

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0603-21

C. ARSENIS, S. ARSENIS,
and G. ARSENIS,

Plaintiffs-Appellants,

v.

BOROUGH OF BERNARDSVILLE,
EDWARD KERWIN, Tax
Assessor, TOM CZERNIECKI,
Borough Administrator,
and ANTHONY SURIANO,
Borough Clerk,

Defendants-Respondents.

APPROVED FOR PUBLICATION

June 28, 2023

APPELLATE DIVISION

Submitted September 21, 2022 – Decided June 28, 2023

Before Judges Haas, DeAlmeida, and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Law Division, Somerset County, Docket No.
L-1061-21.

Hegge & Confusione, LLC, attorneys for appellants
(Michael Confusione, of counsel and on the brief).

Parker McCay, PA, attorneys for respondents (John C.
Gillespie and Alexis C. Smith, on the brief).

Chiesa Shahinian & Giantomasi, PC, and Zipp &
Tannenbaum, LLC, attorneys for amicus curiae

Association of Municipal Assessors of New Jersey
(John R. Lloyd and Peter J. Zipp, of counsel and on
the brief).

The opinion of the court was delivered by

DeALMEIDA, J.A.D.

We consider whether the Superior Court has jurisdiction to adjudicate claims for monetary damages, filed years after the statutory deadline for filing a tax appeal, based on allegations that municipal officials committed fraud and other torts by assessing real property in a manner inconsistent with law and at an amount above its true market value. We conclude that the Superior Court lacks jurisdiction to hear such claims because they are substantively equivalent to a tax appeal properly venued in the Tax Court or a county board of taxation, and the statutory deadlines for challenging local property tax assessments may not be circumvented by a late-filed complaint seeking damages for alleged torts arising from the tax assessment process. In light of these conclusions, we affirm the trial court order dismissing the complaint in this matter with prejudice for failure to state a claim upon which relief can be granted.

I.

In 2012, plaintiffs C. Arsenis, S. Arsenis, and G. Arsenis purchased residential real property in defendant Borough of Bernardsville for \$6,267,500. The parcels are designated in the records of the municipality as Block 16, Lots 5 and 6.01.

Starting in 2013, and in every year thereafter, plaintiffs submitted a forest management plan seeking to qualify a portion of the property for assessment under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to -23.23. Pursuant to annual district-wide reassessments and plaintiffs' farmland assessment applications, the property was assessed for local property tax purposes as follows:

Block 16, Lot 6.01

Year	Acres	Land	Improvements	Total
2012	5	\$795,000	\$1,694,500	\$2,489,500
2013	5	\$755,000	\$2,224,400	\$2,979,400
2014	4	\$664,000	\$2,394,300	\$3,058,300
2015	4	\$664,000	\$2,475,800	\$3,139,800
2016	4	\$664,000	\$2,509,900	\$3,173,900
2017	4	\$664,000	\$2,417,800	\$3,081,800
2018	4	\$628,000	\$2,321,600	\$2,949,600
2019	4	\$588,000	\$2,732,000	\$3,320,000
2020	3	\$536,000	\$2,673,800	\$3,209,800

Block 16, Lot 6.01, Qual. Q0017

Year	Acres	Land	Improvements	Total
2012	47.58	\$7,300	\$0	\$7,300
2013	47.58	\$7,300	\$0	\$7,300
2014	48	\$6,300	\$0	\$6,300
2015	48	\$6,300	\$0	\$6,300
2016	48	\$6,200	\$0	\$6,200
2017	49	\$6,400	\$0	\$6,400
2018	49	\$6,500	\$0	\$6,500
2019	49	\$2,700	\$0	\$2,700
2020	49	\$6,000	\$0	\$6,000

Block 16, Lot 5, Qual. Q0017

Year	Acres	Land	Improvements	Total
2012	.5	\$100	\$0	\$100
2013	.5	\$100	\$0	\$100
2014	.5	\$100	\$0	\$100
2015	.5	\$100	\$0	\$100
2016	.5	\$100	\$0	\$100
2017	.5	\$100	\$0	\$100
2018	.5	\$100	\$0	\$100
2019	.5	\$100	\$0	\$100
2020	.5	\$13,000	\$0	\$13,000

Plaintiffs did not file complaints in the Tax Court or petitions in the Somerset County Board of Taxation (Board) challenging the assessments on their property for tax years 2013 through 2019. See N.J.S.A. 54:3-21 (establishing deadlines for filing a petition of appeal with a county board of taxation and, for properties assessed in excess of \$1,000,000, a complaint with

the Tax Court, challenging the annual assessment on real property for local property tax purposes.).¹

On March 14, 2021, plaintiffs filed a complaint in the Law Division alleging that the assessments on their property for tax years 2013 through 2019 were inflated by municipal officials in a fraudulent scheme to raise revenue. According to the complaint, Bernardsville, and defendants Edward Kerwin, the borough tax assessor, Tom Czerniecki, the borough administrator, and Anthony Suriano, the borough clerk, created false property record cards for plaintiffs' property that failed to note the house on the property lacked a certificate of occupancy due to ongoing renovations. Defendants used the false record cards, plaintiffs allege, to further their fraudulent scheme.²

¹ Plaintiffs filed a complaint in the Tax Court challenging the assessments on Block 16, Lot 6.01 for tax year 2020. That matter remains pending. Plaintiffs also filed a petition with the Board challenging the assessments on the property for tax year 2021. On July 29, 2021, the Board issued a judgment affirming the assessor's denial of farmland assessment for portions of the property and granting a reduction in the assessed value of Block 16, Lot 6.01 for tax year 2021. The record does not reveal whether plaintiffs or the municipality appealed that judgment to the Tax Court.

² Property record cards are "commonly used by tax assessors for the purpose of recording a wide variety of information . . . concerning the character of the property, such as its topography, use, extent of acreage, and other factors which may have a bearing on the valuation appearing in the assessments." De Lia v. Kiernan, 119 N.J. Super. 581, 584 (App. Div. 1972).

Plaintiffs also allege that during the tax years in question, defendants misrepresented the condition of the home; set assessments that were calibrated not to reflect true market value, but to raise specific amounts of taxes; submitted the false property record cards to the bank maintaining the escrow account for plaintiffs' mortgage to fraudulently obtain tax payments on the property; and engaged in illegal "spot assessing." See Twp. of W. Milford v. Van Decker, 120 N.J. 354, 365 (1990). Finally, plaintiffs allege defendants erroneously imposed an added assessment on the property after completion of the renovations.

Plaintiffs allege defendants' conduct constituted: (1) tax/mortgage escrow fraud; (2) common law fraud; (3) unjust enrichment; and (4) negligent misrepresentation. They seek as damages the \$251,815 in local property taxes they allege they overpaid as a result of defendants' conduct, as well as interest, treble damages, punitive damages, and "investigation fees."

In lieu of filing an answer, defendants moved to dismiss the complaint with prejudice for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2. They argued that plaintiffs' claims are the substantive equivalent of tax appeals because they challenge the quantum and method of the assessments on their property and seek damages equal to the taxes they allegedly overpaid. According to defendants, the Superior Court lacked

jurisdiction to hear such claims and could not transfer them to the Tax Court or county board of taxation because they were filed long after expiration of the statutory deadlines for filing tax appeals for the tax years in question.

In addition, defendants argued that plaintiffs' claims, even if viewed as tort claims, are barred by immunity and notice provisions of the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 13-10. Finally, defendants argued that all claims against Czerniecki and Suriano should be dismissed because neither have responsibilities with respect to the assessment and collection of local property taxes and Czerniecki started employment with the borough after the actions alleged in the complaint.

Plaintiffs opposed the motion. In addition to urging the court to reject defendants' arguments, for the first time they allege defendants' conduct violated the Consumer Fraud Act, N.J.S.A. 56:8-1 to -210 (CFA).

The trial court issued a written opinion granting defendants' motion. First, the court concluded that it lacked jurisdiction to adjudicate plaintiffs' claims pursuant to Rule 4:6-2(a). The court found that plaintiffs' tort claims were, in effect, challenges to the assessments on their property and substantively equivalent to tax appeals. Thus, the court concluded, plaintiffs' claims were cognizable before the Tax Court or the Board. However, the court did not transfer the complaint to the Tax Court or the Board pursuant to Rule

4:3-4(a) because plaintiffs' claims were filed after the statutory deadlines for filing tax appeals for each tax year in question.

In addition, the trial court found that, even if plaintiffs' claims are considered to sound in tort, they failed to state a claim on which relief can be granted pursuant to Rule 4:6-2(e) because: (1) plaintiffs failed to allege sufficient facts to meet the heightened standard for fraud set forth in Rule 4:5-8(a); (2) plaintiffs failed to file a timely notice of claim under N.J.S.A. 59:8-3 and -4; (3) defendants are immune from claims for damages arising from "[a]n act or omission in the interpretation or application of any law relating to a tax," under N.J.S.A. 59:7-2(b); (4) the borough is immune from claims for damages arising from the alleged willful misconduct of its employees under N.J.S.A. 59:2-10; and (5) Czerniecki and Suriano had no duties with respect to the assessment and collection of local property taxes or involvement in the assessment of plaintiffs' property for the relevant tax years. In addition, the court found that public entities and employees are not subject to the CFA. A September 24, 2021 order memorializes the court's decision.

This appeal follows. Plaintiffs argue: (1) the trial court erred when it considered facts outside the pleadings without converting defendants' motion to one for summary judgment; (2) they pled their fraud claims with sufficient specificity; (3) their claims go beyond ordinary tax appeals and are, as a result,

cognizable in the Superior Court regardless of the expiration of the statutory deadlines for filing tax appeals; and (4) the immunity established in N.J.S.A. 59:7-2(b) does not extend to fraudulent acts of municipal officials.³

II.

Rule 4:6-2 permits a defendant to move to dismiss a complaint because of a "lack of jurisdiction over the subject matter," R. 4:6-2(a), and a "failure to state a claim upon which relief can be granted" R. 4:6-2(e). When considering such motions, the court's "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). All well-pleaded allegations of the complaint are accepted as true. Holmin v. TRW, Inc., 330 N.J. Super. 30, 32 (App. Div. 2000), aff'd, 167 N.J. 205 (2011). The court searches the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement

³ Plaintiffs' brief does not address: (1) the CFA; (2) Czerniecki and Suriano's non-involvement in the assessment and collection of local property taxes; or (3) the trial court's conclusion that plaintiffs' claims are barred by their failure to file a timely notice of claim under the TCA. N.J.S.A. 59:8-8. We deem plaintiffs' appeal of those aspects of the trial court's decision waived. "[A]n issue not briefed is deemed waived." Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023); Telebright Corp. v. Dir., N.J. Div. of Tax., 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief).

of claim, opportunity being given to amend if necessary." Banco Popular N. Am. v. Gandhi, 184 N.J. 161, 165 (2005) (quoting Printing Mart, 116 N.J. at 746). "A pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011).

We apply a de novo standard of review to a trial court order dismissing a complaint under Rule 4:6-2. See Stop & Shop Supermarkets Co. v. Cnty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017) (quoting Teamsters Loc. 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2014)). Under the rule, we owe no deference to the motion judge's conclusions. Rezem Fam. Assocs., 423 N.J. Super. at 114.

"If, on a motion to dismiss based on defense (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46" and all parties shall be provided notice of the conversion of the motion and a chance to response. R. 4:6-2. Because the trial court was presented with and considered facts outside the complaint, it should have treated defendants' motion as one for summary judgment. We do not, however, find this error to be fatal. As explained more fully below, the absence of jurisdiction to hear plaintiffs' claims is evident from the face of the complaint. This alone is

sufficient to affirm the trial court's dismissal of the complaint with prejudice. We do not consider the other grounds for dismissal found by the trial court, some of which were based on facts outside those pled in the complaint.

The viability of plaintiffs' complaint must be considered in the context of the well-defined annual local property tax assessment process and the "comprehensive statutory appeal and review procedures for real estate tax appeals" in this State. McMahon v. City of Newark, 195 N.J. 526, 529 (2008).

As the Supreme Court explained,

[t]axation of real property in New Jersey is of constitutional dimension. In addition to requiring that "[p]roperty shall be assessed for taxation under general laws and by uniform rules[,]" N.J. Const. art. VII, § 1, ¶ 1(a), New Jersey's Constitution requires that "[a]ll real property assessed and taxed . . . shall be assessed according to the same standard of value, [and] shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district." Ibid.

A comprehensive statutory scheme seeks to implement that constitutional mandate. Thus, the Legislature has required that all real property taxes in New Jersey be assessed annually at the local or municipal level. See N.J.S.A. 40A:9-146 (requiring that municipal governing body or chief executive "shall provide for the appointment of a tax assessor and such deputy tax assessors as it may determine necessary"); N.J.S.A. 54:4-23 (providing that "[a]ll real property shall be assessed to the person owning the same on October 1 in each year"). In exercising those functions, the assessor – although a municipal employee – remains free of any local control. Clinton Twp. Citizen's

Comm., Inc. v. Mayor and Council of Twp. of Clinton, 185 N.J. Super. 343, 353 (Law Div. 1982) (explaining that "[i]n performing his assessment duties the municipal tax assessor acts under the supervision and control of his county board of taxation and the Director of the Division of Taxation. N.J.S.A. 54:3-16; N.J.S.A. 54:1-27 and 54:1-35.51.").

....

Once a tax assessor completes the assessments for the municipality, the assessment roll is submitted to the county board of taxation, N.J.S.A. 54:4-35, and, based in part on the assessments provided by all assessors in the county, the county board sets the tax rate for the municipality. N.J.S.A. 54:4-48 and -49.

[Id. at 541-42.]

There are three additional types of assessments – added assessments, omitted assessments, and omitted added assessments. An added assessment, which plaintiffs allege defendants placed on the property, is intended to capture any increase in value that occurs as a consequence of the completion of the erection, addition to or improvement of any building or structure after the October 1 valuation date for a particular tax year. Am. Hydro Power Partners, LP v. City of Clifton, 239 N.J. Super. 130, 138 (App. Div. 1989).

Added assessments may be imposed via two statutes. The first, N.J.S.A. 54:4-63.2, provides for the making of an added assessment when a structure has been erected, added to or improved after the October 1 valuation date and before the January 1 start of the tax year. In such a case, the assessor makes an

added assessment for the entire subsequent tax year, and also an added assessment for a pro-rated portion of the tax year of completion from the first day of the month following completion through December 31. The second, N.J.S.A. 54:4-63.3, allows for an added assessment where a structure has been erected, added to or improved after the October 1 valuation date for a particular tax year and between the following January 1 and October 1 of the tax year. It is not clear from the complaint which of the two statutes would apply here. That distinction, however, is immaterial to our analysis.

The Legislature created well-defined avenues for review of assessments on real property. A property owner may appeal an annual assessment alleged to exceed the true market value of the property to either the pertinent county board of taxation or to the Tax Court. County boards of taxation are authorized to undertake "the equalization, revision, review, and enforcement" of local property taxes. N.J.S.A. 54:3-1; see also N.J.S.A. 54:3-11. The Tax Court was "established as a court of limited jurisdiction pursuant to Article VI, Section 1, paragraph 1 of the New Jersey Constitution[,]" N.J.S.A. 2B:13-1(a), and is "a court of record[,]" N.J.S.A. 2B:13-1(a). Its jurisdiction is defined, in relevant part, as:

- a. The Tax Court shall have jurisdiction to review actions or regulations with respect to a tax matter of the following:

- (1) Any State agency or official;
- (2) A county board of taxation;
- (3) A county or municipal official.

b. The Tax Court shall have jurisdiction over actions cognizable in the Superior Court which raise issues as to which expertise in matters involving taxation is desirable, and which have been transferred to the Tax Court pursuant to the Rules of the Supreme Court.

[N.J.S.A. 2B:13-2.]

According to N.J.S.A. 54:3-21,

a taxpayer feeling aggrieved by the assessed valuation . . . of the taxpayer's property . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer . . . may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000. In a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer . . . may appeal before or on May 1 to the county board of taxation by filing with it a petition of appeal or, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, by filing a complaint directly with the State Tax Court.

Where the property owner initiates a challenge to an assessment in the county board of taxation, review of the judgment of the county board may be sought in the Tax Court. See N.J.S.A. 54:3-26b ("Any party who is dissatisfied with the judgment of the county board of taxation may seek review of that judgment in the tax court in accordance with the provisions of the State Tax Uniform Procedure Law") and N.J.S.A. 54:51A-9(a) ("Time for taking real property tax cases to tax court. . . . [A] complaint seeking review of adjudication or judgment of the county board of taxation shall be filed within 45 days of the service of the judgment.").

"Appeals from added assessments may be made to the county board of taxation on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later" N.J.S.A. 54:4-63.11. "[H]owever, . . . appeals from added assessments may be made directly to the Tax Court on or before December 1 of the year of levy, or 30 days from the date the collector of the taxing district completes the bulk mailing of tax bills for added assessments, whichever is later, if the aggregate assessed valuation of the property exceeds \$750,000.00" Ibid. "Appeals to the Tax Court from the judgment of the county board of taxation shall be made within 45 days

from the date fixed for final decisions by the county board of taxation on appeals from added assessments." Ibid.

The Tax Court and county boards of taxation are authorized to consider constitutional claims, such as the imposition of a spot assessment, as alleged by plaintiffs.

New Jersey law provides several opportunities for taxpayers to raise constitutional objections to an . . . assessment. A taxpayer may challenge the . . . assessment by appealing to the [c]ounty [b]oard of [t]axation The [c]ounty [b]oard must hear the appeal and render judgment If the taxpayer is still dissatisfied, he or she may appeal the [b]oard's decision to the Tax Court In the Tax Court, the taxpayer is entitled to a de novo hearing before a tax court judge with expertise in the field of real property valuation.

. . . .

A taxpayer may appeal from the Tax Court to the Appellate Division. N.J.S.A. 2B:3-4. If the taxpayer succeeds at any level, the taxing district must refund the excess taxes plus . . . interest within sixty days of the final judgment. N.J.S.A. 54:3-27.2.

[General Motors Corp. v. City of Linden, 143 N.J. 336, 349-350 (1996).]

"The right to appeal a real property assessment is statutory, and the appellant is required to comply with all applicable statutory requirements."
Macleod v. City of Hoboken, 330 N.J. Super. 502, 505 (App. Div. 2000)
(quoting F.M.C. Stores Co. v. Borough of Morris Plains, 195 N.J. Super. 373,

381 (App. Div. 1984), aff'd, 100 N.J. 418 (1985)). The statutory scheme for appealing an assessment on real property is "one with which continuing strict and unerring compliance must be observed" McMahon, 195 N.J. at 543. Compliance with the filing requirement is a necessary predicate to establish jurisdiction in this court for review of an assessment. "Failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 425 (1985). This is true even in the absence of harm to the defendant municipality. Lawrenceville Garden Apartments v. Twp. of Lawrence, 14 N.J. Tax 285, 288 (App. Div. 1994).

The policy of applying strict time limitations to tax matters is based upon the very nature of our administrative tax structure. Municipal budgets must be finalized not later than the 90th day after the beginning of the budget year. N.J.S.A. 54:4-42. Real estate assessments, which constitute the bulk of a municipality's income are established as of October 1 of the pretax year. N.J.S.A. 54:4-23. Throughout our tax legislation, it is clear that our legislature has attempted to set out a well organized time-table for the purpose of enabling a municipality to ascertain the amount of taxable ratables within the jurisdiction in order that it might adopt a responsible and fairly accurate budget.

[F.M.C. Stores, 100 N.J. at 425 (quoting Twp. of Galloway v. Petkevis, 2 N.J. Tax 85, 92 (Tax 1980)).]

We start our analysis with a determination of whether plaintiffs' claims, although couched as torts, are, in effect challenges to the assessments on their

property. It is well-established that a complaint challenging "the quantum or methodology applied in respect of" a municipal tax assessor's assessment on real property "fall[s] squarely within the band of cases subject to the established tax appeal process." McMahon, 195 N.J. at 543-44. The allegations set forth in plaintiffs' complaint, even when given every inference favorable to plaintiffs, are plainly based on the quantum of the assessments the tax assessor placed on their property for the relevant tax years and the methodology he used to calculate those assessments. Plaintiffs allege that the assessor valued the property without considering its condition due to ongoing renovations or the absence of a certificate of occupancy, and placed an erroneous added assessment on the property when the renovations were completed. In addition, they allege the assessor falsified the property record card for the property and used that erroneous information to calculate the assessments at issue. These allegations are precisely the type of arguments routinely raised in the Tax Court and county boards of taxation in tax appeals challenging assessments on real property. See e.g., Brunetti v. Twp. of Cherry Hill, 21 N.J. Tax 80, 82 (App. Div. 2002) (affirming Tax Court judgment upholding revision of assessment after tax assessor discovered error in property record card); Aliotta v. Twp. of Belleville, 27 N.J. Tax 419, 463-64 (Tax 2013) (valuing a residence based on its condition); Consol. Rail Corp. v.

Director, Div. of Tax., 18 N.J. Tax 291 (Tax 1999), aff'd, 19 N.J. Tax 378 (App. Div. 2001) (upholding assessment of partially completed improvements). Plaintiffs cannot transmogrify their routine tax appeals into tort claims to seek monetary damages against the tax assessor or, as explained more fully below, to avoid the strict statutory time limits applicable to tax appeals.

In addition, plaintiffs allege that the assessor engaged in spot assessing, a constitutionally defective "practice of reassessing only properties that were the subject of a recent sale while leaving undisturbed the appraised valuations of properties in the same class that have not been sold" Van Decker, 120 N.J. at 357. Such a claim is plainly within the parameters of a tax appeal, as is illustrated in Van Decker. There, the taxpayers' challenge to a spot assessment began as a timely tax appeal in the Passaic County Board of Taxation, was appealed to the Tax Court, and, from there, through the remainder of the judicial system to the Supreme Court. Id. at 359-60. Raising a constitutional spot assessment claim does not convert a tax appeal to a claim for relief cognizable in the Superior Court without regard to the statutory limitations on filing tax appeals. As we explained in Macleod, where the taxpayer alleged that an added assessment was a spot assessment,

[p]laintiff urges that because the assessment was an impermissible "spot assessment," the additional

assessment was not a valid "added assessment," and the statutory provision for property tax appeals do not apply to him. We have previously concluded that a party challenging the validity of an added assessment must comply with the statutory appeals provisions.

[330 N.J. Super. at 507 (citing Royal Bradley Assoc. v. Borough of Bradley Beach, 252 N.J. Super. 401, 403-04 (App. Div. 1991)).]

The fact that plaintiffs seek damages measured by the amount of local property taxes they alleged to have overpaid bolsters our conclusion that their alleged tort claims are thinly veiled tax appeals. A reduction in the assessment on real property, which thereafter requires the municipality to refund overpaid local property taxes to the property owner, N.J.S.A. 54:3-27.2, is the remedy generally sought in a tax appeal. We do not suggest that a demand for damages must be measured by alleged overpaid taxes in order for a tort claim to be the substantive equivalent of a tax appeal. A complaint that measures damages in this fashion, however, is strongly indicative of a tax appeal properly venued in the Tax Court or county board of taxation.

Our interpretation of plaintiffs' claims is supported by the well-established premise that monetary damage may not be awarded against municipalities and municipal officials for claims arising from local property tax assessments. The controlling statute is clear:

Neither a public entity nor a public employee is liable for an injury caused by:

a. Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.

b. An act or omission in the interpretation or application of any law relating to a tax.

[N.J.S.A. 59:7-2.]

As used in this statute a "'tax' includes a tax, assessment, fee or charge."

N.J.S.A. 59:7-1.

We have previously recognized that the only remedy for alleged error in the assessment of real property by government officials is a timely tax appeal.

General Motors Corp. v. City of Linden, 279 N.J. Super. 449, 469 (App. Div. 1995), rev'd on other grounds, 143 N.J. 336 (1996). As we succinctly held,

[t]herefore, plaintiff could not maintain a tort action against either the tax assessor or Linden for negligence in the assessment of its property. Instead, plaintiff's only remedy to correct an error in its assessment would be an appeal to the Union County Board of Taxation or the Tax Court.

[Ibid. (citing N.J.S.A. 54:3-21).]

There is no dispute that plaintiffs' complaint was filed long after expiration of the statutory deadlines to file tax appeals challenging the annual assessments and added assessment on their property for the tax years in question. The complaint was filed in 2021, years after the tax appeal deadlines for tax years 2013 through 2018. Had plaintiffs' complaint been timely filed it

would have been appropriate for the Superior Court to transfer the complaint to the Tax Court for adjudication as a tax appeal. R. 4:3-4(a) ("Transfer from Superior Court to Tax Court. The court in which an action is pending may order it transferred to the Tax Court provided that the principal issue or issues raised therein are cognizable in that court."). Such a transfer, however, would have been futile here, given that the late filing of the complaint deprived the Tax Court of jurisdiction to adjudicate plaintiffs' claims. See Kohlbrenner Recycling Enters. v. Burlington Cnty. Bd. of Freeholders, 228 N.J. Super. 624, 629 (Law Div. 1987) ("Ordinarily, it would be permissible and proper to transfer this matter . . . in order to solve the jurisdictional problem. R. 1:13-4. Since the complaint has not been timely filed, however, it can no longer be maintained."). We have previously upheld the dismissal of a complaint challenging a local property tax assessment filed in Superior Court after expiration of the time for filing a tax appeal. See Macleod, 330 N.J. Super. at 504-06 (ordering dismissal of action in lieu of prerogative writ challenging an added assessment because complaint was filed after the statutory deadline for filing a petition challenging the assessment in the county board of taxation). Dismissal of plaintiffs' complaint with prejudice was, therefore, warranted.

In light of our conclusions regarding the absence of jurisdiction to adjudicate plaintiffs' thinly veiled tax appeals, we need not address the remaining grounds on which the trial court dismissed the complaint.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION