affidavit of defense is described as an alternative to an appeal only because the lien is first imposed without a hearing. Id. at 997. The defendant still has the right to directly appeal an adverse opinion of the Court of Common Pleas to the Superior Court. See 42 P.S.A. § 742 (West 1981) (“The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas, regardless of the nature of the controversy or the amount

In the instant case, plaintiffs filed Petitions for an Appointment of a Sequestrator. Under the Philadelphia Civil Court Rules, a hearing on those petitions will be held in the Court of Common Pleas. At that hearing, defendants will have the opportunity to present both written and oral responses to the plaintiffs' petitions. Philadelphia Civil Court Rule 206.2 (1995). Defendants may then appeal an adverse decision to the Superior Court. See 42 P.S.A. § 742 (West 1981) ("The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas, regardless of the nature of the controversy or the amount involved. . . ."). These procedures constitute a "plain, speedy, and efficient" state remedy which allows the defendants a "full hearing and judicial determination" in state court. See Rosewell v. LaSalle National Bank, 450 U.S. 503, 514 (1981). Because a "plain, speedy, and efficient" state remedy is available to the defendants, this Court does not have subject matter jurisdiction over this case.

Defendants also argue that this case is not about the collection of taxes, but the use of tax assessments in retaliation for the defendants exercising their civil rights. Therefore, defendants argue, the Tax Injunction Act does not apply. However, the Tax Injunction Act blocks the jurisdiction of a federal district court, even if constitutional issues are involved:

[I]t is well settled that under the Tax Injunction Act, if a plain, speedy and efficient remedy is available in state court, the Act creates a complete barrier to jurisdiction in the district court, even though federal questions, including constitutional questions, may be involved. Thus even though the complaint seeks to assert federal constitutional violations, the Tax Injunction Act requires the plaintiffs to proceed in state court.

Them, 1995 WL 555869 at *2, see also Kimmey v. H.A. Berkheimer, Inc., 376 F. Supp. 57 (E.D. Pa. 1974) (finding court was without jurisdiction despite the fact that plaintiffs argued that their suits

involved. . . ."). A writ of scire facias was not filed in this case. The Court cited the Shapiro case in the Order only to show that there are several procedures for challenging a municipal lien.

did not challenge the validity of the tax, but “the unconstitutional manner in which the statute is administered and implemented.”).

C. Conclusion

Defendants have failed to establish that the Court committed a clear error of law or that its November 28, 1997 Order caused a manifest injustice. Moreover, the defendants have not produced any new evidence, nor have they demonstrated that an intervening change in controlling law should cause the Court to reconsider its decision.

BY THE COURT:

JAN E. DUBOIS, J.