

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 158-3-13 Wrev

CHRISTOPHER KATUCKI and
MARGARET KATUCKI,

Plaintiffs,

v.

TOWN OF NORWICH,

Defendant.

DECISION RE: PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter is before the court on Christopher Katucki and Margaret Katucki's (collectively, "Plaintiffs'") Motion for Partial Summary Judgment, filed August 2, 2013.

BACKGROUND

On July 11, 2012, Plaintiffs filed a written request with the Town of Norwich's ("Defendant's") Board of Abatement, seeking an abatement of the taxes assessed on Plaintiffs' property. Plaintiffs requested abatement in the amount of \$9,297.13. Defendant's Board of Abatement denied this request on February 13, 2013. On March 7, 2013, Plaintiffs filed the complaint in this action, arguing that the determination by Defendant's Board of Abatement was incorrect and that Plaintiffs were entitled to a \$9,297.13 judgment.

On May 29, 2013, Plaintiffs moved for summary judgment. By entry order filed July 5, 2013, the Court denied this motion, explaining that abatement is permissive, not mandatory and that, accordingly, Plaintiffs were not entitled to their requested money judgment.

On August 2, 2013, Plaintiffs filed the instant motion for partial summary judgment, asking the Court to reverse Defendant's Board of Abatement's decision regarding laches and to find that Plaintiffs' application for abatement satisfies the requirements of 24 V.S.A. § 1535(a)(4). Alternatively, Plaintiffs requested that the Court enter an order stating that the facts in Plaintiffs' Statement of Material Facts, dated May 28, 2013 are established in this case.

Defendant opposed Plaintiffs' motion on September 5, 2013, countering that its Board of Abatement did not abuse its discretion in making a determination regarding laches and that Plaintiffs' requests do not entitle them to abatement or any other relief.

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In Plaintiffs' Reply to the Town's Objection to Plaintiffs' Motion for Partial Summary Judgment, filed September 8, 2013, Plaintiffs contend that Defendant must correct the improper tax assessment of Plaintiffs' property and that the determination by Defendant's Board of Abatement is unsupportable as a matter of law.

DISCUSSION

To prevail on a motion for summary judgment, a movant must demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). In ruling on a motion for summary judgment, the court will take "all allegations made by the nonmoving party as true." *Richart v. Jackson*, 171 Vt. 94, 97 (2000).

The Court's review of governmental action under V.R.C.P. 75 is "limited to review of questions of law." *Garbitelli v. Town of Brookfield*, 2011 VT 122, ¶ 6, 191 Vt. 76. Such review "is deferential absent a clear statement of contrary intent." *Ketchum v. Town of Dorset*, 2011 VT 49, ¶ 15, 190 Vt. 507. Here, Plaintiffs have identified no reason why the Court should depart from this deferential standard of review.

In their motion for partial summary judgment, Plaintiffs make two general arguments: (1) that laches was an inappropriate reason for denying Plaintiffs' request for abatement and (2) that Defendant's Board of Abatement improperly determined that Plaintiffs were not entitled to abatement based on a mistake of the listers. Neither of these arguments is successful.

First, Defendant's Board of Abatement did not err when it determined that the doctrine of laches would bar Plaintiffs' recovery "even assuming there was *either* mistake or manifest error within the meaning of the statute." Board of Abatement Decision, dated February 13, 2013, ¶ 10. Even without considering the extreme deference this Court must afford decisions by Defendant's Board of Abatement, "laches is so much a matter of discretion... [that a ruling regarding laches] will not be disturbed unless clearly shown to be wrong." *Petition of Vermont Elec. Co-op, Inc.*, 165 Vt. 634, 635 (1994) (internal quotations omitted). Plaintiffs have identified no reason why this Court should overturn Defendant's Board of Abatement finding that laches would bar any recovery by Plaintiffs. Plaintiffs' arguments demonstrate only that Plaintiffs disagree with Defendant's Board of Abatement's decision regarding laches. Plaintiffs' disagreement is insufficient to warrant overturning Defendant's Board of Abatement's ruling.

Second, Plaintiffs are not entitled to summary judgment on any of their arguments against Defendant's Board of Abatement's application of 24 V.S.A. § 1535(a)(4). *Garbitelli* makes it clear that "[t]he language in the statute is entirely permissive and allows the Board to abate taxes, but does not require it to do so even if the taxpayer falls within one of the categories allowing for abatement." *Garbitelli*, 2011 VT 122, ¶ 14. None of Defendant's Board of Abatement's decisions with respect to 24 V.S.A. § 1535(a)(4) were improper or incorrect as a matter of law. The statute grants boards of


abatement almost complete discretion in determining whether abatement is appropriate. Here, Plaintiffs' unhappiness with Defendant's Board of Abatement's ultimate ruling does not make that ruling wrong. Plaintiffs have failed to prove that Defendant's Board of Abatement abused its discretion in making its abatement decision here. Accordingly, the Court will not set aside any of Defendant's Board of Abatement's rulings regarding 24 V.S.A. § 1535(a)(4) or its denial of abatement in this case. *See id.* (explaining that the court reviews a board of abatement's "decision denying abatement for abuse of discretion.")

Finally, the Court denies Plaintiffs' request for the facts in Plaintiffs' Statement of Material Facts dated May 28, 2013 to be treated as established in this case. V.R.C.P. 56(g) states that "[i]f the court does not grant all the relief requested by the motion, it **may** enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case." V.R.C.P. 56(g) (emphasis added). Some of the facts at issue were already admitted in Defendants' Answer. Plaintiffs offer no explanation for why the remaining facts should be treated as established in this case. Accordingly, the Court denies Plaintiffs' request to treat all of the facts listed in Plaintiffs' Statement of Material Facts as established.

ORDER

Plaintiffs' Motion for Partial Summary Judgment is hereby DENIED.

Dated at White River Junction, Vermont, this 14 day of November, 2013.



Honorable Harold E. Eaton, Jr.
Civil Division Judge

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