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Real Property Taxation - Construction Law - Corporate Law - Education Law - Labor Relations - Municipal Law - Real Estate Law

Tax Certiorari Newsletter Summer 2015

ZONING VIOLATIONS DO NOT IMPAIR PROPERTY OWNER'S ABILITY TO CLAIM TAX EXEMPTIONS UNDER RPTL 420

Oorah, Inc. v. Town of Jefferson, (App. Div., 3rd, Decided July 17, 2014)

A not-for-profit corporation (Oorah), owns three improved parcels of real property located in the Town of Jefferson, Schoharie County. Oorah "provides a wide range of religious, charitable and educational services for families". It filed applications seeking tax exemptions for each of the parcels pursuant to RPTL 420-a. The Town of Jefferson denied such applications in April 2012 on the basis that the property had outstanding violations.

In the subsequent action that ensued, the Town argued that Oorah's purported violations of the building and fire code operated to deprive it of its tax exempt status. The Supreme Court denied Oorah's exemption claims holding that a property owner's actual use of a parcel in violation of a municipality's zoning law will deprive the property owner of the exemption otherwise afforded by RPTL 420-a (1) (a).

The Appellate Division reversed, finding that nothing in the record suggests that Oorah's property is not zoned for use as, among other things, a summer camp or that Oorah is otherwise in violation of the zoning laws promulgated by the Town of Jefferson. Rather, the record reflects that Oorah was in possession of several open building permits pertaining to ongoing work on the affected parcels for which no corresponding certificate of occupancy or certificate of completion had yet been issued.

The alleged violations did not divest Oorah of its ability to use the affected parcels for religious or charitable purposes, therefore, such violations cannot operate to deprive Oorah of a tax exemption to which it otherwise has demonstrated entitlement. To the extent that the Town believes that Oorah is not in compliance with all relevant provisions of the Town's building and fire code, its remedy is to issue a stop work order or pursue whatever enforcement proceedings may be available.

NOT-FOR-PROFIT THEATER CORPORATION'S APARTMENT BUILDINGS EXEMPT FROM PROPERTY TAXATION

Matter of Merry-Go-Round v. City of Auburn, (Ct. of App., Decided November 18, 2014)

The issue presented by this appeal was whether certain real property owned by petitioner Merry-Go-Round Playhouse, a not-for-profit theater corporation, which is used to house its staff and summer stock actors, is exempt from taxation under RPTL 420-a.

Under the Real Property Tax Law, real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes ... and used exclusively for carrying out thereupon one or more of such purposes ... shall be exempt from taxation as provided in this section—(RPTL 420-a [1][a]).

Here, the Court found that petitioner is organized exclusively for an exempt purpose, in that it is intended to promote appreciation for the arts/musical theater, thereby providing education to the community and advancing the moral or mental improvement of area residents.

The Court further noted that the primary use of the apartment buildings is in furtherance of Merry-Go Round's primary purpose. Merry-Go-Round established that the housing is used to attract talent that would otherwise look to other theaters for employment; that the living arrangement fosters a sense of community; and that the staff spends a significant portion of its off-hours in furtherance of theater-related pursuits.

Therefore, under these circumstances, the use of the property to provide staff housing is reasonably incidental to petitioner's primary purpose of encouraging appreciation of the arts through theater and is sufficient for an exemption under RPTL 420-a(1)(4).

PETITIONERS DO NOT WAIVE 4th AMENDMENT RIGHTS BY FILING ARTICLE 7 PETITION

Matter of Jacobowitz v. Town of Cornwall, (App. Div., 2nd, Decided July 30, 2014)

The petitioner filed an Article 7 petition to review her property assessment. Thereafter, the Town of Cornwall sought to conduct an interior inspection of the premises at issue. The petitioner refused. The Appellate Division concluded that the petitioner did not waive her 4th Amendment rights (against unreasonable search) by challenging her property assessment.

For the Town to establish its entitlement to conduct an interior inspection of the petitioner's home for purposes of appraisal, in the absence of the petitioner's consent, the Town bore the burden of demonstrating that the "particular inspection [was] reasonable and thus there [was] probable cause to issue a warrant for that inspection."

Contrary to the Town's contention, the petitioner did not, by challenging the Town's assessments, "open the door" to inspection of the interior of her property against her will, in effect, waiving her Fourth Amendment rights. The petitioner has placed the assessed value of her property in issue and her act of challenging the assessments of her property is a relevant factor to consider in balancing the reasonableness of the Town's interest in seeking entry into the petitioner's home for inspection against the petitioner's privacy interests. However, the petitioner's actions do not amount to a waiver of her Fourth Amendment right to privacy.

The Town did not demonstrate that it is incapable of gathering the information without infringing on the petitioner's privacy rights. Thus, the Town did not establish that an interior inspection is necessary to defend itself in these proceedings.

Since there are numerous alternative methods of accurately appraising the value of residential real property, under the circumstances presented here, the Town's interest in accurately appraising the petitioner's home by means of an interior inspection does not outweigh the petitioner's privacy and property interests in precluding a warrantless entry and search of her home.

ACTUAL RENTAL INCOME BEST INDICATOR OF VALUE

Matter of Techniplex Ill v. Town and Village of East Rochester, (App. Div., 4th, Decided February 6, 2015)

The parties to this litigation were engaged in a valuation of certain commercial property for tax assessment purposes. On appeal, the respondent municipalities objected to the court's undervaluing the subject property because it did not assign a market value to the restaurant located on the property as well as the ground upon which it sits. The restaurant is operated by Tim Donut pursuant to a 30-year ground lease with petitioners for $30,000 per year. Tim Donut does not pay a separate or additional rental for the building.

The respondents' appraiser valued the subject property by estimating what the market rent would be if petitioners were leasing both the land and the building. He did so by comparing the rents paid by other fast-food restaurants "where the land and buildings are leased in their entirety."

"The ultimate purpose of valuation ... is to arrive at a fair and realistic value of the property involved". The income capitalization approach to valuation "rests on the proposition that the value of income-producing property is the amount a willing buyer, desiring but not compelled to purchase it as an investment, would be prepared to pay for it under ordinary conditions to a

seller who desires, but is not compelled, to sell... That amount will depend on the net income the property will likely produce inasmuch as the purchase price represents the present worth of anticipated future benefits". Here, the court noted that the "'net income the property will likely produce'", at least for the next 30 years, is the amount of the ground lease.

"As a general rule, actual rental income is often the best indicator of value". There was no evidence that the rents petitioners charged were arbitrary or the result of collusion or self-dealing and respondents "failed to establish that the actual income was not reflective of the market for the years under review".

NEW OWNERSHIP OF PROPERTY DOES NOT NEGATE RPTL 727 MORATORIUM

Matter of Harriman, LLC v. Town of Woodbury, (App. Div., 2nd, Decided April 22, 2015)

This case involved a purchase of property from a seller who had already commenced an Article 7 petition on the property. After the buyer purchased the property, he commenced his own Article 7 petition for the next year. The previous owner's proceeding settled resulting in a consent judgment. Thereafter, the Town moved to dismiss the buyer's petition citing RPTL 727, which places a moratorium on Article 7 proceedings for (3) years after a consent judgment or other order has been entered. The Supreme Court granted the motion and the buyer appealed.

The Appellate Division acknowledging that this was a case of first impression, upheld the dismissal. In the decision, the Court noted that there is no statutory language that limits the effect of RPTL 727 when the ownership of the property has been transferred. The Court adopted a five (5) part test for when RPTL 727 cannot constitutionally be applied to property that has been sold. RPTL 727 cannot be applied where (1) there is a successful challenge to a property's tax assessment, (2) the same property is sold to a new owner, (3) the property's sale occurs within three years of the assessment reduction, (4) the new property owner is in no way complicit in the prior assessment reduction, and (5) the assessment unconstitutionally exceeds the fair market value for the property.

Despite adopting this test to alleviate a buyer from the burdens of a previous Article 7 settlement, the Court distinguished the instant matter and finding that the buyer could not meet all of the prerequisites. Specifically the Court held that the buyer was well aware of the seller's tax proceeding and settlement negotiations and at no time tried to intervene, join or consolidate those proceedings with his own. As a result the buyer was not a "noncomplicit transferee" under the fourth prong of the test and therefore RPTL 727's statutory moratorium cannot be disturbed.

TAX REFUND MUST BE ISSUED DESPITE LACK OF ARTICLE 7 FILING, WHERE RPTL 727(1) IS IN EFFECT

Matter of The Torok Trust v. Town Bd. Of Town of Alexandria, (App. Div., 4th, Decided March 27, 2015)

Petitioner filed an article 7 proceeding challenging its 2007 assessment on property it owned in the Town of Alexandria. The petitioner did not re-file or challenge its assessment for the 2008 year. The parties settled the 2007 proceeding by stipulation of settlement and order in January 2009. The court-ordered settlement resulted in a reduction in assessment and refund of taxes. Petitioner sought its refund for the 2007 and 2008 years. The school district issued a refund for 2007 but refused to issue a refund for 2008, arguing that since the petitioner did not file in 2008 it could not collect a refund for that year. Petitioner disagreed relying on RPTL 727, which freezes the assessment for the year at issue and subsequent (3) years following a court-ordered reduction. Since petitioner already paid taxes on the 2008 assessment that was being reduced by court-ordered stipulation it was due to receive a refund of the overpaid taxes.

The Appellate Division agreed with the petitioner and ordered a refund. The Court held that the plain language and legislative intent of RPTL 727 meant that once a settlement is reached for the original filing year, the next year's assessment is automatically reduced, without need to file any additional petition. The intent of the law eliminates the requirement of yearly and constant filings. We note this decision differs from prior holdings of the Appellate Division, Third Department.

FAILURE TO FILE NOTE OF ISSUE WITHIN FOUR YEARS OF COMMENCEMENT RENDERS PROCEEDING ABANDONED

Matter of Traditional Links, LLC v. Board of Assessors of Town of Riverhead, (Appellate Division Second Department, May 20, 2015)

The Second Department has ruled that failing to file a note of issue on one year of tax review proceedings within the (4) year period required by RPTL 718 required dismissal and filing notes of issue in previous and subsequent years in a consolidated proceeding does not act to save the year where the note of issue was not timely filed. In this case the petitioner filed Article 7 proceedings for the 2004/05, 2005/06, 2006/07 and 2007/08 tax years. Although notes of issue were timely filed for the middle two petitions no note of issue was filed for the 2004/05 and/or the 2007/08 proceedings. Respondent moved to dismiss the first and last years of the proceeding for failure to file the note of issue. The motion was denied by the Supreme Court. The Appellate Division Second Department reversed. The petitioner argued that filing notes of issue in 2 of the 4 years was sufficient and furthermore that none of the petitions were actually abandoned, noting that there had been an audit of the petitioner's books and records for the years without the notes of issue and dozens of court conferences and discovery. The Second Department disagreed holding that regardless of any other aspects of the litigation, failure to file a timely note of issue is fatal to the claim.

REVALUATION OF INDIVIDUAL PARCELS BASED ON NEW HOME CONSTRUCTION IS NOT VOID AS A SELECTIVE REASSESSMENT

Matter of Carroll v. Assessor of City of Rye, (Appellate Division Second Department, December 17, 2014)

The Second Department has held that assessing individual new home construction is not void as a selective reassessment. In this case the petitioner began construction of a residence on a property previously only improved by a storage shed. In 2003 the assessment was increased based on the assessor's determination as to the value of the percentage of construction completed on the taxable status date. Once complete the assessor reassessed the property, again. The Supreme Court held that this was a form of unconstitutional selective reassessment. Overturning the lower court the Appellate Division stated that reassessment upon improvement is not illegal per se and where, as here, every new construction in the city is reassessed in the same manner, such reassessment is valid.