

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1012

CA 10-00582

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

IN THE MATTER OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY, JAMES SYRACUSE LLC,
AS LESSEE (1045 JAMES STREET),
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN C. GAMAGE, ASSESSOR, CITY OF SYRACUSE,
AND CITY OF SYRACUSE, RESPONDENTS-APPELLANTS.
(APPEAL NO. 1.)

JUANITA PEREZ WILLIAMS, CORPORATION COUNSEL, SYRACUSE (JOSEPH FRANCIS
BERGH OF COUNSEL), FOR RESPONDENTS-APPELLANTS.

GILBERTI STINZIANO HEINTZ & SMITH, P.C., SYRACUSE (JON E. COOPER OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County
(Donald A. Greenwood, J.), entered May 12, 2009. The order denied the
motion of respondents to dismiss the tax certiorari petition.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: In these three tax certiorari appeals, respondents
appeal from an order denying their pre-answer motions pursuant to CPLR
3211 (a) (1) and (7) to dismiss the respective petitions in each
proceeding, based on documentary evidence establishing a defense to
the petitions and for failure to state a cause of action. We affirm
for reasons stated in the decision at Supreme Court. We add only
that, at this early stage of the proceedings, we reject respondents'
contention that petitioner waived its right to contest the assessments
at issue. It is well settled that the allegations in the petitions
must be accepted as true in the context of these pre-answer motions
pursuant to CPLR 3211 (a), and petitioner must be afforded every
favorable inference that may be drawn therefrom (*see 511 W. 232nd
Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152). "[T]he
criterion is whether the proponent of the pleading has a cause of
action, not whether [it] has stated one" (*Leon v Martinez*, 84 NY2d
83, 88, quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275).
Furthermore, inasmuch as respondents contend that there has been a
waiver of statutory rights, they must establish that the waiver does
not violate public policy (*see generally Matter of Buffalo Police
Benevolent Assn. [City of Buffalo]*, 4 NY3d 660, 663-664). In view of

the standard of review of the petitions at this pre-answer stage of the proceedings, we conclude that respondents failed to do so (*cf. North Fork Bank v Computerized Quality Separation Corp.*, 62 AD3d 973), and respondents thus failed to establish that "the documents relied upon . . . definitively dispose of [petitioner's] claim[s]" (*Bronxville Knolls v Webster Town Ctr. Partnership*, 221 AD2d 248).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court