

NO. 29711

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

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EVA R. KIKUHOTO
CLERK OF APPELLATE COURTS
STATE OF HAWAII

FILED

IN THE MATTER OF THE TAX APPEAL OF ROBERTA JO MAHLER and
ARNOLD N. MAHLER, Plaintiffs-Appellants, v. COUNTY OF
HAWAI'I, REAL PROPERTY TAX DIVISION, Defendant-Appellee

APPEAL FROM THE TAX APPEAL COURT
(Tax Appeal Case No. 07-0105)

MEMORANDUM OPINION

(By: Watanabe, Presiding J., Foley, and Fujise, JJ.)

Plaintiffs-Appellants Roberta Jo Mahler and Arnold N. Mahler (Arnold) (collectively, Mahlers) appeal, pro se, from (1) the Tax Appeal Court's¹ March 2, 2009 order denying the Mahlers' August 25, 2008 motion for summary judgment; and (2) the Tax Appeal Court's March 2, 2009 order granting summary judgment in favor of Defendant-Appellee County of Hawai'i, Real Property Tax Division (County).

We affirm.

BACKGROUND

Pursuant to a warranty deed recorded in the State of Hawai'i, Bureau of Conveyances on January 8, 2007, Rabo Agrifinance, Inc. (Rabo), a Delaware corporation that was the successor by merger to Rabo AgServices, Inc., an Iowa corporation, conveyed a 37.92-acre parcel of land located in Hāmākua, Hawai'i (Property) to the Mahlers. The Property had been used by Rabo for agricultural (grazing and pasturing) purposes, and the Mahlers continued said use after purchasing the Property.

On or about March 20, 2007, the County sent to Rabo, "c/o Mahler, Arnold/Roberta (New Owners) [,]" a real property assessment notice for the July 1, 2007 to June 30, 2008 fiscal year, informing Rabo and the Mahlers that the assessed and net-taxable value for the Property as of January 1, 2007 had

¹ The Honorable Gary W.B. Chang presided.

increased from "last year's" value of \$12,700.00 to \$1,398,100.00. The result of the increased assessment was that the tax for the Property increased from \$101.10 for fiscal year 2006-2007 to \$11,620.51 for fiscal year 2007-2008.

The Mahlers filed a timely notice of appeal to the County of Hawai'i, Real Property Tax Board of Review (tax review board), alleging, as grounds for the appeal, that "[t]here is lack of uniformity or inequality resulting from the use of illegal assessment methods or an error in the application of the methods." In support of their appeal, the Mahlers attached a copy of a letter addressed to Arnold from a vice-president for Rabo, which stated that (1) Rabo was not aware of any changes to the Property's tax assessment when it agreed to sell the Property to the Mahlers in October 2006 and signed the closing documents for the sale of the Property in January 2007; (2) during the entire time that Rabo owned the Property, Rabo used the Property for grazing and/or pasturing cattle; (3) Rabo did not receive from the County in 2006 a request to complete a "Non-Dedicated Agricultural Use Application" form; and (4) prior to Rabo's sale of the Property to the Mahlers, the County's assessed value of the Property was \$12,700.00.

Along with their notice of appeal, the Mahlers submitted to the County a "Non-Dedicated Agricultural Use Application[,]" requesting that the Property be assessed for tax purposes based on its nondedicated agricultural use.² The County

² Pursuant to Hawai'i County Code (HCC) § 19-57(a)(2) (2004), entitled "Nondedicated agricultural use assessment":

- (a) Lands classified and used for agriculture and which are not dedicated pursuant to section 19-60, may be assessed for real property tax purposes as established in subsection (a)(2) of this section and shall be subject to the following:
 -

- (2) The portion of land that is committed in specific nondedicated agricultural use shall be assessed at two times the dedicated agricultural use value as established by the director of finance under this chapter[.]

HCC § 19-60 (2005) is the ordinance that governs the dedication of land for
(continued...)

granted the application, effective January 1, 2008. Therefore, the Mahlers' tax for the Property was reduced substantially beginning with the 2008-2009 fiscal year.

The tax review board scheduled a hearing on the Mahlers' appeal for 9 a.m. on August 14, 2007. The Mahlers flew from their home in California to Hilo, Hawai'i to attend the hearing. However, on August 13, 2007, the Hawai'i County mayor signed a proclamation, declaring a state of emergency due to the threat of Hurricane Flossie. As a result, the Mahlers' hearing was canceled and the Mahlers were told that their hearing would be rescheduled.

The County subsequently mailed to the Mahlers a notice that their hearing had been rescheduled to September 5, 2007. The County claims that the certified mail return receipt attached to the notice of rescheduled hearing was signed³ on September 4, 2007. The Mahlers insist, however, that they did not receive the notice until September 7, 2007, after the hearing had already taken place. The Mahlers state that after receiving the notice from the County, Roberta "immediately called the Hilo Real Property Tax Division and was informed that the [tax review board] held the hearing on September 5 and denied our appeal."

On September 25, 2007, the tax review board filed a decision sustaining the County's assessed value for the Property.

On October 11, 2007, the Mahlers filed their notice of appeal to the Tax Appeal Court. Attached to their notice of appeal was a statement in which the Mahlers asserted the following bases for their appeal: (1) The assessed value of

²(...continued)
commercial agricultural use.

³ The County did not state who signed the receipt, and a copy of the receipt is not contained in the record on appeal. We observe that Rule 8.1 of the Rules of the Board of Review for the County of Hawai'i (1999) provides that "[i]n any appeal, all parties shall be served with a notice at least five (5) days before the date set for the hearing of the appeal. The notice shall state the time and place of the hearing." This rule appears to conflict with Hawaii Revised Statutes (HRS) § 91-9.5 (1993), which is part of the Hawaii Administrative Procedure Act that is applicable to contested case hearings before county boards. HRS § 91-9.5(a) provides: "Unless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing."

their Property lacked uniformity and consistency with the assessed values of the eight properties adjoining and contiguous to the Mahlers' Property, since only the Mahlers' Property had been subjected to an increase in real property taxes; (2) the use of the Property for grazing of cattle and pasturing had not changed; (3) prior to entering into the purchase agreement for the Property, they had personally reviewed the official County property-tax assessments for the Property for the past five years and had been assured by their real estate broker, attorney, and escrow agent that the approximately \$100.00 yearly tax was unlikely to change in the future as long as they did not modify the land use or build a structure on the Property; (3) they were not informed of the change in the Property's assessed value until receiving the tax bill in March 2007; (4) the intent of the relevant tax legislation was to impose a higher tax where land in agricultural use is converted "by the owner to any use other than agriculture[,]" and the Mahlers have not changed the use of the Property; and (5) they were denied due process when they were not "timely notified of a rescheduled hearing pertaining to [their] request for reconsideration of [their] tax assessment for 2007-2008 [sic.]"

On August 25, 2008, the Mahlers filed a motion for summary judgment, arguing that the "[County] erred in their [sic] assessment of 2007-2008 as there was a lack of uniformity and consistency. There is a need for equality of assessed valuations of similar adjoining contiguous properties." The Mahlers stated that "[a]s of date April 15, 2008, by written notice from the [County], the 2008-2009 tax assessment from the [County] has now been revised downward from \$1,398,100.00 to \$12,700.00 and the tax bill for the 2008-2009 year has been revised from \$11,620.51 to \$106.05." The Mahlers requested that the Tax Appeal Court issue an order modifying the 2007-2008 assessment for the Property to \$12,700.00 and an order modifying their tax bill for 2007-2008 to \$106.05.

On September 22, 2008, the County filed a response to the Mahlers' motion for summary judgment in which it also moved for summary judgment. The County initially observed that HCC

§ 19-57 "requires that owners requesting the non-dedicated agricultural use exemption file a *Non-Dedicated Agricultural Use Application* by December 31 of the preceding year. Upon approval of the application, the exemption would be applied to the following tax year." The County argued that

[b]y the Mahlers' own statements, the Mahlers did not own the subject parcel of this appeal until January of 2008 and so could not have been assessed at the \$12,700 non-dedicated agricultural use exemption under Section 19-57 of the [HCC] value that they are claiming. To be eligible for the non-dedicated agricultural use exemption value for subject tax year of 2007-2008, the Mahlers would have to have been owners of the parcel in 2007; however, the Mahlers were not the owners in 2007. In the Mahlers' appeal, they claim error by the County in citing to the fact that for the 2008-2009 tax year, the assessed value is again \$12,700. In point of fact, the 2008-2009 tax assessed value of \$12,700 evidences the proper application of the law by the County, since the Mahlers applied for the non-dedicated agricultural use exemption on April 9, 2007, pursuant to section 19-57(c)(1) as the owner of the [P]roperty pursuant to section 19-57(c)(3), and it was granted as of January 1 of the following year, which was 2008. Therefore applying section 19-57(c)(4), the exemption was applied to the tax year following the application approval, and the Mahlers were granted the non-dedicated agricultural use value of \$12,700 for the 2008-2009 tax year.

On March 2, 2009, the Tax Appeal Court entered an order granting summary judgment in favor of the County and an order denying the Mahler's motion for summary judgment. This appeal followed.

ISSUES ON APPEAL

Although the Mahlers raise numerous points on appeal,⁴

⁴ The Mahlers presented the following questions regarding the Tax Appeal Court's order granting the County's motion for summary judgment:

- I. Are pro se litigants entitled to a liberal interpretation when considering a motion for summary judgment?
- II. Is summary judgment appropriate where there are substantial issues of material fact to be tried, and where the pleadings on file, together with the affidavits, show that there are genuine issues as to numerous material facts?
- III. When appellee has failed to present any statement of fact(s) or exhibit(s) as to why appellants' assessment and taxes have been increased, and appellants refute any basis or validity for such increase, is summary judgment appropriate?
- IV. Is reversal of a summary judgment appropriate where the documents provided as exhibits by appellee in their

(continued...)

their arguments can be synthesized to four issues: (1) Whether the Tax Appeal Court erred in granting the County's motion to set aside default judgment, (2) whether they were denied due process because the Tax Appeal Court decided the merits of their appeal without holding a hearing, (3) whether the Tax Appeal Court erred in granting the County's motion for summary judgment, and (4) whether the Mahlers were entitled to have the Tax Appeal Court enter findings of fact and conclusions of law.

⁴(...continued)

application for summary judgment are totally void of any explanation why appellants' assessment and taxes were increased yet all such exhibits support the position of the appellants?

- V. Is the court bound to construe statutes [sic] so as to avoid absurd or unjust results?
- VI. Should legislations be construed to avoid inconsistency, contradiction and illogicality?
- VII. Is the prevailing goal of the courts toward disposition of litigation on the merits?
- VIII. Is the fundamental requisite of due process of law the opportunity to be heard?
- IX. Is the granting of summary judgment to appellee fatal to the constitutional adequacy provided to appellants when appellants have not had the opportunity to present genuine issues of material facts or be heard by the court below?
- X. Do the due process clauses of the fifth and fourteenth amendments place upon the court the duty of fairness, and without a hearing on the merits of the disputed claims, has the court denied appellants such rights by offending elementary standards of justice?
- XI. Is it an abuse of discretion if the trial court exceeds the bounds or [sic] reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant?
- XII. Does the court lack jurisdiction to entertain a motion for summary judgment by appellee when appellee has failed to respond to the notice of appeal?
- XIII. Is there a need for equality of assessed valuations of similar adjoining contiguous properties?
- XIV. Is an appellant entitled to findings of fact and conclusions of law when appellant files a request pursuant [sic] to HRAP (10f)?

(Bolded emphasis in original; formatting altered.)

DISCUSSION

A. The Tax Appeal Court Did Not Abuse Its Discretion in Setting Aside the Default Judgment

The Mahlers filed their notice of appeal on October 11, 2007. Thereafter, according to the record on appeal, the following events occurred:

- On October 11, 2007, the clerk of the Tax Appeal Court filed a notice of entry of appeal to the Tax Appeal Court and a certificate of service that attested that a copy of the notice of entry of appeal was served by the clerk on the following: Wes Takai (Takai), real property tax administrator for the County; Lincoln S. T. Ashida, corporation counsel for the County; and the Mahlers.
- On December 14, 2007, Takai filed with the Tax Appeal Court, the certificate of appeal to the Tax Appeal Court required by HRS § 232-18 (2001).⁵
- On February 15, 2008, the Tax Appeal Court issued a notice that a trial-setting status conference had been scheduled for April 7, 2008. At the conference, trial was scheduled to commence during the week of May 11, 2009.
- On April 14, 2008, the County filed a motion to dismiss the Mahlers' appeal on grounds that the Mahlers had

⁵ HRS § 232-18 provides:

Certificate of appeal to tax appeal court. Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any has been filed, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer's, county's, or assessor's appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal.

failed to effect service of their notice of appeal on the County. The County noted that it had not filed an answer due to the lack of service.

- On April 23, 2008, the Mahlers filed a motion for directed order, requesting that the Tax Appeal Court modify the 2007-2008 fiscal year tax assessment issued by the County from \$1,398,100.00 to \$12,700.00. The Mahlers also filed a memorandum of law in support of their motion and in opposition to the County's motion to dismiss. Attached to the Mahlers' motion were copies of a certified mail receipt, postmarked "10/09/2007[,]" and the return receipt for the certified mail addressed to "Dept. Finance, 101 Pauahi St Ste #4, Hilo, HI 96720" that appears to be signed by an "R. Rabago[.]"
- On May 8, 2008, the County filed a reply to the Mahlers' opposition to the County's motion to dismiss, noting that: "There is no 'R. Rabago' employed by the [County], Department of Finance or Real Property Tax Division. However, there is a 'R. Rabago' employed in the Machine Room of the County Clerk's Office." The County requested, if the Tax Appeal Court did not grant the County's motion to dismiss, that a copy of the notice of appeal be provided to the County and the County be given leave to file an answer to the notice of appeal.
- On May 13, 2008, the County filed its answer to the Mahlers' notice of appeal.
- Pursuant to an order filed on May 28, 2008 (May 28, 2008 order), the Tax Appeal Court ordered that (1) the Mahlers serve their notice of appeal upon the County on or before June 19, 2008 "in a manner required by law"; and (2) the County submit to the court an order dismissing appeal if the Mahlers do not serve a notice of appeal upon the County in a manner required by law on or before June 19, 2008.
- On October 15, 2008, the Mahlers filed a motion for

entry of default judgment. In their motion, the Mahlers alleged that they had complied with the Tax Appeal Court's May 28, 2008 order and served the notice of appeal upon the County, but the County "has never responded to the [May 28, 2008 order], nor has [the County] filed a response to [the Mahlers'] Notice of Appeal."

- On November 26, 2008, the County filed a motion for order setting aside entry of default judgment, requesting that the Tax Appeal Court enter an order "setting aside the Entry of Default filed October 15, 2008."⁶ In a declaration attached to the motion, a deputy corporation counsel stated that because the Mahlers had served their notice of appeal on the County by June 19, 2008 as directed by the Tax Appeal Court in the May 28, 2008 order, the County filed its answer on May 13, 2008 and was not required to submit to the Tax Appeal Court an order dismissing appeal.
- On January 28, 2009, the Tax Appeal Court entered an order granting the County's motion for an order setting aside the entry of default judgment. The Tax Appeal Court expressly clarified in its order that "at no time, did this court intend to enter a default judgment against [the County]. In any event, all relief accorded in the October 15, 2008 Entry of Default is nullified by this order."

The Mahlers claim on appeal that default judgment was correctly granted and should not have been set aside because the County did not respond to the notice of appeal and had no "meritorious defense." We disagree.

HRCP Rule 55(a) (1980) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has

⁶ The record on appeal contains neither an entry of default, nor an entry of default judgment, see Hawai'i Rules of Civil Procedure (HRCP) Rule 55, and it is unclear to us whether the Tax Appeal Court entered default or default judgment. See Casuga v. Blanco, 99 Hawai'i 44, 50, 52 P.3d 298, 304 (App. 2002).

failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." The record indicates that the County filed its answer to the notice of appeal on May 13, 2008. Additionally, the County filed a motion to dismiss and numerous other pleadings in defending its position on appeal. In First Hawaiian Bank v. Powers, 93 Hawai'i 174, 185, 998 P.2d 55, 66 (App. 2000), this court held that the filing of an answer and a motion to dismiss by a party constitutes a pleading or defense, thus precluding the entry of default and default judgment. Therefore, default judgment against the County was not appropriate in this case and any default judgment that may have been entered against the County was properly set aside.

B. Whether the Mahlers Were Denied Due Process

The Mahlers claim that they were denied due process because the Tax Appeal Court did not hold a hearing on their motion for summary judgment and "there [were] numerous issues of material fact which required a hearing." The record indicates, however, that on August 11, 2008, the Mahlers filed an application for hearing to be held by submission and specifically requested, in light of Arnold's medical condition, that the Tax Appeal Court "decide the Application for Summary Judgment by submission rather than requiring [the Mahlers] to be present at the hearing."

Therefore, there is no merit to the Mahlers' due-process claim.

C. The Tax Appeal Court Correctly Granted Summary Judgment in the County's Favor

It is undisputed in this case that the Property purchased by the Mahlers was, and is, currently being used for agricultural purposes and, as such, is eligible to be taxed at the lower rate for lands in nondedicated agricultural use. HCC § 19-57(c) (2004) sets forth the process for applying for the lower tax rate:

(c) Application; filings; assessment effective; renewal.

(1) The director [of finance for the County (director)] shall prescribe the form of the

nondedicated agricultural use application.

- (2) The application shall be filed with the director by December 31 of any calendar year.
- (3) The application for a nondedicated agricultural use assessment must be signed by all owners of the land being committed.
- (4) If the application is approved, the assessment based upon the use requested in the application shall be effective as of January 1 for the following tax year.
- (5) Renewal of the application shall be in such form and at such time as required by the director.

(Emphases added.)

Pursuant to HRS § 232-13 (2001),⁷ appeals from the tax review board to the Tax Appeal Court are heard de novo. The undisputed evidence in the record submitted to the Tax Appeal Court reveals that the Mahlers did not become the owners of the Property until January 8, 2007. Therefore, they could not, and did not, sign and file with the County by December 31, 2006 an application for a nondedicated agricultural-use assessment of the Property. Having failed to meet the deadline set by HCC § 19-57 for filing an application for nondedicated agricultural-use assessment, the Mahlers were not, as a matter of law, entitled to the lower tax rate for the Property for the 2007-2008 fiscal

⁷ HRS § 232-13 provides, in pertinent part:

Hearing de novo; bill of particulars. The hearing before the tax appeal court shall be a hearing de novo. Irrespective of which party prevails in proceedings before a state board of review, or any equivalent administrative body established by county ordinance, the assessment as made by the assessor, or if increased by the board, or equivalent county administrative body, the assessment as so increased, shall be deemed prima facie correct. Each party shall have the right to introduce, or the tax appeal court, of its own motion, may require the taking of such evidence in relation to the subject pending as in the court's discretion may be deemed proper. The court, in the manner provided in section 232-16, shall determine all questions of fact and all questions of law, including constitutional questions, involved in the appeal.

The jurisdiction of the tax appeal court is limited to the amount of valuation or taxes, as the case may be, in dispute as shown on the one hand by the amount claimed by the taxpayer or county and on the other hand by the amount of the assessment, or if increased by the board, or equivalent county administrative body the assessment as so increased.

year.

4. The Tax Appeal Court Was Not Required to Enter Findings of Fact and Conclusions of Law

The Mahlers contend that despite their request, the Tax Appeal Court did not enter findings of fact and conclusions of law. Pursuant to HRCF Rule 52(a) (1980), however, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under [Rule 56 (1980),]" which relates to motions for summary judgment. Therefore, in granting the County's motion for summary judgment, the Tax Appeal Court was not required to enter findings of fact and conclusions of law.

CONCLUSION

Based on the foregoing discussion, we affirm the orders entered by the Tax Appeal Court on March 2, 2009 that denied the Mahlers' August 25, 2008 motion for summary judgment and granted the County's motion for summary judgment.

DATED: Honolulu, Hawai'i, December 17, 2009.

On the briefs:

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