

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-308

NOVEMBER TERM, 2006

Ott Rutland, LLC	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior
	}	
Vermont Department of Taxes	}	
	}	DOCKET NO. 566-9-05 Wncv

In the above-entitled cause, the Clerk will enter:

Appellee Department of Taxes has moved to dismiss the appeal for lack of jurisdiction, arguing that the order appealed is not a final judgment.

By way of background, the Department assessed certain land gains taxes against taxpayer, and taxpayer sought a refund. The Department denied the refund by not acting on it in the six-month time period provided. Taxpayer appealed to the superior court, which remanded to the Commissioner of Taxes to issue a decision on the refund that would present findings of fact and conclusions of law for review. Taxpayer appealed the remand decision to this Court, also seeking a stay of the proceedings before the Commissioner. We denied the request for stay.

The Department argues the remand order does not meet our standard for a final, appealable judgment. ATo be final and appealable an order must end litigation on the merits or conclusively determine the rights of the parties, leaving nothing for the court to do but execute the judgment.@ In re Burlington Bagel Bakery, Inc., 150 Vt. 20, 21 (1988). Taxpayer contends that the superior court resolved the sole issue raised in his appeal: whether the Department waived any right to collect the tax by failing to issue a substantive decision on the requested refund within the six-month period. Taxpayer asserts that by remanding the matter to provide the Department with the opportunity to issue a substantive decision, the superior court conclusively answered that question.

It is apparent that the superior court=s order did not terminate the litigation between the parties. See, e.g., Larkin v. Burlington, 172 Vt. 566, 567 (2001) (holding that environmental court order remanding matter to planning commission was not final judgment). Nor does taxpayer explain why his appellate argument cannot be raised in the course of appealing the Commissioner=s decision

on remand. At most, taxpayer could have argued that the remand order was properly considered an appealable interlocutory ruling. But taxpayer declined to pursue an interlocutory appeal.

Because the order appealed is not a final judgment, the Department=s motion to dismiss the appeal is granted.

FOR THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice