

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS

STATE OF NEW YORK

DCH AUTO,

Appellant,

-against-

NO. 55

TOWN OF MAMARONECK,

Respondent.

20 Eagle Street
Albany, New York
May 19, 2022

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

MATTHEW S. CLIFFORD, ESQ.
GRIFFIN, COOGAN, SULZER & HORGAN, P.C.
Attorney for Appellant
51 Pondfield Road
Bronxville, NY 10708

WILLIAM MAKER, JR., ESQ.
MAKER FREGALE & DI COSTANZO, LLP
Attorney for Respondent
350 Theodore Fremd Avenue
Rye, NY 10580

Colin Richilano
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 55, in the matter of
3 DCH Auto v. The Town of Mamaroneck.

4 We'll take a moment, Counsel, while your
5 colleagues organize themselves.

6 Good afternoon, Counsel.

7 MR. CLIFFORD: Good afternoon, Your Honor.
8 Matthew Clifford, Griffin, Coogan, Sulzer & Horgan for the
9 petitioner-appellants DCH Auto and DCH Investments Inc. My
10 I reserve two minutes for rebuttal, please?

11 CHIEF JUDGE DIFIORE: You may, sir.

12 MR. CLIFFORD: Thank you, Your Honor.

13 CHIEF JUDGE DIFIORE: You're welcome.

14 MR. CLIFFORD: In our view, this is a very simple
15 case that has the potential to impact numerous commercial
16 tenants throughout the state. The parties have agreed and
17 stipulated that the property was overassessed for certain
18 years at issue, subject to resolution of the issue under
19 RPTL 524(3) as to whether DCH is the person whose property
20 is assessed or someone authorized in writing by the
21 complainant, officer, or agent to make such statement who
22 has knowledge of the facts stated therein.

23 DCH, pursuant to its lease, is legally obligated
24 to pay all the property taxes and pays the owner's full tax
25 burden. It also possesses the property and DCH Auto in its



1 lease was conferred the right to challenge the property tax
2 assessments throughout the term of the lease. Therefore,
3 we believe pursuant to RPTL 524(3) that we are the person
4 whose property is assessed.

5 At the time DCH filed the complaints, it was
6 universally accepted and stated that an aggrieved party had
7 standing to bring an administrative action. The RPTL
8 524(3) delegated to the commissioner of the Department of
9 Taxation and Finance the responsibility to prepare the
10 complaint form. With that complaint form, it provided
11 instructions.

12 JUDGE TROUTMAN: Were - - -

13 MR. CLIFFORD: The instruction - - -

14 JUDGE TROUTMAN: Was your client required at the
15 time of filing to offer proof that they had the right to
16 bring the - - - the suit?

17 MR. CLIFFORD: There is no requirement, but we
18 did. The complaints - - - the 2009 complaint, which was
19 filed by the client on its own, identified us as
20 lessee-taxpayer. In all of the other complaints, we
21 identified ourselves as tenant legally obligated to pay the
22 taxes.

23 JUDGE TROUTMAN: And did you have to show that
24 pursuant to the lease you were authorized?

25 MR. CLIFFORD: There was nothing in the



1 instructions that said that. And in addition, we believed
2 that the municipalities were put on notice. And in
3 addition, under RPTL 525, they have the right to administ -
4 - - to have a hearing, to administer oaths, take proofs,
5 and request documentation.

6 JUDGE TROUTMAN: So when you say that you're the
7 lessee, they're clear that they're not dealing with the
8 owner?

9 MR. CLIFFORD: That's correct. And they - - -
10 there's no dispute that they knew we were not the owner of
11 the property.

12 Now, in addition to the instructions which
13 indicated that any person whose property is - - - any
14 person who is aggrieved - - - excuse me. Any person who
15 pays their property taxes can aggrieve the assessment.
16 They also - - - opinion of counsel also indicated that a
17 shopping center lessee who is obligated to pay the taxes
18 has the right to administrative and judicial review.

19 In addition, the town's own website, up until
20 April of 2014, adopted the ORPS instructions and the
21 opinion and said that anybody who was aggrieved by the
22 assessment had the right to file a complaint. None of
23 these sources said that the owner must sign the
24 authorization to the complaint or designate the tenant as
25 an agent to act on their behalf. Before the appel - - -



1 JUDGE CANNATARO: It sounds to me, Counsel - - -
2 excuse me - - - that your argument, then, is that the
3 Appellate Division ignored what seems to be a longstanding,
4 widespread custom and practice - - -

5 MR. CLIFFORD: That's correct.

6 JUDGE CANNATARO: - - - taking place in front of
7 the assessment review boards.

8 MR. CLIFFORD: That is correct, Your Honor.

9 JUDGE CANNATARO: And - - - and, you know, took
10 everyone by surprise. But the question I keep asking
11 myself is did they not have the authority to do that? I
12 mean, they are - - - they have the prerogative to interpret
13 the statute. I'm sure they recognize that aggrieved party
14 is a terms that's used elsewhere in the statute, but not in
15 524. And they made a - - - what to me doesn't - - -
16 doesn't seem like a particularly outrageous interpretation;
17 that person whose property is assessed is not equivalent to
18 aggrieved party.

19 MR. CLIFFORD: Well, Your Honor, there's - - -
20 there's a couple answers to that. First, the statute does
21 not use the word owner and the caselaw - - -

22 JUDGE CANNATARO: I didn't say "owner".

23 MR. CLIFFORD: Right, right. I'm sorry. The - - -
24 - the case that changed the law in the state was Circulo
25 from the Second Department. It was a tax exemption case.



1 Did not involve a net - - - tenant obligated to pay the
2 taxes or authorized by its lease. The owner that - - -
3 that - - - the Appellate Division broadly interpreted the
4 statute and inserted the word owner where it did not exist.

5 JUDGE CANNATARO: Okay.

6 MR. CLIFFORD: And this was never an issue in the
7 state before Circulo because everyone understood, based
8 upon the McLean's case, that a tenant legally obligated to
9 pay the taxes had the right to file.

10 JUDGE CANNATARO: And did - - - Circulo is also a
11 Second Department decision, correct?

12 MR. CLIFFORD: Circulo's a Second Department
13 decision and McLean's is the Third Department.

14 JUDGE CANNATARO: And didn't the Second
15 Department have the right, have the authority to make that
16 interpretation in Circulo and - - - and I think it's been
17 followed ever since, ha - - - has it not?

18 MR. CLIFFORD: It has not, outside of the Second
19 Department. There - - - there haven't been any decisions
20 that have followed that.

21 What's happening here is that Circulo did not
22 deal with our factual situation. We - - - there was no net
23 tenant. The court spoke broadly and used the word owner
24 where it did not exist in the statute. You know, if the
25 legislature had intended to mean owner, they would have put



1 the word owner in the statute. The Second Department can
2 interpret the statute, but that's subject to this court's
3 review. And we - - - and we - - -

4 JUDGE CANNATARO: And this court has never
5 reviewed 524 before. We've never said what person whose
6 property being assessed is. We've never defined that term
7 for the Second Department or for any other department - - -

8 MR. CLIFFORD: Yes, the - - -

9 JUDGE CANNATARO: - - - isn't that correct?

10 MR. CLIFFORD: That's my understanding that this
11 court did not address that issue in the Larchmont Pancake
12 House case. But what I'm - - - what I'm trying to convey
13 is that all practitioners knew that we had the right - - -
14 that a tenant legally obligated to pay the taxes had the
15 right to file; that went back to McLean's; that went back
16 to all the sources I told you - - - that I mentioned. And
17 now Circulo and the case below have - - - have eviscerated
18 that - - -

19 JUDGE CANNATARO: It seems - - -

20 MR. CLIFFORD: - - - which is why we're - - -

21 JUDGE CANNATARO: It seems to me on some level
22 what you're arguing is that the Second Department's
23 interpretation of the law should bend to the custom and
24 practice out there before the assessment review boards.
25 And my question is, why would it be wrong to require that



1 the custom and practice yield to the Second Department's
2 interpretation of that statutory limit?

3 MR. CLIFFORD: Because the custom and practice
4 was based upon McLean's decision out of the Third
5 Department. The opinion of counsel specifically cites to
6 that. And everyone understood that a tenant legally
7 obligated to pay the taxes had the right to file. The
8 Second Department, respectfully, took a - - - took a left
9 turn.

10 JUDGE WILSON: Do you have a property interest in
11 your lease?

12 MR. CLIFFORD: We believe we do, Your Honor, by -
13 - - by virtue of being legally obligated to pay the taxes
14 and authorized to file, we are essentially the "person
15 whose property is assessed".

16 JUDGE WILSON: So and let me ask you another
17 thing. The statute also allows for a designated agent to
18 file on behalf of whoever the person whose property is
19 assessed is. Do you qualify - - - does the lease qualify
20 you as an agent under the statute?

21 MR. CLIFFORD: I believe we meet both components;
22 person whose property is assessed, if the court were to
23 find we are not, we are someone who is authorized. The
24 lease conferred upon us the right to challenge the property
25 taxes throughout the term of the lease.



1 So DCH filed McLean's - - -

2 JUDGE RIVERA: Let me - - - Counsel, if I can - -
3 - if - - - if - - -

4 MR. CLIFFORD: Oh, sorry.

5 JUDGE RIVERA: If we were to disagree with you,
6 do you have an action against the owner? In other words,
7 do you have any other relief?

8 MR. CLIFFORD: I believe we do not, Your Honor.

9 JUDGE RIVERA: And if we were to hold against
10 you, so that - - - given your answer, that is devastating,
11 of course, to your client, but doesn't it mean that people
12 will just better articulate their respective rights in
13 future lease agreements?

14 MR. CLIFFORD: It could mean that, but it does
15 not mean - - -

16 JUDGE RIVERA: To address this issue.

17 MR. CLIFFORD: It could mean that, but there's
18 probably thousands of leases out there right now that are
19 drafted similarly to ours that are now going to subject - -
20 - that are now abrogated if the court holds otherwise. And
21 those - - - all those tenants are out of luck.

22 So respondents are now claiming in their papers
23 that the statute has always required an owner to file. And
24 I say respectfully to the town, they've never explained
25 why, if that was the case, they advised people on their



1 website that anyone could file a grievance; any person
2 aggrieved could file a complaint.

3 None of the cases the respondents cite involved -
4 - - the factual circumstances we have here did not involve
5 a net tenant. The court was not addressing this fact
6 pattern that dealt with issues unrelated to the identity of
7 the complainant.

8 In addition, the appellate division below held
9 that we did not satisfy the condition precedent.

10 I see my time is up.

11 CHIEF JUDGE DIFIORE: You may continue your
12 thought.

13 MR. CLIFFORD: We did not satisfy the condition
14 precedent. We respectfully disagree with that. To satisfy
15 the condition precedent, the caselaw has held that the
16 complainant needs to timely file a complaint to the proper
17 officials that identifies the property, states the grounds
18 for review, and states the relief being sought. The
19 complaints here met that standard and that the appellate
20 division nonetheless dismissed the cases on an issue of
21 form, not on the substance of the complaints. Thank you.

22 CHIEF JUDGE DIFIORE: Thank you, Counsel.

23 Counsel?

24 MR. MAKER: Good afternoon, everyone. William
25 Maker, Jr. on behalf of the Town of Mamaroneck. Sitting



1 with me is Kevin Stout. He represents the Village of
2 Mamaroneck.

3 All the respondents wish this court to do is to
4 interpret 524(3) as it is written. And the importance of
5 all this is borne out by the two 19th century cases, Walter
6 and Burke, which have appeared in their brief and according
7 - - -

8 JUDGE RIVERA: But Counsel, let me interrupt you.
9 What - - - what are we to make of the fact that it doesn't
10 use the word "owner"? Obviously, a tenant does have
11 certain property interests. Not the full bundle of rights
12 of an owner, but it has - - - it has certain property
13 interests. What are we to make of the fact that the word
14 owner is not found in the statute?

15 MR. MAKER: Your Honor, our obligation is to
16 define what it means, a person whose property is assessed.
17 Didn't use the word owner. I can't change that. I had
18 nothing to do with it. But what is a person whose property
19 is assessed? Well, I think it's pretty clear that the
20 property assessed is the real estate because the real
21 property tax law only assesses real estate. And a lease
22 hold interest, under New York law, is a prop - - - personal
23 property right, not a real estate right. So therefore, the
24 property assessed was the real estate, not the lease hold
25 of DCH Auto. And also, whose property is that? It's the



1 owner, 74 - - - 700 Waverly Avenue Corp., who owns the
2 property. So that's the person whose property is assessed
3 and that's the person who was supposed to have filed the
4 complaint.

5 JUDGE SINGAS: Counsel - - - Counsel, the
6 legislature used the word "owner" dozens of times in other
7 sections, so if they really wanted it to mean owner,
8 wouldn't they have just said what they wanted to mean?

9 MR. MAKER: They certainly could have done that.
10 And if they had done that, Mr. Clifford and I would not
11 have had to drive 135 miles to be with you this afternoon.
12 They didn't.

13 JUDGE SINGAS: Fair enough.

14 MR. MAKER: So we're - - - we're relegated to
15 interpreting what the words person whose property is
16 assessed means. And I submit to you that it could only be
17 the owner, based upon the structure of the real property
18 tax law.

19 JUDGE TROUTMAN: Do you dispute that the tenants
20 are aggrieved?

21 MR. MAKER: Oh, I have - - - they - - - they had
22 the right to bring on the Article 7 proceeding if a proper
23 grievance had been filed, but there wasn't a proper
24 grievance filed here, except for the 24 - - -

25 JUDGE GARCIA: Counsel?



1 MR. MAKER: Um-hum?

2 JUDGE GARCIA: I'm sorry, here. To that point,
3 let's assume we agree with your definition of who gets
4 standing in Article 5. Essentially an owner. Person whose
5 property is assessed, essentially an owner. But the point
6 you just made was Article 7's broader, right. So it's an
7 aggrieved person. And Article 7 to me, looking back to
8 Article 5, doesn't have that requirement you're saying.
9 What Article 7 requires I, the petition must show that a
10 complaint was made in due time to the proper officers to
11 correct such assessment. And a complaint was made in due
12 time to correct the assessment.

13 MR. MAKER: But it was made by a person who - - -

14 JUDGE GARCIA: But you've got - - -

15 MR. MAKER: - - - didn't have the right to make
16 it.

17 JUDGE GARCIA: But this - - -

18 MR. MAKER: I - - -

19 JUDGE GARCIA: But this requirement, as I read
20 Article 7, seems to mean to me that the purpose of this is
21 to exhaust administrative remedies to give the village or
22 the town the opportunity to correct or negotiate; and
23 that's our Sterling case, right. So this isn't talking
24 about who brought that petition. It's just saying - - -
25 making sure that it was done. So when you bring me Article



1 7 and Article 7 is clearly broader, even going by your
2 interpretation - - -

3 MR. MAKER: Absolutely.

4 JUDGE GARCIA: - - - all you have to say is the
5 town had notice and an opportunity to address these issues
6 in the administrative process.

7 MR. MAKER: But under that logic, Your Honor, you
8 could have filed the grievance.

9 JUDGE GARCIA: No. No. You could - - - you can
10 challenge that, right?

11 MR. MAKER: But the grievance - - - that's what
12 we are doing. We're challenging the fact that the person
13 whose property was actually assessed, who turns out to be
14 the owner of the property, did not file the grievance.

15 JUDGE GARCIA: Okay. You got - - -

16 MR. MAKER: So I think - - -

17 JUDGE CANNATARO: Counsel, I - - -

18 JUDGE GARCIA: So I'm sorry. Okay. I take your
19 point actually, yes. So I could have filed the original
20 one and for some reason, Mamaroneck decides we're going to
21 just deal with you. And I come in and I have all my
22 assessment documents. And we negotiate and you reject my
23 claim and it goes on. And you never make a motion and you
24 never do anything in the Article 5 proceeding. And you let
25 us go through and you treat me like I'm the person whose



1 property was aggrieved all through the Article 5 petition.
2 Why not? If you're going to do that, why doesn't that
3 satisfy the Article 7?

4 MR. MAKER: Because I think the - - - the
5 underlying premise is that the complaint is filed by the
6 appropriate person. Not just anybody, but the person who
7 Article 5 says must file it, the person whose property is
8 assessed. I don't think it just means that anybody at any
9 time could file a - - -

10 JUDGE GARCIA: But - - -

11 MR. MAKER: - - - a Article 5 petition because -
12 - -

13 JUDGE GARCIA: No. And I think it's somewhat
14 undercut by the fact that the localities aren't challenging
15 that in the Article 5 proceeding and they're raising it
16 seven years later in an Article 7. But as I read the
17 Article 7, that provision is in there to ensure that the
18 process was filed; that the town had the opportunity to
19 negotiate and to address these issues in the administrative
20 proceeding. It's not a jurisdictional basis.

21 MR. MAKER: Well, I disagree with you. I'm
22 sorry, Judge Garcia. I think the whole fundamental premise
23 is that the proper person comes to the board of assessment
24 review; that's the whole premise.

25 JUDGE WILSON: And is there no - - -



1 MR. MAKER: Not that anybody can.

2 JUDGE WILSON: - - - is there - - - is there no
3 duty on you to point out that it's the wrong person if you
4 believe that?

5 MR. MAKER: I don't believe there is any such
6 duty to do that; none whatsoever. It's up to - - - it's up
7 to the petitioner or the complainant, I should say, to
8 establish their own jurisdiction. It's not up to me as the
9 respondent to tell them where they might have gone astray.

10 And what I wanted to get at is these two 19th
11 century cases - - - I want to get back to that. It turns
12 out that those two 19th century cases that are court of
13 appeals cases dealt with an 1858 statute, which I finally
14 was able to get my hands on. And that statute had nothing
15 to do with tax (indecipherable). It had to do with
16 assessments that were being levied against property by the
17 City of New York pre-Civil War as it was putting in
18 sidewalks and streets in front of people's homes and
19 therefore assessing them. That statute had no grievance
20 procedure. It allowed an aggrieved party, which this court
21 interpreted to include lessees in those two cases, Burke
22 and Walter, to go directly to court.

23 Now, why is that important? Well, because those
24 two cases, which were not tax actuary cases and which did
25 not involve administrative review, were then cited and



1 relied upon by the McLane decision that Mr. Clifford refers
2 to as the - - - as the reason why, in the City of
3 Binghamton, under its local law, a tenant could file a
4 grievance. It then is - - - McLean is cited in the opinion
5 of the State Board of Equalization assessment that Mr.
6 Clifford has cited, involving a lessee of a shopping center
7 being told to file a grievance. Then it's cited by this
8 court in the tax actuary case in 1989, Waldbaum's. And
9 then it's cited by this court in the Larchmont Pancake
10 House decision, both by the majority and by the dissenters.

11 So my point is that the incorrect premise of
12 these two cases has now permeated into the tax sanctuary
13 world and influenced it in a way that it should never have
14 been done. And I just wanted to point it out to the court,
15 I have copies of the 1858 case with - - - law with me. I'm
16 happy to leave them with you. And of course, I'll give Mr.
17 Clifford a copy.

18 The problem also is the notion of laws - - - of
19 what - - - language being superfluous. As you know, 524(3)
20 and 704(1) contain completely different phrases; a person
21 whose property is assessed versus any person claiming to be
22 aggrieved by an assessment. These two phrases have only
23 one word in common, person, and a version of the word
24 assessed.

25 You have always told us that statutes have to be



1 construed - - - and I think your Mestecky decision says it
2 best, that meaning and affect should be given to every word
3 of a statute and that an interpretation that renders words
4 or clauses superfluous should be rejected; that's the
5 Mestecky case.

6 You go on to say more recently in Ironduit - - -
7 Irondequoit v. the County of Monroe that the courts must
8 look at statutes in such a way that harmonizes related
9 provisions and renders them compatible; that's what the
10 Second Department did. It said we have these two phrases.
11 They're completely different. They must mean different
12 things. 524 said - - - is - - - should be interpreted to
13 mean the owner and 704, a much broader group, as Judge
14 Garcia's pointed out to us.

15 JUDGE GARCIA: Counsel, just on that point, and I
16 don't know the answer to this, what is the policy reason
17 for doing that? For giving a broader group access to
18 Article 7 than those that could bring in Article 5?

19 MR. MAKER: I do not know. I suppose it has
20 something to do with the fact of the - - - it has something
21 to do with the fact that the tenants are paying the taxes.
22 There are no two ways about that. So there may be that
23 reas - - - rationale. But I think the rationale for having
24 the owner file the grievance is so that it stays involved
25 in some way in the overall process, so it's aware of what's



1 going on.

2 I will end with this if I might.

3 JUDGE RIVERA: Well, let me - - - let me - - -
4 I'm sorry, let me interrupt you there. Are you saying that
5 the way to harmonize it, in response to Judge Garcia's
6 question, is the legislature wanted to ensure that a tenant
7 wasn't acting without consent of the owner? Is that what
8 you mean by that?

9 MR. MAKER: Without knowledge, at least.

10 JUDGE RIVERA: I'm sorry?

11 MR. MAKER: Without the knowledge of the owner.

12 JUDGE RIVERA: Yeah, but knowledge, unless you're
13 - - - you approve of it, is not helpful to you here, I
14 think.

15 MR. MAKER: Not really because this particular
16 lease on page 456 of the record requires the landlord to
17 get involved if the law requires them to get involved. So
18 they've already negotiated a lease that covers this
19 contingency, they just didn't utilize that.

20 JUDGE RIVERA: Let me - - - let me ask you this.
21 And it may be - - - it may be, you know, a silly question.
22 Let's say a tenant brings the action.

23 MR. MAKER: Um-hum.

24 JUDGE RIVERA: And the landlord, the owner, has
25 no knowledge of it, and the tenant loses. You've taken no



1 - - - the town has not acted on it, hasn't said you're not
2 the right party, and in fact, makes a determination; says
3 our assessment was correct, you lose. Can the owner then
4 say that's null and void because I'm the only one who can
5 bring the action?

6 MR. MAKER: No. Because there are strict
7 statutes of limitations. You have to file a grievance
8 within - - -

9 JUDGE RIVERA: Well, let's say it's within the
10 statute of limitations.

11 MR. MAKER: I don't see how that possibly could
12 happen.

13 JUDGE RIVERA: Okay. All right.

14 MR. MAKER: Because - - - now, I just want to - -
15 - I know I'm over my time, but one last point. We've - - -
16 I've been at this since the fall of 2018, when amici
17 motions were being made in the Larchmont Pancake House
18 case. The International Counsel of Shopping Centers was
19 one of those amicus - - - amici then, they're amici now.
20 They have 4,250 members in the State of New York.

21 In these three-and-a-half years, I have not seen
22 an affidavit from anybody that says I'm a tenant required
23 to pay lease - - - the taxes. I went to my landlord, asked
24 my landlord to sign a grievance, and my landlord refused.
25 So the apocalypse that's being portrayed by the petitioner



1 and its allies just has not come to pass.

2 With that, I end and wish you all a very pleasant
3 afternoon.

4 CHIEF JUDGE DIFIORE: Thank you, sir.

5 Counsel?

6 MR. CLIFFORD: Thank you, Your Honor.

7 With all due respect to my colleague, at the time
8 we filed, the law didn't require the owner. Circulo came
9 and - - - down the stream changed the rules. We relied
10 upon all the sources, the state guidance, the town's
11 website, the McLean's case. In addition, the - - - when
12 the court is reviewing this particular statute, it's
13 remedial in character and should be liberally construed, so
14 as not to defeat a valid claim on a technicality, and we
15 believe that's exactly what happened here.

16 In addition, with respect to the construction, we
17 believe that the canon of in pari materia applies here
18 because it's 524, 704, and 706 of the RPTL all relate to
19 the same subject matter, and that's the review of property
20 tax assessments. RPTL 524 and 706 present the same grounds
21 for review. And as Judge Garcia pointed out, the filing of
22 an Article - file of complaint is a condition precedent to
23 the Article 7 petition.

24 The statutes are interlocking, they're
25 interdependent, and they should be construed together. We



1 believe that the Second Department, respectfully, inserted
2 an owner requirement where none existed before. And if
3 that is upheld, it is going to cause chaos out amongst
4 tenants who have leases structured the way ours is.

5 Now, getting up closer - - -

6 JUDGE RIVERA: But let me - - - let me ask you
7 this. If - - - again, if moving forward prospectively now,
8 the law is clear, why isn't he right that tenants could
9 simply go to the owner and say you got to file that
10 complaint? And if they refuse, then maybe you have an
11 action against the owner.

12 MR. CLIFFORD: If the court changes the law now,
13 prospectively - - -

14 JUDGE RIVERA: Yes.

15 MR. CLIFFORD: - - - I think that might be right.
16 But - - - but ret - - - retroactively, which would apply
17 here, there's a condition by - - -

18 JUDGE RIVERA: Yes, I understand it would not - -
19 - it would not - - -

20 MR. CLIFFORD: It wouldn't help us.

21 JUDGE RIVERA: - - - give you comfort.

22 MR. CLIFFORD: Right, right.

23 JUDGE RIVERA: What I'm saying in terms - - -
24 because before, I asked you a question about whether or not
25 there might be some remedy and you said no. These leases



1 are set in stone. There's no remedy. So the question is,
2 if they have these provisions and we now say the - - -
3 moving forward the law is that the owner is the one who's
4 got to file the complaint and has got to move forward on
5 these actions, that would allow the tenant, right - - - my
6 point is that would allow the tenant, given if the lease
7 has that language or otherwise, to argue to the owner
8 you're the only one who can do this; you must file the
9 complaint.

10 MR. CLIFFORD: I think that would reach an
11 equitable result prospectively. Here, it would not be
12 equitable.

13 JUDGE RIVERA: Yes.

14 MR. CLIFFORD: If I could just - - -

15 CHIEF JUDGE DIFIORE: Thank you, Counsel.

16 MR. CLIFFORD: Thank you.

17 (Court is adjourned)

18
19
20
21
22
23
24
25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript of proceedings in the Court of Appeals of DCH Auto v. Town of Mamaroneck, No. 55 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers
Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: May 27, 2022

