

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Davanne Realty v. Edison Township (A-25-09)

[NOTE: This is a companion case to Lucent Technologies v. Township of Berkeley Heights and 1717 Realty Association v. Borough of Fair Lawn, also decided today.]

Argued February 1, 2010 -- Decided March 17, 2010

PER CURIAM

Davanne Realty (Davanne) owns a commercial warehouse in Edison Township that it rents to a tenant. In conformity N.J.S.A. 54:4-34, the Tax Court dismissed Davanne's challenge to the assessed value of that property. Davanne appealed to the Appellate Division from the Tax Court's order, contending that the tax bill is a fine, forfeiture or penalty imposed in violation of the Excessive Fines Clause of the Eighth Amendment and Article I, Paragraph 12 of the New Jersey Constitution.

N.J.S.A. 54:4-34 is part of a comprehensive statutory scheme implementing this State's constitutional mandate to assess and tax real property "at the same standard of value" and "the general tax rate of the general taxing district." Under this system for valuing property, a municipality has a significant interest in the timely receipt of economic data for income-producing property. In furtherance of that interest, N.J.S.A. 54:4-34 authorizes the taxing district to request owners of income-producing property to provide "a full and true account" of income derived from the property within forty-five days of a written request, commonly known as a Chapter 91 request. If the owner fails to respond within the required time frame, the assessor must reasonably determine the full and fair value of the property based on the "information in his possession or available to him." In that circumstance, no appeal shall be heard from the assessor's valuation and assessment. This limitation on the right to appeal has been described as an "appeal-dismissal sanction." The property owner retains the right to challenge the reasonableness of the underlying data used by the assessor as well as the reasonableness of the methodology used by the assessor in arriving at the valuation.

Davanne did not respond to the Township of Edison's request for information on income derived from its property. Consequently, Edison's tax assessor valued Davanne's property at \$1,632,000 using the information available to him. Before the Tax Court, Davanne was afforded the opportunity but declined to raise a challenge based on the reasonableness of information or the methodology employed by the tax assessor. Instead, Davanne submitted a valuation based on income it derived from leasing the property in its effort to establish that the tax assessor over-stated the value of the property by \$315,600, resulting in a tax bill for 2007 that was higher than it should have been by approximately \$11,740. Davanne characterizes that \$11,740 amount as a fine, forfeiture or penalty imposed in violation of the federal and state constitutional prohibitions against excessive fines and forfeitures. The Tax Court rejected that claim.

On appeal, the Appellate Division concluded that the Tax Court properly rejected Davanne's claim. It noted that the effect of the appeal-dismissal sanction is limited to preclusion of "appeals asserting claims for re-evaluation based upon the economic data provided by the taxpayer." The Appellate Division noted that, consistent with that limited purpose, the property owner retains the right to challenge the reasonableness of the underlying data used by the assessor and the reasonableness of the methodology used by the assessor in arriving at the valuation and, upon a showing of good cause for failure to file a timely response to a proper request, the property owner may present that information. No amount may be added to a property owner's tax bill based on failure to respond to a municipality's request for information.

According to the Appellate Division, the Excessive Fines Clause of the Eighth Amendment, which applies to the states through the Fourteenth Amendment, limits the government's power to extract payments whether in cash or in kind as punishment for some offense. The Clause only limits the government's exercise of its prosecutorial

power, including the power to collect fines to punish excessively or on an arbitrary basis.

The Appellate Division reasoned that when a statute that is fairly characterized as remedial has some inevitable deterrent impact, Austin does not require characterization of the impact as punitive unless the only explanation for the extraction is a deterrent purpose. The Appellate Division further reasoned that the appeal-dismissal sanction imposed by N.J.S.A. 54-4-34 is not a punishment because it is rationally and reasonably related to and fully justified by the need to efficiently assess and collect property taxes based on property value. The Legislature's denial of an opportunity to present relevant information beyond a statutory deadline may further the government's interest in timely receipt of data by creating a reasonable incentive for meeting the deadline for response. But the statute can be explained without reliance on that incidental benefit. Taken together, the various provisions of N.J.S.A. 54:4-34 permit the timely assignment of property values and avoid the additional costs of post-assessment litigation necessitated by the property owner's inexcusable delay in providing relevant information. Because a property tax bill may not include a component that can be explained as a fine extracted to punish dilatoriness and no amount can be added to the bill as a penalty for delay, the intent to extract a payment designed as a punishment cannot have motivated the Legislature's adoption of the appeal-dismissal sanction. The panel concluded that there is no basis for it to find that the appeal-dismissal sanction was applied in this case to extract a payment as punishment. According to the Appellate Division, Davanne did not challenge the tax assessor's valuation at a reasonableness hearing. Consequently, it can only be assumed that the assessed value is based on nothing other than the information reasonably available to the tax assessor and a reasonable methodology.

The Supreme Court granted certification.

HELD: Judgment of the Appellate Division is **AFFIRMED** substantially for the reasons set forth in Judge Grall's thorough and thoughtful opinion. The statutory-appeal dismissal sanction does not violate the Excessive Fines Clause of the Eighth Amendment or the State Constitution.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY
A-25 September Term 2009

DAVANNE REALTY,

Plaintiff-Appellant,

v.

EDISON TOWNSHIP,

Defendant-Respondent.

Argued February 1, 2010 - Decided March 17, 2010

On certification to the Superior Court,
Appellate Division, whose opinion is
reported at 408 N.J. Super. 16 (2009).

Steven R. Irwin argued the cause for
appellants (The Irwin Law Firm, attorneys).

Martin Allen argued the cause for respondent
(DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis & Lehrer, attorneys).

Julian F. Gorelli, Senior Deputy Attorney
General, argued the cause for Attorney
General of New Jersey (Paula T. Dow,
Attorney General, attorney; Melissa H.
Raksa, Assistant Attorney General, of
counsel).

PER CURIAM.

The judgment of the Appellate Division is affirmed
substantially for the reasons set forth in Judge Grall's
thorough and thoughtful opinion. Davanne Realty v. Edison Twp.,
408 N.J. Super. 16 (2009).

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN,
WALLACE, RIVERA-SOTO and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-25

SEPTEMBER TERM 2009

ON CERTIFICATION TO Appellate Division, Superior Court

DAVANNE REALTY,

Plaintiff-Appellant,

v.

EDISON TOWNSHIP,

Defendant-Respondent.

DECIDED March 17, 2010
Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY _____

DISSENTING OPINION BY _____

CHECKLIST	AFFIRM	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	X	
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	7	