

NO. CV 09 4021684S

: SUPERIOR COURT

CITY OF BRISTOL

: JUDICIAL DISTRICT OF

: NEW BRITAIN

v.

TOWN OF HARWINTON

: OCTOBER 30, 2009

MEMORANDUM OF DECISION  
ON DEFENDANT’S MOTION TO REARGUE

The issue in the motion to reargue filed by the defendant, the town of Harwinton (Harwinton), is whether the provision in General Statutes § 12-117a,<sup>1</sup> that an aggrieved party may file a tax appeal in “the superior court for the judicial district in which such town or city is situated,” is mandatory or discretionary. The issue arose when the plaintiff, the city of Bristol (Bristol), appealed a decision by Harwinton’s assessor placing a value of \$25,634,000 on Bristol’s property which is situated in Harwinton.

This action was commenced on July 27, 2009 and made returnable to the Superior Court for the judicial district of New Britain. Bristol is located within the judicial district of New Britain. Harwinton is located within the judicial district of Litchfield.

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General Statutes § 12-117a provides, in relevant part, that: “[a]ny person . . . claiming to be aggrieved by the action of . . . the board of assessment appeals . . . 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* . . .” (Emphasis added.)

On August 26, 2009, the defendant filed a revised motion to transfer<sup>2</sup> this action from the judicial district of New Britain to the judicial district of Litchfield pursuant to Practice Book §§ 8-1 and 12-1. In support of its motion, the defendant recited as follows:

“The Plaintiff’s complaint sounds in five counts of excessive evaluation. C.G.S.A. § 51-345 et seq. sets forth provisions for venue in civil actions filed in the State of Connecticut. P.B. § 12-1 et seq. as well as the above [cited] statute allows for the transfer of cases from the Superior Court for one Judicial District to a Superior Court for another Judicial District. Pursuant to G.S. § 51-347b (a) and [P.B. §] 12-1 the Court has the authority, upon its own motion to order the transfer of any action to a Superior Court location in another Judicial District.”

The defendant further recited therein that:

“[T]he action involves a substantial tax appeal involving properties valued in the millions of dollars. All said properties are located in Harwinton . . . .

“In addition, all Harwinton town officials all reside in Litchfield County. The vast majority of witnesses and all re-evaluation documentation are at the Town Hall of Harwinton. Furthermore, given the substantial amount of money involved in the tax appeals, this action will probably be subject to a Motion to View in which the Court will be asked to conduct an on site inspection of the properties to determine the validity of the Plaintiff’s claim.”

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The court notes that the defendant first filed a motion to transfer on August 24, 2009. The court’s August 26, 2009 ruling applied to both the original and revised motions to transfer.

Practice Book §§ 10-32 and 12-1 as well as General Statutes § 12-117a address the issue of venue. Practice Book § 10-32 provides that any claim for improper venue is “waived if not raised by a motion to dismiss filed in the sequence provided in Sections 10-6 and 10-7 and within the time provided by Section 10-30.”<sup>3</sup> Practice Book § 12-1 provides that a judicial authority may transfer any cause of action “(1) upon its own motion or upon the granting of a motion of any of the parties, or (2) upon written agreement of the parties filed with the court.”

In its August 26, 2009 ruling, the court denied the defendant’s motions to transfer for the following reasons:

“The court notes that property tax appeals are routinely transferred from other judicial districts, including Bridgeport, Danbury, Hartford, New London, Stamford and Tolland, to the Tax Court. The Tax Court is uniquely constituted with experienced judges

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Practice Book § 10-6 provides that “[t]he order of pleading shall be as follows:

- (1) The plaintiff’s complaint.
- (2) The defendant’s motion to dismiss the complaint.
- (3) The defendant’s request to revise the complaint.
- (4) The defendant’s motion to strike the complaint.
- [(5) through (8) omitted.]”

Practice Book § 10-7 provides that “[i]n all cases, when the judicial authority does not otherwise order, the filing of any pleading provided for by the preceding section will waive the right to file any pleading which might have been filed in due order and which precedes it in the order of pleading provided in that section.”

Practice Book § 10-30 provides that “[a]ny defendant, wishing to contest the court’s jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance.”

and staff who are able to quickly address tax appeal issues by an organized and cost-effective pretrial program. Cases not settled at pretrial are given an early trial date at the parties' convenience. The judges of the Tax Court preside over a diverse array of cases including relatively modest properties to complex, multi-million dollar valuations."

In its motion to reargue, it is the defendant's position that it is mandatory for Bristol to bring its appeal to the judicial district of Litchfield since the subject property is situated in Harwinton. Bristol argues that since § 12-117a uses the word "may," it is discretionary for the plaintiff to file the appeal in the judicial district where the plaintiff is located or in the judicial district where the property is situated. Bristol further points out that General Statutes § 51-345 (a) (3)<sup>4</sup> provides that in a civil action, the process shall be returnable in the judicial district where either the plaintiff or the defendant resides.

In *Manchester Tobacco v. Lahham*, Superior Court, judicial district of Tolland at Rockville, Docket No. CV 08 5003668 (March 17, 2009, *Sferrazza, J.*), the court found that the defendants' claim of improper venue was correct but ruled that "by virtue of General Statutes § 51-351, the appropriate remedy is transfer rather than dismissal." The court apparently did not consider improper venue as a jurisdictional issue not subject to waiver. General Statutes § 51-351 provides that "[n]o cause shall fail on the ground that it

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General Statutes § 51-345, regarding venue in civil actions and the return of civil process, provides as follows: "(a) **Actions in general.** Except as provided in section 51-348 and subsections (b) to (g), inclusive, of this section, all civil process shall be made returnable to a judicial district, as follows: . . . (3) If either or both the plaintiff or defendant are residents of this state, to the judicial district where either the plaintiff or defendant resides . . . ."

has been made returnable to an improper location.” See also *Sprague v. Commission on Human Rights & Opportunities*, 3 Conn. App. 484, 487, 489 A.2d 1064 (1985) (administrative appeals as well as ordinary civil actions are governed by § 51-351).

The issue of venue is not a substantive jurisdictional issue providing grounds for a motion to dismiss. Section 51-351 and *Sprague* provide for a transfer of venue rather than a dismissal of the cause of action. However, neither § 51-351 nor *Sprague* consider whether a cause of action required by statute to be brought in a particular judicial district requires a court to transfer the action to the proper judicial district. Practice Book § 10-32 is of particular note in that it provides that improper venue is waived if not raised by a motion to dismiss. In this case, the defendant moved to transfer the cause of action rather than address the venue issue in a motion to dismiss.

In its opposition to the defendant’s motion to transfer, the plaintiff relied on § 51-345 (a) (3) which permits a party to bring an action in any judicial district provided that the plaintiff and the defendant are residents of the state of Connecticut. At oral argument, the plaintiff argued that the language in § 12-117a, that the plaintiff “may” bring an action in the judicial district where the subject property is situated, is not mandatory but discretionary.

Where there is a statute, such as § 51-345 (a) (3), allowing a party to bring an action in a judicial district where either the plaintiff or the defendant resides, and where there is a statute, such as § 12-117a, providing for an aggrieved party to take an appeal to

the judicial district where the property is situated, the issue becomes which statute prevails.

As noted in *Semerzakis v. Commissioner of Social Services*, 274 Conn. 1, 18, 873 A.2d 911 (2005), “[if] there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of a general provision, then the particular provision must prevail; and if both cannot apply, the particular provision will be treated as an exception to the general provision[.]” (Citation omitted; internal quotation marks omitted.) Here, the provision generally applying to civil cases is found in § 51-345 (a), whereas the provision applying to a particular subject matter is found in § 12-117a.

Although the court concludes that, pursuant to § 12-117a, the judicial district where the property is situated is the proper judicial district to return this action, the fact that such an appeal was brought in the judicial district of New Britain is not determinative of the jurisdictional issue. As previously noted, the issue of venue is not a substantive jurisdictional issue requiring dismissal for non-compliance. According to Practice Book §§ 10-32 and 12-1, the defendant’s right to file a motion to dismiss has been waived by its failure to timely file such a motion.

Accordingly, the motion to reargue is granted, and in turn, reconsideration of the denial of the motions to transfer are denied.

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Arnold W. Aronson  
Judge Trial Referee