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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. SUPERIOR COURT

MACSTEEL SERVICE CENTERS USA,
INC., as successor to EDGECOMB METALS
COMPANY

VS. CASE NO: 2004-3097

TOWN OF NORTH SMITHFIELD

HEARD BEFORE THE HONORABLE
MR. JUSTICE STEPHEN J. FORTUNATO, JR.
ON DECEMBER 7TH, 2010

APPEARANCES:

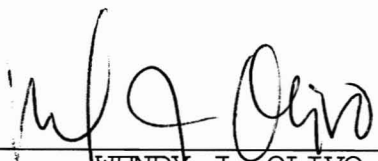
PAUL SULLIVAN, ESQ.FOR THE PLAINTIFF
MARK HADDEN, ESQ. FOR THE DEFENDANT

WENDY J. OLIVO
COURT REPORTER

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C E R T I F I C A T I O N

I, Wendy J. Olivo, hereby certify that the
succeeding pages 1 through 8, inclusive, are a true and
accurate transcript of my stenographic notes.



WENDY J. OLIVO
COURT REPORTER

12/10/10

DECEMBER 7TH, 2010

(A. M. SESSION)

DECISION OF THE COURT

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THE COURT: As was correctly pointed out by counsel for the Town in his brief, I am in no position to award attorney's fees. I'll discuss that in a few moments, but because of the absence of affidavits and so on, but in any event, the matter before the Court is an interesting one, and as counsel are well aware, if there's a dispute as to material and significant facts, then summary judgment cannot be awarded. If there is no such dispute and the law is clear, then the moving party can prevail. There are several preliminary matters that should be addressed, some guiding principles, one is that tax laws are to be strictly construed and they are to be construed in favor of the taxpayer and against the government taxing authority. See Bassett v DeRentis at 446 A.2d 763, in construing a statute, this Court has a function to ascertain the intent of the legislature and to effectuate that intent whenever it's within legislative competence. In addition, this is at 764, "In addition, it is presumed that the legislature will not enact a statute that leads to an unreasonable result; moreover, since we concern ourselves with a tax statute, the statute must be strictly construed with all doubts

1 resolved in favor of the taxpayer." As I indicated in
2 colloquy with counsel, and this is part of the reason
3 we're here today and that both parties didn't get on with
4 their business back in the latter part of the last
5 century, the taxpayer should have paid the \$119.52, and
6 then if they thought it necessary to vindicate a
7 principle or for some other reason they should have
8 pursued appropriate legal relief. Similarly, the Town,
9 when it felt some sort of a major affront because a
10 business in their town, which apparently had a record of
11 paying its taxes to the Town and it being a decent
12 corporate citizen there's no suggestion otherwise if the
13 Town felt that they wanted their \$119.52, they should
14 have done one of several things available to them. They
15 should have brought an action to collect that interest.
16 They could have engaged or operated under our distraint
17 statute, which is found among title 44 .8-1 et seq.1,
18 I believe, but in any event, it is captioned that way.
19 They could have sold the property, but counsel says,
20 "Gee, we wouldn't get involved for \$119. 52." Well, you
21 have gotten involved. It has cost the Town all sorts of
22 legal fees, one suspects, to get to this point. There's
23 been litigation on top of litigation, all of which was
24 engendered by a dispute over \$119. Our Supreme Court has
25 made it very clear as to what it thinks about tax sales,

1 and let us not forget that this matter comes into this
2 court because of a threatened tax sale by the Town
3 relative to collecting the \$119.52 that had morphed over
4 time based upon the Town not taking the tax payments as
5 they were made as tax payments, but continually deducting
6 from them and therefore saying, "You're late and you're
7 not paying your taxes." Over time it moved into some 20
8 or \$25,000 and then the tax sale was threatened. The
9 Supreme Court of Rhode Island in Albertson v Leca, at 447
10 A.2d 383, speaks of tax sales and the awesome power that
11 government has in bringing those about. At page 388, and
12 I should point out this opinion was unanimous and written
13 by probably the most distinguished jurist in
14 Rhode Island's legal history in the 20th century,
15 Justice Weisberger, who quotes some early sources at 388,
16 he says, as Blackwell wrote, "The sale of the land for
17 taxes is the nearest approach to tyranny that exists in a
18 free government." And he goes on to talk about how the
19 law abhors a forfeiture and that is exactly what the Town
20 seeks here, a forfeiture. Justice Weisberger went on to
21 say, "The inequity of the owner's inordinate loss is
22 often matched by the inequity of the tax sale purchaser's
23 inordinate gain. For the relatively small sum that the
24 owner was unable to pay, the purchaser can acquire the
25 entire estate. Thus, the purchaser may obtain acres for

1 cents, achieving through speculation what another has
2 lost through misfortune." That is not exactly the case
3 here, but you get the point. And the United States
4 Supreme Court, through Mr. Chief Justice Roberts said in
5 Jones v Flowers at 547 US 220, decided in 2006, these for
6 sales constitute an extraordinary power on the part of
7 the government which must be exercised cautiously." The
8 purpose of a tax sale, as Justice Weisberger continued at
9 page 389, citing Picerne v Sylvester, the purpose is
10 indicated, quoting Justice Weisberger, indicates "in
11 dictum that one purpose of tax sale legislation was to
12 vest real property in the hands of responsible persons
13 who would assume and pay their fair share of the tax
14 burden." Here you have a taxpayer that is regularly
15 paying the annual taxes and yet the Town wishes to
16 proceed to a tax sale when, at the outset other methods,
17 other legally sanctioned methods were available for the
18 Town to collect its \$119.52, or even if it went up to
19 \$200 or \$300, to get its \$200 or \$300, but the Town
20 sought a different course that is not contemplated, in my
21 view, by the legislature when it passed both the
22 distraint statute and the tax sale for real property
23 statute. Either party could have come to court to seek a
24 declaratory judgment over this controversy before it spun
25 out of control. The case here is, I think, and I

1 conclude, a result of bureaucratic legerdemain and a
2 taxing authority that had no sense of proportion
3 whatsoever and did not follow appropriate legal regimes
4 that are in place and allow for the collection of small
5 fees of money; or a prudent tax official or town counsel,
6 whoever got involved in this, could say for \$119, we are
7 not going to make a major case out of this and with legal
8 fees, aggravation and all the rest that goes along with
9 it. I also invite the attention of counsel to Capital
10 Properties, Inc. V. The City of Providence, 843 A.2d,
11 456, decided in 2004 or authored by then justice, now
12 Chief Justice Suttell, who speaks of how intertwined an
13 illegal collection may be with an illegal assessment. I
14 do not have to resolve whether the \$119.52 was properly
15 or improperly assessed. There was a vehicle for doing
16 that, but as I indicated for reasons best known to
17 itself, the company chose not to go that route. But that
18 did not then confer upon the Town the right or legal
19 prerogatives to do what it has chosen to do over the past
20 decade. We in the legal system, and hopefully those in
21 the other branches of government, should approach problems
22 of this nature with a sense of proportion, but none is
23 visible on the part of the Town. They have used a chain
24 saw to remove an aggravating splinter when tweezers would
25 have sufficed, but they have done that for reasons best at

1 known to themselves. What has happened here certainly is
2 an inequitable situation, or raises equitable terms to
3 the Court and indeed tax sales are equitable remedies,
4 and that's what first brought this matter here. This
5 case surely falls among those that shock the conscience
6 of the Court. When I say that, I don't mean my personal
7 sensibilities, which are frankly not that delicate, but I
8 mean the conscience of the community. It's something
9 that Benjamin Cardozo discussed in his classic, The
10 Nature of the Judicial Process, and that there is a
11 common sensibility of mores or morals that must be
12 applied in matters such as this, and surely if we were to
13 go outside and stop random people on the street, both
14 those without education or those that had a PHD, would
15 agree that a \$119 dispute should not somehow transmogrify
16 into a situation where the taxing official would then
17 collect, the taxing official would then collect \$69,000
18 or \$20,000 or \$5,000 for that matter. So the motion for
19 summary judgment is granted in part, that is the MacSteel
20 Corporation will not have to pay any money to the Town of
21 North Smithfield other than the \$119.52. As to statutory
22 interest, I'm going to use my discretion in waiving that
23 in its entirety. And for that authority I direct
24 counsel's attention to Commercial Associates v Tilcon
25 Gammino, Federal Supplementary, 939, a Federal District

1 of Rhode Island case decided in 1992. And see also
2 Martin v Lumbermen's Mutual Casualty, 559 A.2d 1028. The
3 money that is in the registry shall be returned, the
4 money that MacSteel paid into the registry shall be
5 returned forthwith to the company. As to attorney fees,
6 all that I can determine here today is that the
7 prevailing party is obviously MacSteel, but it seems to
8 me that some other judge will have to examine the
9 question of the amount of any such fees in light of the
10 history of this litigation and also it's incumbent upon
11 the party seeking attorney's fees to follow the
12 strictures of Colonial Plumbing at 464 A.2d 741, relative
13 to getting an expert by testimony or affidavit to give
14 opinions about the validity of the fees.

15 Okay. Thank you, gentlemen.

16 MR. SULLIVAN: I have one request, can I ask for
17 point of clarification, as far as attorney's fees -- to
18 prevent further litigation going forward on that, I
19 understand the structures and what the Court is talking
20 about, however, the Court is indicating it is awarding
21 attorney's fees just not the amount.

22 THE COURT: Yes, it is awarding attorney's fees,
23 yes. But the other judge may determine zero, I don't
24 know, but I do know that you are the prevailing party
25 that which you figured out yourself.

1 MR. HADDEN: The Court is not making determination
2 that attorney's fees should be awarded or that they're
3 entitled to attorney's fees, you're just indicating that
4 they're the prevailing party and just as you said there
5 are separate steps?

6 THE COURT: Yes, correct.

7 MR. HADDEN: Thank you, Your Honor.

8 (HEARING ADJOURNED)

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