

NO. X03 CV15-6062286S : SUPERIOR COURT  
THE TOWN OF REDDING, ET AL : COMPLEX LITIGATION DOCKET  
VS : AT HARTFORD  
GEORGETOWN LAND DEVELOP :  
MENT COMPANY, LLC, ET AL- SEPTEMBER 14, 2016

MEMORANDUM OF DECISION ON  
CROSS-MOTIONS FOR SUMMARY JUDGMENT

In this foreclosure action, the plaintiffs the Town of Redding (town) and the Georgetown Fire District (fire district) and the defendants RJ Tax Lien Investments, LLC (RJ) and U.S. Bank, National Association (U.S. Bank)—who are assignees of the liens of the nonappearing defendant the Georgetown Special Taxing District (taxing district) have filed cross motions for partial summary judgment on the issue of their respective lien priorities.<sup>1</sup> The parties have also filed a joint stipulation of facts in support of their cross motions.

The parties stipulate to the following facts for the purposes of summary judgment:

“1. The properties which are the subject of this foreclosure are located in the [town] and are now, and were at all dates when the same went into the relevant tax lists, owned by Defendant Georgetown Land Development Company, LLC. That entity had commenced but has not yet completed a mixed-use development project at the site.”

“2. The [town] is a municipal corporation empowered by Connecticut General Statutes § 7-148 (c) (2) (B) and § 12-122 to assess, levy, and collect real estate taxes on the properties which are the subject of this foreclosure.”

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<sup>1</sup> Although there are several other parties to this action, for the sake of clarity, the town and the fire district will be referred to as the “plaintiffs,” RJ and U.S. Bank will be referred to as the “defendants,” and the four collectively will be referred to as the “parties.”

“3. The [town] duly and properly assessed and levied real estate taxes on the properties which are the subject of this foreclosure for the 2009 through 2014 Grand List years, inclusive, and has properly continued its liens thereon (except the 2014 Grand List year for which continuance is not yet legally required). No part of these taxes has been paid, and they total approximately \$3,055,802.01 (through December 31, 2015).”

“4. The [fire district] is a fire district created by Special Act No. 33-84 to provide fire and emergency services, and is empowered by Connecticut General Statutes § 7-328 (a) to levy and collect real estate taxes on the properties which are the subject of this foreclosure.”

“5. The [fire district] duly and properly assessed and levied real estate taxes on the properties which are the subject of this foreclosure for the 2009 through 2014 Grand List years, inclusive, and has properly continued its liens thereon (except the 2014 Grand List year for which continuance is not yet legally required). No part of these taxes has been paid and they currently total approximately \$145,069.00 (through December 31, 2015).”

“6. The [taxing district] is a special taxing district created by Special Act No. 05-14 as amended by Public Act No. 06-163 and Public Act No. 07-196. The boundaries of the [taxing district] encompass approximately 51 acres of land largely, but not completely, comprised of the properties which are the subject of this foreclosure, as presented on the maps attached hereto. The [taxing district] was established to facilitate the acquisition and financing of the public infrastructure and other public facilities necessary for development of the mixed-use development project within the [town].”

“7. The [taxing district] is empowered by Special Act No. 05-14 as amended by Public Act No. 06-163 and Public Act No. 07-196 to levy and collect real estate taxes on the properties which are the subject of this foreclosure. It has assessed and levied real estate taxes on

the properties which are the subject of this foreclosure for the 2007 through 2014 Grand List years, inclusive, and has continued its liens thereon (except the 2014 Grand List year for which continuance is not yet legally required). According to the land records as of the commencement of this action, the [taxing d]istrict remains the holder of the liens for the taxes it levied in the 2008 Grand List year and the 2013, 2014, and 2015 Grand List years, and has assigned certain liens as reflected below. The total of all [taxing district] unpaid taxes total approximately \$19,992,861.84 (through December 31, 2015).”

“8. The Defendant Georgetown Land Development Company, LLC owns all or nearly all of the property within the District’s boundaries, and therefore controls the [taxing [d]istrict’s Board of Directors.”

“9. The [taxing district] has assigned its liens securing its real estate taxes on the properties which are the subject of this foreclosure for the 2007 Grand List year to [RJ], an affiliate of Georgetown Land Development Company, pursuant to Connecticut General Statutes § 12-195h. They currently total approximately \$1,159,692 (through December 31, 2015).”

“10. The [taxing district] has assigned its liens securing its real estate taxes on the properties which are the subject of this foreclosure for the 2009 through 2012 Grand List years, inclusive, to [U.S. Bank] pursuant to Connecticut General Statutes § 12-195h in exchange for forbearance against enforcement of defaulted General Obligation Bonds, Series 2006A of the [taxing district]. They currently total approximately \$13,284,821 (through December 31, 2015). This defendant claims to be the assignee of the [taxing d]istrict’s liens for the 2013, 2014, and 2015 Grand List years as well under an unrecorded assignment agreement.”

“11. The liens of all real estate taxes levied by the [town], the [fire district], and the [taxing district] have precedence and priority over all sewer assessments and sewer use charges

levied by the Plaintiff The Town of Redding Water Pollution Control Authority pursuant to Connecticut General Statutes § 7-254(b) and § 7-258(a).”

#### DISCUSSION

“[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Stuart v. Freiberg*, 316 Conn. 809, 820-21 (2015). In the present case, the parties have stipulated as to the essential facts and the only issues left in determining the priority of the liens are ones of statutory interpretation. “[S]tatutory interpretation is a question of law”; *Woodrow Wilson of Middletown, LLC v. Connecticut Housing Finance Authority*, 294 Conn. 639, 644 (2010); and is, therefore, amenable to summary judgment. See *Mozelski v. Thomas*, 76 Conn. App. 287, 290 cert. denied, 264 Conn. 904 (2003) (“[t]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law” [internal quotation marks omitted]).

The town argues that under the provisions that created the taxing district “unambiguously subordinates its tax liens to those of the town,” and that the defendants’ reading of those provisions “would render its key language superfluous.” The town further contends that “as a secondary quasi-municipal entity, the [taxing district’s] jurisdiction and powers are presumed to be junior to those of its forum town in the absence of explicit language to the contrary” and the defendants’ interpretation of the provisions that created the taxing district “would lead to the absurd result that the District’s sole landowner would be both empowered and highly

incentivized to effectively nullify the [t]own's power to tax its property." The fire district similarly argues that the town has lien priority over the taxing district based on the clear language of the relevant acts. It additionally argues that, because its liens are "equal in priority to the liens of the [t]own" under General Statutes § 12-172, they, therefore, also have priority over those of the taxing district. The defendants argue that the liens of the taxing district are municipal liens, just like the town's and the fire district's, and, therefore, are equal in priority with those of the town and the fire district and, as the assignees of the taxing district's liens, they share that priority.<sup>2</sup>

The taxing district was created through No. 05-14 of the 2005 Special Acts as amended by No. 06-163 of the 2006 Public Acts and No. 07-196 of the 2007 Public Acts. Section 4 (b) (3) of Public Act 07-196 provides: "In order to provide for the collection and enforcement of its taxes, fees, rents, benefit assessments and other charges, the district is hereby granted all the powers and privileges with respect thereto as districts organized pursuant to section 7-325 of the general statutes, and as held by municipal corporations or as otherwise provided in this section. Such taxes, fees, rents or benefit assessments, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as delinquent property taxes. Each such lien may be continued, recorded and released in the manner provided for property tax liens and shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding. Each such lien may be continued, recorded and released in the manner provided for property tax liens."

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<sup>2</sup> The defendants also argue that they have been misjoined as defendants, but "[t]he exclusive remedy for misjoinder of parties is by motion to strike." (Internal quotation marks omitted.) *McCart v. Shelton*, 81 Conn. App. 58, 61, 837 A.2d 872 (2004).

Both the plaintiffs and the defendants contend that this subdivision supports their contention regarding lien priority. The plaintiffs contend that the specific language indicating the taxing district's liens "shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding" indicates that their liens take precedence over those of the defendants. The defendants contend that the part of the subdivision giving them "all the powers and privileges with respect thereto as districts organized pursuant to section 7-325" gives them the same powers as the town and the fire district and that the language stating their liens "shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding" simply means that the taxing district's "liens do not automatically take priority over the [t]own's liens." (Emphasis omitted.) The plaintiffs respond that, where the legislature has used similar language in other statutes, it has meant subordination not parity and that where the legislature has intended parity of priority it has used different terminology.

Districts organized pursuant to General Statutes § 7-325 have equal lien priority to municipalities. *Stratford v. Thorough*, Superior Court, judicial district of Fairfield, Docket No. CV-12-6030347-S (April 21, 2015, *Jennings, J.T.R.*) (60 Conn. L. Rptr. 216, 217). General Statutes § 7-328 provides, in relevant part regarding districts created under § 7-325: "[T]he district and the treasurer thereof shall have the same powers as towns and collectors of taxes to collect and enforce payment of such taxes, *and such taxes when laid shall be a lien upon the property in the same manner as town taxes, and such liens may be continued by certificates recorded in the land record office of the town, and foreclosed in the same manner as liens for town taxes or enforced in accordance with any provision of the general statutes for the collection of property taxes.* (Emphasis added.) Additionally, General Statutes § 12-195b (b) provides: "On and after July 1, 1999, and except as otherwise provided by law, a notice of lien upon

personal property for taxes payable to a municipality shall, once perfected under part 5 of article 9 of title 42a, *have priority over all previously perfected liens and security interests and other encumbrances of record under the Connecticut Uniform Commercial Code. If more than one municipality perfects such a notice of lien on the same day, the priority of such liens shall be determined by the time of day such liens were perfected, and if perfected at the same time, the lien for the highest tax amount shall take precedence.* As used in this section, ‘municipality’ means any town, consolidated town and city, consolidated town and borough, borough, district, as defined in section 7-324, and any city not consolidated with a town.” (Emphasis added.) As a district organized pursuant to § 7-325 is one “as defined in section 7-324,” such a district would count as a municipality under § 12-195b (b).

Furthermore, according to General Statutes § 12-172, “[t]he interest of each person in each item of real estate, which has been legally set in his assessment list, shall be subject to a lien for that part of his taxes laid upon the valuation of such interest, as found in such list when finally completed, as such part may be increased by interest, fees and charges, and a lien for any obligation to make a payment in lieu of any such taxes, as defined in section 12-171. Such lien, unless otherwise specially provided by law, shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which such tax, or the first installment thereof, became due until two years after such tax or first installment thereof became due and, during its existence, *shall take precedence of all transfers and encumbrances in any manner affecting such interest in such item, or any part of it.* (Emphasis added.) General Statutes § 12-171 states that “‘municipality’, wherever used in sections 12-172 to 12-177, inclusive, has the same meaning as that given it in section 12-141. . . .” According to General Statutes § 12-141, “[m]unicipality’ . . . includes each town, consolidated town and city,

consolidated town and borough, city, borough, school district, fire district, fire and sewer district, sewer district, lighting district and improvement association and each municipal organization and taxing district not previously mentioned,” meaning that districts created pursuant to § 7-325 are municipalities for the purposes of § 12-172. Thus, as this statutory scheme indicates, districts organized pursuant to § 7-325 have the same lien priority as municipalities.

Nevertheless, as the plaintiffs point out, the taxing district was not organized pursuant to § 7-325. It was created by Special Act 05-14 and, via Public Act 07-196, “granted all the powers and privileges with respect thereto as districts organized pursuant to section 7-325 of the general statutes, and as held by municipal corporations or as otherwise provided in this section.” That same public act, however, specifically addresses the liens created pursuant to the districts taxing power, providing, in part, that “[s]uch taxes, fees, rents or benefit assessments, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as delinquent property taxes. Each such lien may be continued, recorded and released in the manner provided for property tax liens and *shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding. . . .*” (Emphasis added.) This provision seems to give the liens of the town p priority over those of the taxing district.

Our Supreme Court has written concerning interpreting statutes: “[w]hen construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra textual evidence of the meaning of the statute

shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . An additional principle of statutory construction . . . is that the legislature is always presumed to have created a harmonious and consistent body of law. . . . [T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter. . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction.” (Citation omitted; internal quotation marks omitted.) *Brennan v. Brennan Associates*, 316 Conn. 677, 684-85, 113 A.3d 957 (2015).

The conflict in interpreting the lien priority is between general statutory language applying to organizations created pursuant to § 7-325 and specific language applying to the taxing district. There is a “well established principle of statutory interpretation that requires courts to apply the more specific statute relating to a particular subject matter in favor of the more general statute that otherwise might apply in the absence of the specific statute. [I]t is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling. . . . The provisions of one statute which specifically focus on a particular problem will always, in the absence of express contrary legislative intent, be held to prevail over provisions of a different statute more general in its coverage.” (Internal quotation marks omitted.) *Studer v. Studer*, 320 Conn. 483, 497-98, (2016).

The general language gives organizations created pursuant to § 7-325 “a lien upon the property in the same manner as town taxes . . . and foreclosed in the same manner as liens for town taxes or enforced in accordance with any provision of the general statutes for the collection of property taxes”; General Statutes § 7-328; which “shall take precedence of all transfers and encumbrances in any manner affecting such interest in such item, or any part of it”; General Statutes § 12-172; and whose “priority [with respect to municipal liens] shall be determined by the time of day such liens were perfected, and if perfected at the same time, the lien for the highest tax amount shall take precedence.” General Statutes § 12-195b (b). The more specific legislation, found in Public Act 07-196, § 4, granted the taxing district “all the powers and privileges with respect thereto as districts organized pursuant to section 7-325 of the general statutes, and as held by municipal corporations or as otherwise provided in this section” and provided that, “[s]uch taxes, fees, rents or benefit assessments, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as delinquent property taxes,” but specifically states that “[e]ach such lien . . . shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding.” Therefore, Public Act 07-196, § 4, which applies specifically and only to the taxing district, although giving the district “all the powers and privileges with respect thereto as districts organized pursuant to section 7-325,” circumscribes those powers as “otherwise provided in th[e] section,” and makes the districts liens “take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding.” Therefore, this last clause, which specifically applies to only the liens of the taxing district, is the applicable statute in determining the status of those liens.

The defendants argue nonetheless that the clause that makes the taxing district's liens "take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding" simply gives them equivalent and not superior priority to those of the town. This interpretation is unreasonable for at least two reasons. First, as the plaintiffs point out, this same language is used routinely to make other types of liens subordinate to real estate taxes. see, e.g., General Statutes § 7-148aa ("Each such lien shall take precedence over all other liens filed after July 1, 1997, and encumbrances except taxes and may be enforced in the same manner as property tax liens."); General Statutes § 7-239 (b) ("A lien described in this section shall take precedence over all other liens or encumbrances except taxes and may be foreclosed against the lot or building served in the same manner as a lien for taxes."); see also *Connecticut Fair Plan v. High Plains Land Co.*, Superior Court, Judicial District of Waterbury, Docket No. CV-99-0156099-S (January 7, 2002, *Moraghan, J.*) (31 Conn. L. Rptr. 281, 285) (determining "[p]riority over inferior claims does not elevate the [lien] to the status of a tax in the hierarchy of circumstances" in interpreting General Statutes § 7-239 (b)). It is unreasonable to believe that the legislature would have meant for language which it typically used to subjugate the priority of one entity's liens to those of another to make the priorities of the town's and the taxing district's liens the same in this instance, especially given that the taxing district was already given the powers of organization organized under §7-325, which includes, under § 7-328, having liens based on such taxes "laid . . . in the same manner as town taxes . . . and foreclosed in the same manner as liens for town taxes or enforced in accordance with any provision of the general statutes for the collection of property taxes." Indeed, the juxtaposition of use of "except" in Public Act 07-196, § 4, with "in the same manner" in § 7-328 indicates just what a stretch it would be to conclude that these two clauses have the same meaning.<sup>3</sup>

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<sup>3</sup> In its motion for leave to supplement the record, U.S. Bank argues that the language in House Bill No. 5241, 2016

Second, interpreting the clause to simply give the taxing district's liens equal priority to those of the town, would essentially render that clause superfluous. "It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *Lopa v. Brinker International, Inc.*, 296 Conn. 426, 433 (2010). As indicated above, a district organized pursuant to § 7-325 is already granted "a lien upon the property in the same manner as town taxes . . . and foreclosed in the same manner as liens for town taxes or enforced in accordance with any provision of the general statutes for the collection of property taxes"; General Statutes § 7-328; which "shall take precedence of all transfers and encumbrances in any manner affecting such interest in such item, or any part of it"; General Statutes § 12-172; and whose "priority [with respect to municipal liens] shall be determined by the time of day such liens were perfected, and if perfected at the same time, the lien for the highest tax amount shall take precedence." General Statutes § 12-195b (b). Therefore, in granting the taxing district the powers and privileges of a district organized pursuant to § 7-325, the legislature already granted the taxing district's liens a priority equivalent to that of the town.

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Sess., supports its contention that the language in Public Act 07-196 gives its liens the same priority as those of the town. This argument is mistaken for at least two reasons. First, House Bill No. 5241 has not as of yet been enacted into law, and therefore does not reflect an enacted expression of the legislature for comparison. Second, and perhaps more importantly, House Bill No. 5241 contains the phrase "except a lien for taxes of the municipality on real property," which is similar to the phrase "except a lien for taxes of the town of Redding" that the defendants claim makes the liens equivalent." If that language were meant to mean that the two liens were equivalent, as the defendants claim, it would render House Bill No. 5241 internally inconsistent because the bill would say both that the liens had equivalent priority and that municipality's liens had priority. The more reasonable interpretation is that the language in House Bill No. 5241, "which lien [for taxes] or assessment shall have priority over such benefit assessment lien," (emphasis omitted) is meant to further clarify the priority of the municipality's liens.

Therefore, an additional provision granting those same powers to the municipality would have been superfluous, and interpreting the clause in this manner is therefore unreasonable.

The plain and unambiguous meaning of the clause in Public Act 07-196, § 4, which provides that the liens of the taxing district “shall take precedence over all other liens or encumbrances except a lien for taxes of the town of Redding” is to subjugate the priority of those liens to the town’s liens.” Furthermore, giving the liens of the town priority over those of the taxing district does not lead to an absurd or unworkable result., there seems instead to be a logical reason, given the connection between the taxing district and the development company, to give the town’s liens priority. The parties have stipulated that the “Georgetown Land Development Company, LLC owns all or nearly all of the property within the [taxing d]istrict’s boundaries, and therefore controls the [taxing d]istrict’s Board of Directors” and that “[t]he [taxing district] has assigned its liens securing its real estate taxes on the properties which are the subject of this foreclosure for the 2007 Grand List year to [RJ], an affiliate of Georgetown Land Development Company . . . .” As the town points out, “[i]nterpreting the [act] as the defendants suggest would cause the absurd result of both empowering and incentivizing the project’s developer to render the town’s taxes virtually unenforceable simply by putting on paper that it has taxed but not paid itself tens of millions of dollars.” Indeed, there does not seem to be anything absurd or unworkable about giving a town’s liens priority over those of a taxing district in that town whose board is controlled by a single corporation that is virtually its only landowner as a way to prevent precisely the hazard to which the plaintiffs refer.<sup>4</sup>

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<sup>4</sup> RJ also states that the plaintiffs’ interpretation would “all but invalidate” General Statutes § 12-181. It is not apparent to the court, however, how interpreting a law specific to the lien priority of the taxing district, making its liens inferior to the town but superior to other liens, would invalidate § 12-181, and RJ provides no explanation for why that is so.

With regard to the priority of the fire district's liens, as stipulated by the parties, the fire district "is empowered by Connecticut General Statutes § 7-328 (a) to levy and collect real estate taxes on the properties which are the subject of this foreclosure." Under § 7-328 (a), a district is granted "a lien upon the property in the same manner as town taxes . . . and foreclosed in the same manner as liens for town taxes or enforced in accordance with any provision of the general statutes for the collection of property taxes." This provision gives the fire district an equivalent lien priority to that of the town. See *Stratford v. Thorough*, supra, 60 Conn. L. Rptr. 217. Therefore, as the town's liens have priority over those of the defendants, the liens of the fire district also have priority over the defendant's liens.

#### IV

#### CONCLUSION

For the foregoing reasons, the summary judgment motions of the town of Redding and the Georgetown Fire District are granted. The summary judgment motions of RJ Tax Lien Investments, LLC and U.S. Bank, National Association are denied.

          /S/          Miller, J.

Miller, J.