

DOCKET NO. NNH CV-20-6105481-S : SUPERIOR COURT  
LOCKLOAD, LLC : JUDICIAL DISTRICT  
v. : OF NEW HAVEN  
TOWN OF BRANFORD : JANUARY 13, 2021

Judicial District of New Haven  
SUPERIOR COURT  
FILED  
JAN 13 2021  
CHIEF CLERK'S OFFICE

**MEMORANDUM OF DECISION RE: MOTION TO DISMISS**

This action is a tax appeal. The defendant town has filed a motion to dismiss for lack of subject matter because the plaintiff did not file its complaint within two months of the mailing of the defendant’s notice of action as required by General Statutes § 12-117a. The plaintiff asserts that the time period was stayed by Governor Lamont’s Executive Orders 7G and/or 7I.

“[O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case.” (Internal quotation marks omitted.) *Figueroa v. C & S Ball Bearing*, 237 Conn. 1, 4, 675 A.2d 845 (1996).

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “[J]urisdiction over the person, jurisdiction over the [subject matter], and jurisdiction to render the particular judgment are three separate elements of the jurisdiction of a court.” (Internal quotation marks omitted.) *Morgan v. Hartford Hospital*, 301

Conn. 388, 401, 21 A.3d 451 (2011).

Section 12-117a provides, in relevant part: “Any person . . . claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom . . . to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court.”

The plaintiff filed an application with the defendant appealing its valuation. Following a hearing on March 19, 2020, the defendant’s board of assessment appeal determined that there would be no change in valuation. The defendant’s board chair mailed notice of this determination to the plaintiff’s attorney on March 20, 2020, thus commencing the two-month appeal period, which expired on May 20, 2020. The plaintiff did not file this appeal with the Superior Court until June 18, 2020, after the expiration of the appeal period.

On March 10, 2020, Governor Lamont declared a public health emergency pursuant to General Statutes § 19a-131a and a civil preparedness emergency pursuant to General Statutes § 28-9 in response to the COVID-19 pandemic. Section 28-9 provides, in relevant part: “(a) In the event of serious disaster, enemy attack, sabotage or other hostile action or in the event of the imminence thereof, the Governor may proclaim that a state of civil preparedness emergency exists, in which event the Governor may personally take direct operational control of any or all parts of the civil preparedness forces and functions in the state. . . . (b) Upon such proclamation, the following provisions of this section and the provisions of section 28-11 shall immediately

become effective and shall continue in effect until the Governor proclaims the end of the civil preparedness emergency: (1) Following the Governor's proclamation of a civil preparedness emergency pursuant to subsection (a) of this section or declaration of a public health emergency pursuant to section 19a-131a, the Governor may modify or suspend in whole or in part, by order as hereinafter provided, any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or requirement, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health. . . . (7) The Governor may take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state, to prevent or minimize loss or destruction of property and to minimize the effects of hostile action."

"In enacting § 28-9, the General Assembly made a policy determination that in the event of a serious disaster resulting in a declaration of a civil preparedness emergency, the governor of this state would be vested with broad powers to take steps to protect the public health." (Internal quotation marks omitted) *Casey v. Lamont*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X06-CV-20-6055406-S (September 16, 2020, Bellis, J.), *aff'd*, \_\_ Conn. \_\_, \_\_ A.3d \_\_. Additionally, the court in *Casey* reasoned that "by looking at the plain language of § 28-9, which provides that once the governor proclaims the existence of a state of civil preparedness emergency, he may modify or suspend in whole or in part . . . any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or requirement, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health . . . and he "may

take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state . . . .” (Citations omitted; internal quotation marks omitted.) Id.

The plaintiff contends that the Governor’s Executive Order 7G, issued on March 19, 2020, extended the time period. Paragraph 2 of the Executive Order essentially suspended court deadlines and time limitations “for the duration of this public health and civil preparedness emergency, unless earlier modified or terminated by me. . . .”

Executive Order 7I was issued two days later on March 21, 2020. Inter alia, the Governor noted the legislative requirements placed upon municipalities to complete specific duties such as Net Grand Lists, Assessor Reports, Board of Assessment Appeals applications and decisions and Grand Lists of Taxable and Tax-Exempt Property. Paragraph 19 (h) provides, in relevant part, “Any Covered Law prescribing the procedure for commencement of an appeal of a decision to the Superior Court and associated service of process is suspended and modified to permit any such appeal to be commenced by a proper officer by electronic mail notice on the designated municipal clerk (including any town, city, borough, or district clerk). The time period to commence said appeal shall remain unchanged. Municipalities shall clearly post the email address to be used for the electronic service on their website.”

This subparagraph supersedes Executive Order 7G, paragraph 2. It provides for the continuation of the appeal process so that municipalities can fulfill their legislatively required tasks without delay. Effective March 21, 2020, the appeal period set forth in § 12-117a has been two months from the date of notice.

The plaintiff also contends that paragraph 15 of Executive Order 7I extended the filing deadline of § 12-117a. Paragraph 15 provides that certain deadlines, including those in General Statutes §§ 12-110, 12-111, 12-117 and 12-120 are suspended. The subject statute, § 12-117a was not included in paragraph 15. Paragraph 15 does not provide for suspension of the time deadlines contained in § 12-117a.

“Appeals to courts from administrative agencies exist only under statutory authority. . . . A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created. . . . Such provisions are mandatory, and, if not complied with, the appeal is subject to dismissal.” *Chestnut Point Realty, LLC v. East Windsor*, 158 Conn. App. 565, 570, 119 A.3d 1229 (2015), *aff’d*, 324 Conn. 528, 153 A.3d 636 (2017).

Lastly, the plaintiff contends that the defendant’s offices were closed during the two-month appeal period, precluding service of the appeal. Executive Order 7I, paragraph 19 (h) specifically provides for service by email. Service was not precluded by a closing of offices.

The plaintiff’s time to file an appeal with the Superior Court expired on May 20, 2020, pursuant to § 12-117a. An appeal filed thereafter must be dismissed for lack of subject matter jurisdiction.

**ORDER**

The motion to dismiss (101.00) is granted. The objection to same (104.00) is overruled.

The Court,



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Robert E. Young, J.