Affirmed and Opinion filed November 30, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00445-CV

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NATIONAL CHURCH RESIDENCES OF ALIEF, TEXAS, Appellant

V.

**ALIEF INDEPENDENT SCHOOL DISTRICT,
HARRIS COUNTY, AND CITY OF HOUSTON, Appellees**

**On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 98-32483**

O P I N I O N

National Church Residences of Alief, Texas, appeals from an adverse judgment in a delinquent property-tax case. Because appellant at trial introduced no evidence rebutting appellees' prima facie case, we affirm the judgment of the court below. We deny as moot appellee Alief Independent School District's Motion to Strike Documents from Appellant's Brief and to Consider Case Without Necessity of Oral Argument and deny the school district's Motion for Damages for Filing a Frivolous Appeal, both filed October 5, 1999.

I. Background

On July 10, 1998, the school district filed suit against appellant for the recovery of delinquent 1996 property taxes assessed against improvements owned by appellant on certain land owed by appellant. Appellees Harris County and City of Houston intervened, seeking taxes on the same improvements.

On January 4, 1999, appellant filed a Third-Party Petition, seeking to add the Harris County Appraisal District as a third-party defendant. In its pleading, appellant alleged that it purchased the land in question in 1995. On January 1, 1996, appellant alleged, there were no completed improvements on the land. For tax year 1996, appellant contends, it paid all timely noticed and assessed property taxes. Appellant alleges that, pursuant to section 11.18 of the Tax Code, it applied for and received from the appraisal district a tax exemption for tax year 1997. Coincidentally, in June 1997, appellant alleges, the appraisal district delivered to appellant a "Notice of Appraised Value" dealing with tax year 1996. Appellant contends the notice purported to establish additional taxable value in connection with improvements to the land for tax year 1996.[1] In its pleadings, appellant contends that because of certain invalid procedures followed by the appraisal district, the additional assessment for tax year 1996 was void. Appellant attempted to add the appraisal district as a defendant in the suit in which it was defending itself against the delinquent-tax allegations. After a January 11, 1999, hearing in connection with the third-party petition and appellant's motion seeking a continuance, the court apparently denied appellant's motions.

At trial on February 1, 1999, appellees introduced into evidence without objection certified copies of the 1996 tax records. Appellant introduced no evidence, but cross-examined appellees' attorneys in connection with their fee arrangements with their clients and asked whether certain notice had been given. The court, sitting without a jury, entered judgment for appellees. Appellant filed motion for judgment N.O.V., in the alternative, a motion for reconsideration or for a new trial, which was denied April 6, 1999.

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[1] In its appellate brief, appellant contends that it mistook this notice regarding tax year 1996 as an erroneous notice for tax year 1997, for which it was been granted tax exempt status. Appellant argues that it did not discover its error until the statutory appeal deadline for contesting the notice for tax year 1996 had lapsed. Although appellant relates its version of the events in its pleadings and in its appellate brief, it offered no supporting evidence at trial. Appellees purport to contradict the version of the events appellant relates in its statement of facts. *See* TEX. R. APP. P. 38.1(f). We include appellant's version of events for informational purposes only. We do not consider it evidence for purposes of this opinion.

II. Discussion

A. Third-party defendant

It its first two arguments, appellant complains that the court below erred in refusing to hear and consider its third-party petition attempting to add the appraisal district as a third-party defendant and erred in dismissing appellant's third-party action against the appraisal district.

Before a case is called for trial, additional parties may be brought in by the defendant upon such terms as the court may prescribe, but not at a time nor in a manner to delay unreasonably the trial of the case. *See* TEX. R. CIV. P. 37. A defendant, as a third-party plaintiff, may bring in as a defendant a party who is or may be liable to it or to the plaintiff for all or part of the plaintiff's claims against it. *See* TEX. R. CIV. P. 38(a). The third-party plaintiff must obtain leave of court if it files the third-party petition later than thirty days after it serves its original answer. *See id.* We review a trial court's decision on questions of joinder of parties and causes of action under an abuse of discretion standard. *See Hamilton v. Hamilton*, 280 S.W.2d 588, 591 (Tex. 1955); *Williamson v. Tucker*, 615 S.W.2d 881, 886 (Tex. Civ. App.—Dallas 1981, writ ref'd n.r.e.).

Because appellant filed its third-party petition on January 4, 1999, more than thirty days after it served its original answer on September 14, 1998, leave of court was required. Moreover, the third-party petition was filed about a week before the original date set for trial, January 11, 1999. The record does not reveal why the court below denied appellant's request to add a defendant.

A trial court has wide discretion on questions of joinder of parties and claims. The court may have been concerned about unreasonably delaying the trial. Appellant has not demonstrated that the court below abused that discretion by failing to add a third party defendant approximately two weeks before trial. Moreover, appellant's complaint against the appraisal district concerns the validity of its assessment notice.[2]

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[2] We also note that appellant seems to argue that its valuation was increased without notice and that such increase is, therefore, void. Where a taxpayer's valuation is increased without prior notice having been given, such increase is a void act and is be subject to challenge at any time. *See Garza v. Block Distributing Co.*, 696 S.W.2d 259, 262 (Tex. App.—San Antonio 1985, writ ref'd n.r.e.). We further note that the *Garza* court found that a purported increase in a taxpayer's valuation was void even where the (continued...)

The court below did not abuse its discretion in failing to add a third-party defendant.

Appellant also apparently filed two verified motions for continuance, the first on January 4, 1999, and the second on January 29, 1999, two days before trial. Both motions sought additional time for discovery in connection with the requested third-party claim against the appraisal district. The second motion also sought additional time to file a motion for summary judgment, which was appended to the continuance motion. Neither continuance motion was included in the appellate record, but file-stamped photocopies of the motions were included as appendices to appellant's brief. Appellees do not suggest that the motions were not filed.

The trial court has broad discretion to deny a continuance. *See* TEX. R. CIV. P. 251; *Hernandez v. Heldenfels*, 374 S.W.2d 196, 202 (Tex. 1963). We will not overturn the trial court's decision unless the record discloses a clear abuse of discretion. *See Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex. 1986). Here, appellant complains of the denial of the continuance only in connection with the third-party issue. We have determined that the trial court did not abuse its discretion in failing to add the appraisal district as a third-party defendant. The trial court's action, thus, obviated the need for continuance in connection with discovery as to the third-party defendant. We also note that appellant acknowledges in its pleadings that it received the contested notice in June 1997. The record shows that the school district originally filed suit in July 1998. At the court's motion hearing on January 11, 1999, appellant's attorney told the court that he had not acted before because "I had a full plate the last two months." He also said his work as lead attorney in another suit kept him busy. The record does not disclose that the trial court clearly abused its discretion by denying the continuance motion. We overrule appellant's first and second appellate issues.

B. 15% Penalty

In its third and fourth appellate issues, appellant questions whether (1) the trial court erred in awarding appellees judgment for the 15% "additional penalty for collection costs" pursuant to section 33.07 of the Tax Code absent evidence that appellees provided required statutory notice of such claim to

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[2] (...continued)
appraisal board was not made a party to the suit.

appellants and (2) trial court erred in awarding the 15% penalty where the June 1997 delivery date of the notice of additional assessment meant that the taxes in question could not possibly have been delinquent on July 1 of the year in which they became delinquent.

> In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax and penalties imposed and interest accrued constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax alleged to be delinquent against the property and the amount of penalties and interest due on that tax as listed are the correct amounts.

TEX. TAX. CODE ANN. § 33.47(a) (Vernon Supp. 2000). Once the taxing authority meets its initial burden, the burden of introducing evidence shifts to the defendant taxpayer to introduce its defenses. *See Alamo Barge Lines, Inc. v. City of Houston*, 453 S.W.2d 132, 134 (Tex. 1970).

A taxing unit or appraisal district may provide that taxes that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30 of the Tax Code. *See* Act of Aug. 10, 1981, 67th Leg., 1st C.S., ch. 13, §130, 1981 Tex. Gen. Laws 117, 168-69 (amended 1999) (current version at TEX. TAX CODE ANN. § 33.07 (Vernon Supp. 2000)). The amount of the penalty may not exceed 15% of the amount of taxes, penalty, and interest due. *See id*. If the taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver a notice of delinquency and of the penalty to the property owner at least thirty and not more than sixty days before July 1. *See* § 33.07(d).

Here, the taxing authorities — the school district, the city of Houston, and Harris County — introduced certified copies of the delinquent-tax roll or certified copies of the entries showing the property and the amount of taxes and penalties imposed and the interest accrued. These certified copies constituted prima facie evidence that each person charged with a duty relating to the tax or penalty had complied with the statute. We take this to mean that the records constitute prima facie evidence that notice required of Section 33.07(d) was delivered at least thirty and not more than sixty days before July 1. At the point during the trial at which the taxing units introduced their prima facie evidence, the burden shifted to appellant

to introduce evidence rebutting the prima facie case. Appellant introduced no evidence. At trial, appellant established that the attorneys for the taxing districts had no first-hand knowledge of whether the notice required of Section 33.07(d) had been delivered. This was not sufficient to rebut the statutory presumption that each person had done that which was required by the Tax Code.

Appellant seems to suggest that the taxing units had the burden of proving notice. The taxing units met their initial burden by introducing the certified copies. Appellant failed to rebut that statutory presumption.

Appellant further argues that it received notice of the additional assessment for tax year 1996 in mid-June 1997. It argues that the taxes associated with the additional assessment were not due, and any penalties did not begin to accrue, until August 31-September 1, 1997. Thus, it contends, the taxes did not "remain" delinquent on July 1, 1997, as required by statute, and thus the penalty under Section 33.07 cannot logically apply.

Appellant introduced no evidence supporting its allegation that it received notice of additional assessment for tax year 1996 in June 1997. Nor did it introduce evidence that the additional taxes were due August 31-September 1, 1997, or that the penalties began to accrue at that time. Appellant has attached to its First Amended Brief an appendix containing what appear to be photocopies of tax notices purporting to support its allegations These photocopies were not introduced at trial and do constitute evidence. We do not consider them. Appellant also attached to its brief a copy of a summary judgment motion with a supporting brief, neither bearing a file stamp but apparently appended to the aforementioned motion for continuance, and an unsigned affidavit setting out its improper-notice defense. Nothing in the appellate record shows that the summary judgment motion or supporting brief and affidavit were served on other parties or filed with the trial court, except as an attachment to the continuance motion. We do not consider the motion, the supporting brief, or the unsigned affidavit part of the appellate record.

The trial court, considering the evidence before it at trial, did not err in awarding the 15% penalty sought by the taxing units. We overrule appellant's third and fourth appellate issues.

III. Conclusion

Having overrule all appellant's appellate issues, we affirm the judgment of the court below.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed November 30, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Amidei.

Do Not Publish — TEX. R. APP. P. 47.3(b).