THE STATE OF NEW HAMPSHIRE

GRAFTON, SS. **SUPERIOR COURT**

New Hampshire Resident Limited Partners of the Lyme Timber Company

v.

New Hampshire, Department of Revenue Administration

NO. 2008-E-186

ORDER

Petitioners, members of the New Hampshire Resident Limited Partners of the Lyme Timber Company ("members"), brought this case seeking de novo review of a Department of Revenue Administration ("DRA") assessment against the members individually. The parties both moved for partial summary judgment, and the court granted the members' motion. DRA then appealed the case to the Supreme Court, and the case was reversed. The case is now before this court on a remaining challenge relating to the underlying individual assessments levied by DRA in 2006. For reasons detailed below, the Court dismisses the action sua sponte.

Facts

The history of this case has been well documented in orders from this and the Supreme Court and will not be re-elaborated here. To summarize, the members of the Lyme Timber Company ("members") brought an appeal from Department of Revenue Administration ("DRA") assessments levied against them individually. This court ruled the units that members owned in the Company were not transferrable and not inidividually taxable. The Supreme Court reversed that holding. The parties then negotiated among themselves, the amount of backed taxes each member owed on his/her units. The only members who could not come to an agreement with the

DRA are David and Barbara Roby. The Robys were assessed each individually and as a pair for shares owned. The Robys now claim that the assessment DRA levied against them for tax year 2002 was improperly calculated, requiring the Robys to overpay by more than $170,000. "Petitioners request that the Court now consider the question of whether the DRA's 2002 assessment against the Robys violates RSA 77:4-c." The DRA objects to the Robys bringing such a challenge so long after they were originally assessed.

Before this Court can consider the merits of the Robys' claims, it must consider whether the Robys may assert any claims against the DRA stemming from the Robys' 2002 assessment. Both DRA and the Robys cite RSA 21-J:28-b, IV, which states:

> Within 30 days of the notice of decision, the taxpayer may appeal such decision by written application to the board of tax and land appeals or the superior court, in the county in which the taxpayer resides or has a place of business or resident agent. The board of tax and land appeals or the superior court, as the case may be, shall hear the appeal de novo. Each party may introduce whatever evidence it believes necessary, limited only by the evidentiary rules of the forum. Legal issues shall be limited to those raised before the commissioner, with the exception that the taxpayer may raise additional legal claims addressing constitutional issues, and either party may raise additional legal claims upon a showing of good cause.

(emphasis added).[1] The DRA emphasizes the first portion of the statute, and the Robys emphasize the second portion. DRA essentially argues that "good cause," which is not defined in the statute, must mean that the Robys can only raise a new claim now if it is one they could not have brought before the DRA in the first place. The Roby's, on the other hand, argue that efficiency is good enough cause because the DRA has not been prejudiced by the long delay. The Robys also alternatively argue that the clerical error made by the DRA constitutes a factual dispute and that the Robys joining suit with the other members of Lyme Timber prevented them

[1] This is the version of the statute in effect in 2002. This is the version of the statute relevant to this case.

from bringing this individual objection to their assessment at an earlier time. Neither of these interpretations are correct.

The issue of whether "good cause" permits the Robys to challenge a 2002 assessment is a legal question. Courts "interpret statutes in the context of the overall statutory scheme, not in isolation. We first look to the language of the statute, and construe it according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended." In re Mallett, __ N.H. __, __ (Jan. 13, 2012) (slip. op. at *3) (citation and quotation omitted).

In the tax context, although relating to an separate provision of the New Hampshire tax code, the New Hampshire Supreme Court has considered "good cause" and looked to the plain and ordinary meaning of the phrase. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992). Although the Court in Barksdale went on to find that there was ambiguity in the phrase "good cause" and looked to the relevant legislative history, the "good cause" contemplated in this case is not ambiguous and does not require review of the legislative history. The reason the Court found good cause ambiguous in Barksdale was because the court needed to determine whether a particular action taken by a taxpayer justified the town selectmen granting that taxpayer an abatement for good cause shown. Barksdale, 136 N.H. at 514–15. Eventually the court opted for a more restrictive interpretation of good cause, limiting the circumstances in which an abatement is appropriate. Id. at 516. Thus, Barksdale supports a narrow construction of "good cause." The phrase is not ambiguous because "good cause," as used in RSA 21-J:28, IV, clearly relates to a determination to be made by this Court; whether it is appropriate for a party to raise a new legal claim. See In re Briggs, 29 N.H. 547, 552 (1854) (good cause to abate taxes means a cause "for which justice requires").

Further, in other contexts, the New Hampshire Supreme Court has held that "good cause" means substantially the same as "just and reasonable." See, e.g., Whitcher v. Town of Benton, 50 N.H. 25, 27 (1870). Black's Law Dictionary (9th ed. 2009) defines "good cause" as "A legally sufficient reason." Webster's defines it as "a cause or reason sufficient in law. One that is based on equity or justice or that would motivate a reasonable man under all the circumstances." WEBSTER'S THIRD NEW INT'L DICTIONARY 978 (2002).

Considering all these definitions together, the phrase "good cause" is one which may be judicially interpreted and contemplates a restrictive process limiting access to the courts for individuals who fail to properly raise issues before the DRA. Here, the Robys have not shown that there is good cause for their failure to challenge the specifics of their individual assessment in 2006. There is no "reason sufficient in law" for the Robys to bring objection to the amount of tax levied against them almost ten years ago, nor have the Robys cited a constitutional challenge to any DRA action or determination. As such, the Robys challenge must be dismissed as untimely.[2]

SO ORDERED.

Dated: 1/26/12

Timothy J. Vaughan
Presiding Justice

[2] "A trial court has the discretion to dismiss an action *sua sponte* where the allegations contained in a writ do not state a claim upon which relief can be granted." Kennedy v. Titcomb, 131 N.H. 399, 401 (1989) (citing Garabedian v. William Co., 106 N.H. 156, 157–58, (1965)).