

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27204
H/kmg

_____AD3d_____

Argued - April 15, 2010

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ANITA R. FLORIO
LEONARD B. AUSTIN, JJ.

2008-11157

DECISION & ORDER

In the Matter of Fraternal Order of Eagles, respondent,
v Board of Assessors, et al., appellants.

(Index No. 402387/06)

John Ciampoli, County Attorney, Mineola, N.Y. (Gil Nahmias of counsel), for appellants.

Jaspan Schlesinger, LLP, Garden City, N.Y. (YuhTyng Tsuei and Joan M. Quinn of counsel), for respondent.

In related proceedings pursuant to RPTL article 7 to review the tax assessments of the petitioner's real property for the tax years 2004/2005 through 2008/2009, the appeal is from an order of the Supreme Court, Nassau County (Bucaria, J.), entered October 2, 2008, which granted the petitioner's motion, in effect, for summary judgment reducing the tax assessments for Lots 80-84 to the sum of \$0, and directing that the current full market value assessment, as limited by the requirements of RPTL 1805, for the single entity encompassing Lots 76-79 be applied to the combined parcel constituting Lots 76-84.

ORDERED that the order is reversed, on the law, with costs, and the petitioner's motion, in effect, for summary judgment reducing the tax assessments for Lots 80-84 to the sum of \$0, and directing that the current full market value assessment, as limited by the requirements of RPTL 1805, for the single entity encompassing Lots 76-79 be applied to the combined parcel constituting Lots 76-84 is denied.

CPLR 3212(b) provides that "[a] motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written

May 4, 2010

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admissions” (CPLR 3212[b]). Here, the petitioner failed to submit a copy of the petitions in support of its motion for summary judgment. Accordingly, the petitioner was not entitled to summary judgment and the motion should have been denied (*see Zellner v Tarnell*, 54 AD3d 329, 329-330; *Sendor v Chervin*, 51 AD3d 1003; *Thompson v Foreign Cars Ctr., Inc.*, 40 AD3d 965; *Matsyuk v Konkalipos*, 35 AD3d 675; *Sted Tenants Owners Corp. v Chumpitaz*, 5 AD3d 663).

In light of our determination, we need not reach the parties’ remaining contentions.

RIVERA, J.P., FISHER, FLORIO and AUSTIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court