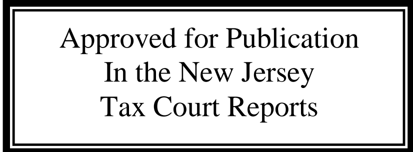
NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

HANOVER FLORAL CO., Plaintiff, v. **EAST HANOVER TOWNSHIP,** Defendant.	TAX COURT OF NEW JERSEY DOCKET NO.: 018815-2012


Approved for Publication
In the New Jersey
Tax Court Reports

Decided: September 29, 2017

L. Jeffrey Lewis (McKirdy and Riskin, P.A., attorneys)
for plaintiff.

Jason A. Cherchia (O'Donnell McCord, P.C., attorneys)
for defendant

BIANCO, J.T.C.

This opinion[1] shall serve as the Court's determination concerning a Motion for Summary Judgment filed by Defendant, East Hanover Township ("Township"), seeking to dismiss the complaint of Plaintiff, Hanover Floral Co.'s ("Hanover Floral"), with prejudice as a matter of law pursuant to R. 4:46-1; and a Cross-Motion for Summary Judgment filed by Hanover Floral seeking a refund of taxes paid by mistake pursuant to N.J.S.A. 54:4-54. For the reasons set forth herein, the court denies the Township's motion and grants partial Summary Judgment to Hanover Floral.

[1] The Honorable Patrick DeAlmeida, P.J.T.C., did not participate in the court's decision to publish this opinion.

BACKGROUND, FACTS, AND PROCEDURAL HISTORY

Hanover Floral is a family-owned business that has been operating in the Township since 1928. The owner is eighty-eight years old and a life-long resident of the Township; he has worked at Hanover Floral since he was a teenager.

Deerfield Developers, LLC ("Deerfield"), a non-party to the present action, applied to the East Hanover Planning Board ("Planning Board") for a preliminary major subdivision known as Ridgedale Estates to be developed on property adjacent to Hanover Floral. The Planning Board approved the subdivision in 1998. Deerfield entered into a Developer's Agreement with the Township in or about 1999 in connection with the development of Ridgedale Estates on Block 96 Lots 99 through 102 as shown on the Official Tax Map of the Township. As part of the Ridgedale Estates development, a certain lot designated as Lot 100 would be dedicated and conveyed to the Township when the development was completed.

Hanover Floral, located next to the proposed Ridgedale Estates development on Block 96 Lot 98, used part of the adjoining Lot 100 for more than thirty years. On or about June 25, 1999, Hanover Floral filed an adverse possession claim against Deerfield and its designated developer of the property, Edgemont Development Company ("Edgemont"), claiming a portion of said Lot 100. The Township and the Planning Board were also named defendants in that suit. Working with Township officials, the parties settled the action by subdividing Lot 100 into two parcels: (1) the contested portion of Lot 100, which would be conveyed to Hanover Floral; and (2) the balance of Lot 100, which would remain dedicated to the Township for draining and conservation purposes as part of the Ridgedale Estates development to be constructed.

On or about September 5, 2000, Edgemont obtained approval from the Planning Board, under Resolution No. 27-2000, granting Minor Subdivision approval separating the disputed

portion of Lot 100 and the remainder of that lot. By deed of January 30, 2001, the disputed portion of Lot 100 was conveyed to Hanover Floral, and incorporated with Lot 98. The deed was filed in Morris County on or about March 5, 2001. The Official Tax Map was amended showing the disputed portion of Lot 100 as part of Lot 98.

For reasons unknown, in 2001, the Tax Assessor erroneously listed Hanover Floral as the owner of the then newly configured Lot 100 and began sending tax bills for that lot to Hanover Floral. The tax bills were routinely passed along to Hanover Floral's bookkeeper for payment. Hanover Floral and its bookkeeper mistakenly believed that the tax bills it received from the Township for Lot 100 were for the disputed portion of that property it acquired through the adverse possession action. The bookkeeper therefore paid the tax bills for Lot 100 from 2001 through September 2011.

In 2011, Hanover Floral applied for a loan, and, in connection with that loan application, a title search was ordered. In a letter to Hanover Floral dated September 19, 2011, the title company flagged a discrepancy, noting that while the Township was billing Hanover Floral for taxes on Lot 100, it appeared that Deerfield owned that lot. Hanover Floral's attorney promptly brought the discrepancy to the attention of the Township's Tax Assessor; he provided a summary of taxes that the Township had erroneously billed to Hanover Floral. The Tax Assessor admitted that a mistake had been made in assessing Lot 100 to Hanover Floral.[2] In mid-April 2012, the Tax Assessor advised Hanover Floral's attorney that Hanover Floral would need to file a tax appeal. Furthermore, on several occasions between October 2011 and May 2013, Hanover Floral notified

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[2] In his Certification submitted in support of Hanover Floral's Cross-Motion, Donald M. McHugh, Esq. stated that he "spoke with the Township's Tax Assessor, . . . , shortly after [he sent him the letter of October 12, 2011]" and "[h]e [i.e. the Assessor] admitted that the Township had made a mistake in assessing the property in Hanover Floral's name." This fact has not been disputed anywhere in the record of this proceeding.

the Township and the Township's attorney of the error and quantified the amount of taxes mistakenly paid by Hanover Floral. On or about December 28, 2012, Hanover Floral filed the present litigation to obtain a refund under N.J.S.A. 54:4-54.

In June 2013, Hanover Floral stopped paying taxes on Lot 100. Shortly thereafter, delinquency notices were sent to Hanover Floral. Between July 2014 and October 31, 2014, Hanover Floral and the Township corresponded regarding the discrepancy. Hanover Floral maintained that it was not the owner of Lot 100, had been erroneously taxed, and requested that its name be removed from the list of tax delinquents. Hanover Floral was threatened with having its name published in the local paper as a tax delinquent if it did not pay taxes on Lot 100 by October 30, 2014.

On October 30, 2014, Hanover Floral paid $4,152.45 to the Tax Collector for the alleged delinquent taxes on Lot 100. According to Hanover Floral, the payment was made *under protest*, so that its good name would not be "wrongfully smeared." The Township never responded or did anything to correct the error. After a second time Hanover Floral discontinued paying taxes on Lot 100, it again began receiving tax delinquency notices.

The Developer's Agreement between the Township and Deerfield, dated January 17, 2000, required Deerfield to convey Lot 100 to the Township after Deerfield made improvements to the property within two years of that date. Deerfield built and sold twenty-three single-family homes in the Ridgedale Estates development between September 2000 and March 2002. The Township Engineer acknowledged in late 2003 that the project was in substantial compliance with the approved subdivision plan. Deerfield posted a two-year $79,000 maintenance bond and provided a form of deed to convey Lot 100.

Matters remained in this penultimate stage of completion for nearly twelve years until the Township adopted Ordinance 4-2015 on May 4, 2015, authorizing the Township to acquire Lot 100 by Deed of Dedication in connection with the Ridgedale Estates development. On or about June 9, 2015, Lot 100 was dedicated to the Township. At that time, the Township became the legal owner of present Lot 100. On February 8, 2016, the Township adopted Resolution No. 46-2016 cancelling the outstanding taxes on Lot 100.

On April 15, 2016, the Township filed a Motion to Dismiss or alternatively for Summary Judgment dismissing Hanover Floral's complaint with prejudice. On May 31, 2016, Hanover Floral filed opposition to the motion. On June 10, 2016, this court entered an order denying the motion without prejudice after hearing oral argument. On June 21, 2016, the court entered an order of transfer, concluding that jurisdiction in the matter lies in the Superior Court, Law Division, in accordance with Cerame v. Township Committee of Middletown, 349 N.J. Super. 486 (App. Div. 2002). On December 21, 2016, the Superior Court, Chancery Division, Morristown, entered an Order of Transfer[3] to the Tax Court of New Jersey pursuant to N.J.S.A. 2B:13-2(b), and R. 4:3-4(a) and R. 8:2(a) upon the joint application of both parties. The Chancery Court concluded that the transfer was appropriate because the matter raises issues involving tax expertise and the court is familiar with the case, having participated in earlier proceedings between the parties.

The Township filed the present Motion for Summary Judgment to dismiss all claims with prejudice pursuant to R. 4:46-1. Hanover Floral responded with its own Cross-Motion for Summary Judgment pursuant to R. 1:6-2 and the court heard oral arguments.

[3] Superior Court Docket Number: MRS-L-001501-16.

APPLICABLE LAW – SUMMARY JUDGMENT

The purpose of Summary Judgment procedure is to provide "a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995) (citing Ledley v. William Penn Life Ins., Co., 138 N.J. 627, 641-42 (1995) (quoting Judson v. Peoples Bank & Trust Co., of Westfield, 17 N.J. 67, 74 (1954)).

When deciding a Motion for Summary Judgment under R. 4:46-2, courts must determine whether:

> [T]here exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party.
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> [Brill, supra, 142 N.J. at 523].

Moreover, "[t]he 'Judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 249 (1986)).

In Brill, the New Jersey Supreme Court adopted a less stringent Summary Judgment standard. The Brill Court synthesized the Summary Judgment standard with the directed verdict standard found in R. 4:40-2. The Court explained that "[t]he essence of the inquiry in each [Summary Judgment, R. 4:37-2(b), R. 4:40-1 and R. 4:40-2] is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that

one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson, supra, 477 U.S. at 251-52).

In sum, the Brill Court emphasized that the "thrust of [the] decision is to encourage trial courts not to refrain from granting Summary Judgment when the proper circumstances present themselves." Id. at 541.

When the movant demonstrates a right to Summary Judgment, the burden shifts to the opponent of the Motion to show by competent evidence that a genuine issue of material fact exists. See Robbins v. City of Jersey City, 23 N.J. 229, 241 (1957); James Talcott, Inc. v. Shulman, 82 N.J. Super. 438, 443 (App. Div. 1964).

In the present case, the Court does not need to resolve any questions of material fact. Therefore, the case is ripe for Summary Judgment. Hanover Floral and the Township dispute three distinct matters of law *to wit* whether (1) Hanover Floral paid tax on the property of another by "mistake," as defined under N.J.S.A. 54:4-54; (2) a refund is mandatory or permissive under N.J.S.A. 54:4-54; and (3) the Township must refund taxes paid by Hanover Floral during 2012 and the first two quarters of 2013 after Hanover Floral filed its complaint.

The Court finds that (1) Hanover Floral paid taxes on the property of another by "mistake," as defined by N.J.S.A. 54:4-54; (2) a refund is mandatory under N.J.S.A. 54:4-54; and (3) the Township is required to return payments made by Hanover Floral during the last two quarters of 2013 and part of 2014. Under Cerame, supra, 349 N.J. Super. at 491, the Township must refund all taxes erroneously paid by Hanover Floral from 2009 onward, however, it is not required to refund taxes paid by Hanover Floral prior to 2009 due to a three-year statute of limitations. The court's reasoning is as follows:

ANALYSIS

I. HANOVER FLORAL PAID TAXES ON THE PROPERTY OF ANOTHER BY "MISTAKE," AS DEFINED UNDER N.J.S.A. 54:4-54

Hanover Floral and the Township dispute whether Hanover Floral paid taxes from 2001 – 2012 by "mistake," as defined under N.J.S.A. 54:4-54. The statute provides relief where a Taxpayer has *mistakenly* paid the property taxes of another; it reads in part: "[w]here one person has by *mistake* paid the tax on the property of another supposing it to be his own, the governing body . . . may return the money paid in error without interest and restore the record of the assessment without interest." N.J.S.A. 54:4-54 (emphasis added).

The Township argues that the facts of this case are similar to the facts in JC Trapper, LLC v. City of Jersey City, 19 N.J. Tax 421 (Tax 2001), aff'd o.b., 20 N.J. Tax 239 (App. Div. 2002), where the Tax Court denied relief to a Taxpayer under N.J.S.A. 54:4-54. The salient fact from JC Trapper, LLC was that the Taxpayer *knowingly* paid taxes from 1988 to 1999 on property owned by the municipality. The Court concluded that the Taxpayer did not pay taxes by "mistake." The Court identified two instances where a "mistake" could occur under N.J.S.A. 54:4-54: (1) "the Taxpayer is unaware that an assessment on property of another is included in the assessment on the Taxpayer's property . . . or (2) the Taxpayer lacks knowledge of facts providing a plausible basis for disputing the Taxpayer's ownership of the property subject to tax." Id. at 431.

According to the Township, Hanover Floral's discrepancy does not meet JC Trapper, LLC's criteria and no "mistake" occurred. The Notice of Assessment cards and tax bills delivered to Hanover Floral both note that they pertain to the assessment for Block 96 and Lot 100 and taxes owed for that lot. The Township contends that Hanover Floral's payment records also indicated it knew that it was paying the taxes for Lot 100, as configured subsequent to the adverse possession proceeding. In light of these facts, the Township argues, Hanover Floral cannot now claim that the

assessment for Lot 100 as presently configured, was mistakenly included in the assessment for present Lot 98 (which included that portion of Lot 100 acquired in the adverse possession proceeding.)

The Township further argues that the adverse possession complaint filed in 1999 demonstrates that Hanover Floral knew it did not own or claim to own all of former Lot 100: correspondence from Hanover Floral's counsel between 1999 and 2000 demonstrate that Hanover Floral was fully aware of exactly what portion of Lot 100 it claimed, and that said claim did not constitute the whole of Lot 100 as then delineated on the Township's tax map. The Township concludes that the facts here demonstrate Hanover Floral had knowledge of ownership, the very issue that the JC Trapper Court relied upon to determine that no mistake occurred. Accordingly, like the taxpayer in JC Trapper, the Township asserts that Hanover Floral was fully aware of the ownership issue and for nearly twelve years paid the taxes for property that it knew it did not own.

This Court is not persuaded by the Township's argument and finds that Hanover Floral indeed paid property taxes by "mistake," as defined under N.J.S.A. 54:4-54. The analysis of whether a "mistake" occurred begins with a plain reading of the statute itself. In N.J.S.A. 1:1-1, the legislature provides guidance in the interpretation of statutes:

> In the construction of laws and statutes of this state . . . words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless a different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.
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> [Id.]

In the American Heritage Dictionary (5th ed. 2017), [4] "mistake" is defined as "an error or fault," "a misconception or misunderstanding," "to understand wrongly; misinterpret," or "to recognize or identify incorrectly." Under this definition, Hanover Floral did in fact pay the taxes of another (i.e. Deerfield) and it did so by "mistake," falsely believing that it was paying taxes on its own property. Additionally, the facts here are *not* similar to JC Trapper, but rather are more analogous to the facts of McShain v. Township of Evesham, 163 N.J. Super. 522, 527 (Law Div. 1978), where the Taxpayer did not knowingly pay the property taxes of another and received a full refund for taxes erroneously paid.

Under a plain reading of N.J.S.A. 54:4-54, the legislature provides a remedy for Taxpayers that mistakenly pay taxes on the property of another. Hanover Floral's mistake is the type the legislature sought to remedy with this statute. The Township's Assessor filed Tax Lists for 2001 through 2015 that falsely identified Hanover Floral as the owner of Lot 100. When Hanover Floral received the erroneous tax bills for Lot 100, it believed they were for the portion of that lot acquired in the adverse possession action, and Hanover Floral's bookkeeper paid the taxes on Lot 100 from 2001 through 2011 based upon that belief. It was not until Hanover Floral's attorney ordered a title search in connection with a loan application in late 2011 that Hanover Floral became aware that it had been paying taxes on a property it did not own.

Contrary to the Township's assertion, the facts in JC Trapper are not similar to the facts presented here, and, the court's discussion of the statute and the criteria for what constitutes a "mistake" therein, does not weaken Hanover Floral's position. Here, Hanover Floral *unknowingly* paid taxes on property owned by Deerfield. It did not discover the Township's error until

[4] See, http://ahdictionary.com/word/search.html?=mistake, last visited August 29, 2017. Hanover Floral cited the 1991 edition of this dictionary in its papers; the court observes the definition has not changed since 1991.

September 2011. As soon as Hanover Floral discovered the error, it contacted the Township to have the matter corrected. By contrast, the parties in JC Trapper *knowingly* paid taxes on property owned by the municipality. See 19 N.J. Tax at 434.

The "mistake" criterion in JC Trapper does not weaken Hanover Floral's argument. Specifically, the Court in JC Trapper identified that a mistake occurs where "the Taxpayer is unaware that an assessment on property of another is included in the assessment on the Taxpayer's property . . ." Id. at 431. While this criterion does not perfectly match the discrepancy here (as the Township asserts), the fundamental principle is indistinguishable. Hanover Floral had a justifiable belief that the tax bills it erroneously received and paid for Lot 100, were for property it owned. The key distinction between this case and JC Trapper is that, unlike the Taxpayer in JC Trapper, Hanover Floral did not *knowingly* pay taxes on the property of another. Moreover, the discrepancy is of a type that the Court's holding in JC Trapper was attempting to remedy. In other words, the court in JC Trapper sought to provide relief for a Taxpayer unknowingly paying taxes on the property of another, falsely believing it to be the Taxpayer's obligation. The subtle difference between the criteria for a "mistake" set forth in JC Trapper and Hanover Floral's "mistake" here amounts to *a distinction without a difference*.[5]

McShain, supra, and Farmingdale Realty Co. v. Borough of Farmingdale, 55 N.J. 103 (1969), are more analogous than JC Trapper to the facts of this case. In McShain, the Court noted that Plaintiffs paid taxes on another's property "without actual *knowledge* that their assessment included properties which they did not own." Id. at 525 (emphasis added). This definition is also

[5] "The phrase 'distinction without a difference' appears to generate from the circa 1776 correspondence of American loyalist Samuel Curwen, Judge of Admiralty, while exiled in England. See Bartlett Jere Whiting, Early American Proverbs and Proverbial Phrases 11 (1977)." Merrill Creek Res. v. Township of Harmony, 29 N.J. Tax 487, 496 n.15 (Tax 2016).

more consistent with the guidance provided by the Supreme Court in Farmingdale Realty Co., that "[i]t is only just that the municipality and not the wronged Taxpayer should bear the burden of the unilateral clerical errors of an assessor . . ." Id. at 11.

In an effort to ascertain whether Hanover Floral knew or should have known that it was paying the taxes of another, the court directed the Township to provide a certification of the Tax Assessor for the Township, to review Hanover Floral's payment history for property taxes on the relevant lots between 1998 and 2003. The purpose of this certification was to ascertain whether a reasonable taxpayer would have detected a sudden spike in property taxes after acquiring an additional lot. The certification revealed that Hanover Floral's property taxes increased by predictable and unremarkable margins each successive year, and, there was no unusual increase between 2000 and 2001, the time in which Hanover Floral acquired a portion of Lot 100 through adverse possession. The certification provides an additional basis for the court to conclude that Hanover Floral did not know, and had no reason to know, that it was erroneously paying the taxes of another.

Essentially, the Court finds that the problem arose from an error initially made by the Tax Assessor and that the purpose of N.J.S.A. 54:4-54 is to relieve victims of such errors. The Township argues that Hanover Floral was aware of facts that plausibly could have provided a basis to determine the ownership of the lot in question. However, the Township cannot simultaneously argue that (1) Hanover Floral knew or should have known that it was paying taxes on the property of another; and (2) the Township did not know and had no reason to know that it was erroneously collecting taxes from Hanover Floral over a 12-year period. The Court rejects the Township's invitation to draw such an inconsistent and illogical conclusion. The Township failed to take proper steps to ameliorate the situation, even after Hanover Floral repeatedly informed the Township of

the discrepancy and the Township's Tax Assessor acknowledged the error. These facts eviscerate the Township's contention that Hanover Floral failed to exercise due diligence. A rigid standard cannot be applied to Hanover Floral as to what it should have known, while a lesser standard is applied to the Township. It is well established that "[i]n dealing with the public, government must 'turn square corners.'" F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985) (citing Gruber v. Mayor and Township Committee, 73 N.J. Super., 120 (App. Div. 1962), aff'd., 39 N.J. 1 (1962)); see also New Concepts for Living, Inc. v. City of Hackensack, 376 N.J. Super. 394, 401 (App. Div. 2005) ("government must 'turn square corners' in its dealings with the public.") Accordingly, the court finds that Hanover Floral paid taxes from 2001 – 2012 by "mistake," as defined under N.J.S.A. 54:4-54.

II. A REFUND IS MANDATORY UNDER N.J.S.A. 54:4-54

Hanover Floral and the Township dispute whether N.J.S.A. 54:4-54 *mandates* a refund or provides the Township with discretion on whether to provide a refund. The Township argues that a plain reading of the statute does not require the Township to provide a refund; N.J.S.A. 54:4-54 uses permissive rather than mandatory language providing that "the governing body . . . *may* return the money paid in error without interest." Id., (emphasis added). Moreover, the use of the word "shall" in an earlier part of the statute ("the governing body of the taxing district shall refund the excessive payment") and use of the word "may" elsewhere evokes legislative intent for mandatory and permissive meaning. While the Township acknowledges that the JC Trapper Court held a refund was mandatory rather than permissive, it distinguishes the facts of that case from the present one, noting that the court in JC Trapper ordered a refund because it would have been unfair for the municipality to retain proceeds it was never entitled to in the first place. Here, however, according

to the Township, the Township was entitled to collect taxes on the property, even though it collected the taxes from the wrong entity.

Once again, this Court does not find the Township's argument persuasive. Our courts that have directly addressed this issue have held that the application of N.J.S.A. 54:4-54 is mandatory and does not provide the municipality with discretion to provide a refund.

In McShain, the Supreme Court's decision in Farmingdale Realty Co. guided the Court:

> All in all, it seems clear to us that a simple and expeditious remedy, without the rigamarole of a formal appeal to a county board, has been provided by N.J.S.A. 54:4-54 for the correction of the kind of clerical mistakes specified therein which are discovered after the tax list and duplicate have left the assessor's hands . . . *[i]t is only just that the municipality and not the wronged taxpayer should bear the burden of the unilateral clerical errors of an assessor* resulting in the payment of taxes to which the municipality is not entitled.
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> [McShain, supra, 163 N.J. Super. at 527 (citing Farmingdale Realty Co., supra, 55 N.J. at 110-11) (emphasis added).]

The McShain court expounded on this point:

> Although the municipality in the present instance was entitled to the taxes paid, albeit not from Plaintiffs, the principle that the municipality should bear the burden of unilateral clerical errors should still guide the construction of the statute.
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> Viewed with this background, . . . [a] hearing is necessary only for the protection of third parties who may have acquired an intervening interest in the property either by conveyance or encumbrance . . . There is no reason to involve the Taxpayer who paid by mistake; he is entitled to recover in any event. A contrary result would be unfair.
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> [McShain, supra, 163 N.J. Super. at 527.]

The Court in J.C. Trapper adopted the reasoning of McShain and Farmingdale Realty Co. and held that where a Taxpayer had made payments by mistake, "a refund is mandatory not discretionary even though N.J.S.A. 54:4-54 provides that 'the governing body . . . *may return* the money paid in error . . .'" J.C. Trapper, supra, 19 N.J. Tax at 430 (emphasis in original).

The Township's argument that under JC Trapper, the Township is entitled to keep proceeds erroneously charged to the wrong taxpayer because the municipality itself did not own the property, is wholly without merit. Under the subdivision agreement between the Township and Deerfield, Deerfield was to convey title to the Township upon completion of a development. Deerfield completed the development at the end of 2002. It is not clear why Deerfield did not convey the property to the Township at this time. Instead, Deerfield retained title of Lot 100 for 12 years after the development was completed, but did not pay taxes on the property. Although Hanover Floral informed the Township of the erroneous payments, the Township declined to take any corrective actions until it canceled any unpaid taxes owed on the property after it took ownership. The Court does not find that JC Trapper permits a municipality to collect taxes in perpetuity from an entity that does not own the property, merely because the municipality could have collected tax revenue from the true property owner. The proper remedy for the Township was to either (1) require Deerfield to pay its taxes before the Township accepted title, or (2) obtain title and forego the tax proceeds. The Court is not inclined to reward the Township for failing to "turn square corners." F.M.C. Stores Co., supra, 100 N.J. at 426. To rule otherwise would encourage future malfeasance of this nature by municipalities. The Court finds that under JC Trapper, McShain, Farmingdale Realty Co., and N.J.S.A. 54:4-54, a refund is mandatory.

III. HANOVER FLORAL IS GRANTED EQUITABLE RELIEF FOR PAYMENTS MADE AFTER 2012

The Township and Hanover Floral dispute whether The Township should refund taxes paid by Hanover Floral for the last two quarters of 2013 and part of 2014, after the taxpayer filed its present complaint. The Township argues that the facts here are similar to JC Trapper, where the Taxpayer knowingly made payments, but under protest. The Court in JC Trapper noted that the Taxpayer "knew of the ownership issue and nevertheless elected to pay the taxes and interest in

dispute . . . stating that payment was being *made under protest* and without prejudice to the plaintiff's right to *seek a refund* . . ." Id. at 433-34 (emphasis added).

The Court finds that the Township must refund taxes paid by Hanover Floral for the last two quarters of 2013 and part of 2014 under general equity principles. See N.J.S.A. 2B:13-3(a), (providing that "[t]he Tax Court . . . may grant *equitable relief* . . .") (emphasis added); and see City of Elizabeth v. 264 First St., LLC, 28 N.J. Tax 408, 445 (citing N.J.S.A. 2B:13-3(a)). ("Although the Tax Court is a court of limited jurisdiction . . . the court is charged with the responsibility to 'grant legal and *equitable relief* so that all matters in controversy between the parties may be completely determined.'") (emphasis added).

Quite simply, the municipality in JC Trapper did not behave like the Township did in this case. "[T]he statutory provisions governing substantive standards and procedures for taxation, including the administrative review process, are premised on the concept that government will act scrupulously, correctly, efficiently, and honestly." F.M.C. Stores Co., 100 N.J. at 427. Prior to making payments, Hanover Floral advised the Township in writing that Hanover Floral did not own Lot 100 and was not obligated to pay taxes for the property. Nevertheless, the Township continued to threaten to publish Hanover Floral's name in the local paper as a tax delinquent. Understandably, Hanover Floral felt it had no choice but to make payments to avoid damage to its reputation. On this specific issue, JC Trapper is not illuminating to the court, because the municipality in that case did not intimidate the taxpayer as the Township did to Hanover Floral. Given these facts, the Township must refund all taxes paid by Hanover Floral for Lot 100 for the last two quarters of 2013 and part of 2014.

IV. STATUTE OF LIMITATIONS

While Hanover Floral mistakenly paid taxes to the Township from 2001 – 2012, this Court only has the authority to grant Hanover Floral partial summary judgment and order a refund for taxes paid from 2009 onward. This is because the Appellate Division in Cerame, supra, 349 N.J. Super., concluded that N.J.S.A. 54:4-54 and N.J.S.A. 54:51A-7 must be read together, "[s]ince both correction-of-errors statutes are intended to correct the same wrongs . . ." id. at 494, and therefore a suit for "the correction of mistakes in real estate tax assessment, whether filed in the Law Division under N.J.S.A. 54:4-54 or in the Tax Court under N.J.S.A. 54:51A-7, is governed by the three-year limitations period contained in the latter statute." Id. at 495. Accordingly, whether a Taxpayer brings a complaint under N.J.S.A. 54:4-54 or N.J.S.A. 54:51A-7, the Court may only grant a refund for the taxes paid for the year in which the complaint is filed and the three years prior.[6]

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[6] Hanover Floral disputed this determination by the Cerame court *briefly* in its papers and at argument, to preserve the issue for future appeal. The issue, however, was not fully briefed nor argued in the present proceeding. That notwithstanding, this court respectfully disagrees with the Cerame Court's holding *to wit* that N.J.S.A. 54:4-54 and N.J.S.A. 54:51A-7 should be read together. See Cerame, supra, 349 N.J. Super. at 490-95. The Cerame Court reasoned that because "under both statutes, 'mistakes' *do not include* assessments resulting from the exercise of judgment or discretion by the assessor," Id. at 490 (emphasis added), therefore both "statutes are intended to correct the same wrongs." Id. at 494. In this court's view, the more appropriate analysis is to conversely look at what the statutes *do include*. To that end, N.J.S.A. 54:51A-7 addresses typographical errors, errors in transposing, or mistakes in tax assessment. The American Heritage Dictionary (5th ed. 2017) defines a typographical error as "a mistake in printing, typesetting, or typing, especially one caused by striking an incorrect key on a keyboard." See, https://ahdictionary.com/word/search html?q=typographical+error, last visited September 29, 2017. Further defining transposing as "to reverse or transfer the order or place of; interchange." See, https://ahdictionary.com/word/search html?q=transposing, last visited September 29, 2017. Hovbilt, Inc. v. Township of Howell, 138 N.J. 598, 618 (1994), provides a simple example of a "mistaken assessment" to include the "assessment of vacant land under the assumption that the property was improved." The Hovbilt Court reasoned that a "mistake" like this is "attributable to a typographical error, a mistake in transposing, or some other discoverable or undiscoverable cause," and not because of the "assessors opinion, judgment, or discretion." Id. On the other hand, N.J.S.A. 54:4-54 addresses duplicate assessments on one parcel, assessments for one parcel mistakenly placed upon another, and the mistaken payment of tax on another's property supposing it to be one's own. See, Cerame, supra, 349 N.J. Super. at 491. This court is satisfied that upon reviewing what the statutes *do cover*, the differences between the two statutes become apparent. N.J.S.A. 54:51A-7 seeks to correct errors that are mechanical in nature and therefore a taxpayer should not be afforded an unlimited time extension to file an appeal, bypassing the rules set out for a timely

CONCLUSION

For the foregoing reasons, the court denies the Township's motion for summary judgment, and grants partial summary judgment to Hanover Floral. The Township is hereby ordered to refund taxes paid by Hanover Floral for 2009, 2010, 2011, 2012, and the last two quarters of 2013, and part of 2014. The Tax Court shall issue judgments consistent with this opinion.

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filing of appeal under N.J.S.A. 54:3-21. See, Hovbilt, 138 N.J. 598, 602. By contrast, N.J.S.A. 54:4-54 seeks to correct the effect of a mistake by the municipality resulting in the payment of taxes which a taxpayer is not required to make, and the municipality is not entitled to receive from that taxpayer. See, Farmingdale Realty Co., supra, 55 N.J. 111. It is clear to this court that N.J.S.A. 54:4-54 seeks to correct more than simple discoverable mechanical errors, rather it seeks to return a taxpayer (essentially a non-breaching party) to the position he would have been had the municipality (the breaching party) not wrongfully collected taxes. Moreover, it is apparent that the Legislature intended the remedy for N.J.S.A. 54:4-54 to extend indefinitely. When it was enacted under Section 5 of Chapter 67, P.L. 1905, N.J.S.A. 54:51A-7 "allowed the State Board of Tax Appeals to correct errors at any time" so long as the "mayor or assessor consented to the correction." See, Hovbilt, 138 N.J. 598, 604-605. The Legislature amended this statute twice: first in 1946, and again in 1979. The 1979 amendment included the 3 year statute of limitations. Id. The Legislature also had the opportunity to either amend N.J.S.A. 54:4-54 to include a statute of limitations, or repeal the statute altogether. It is clear by its inaction that the Legislature "intended the remedy and procedure" of N.J.S.A. 54:4-54 to remain. Farmingdale Realty Co., supra, 55 N.J. 111. Furthermore, the Tax Court recently reaffirmed age-old legal principles long employed by our courts to ascertain legislative intent in Fields v. Trustees of Princeton University, 28 N.J. Tax 587 (2015), which are pertinent here:

> It is well established that as with any statute, the primary goal of the court is to effectuate the legislative intent. Cosmair, Inc. v. Director, Div. of Taxation, 109 N.J. 562, 570, 538 A.2d 788, (1988). . . . Further, a statutory enactment cannot be deemed as a meaningless exercise by our Legislature and must be interpreted to have some purpose. See Flexx Petroleum Corp. v. Director, Div. of Taxation, 12 N.J. Tax 1, 12 (Tax 1991) (court must avoid any interpretation 'that will render any part of a statute inoperative, superfluous or meaningless' or 'attribute to the Legislature a deliberate attempt to make a meaningless change').

While this court disagrees with the Cerame Court's conclusions regarding any time limitations that N.J.S.A. 54:4-54 may contain by analogy to N.J.S.A. 54:51A-7, "[t]rial courts are free to disagree with appellate opinions; they are not free to disobey." Tuition Plan v. Director, Div. of Taxation, 4 N.J. Tax 470, 485 (Tax 1982) (citations omitted). Accordingly, this court has limited the relief under N.J.S.A. 54:4-54 to Hanover Floral, to the taxes paid on Lot 100 for the year in which the complaint was filed and *only* the three years prior, the equitable relief herein granted for *subsequent* years not cover by N.J.S.A. 54:4-54 notwithstanding.