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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF MANOUEL,

Appellant,

-against-

No. 22

BOARD OF ASSESSORS,

Respondent.

20 Eagle Street
Albany, New York 12207
January 15, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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Sara Winkeljohn
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 22, Matter of
2 Manouel.

3 Counsel, would you like any rebuttal time?

4 MR. BYRNES: Two minutes, please, Your
5 Honor.

6 CHIEF JUDGE LIPPMAN: Two minutes. Go
7 ahead, counsel.

8 MR. BYRNES: All right. Your Honor, the
9 sole issue in this case is whether a single-family
10 home is considered owner-occupied for the purposes of
11 SCAR jurisdiction when a close relative - - -

12 CHIEF JUDGE LIPPMAN: What would be
13 consistent with the purposes of SCAR? From a policy
14 perspective, what's your argument as to why in this
15 case you should recov - - -

16 MR. BYRNES: Okay.

17 CHIEF JUDGE LIPPMAN: - - - be able to use
18 SCAR?

19 MR. BYRNES: The SCAR was initially enacted
20 to allow homeowners to efficiently and affordably
21 litigate their disputes regarding their property tax
22 assessments.

23 CHIEF JUDGE LIPPMAN: But to only certain
24 people should the - - -

25 MR. BYRNES: Only certain people, correct.

1 There are certain - - -

2 CHIEF JUDGE LIPPMAN: Occup - - - owner-
3 occupied homes.

4 MR. BYRNES: Owner-occupied residential
5 properties, et cetera.

6 CHIEF JUDGE LIPPMAN: Right.

7 MR. BYRNES: It was enacted because the
8 alternative to a SCAR proceeding is just a - - - an
9 Article 7 Title I proceeding, which is a regular
10 special proceeding. It's a 210-dollar filing fee, 95
11 dollars for an RJI, 30-dollar - - -

12 CHIEF JUDGE LIPPMAN: How do you come in
13 with - - - within the owner-occupied language?

14 MR. BYRNES: Well, SCAR is a remedial
15 statute, so the jurisdictional requirements should be
16 read broadly to spread its beneficial effects as
17 widely as possible. And in this case that would mean
18 reading the word owner to include a close relative of
19 the actual owner.

20 JUDGE READ: Where do we draw the line,
21 though? If we read it to - - - to include the close
22 relative here, I mean what about a cousin or what
23 about - - - I mean how - - - how would - - - how
24 would we know where to draw the line? How would the
25 agency know how to - - - where to draw the line?

1 MR. BYRNES: I mean, I think Judge
2 LaMarca's opinion from the Supreme Court was a good
3 one where he suggested that it was excluding
4 properties that were held for - - - to generate
5 income from rental. That being said, if it was just
6 limited to close family members, too, I - - - I think
7 that would be a workable distinction.

8 JUDGE ABDUS-SALAAM: What about - - -
9 counsel, what about the situation where, for example,
10 someone is a partner in a law firm and has a house in
11 Nassau County that they never use, but they have
12 coworkers who are coming from a different part of a -
13 - - a - - - a different office of the same firm,
14 maybe an office here in Albany, and they commute to
15 Nassau every day. And then their coworker who owns
16 the home says, well, you know, I'm not using it so
17 you can go ahead and use it. They're not there all
18 the time. There's no income. This is gratis. So
19 would they be permitted to stay there and then the -
20 - - the homeowner's still - - -

21 MR. BYRNES: In - - - in other words, it's
22 just a - - - a friend or a coworker, not a - - - not
23 a relative?

24 JUDGE ABDUS-SALAAM: Right.

25 MR. BYRNES: Well, if we adopted the income

1 production test then no, but if it was just limited
2 to family members then, you know, again, no, they
3 wouldn't be - - -

4 JUDGE ABDUS-SALAAM: They would have to be
5 close family members, not just - - -

6 MR. BYRNES: I would think close family
7 members should be the distinction. I mean, look, the
8 whole point of - - -

9 CHIEF JUDGE LIPPMAN: But shouldn't there
10 be more than - - - shouldn't there be some kind of
11 guideline rather than us - - - us just guessing? You
12 know, as Judge Read said, well, where's the line and
13 how do we get it? You know, oh - - - oh, yeah, I
14 think it should be family members. Or gee, I think
15 it should be family members once removed. Or gee, I
16 think it should be family members once removed and
17 our close associates from work.

18 Doesn't there have to be some kind of a
19 standard? And I get it when - - - when you say that
20 - - - that the purpose - - - and we want to do things
21 that are consistent with the purpose. But there's
22 got to be some way to figure it out. You - - - you
23 think - - - I guess I'm asking you, what's your test?
24 Is it solely as long as you're not getting income
25 from it, it's okay?

1 MR. BYRNES: More - - -

2 CHIEF JUDGE LIPPMAN: Is that the - - - is
3 that the bottom line?

4 MR. BYRNES: That's the bottom line. The -
5 - - the whole point of the owner-occupancy
6 requirement from - - - from the legislative history
7 was to make SCAR administratively feasible. In other
8 words, to con - - - restrict out the very large class
9 of residential landlords that own, you know,
10 inventories of one to three-family houses that are
11 rented out. If you allow them into the SCAR forum,
12 it's a floodgate. There's lots of them. There's a
13 lot of one to three family houses that are owned for
14 rental purposes. The situation that the petitioners
15 are in in this - - -

16 CHIEF JUDGE LIPPMAN: So owner-occupied
17 under your test would be anyone who you let use the
18 property who doesn't pay you rent?

19 MR. BYRNES: More or less, yeah.

20 CHIEF JUDGE LIPPMAN: Would be owner-
21 occupied?

22 MR. BYRNES: Owner-occupied, other than - -
23 -

24 CHIEF JUDGE LIPPMAN: Okay. That's - - -
25 that's the test you'd have us apply.

1 MR. BYRNES: In this particular case, it's
2 the close family member.

3 JUDGE RIVERA: But - - - but - - -

4 MR. BYRNES: So I think in - - - even in -
5 - -

6 JUDGE RIVERA: Counsel, it sounds to me
7 like you're making an argument you should be making
8 to the legislature, because the language is very
9 clear. It says owner.

10 MR. BYRNES: Right. I understand. But the
11 - - - again, given the remedial nature of the
12 statute, the point is to correct inequities. And
13 whether - - -

14 JUDGE RIVERA: Yes. But we can't write
15 into the statute what's not there.

16 MR. BYRNES: But you can interpret "owner"
17 to have a broader definition than its dictionary
18 definition, which this court has done in the past
19 when interpreting - - -

20 JUDGE RIVERA: On "owner"? We've defined -
21 - -

22 MR. BYRNES: Not on owner; on residential.
23 You know, there's - - - there's - - - there's a
24 multiple-prong test to determining SCAR eligibility.
25 This court decided, I think in the late 80s, that

1 residential - - - exclusively residential doesn't
2 mean exclusively; exclusively means predominantly.

3 JUDGE RIVERA: So owner doesn't mean
4 exclusively owner?

5 MR. BYRNES: Right. No, owner doesn't mean
6 - - - correct. Owner wouldn't mean exclusively the
7 owner. It would mean, you know, owner plus, you
8 know, close relatives, people that get basically the
9 beneficial use of the property without - - - without
10 the owner of the property getting financial
11 remuneration for it.

12 JUDGE RIVERA: So - - - so if it's a close
13 relative who you charge rent to, that's not covered?

14 MR. BYRNES: Correct, because they're just
15 gen - - - at that point it's just a tenant that
16 happens to be a relative of theirs. They can use
17 that stream of income to hire an attorney to
18 prosecute a traditional tax certiorari. The whole
19 point of SCAR, again, is to limit the cost and the
20 burden associated with a traditional tax certiorari,
21 which can be very time-consuming, very expensive,
22 take multiple years to resolve and - - -

23 JUDGE RIVERA: And that - - - that
24 certainly would suggest that the legislature would
25 not have limited the phraseology to "owner-occupied".

1 They would have made clear exactly what you're
2 saying. Again, it strikes me like you're - - -
3 you're seeking for us to do what the legislature has
4 chosen not to do at this time. It may be very good
5 policy.

6 MR. BYRNES: Right.

7 JUDGE RIVERA: That's not a disagreement
8 with you.

9 MR. BYRNES: Right. Again, that - - -

10 JUDGE RIVERA: It strikes me you're - - -
11 you're making the argument to the wrong building.
12 You may have to go a few blocks over.

13 MR. BYRNES: I understand. I just think
14 it's outweighed by policy considerations in this
15 particular case. Again, it's - - - here it's the - -
16 - and it is close relatives that we're dealing with
17 in this particular fact pattern. You know, it's not
18 anything beyond that.

19 CHIEF JUDGE LIPPMAN: Well, I think you
20 have a closer question in - - - in regard to what
21 Judge Rivera is asking you. There have been more
22 flexible interpretations over the years in terms of
23 the precedents as to what - - - what cov - - - what's
24 covered under this and what isn't.

25 MR. BYRNES: Um-hum.

1 CHIEF JUDGE LIPPMAN: So I think it's gone
2 part of the way, or a good part of the way to where
3 you want to go. Isn't this, though, as Judge Rivera
4 says, even beyond those precedents, extending
5 somewhere the legislature certainly didn't lay out a
6 game plan to go this far. But you're - - - what
7 you're really arguing, I guess, is that - - -

8 MR. BYRNES: Right, yeah.

9 CHIEF JUDGE LIPPMAN: - - - that where
10 we've come since that legislation leads to the
11 logical conclusion that this situation is covered?

12 MR. BYRNES: That's exactly right. If you
13 follow the exact fact patterns of the cases that have
14 expanded SCAR jurisdiction - - - this is clearly a -
15 - - a step further. I'm not going to deny that. But
16 if you follow the overarching principles of statutory
17 construction - - -

18 CHIEF JUDGE LIPPMAN: You think it's
19 consistent with it.

20 MR. BYRNES: - - - it's consistent with it.
21 Exactly.

22 JUDGE READ: It would be a change, though,
23 wouldn't it, in - - - in the settled understanding of
24 what that means?

25 MR. BYRNES: No. If it was limited to only

1 family members, I mean I - - - I don't have
2 statistics on this at all.

3 JUDGE READ: But it would be a change.

4 MR. BYRNES: I can't imagine that that's a
5 huge amount of properties. Yeah. It would be - - -
6 more people would be let in, absolutely, which I
7 think is the goal of SCAR. And I think that would be
8 a - - -

9 JUDGE READ: I mean it would be a change
10 from the way it's been interpreted by the government,
11 because owner has been interpreted as owner, as I
12 understand it.

13 MR. BYRNES: Correct, um-hum.

14 JUDGE RIVERA: Are you relying on New
15 Castle and Masters?

16 MR. BYRNES: New Castle v. Kaufmann,
17 correct. And that's - - -

18 JUDGE RIVERA: And Masters?

19 MR. BYRNES: I'm sorry? And - - - and
20 Masters just to a certain extent.

21 CHIEF JUDGE LIPPMAN: Okay, counsel.
22 Thanks.

23 MR. VALK: Good afternoon. May it please
24 the court, Deputy County Attorney Martin Valk for the
25 respondents.

1 CHIEF JUDGE LIPPMAN: Coun - - - counsel,
2 why - - - why isn't what your adversary is talking
3 about really consistent with the - - - the cases and
4 the pronouncements on this issue? He acknowledges it
5 takes it even one step further. But it's not - - -
6 the spirit of - - - of this particular circumstance
7 is relatively in sync with some of these other
8 rulings in this area. Is it - - - why - - - why
9 should we draw the line here, I guess is what I'm
10 saying.

11 MR. VALK: Quite simple. First of all, the
12 one word answer is jurisdiction, and I'm - - - and
13 that's two prongs. Number one, the SCAR court did
14 not have jurisdiction over this proceeding for
15 various factors. The petitioners did not reside at
16 the property.

17 JUDGE PIGOTT: Let me - - - let me - - -
18 why are you doing this? I mean it - - - it - - - it
19 would seem to me you got a lady - - - you know, what
20 is she, a grandmother or something - - - living in a
21 house. What's the advantage to Nassau County to go
22 through a plenary hearing with respect to - - - to an
23 assessment on a single-family house knowing, you
24 know, that you - - - as your opponent points out, you
25 got all these filing fees. You got to get an expert.

1 You're going to go through discovery. Maybe - - -
2 maybe a year-and-a-half down, you're going to get to
3 the thing. In the meantime, you had to file a second
4 one. And these things pile up and Nassau County's
5 famous for getting these things done quickly. So why
6 - - - why wouldn't you just say let this go?

7 MR. VALK: I guess my client's reputation
8 precedes itself. Couple of reasons, number one - - -
9 and the panel alluded to it, where do you draw the
10 line?

11 JUDGE PIGOTT: Well, why don't you draw the
12 line here? You could say to him, why don't you just
13 have your - - - your taxpayer file - - - doesn't even
14 have to file it. Give a deed to your - - - to your
15 mother-in-law, now she's an owner-occupant. Want a
16 no more dollars, don't even have to file it.

17 MR. VALK: But that wouldn't cover the year
18 at issue, assuming that's - - -

19 JUDGE PIGOTT: Well, of course. But it - -
20 - but what - - - but what you're simply saying is
21 there's a papier-mache hoop you can - - - you can
22 jump through by - - - by having - - - you know, on
23 December 31st giving her this deed that doesn't have
24 to be filed. Nobody - - - nobody cares about it
25 except she's the owner and now she can do this. Then

1 it would seem to me that in the spirit of this
2 statute, you'd be more than happy to get this thing
3 done through SCAR.

4 MR. VALK: Well, except the plain meaning
5 is owner-occupied. If she were the owner on tax
6 status, they - - - then, Your Honor, you are correct,
7 but here she wasn't.

8 JUDGE PIGOTT: And why does that - - - what
9 - - -

10 MR. VALK: It's as simple as that.

11 JUDGE PIGOTT: You know, I mean, I - - - I
12 understand you can raise this, but why?

13 JUDGE ABDUS-SALAAM: Counsel, if - - -
14 could I just - - - I - - - I - - - I know that's
15 rhetorical question, so I'm going to jump in if you
16 don't mind.

17 MR. VALK: Thank you.

18 JUDGE PIGOTT: Absolutely.

19 JUDGE ABDUS-SALAAM: If - - - if one of the
20 owners had lived there with her, that person could
21 file the SCAR, right?

22 MR. VALK: I would - - -

23 JUDGE ABDUS-SALAAM: You can have two
24 homes, right? I - - - I mean - - - or is for SCAR
25 purposes, you can't live someplace for a few months

1 and someplace else for a few months or have a second
2 home?

3 MR. VALK: I would - - - I would say that
4 the general overarching rule is you can only occupy -
5 - -

6 JUDGE ABDUS-SALAAM: One place.

7 MR. VALK: - - - one home.

8 JUDGE PIGOTT: Yeah, but there's an excep -
9 - -

10 MR. VALK: The owner can only occupy one
11 home.

12 JUDGE PIGOTT: There's an exception for
13 seasonals.

14 JUDGE ABDUS-SALAAM: Yeah.

15 MR. VALK: And that - - - that is - - -
16 that is correct. But - - -

17 JUDGE PIGOTT: Not in the statute.

18 MR. VALK: And - - - and it's not in the
19 statute. And in fact, the people in the other
20 building in 2012, I think, made the statute clear by
21 saying primary residence when they expanded the
22 statute to include limited partnerships and to
23 include trusts.

24 JUDGE PIGOTT: There they're referring to
25 Medicare - - -

1 MR. VALK: Again, that's not our situation
2 here.

3 JUDGE PIGOTT: Then they're referring to
4 Medicaid trusts and things like that where the - - -
5 where the elderly or the - - - the parents deed the
6 house to the kids but remain in it for - - -

7 MR. VALK: For estate planning purposes.
8 Yes, Your Honor.

9 JUDGE PIGOTT: And for some reason that's
10 okay.

11 MR. VALK: That - - - well, that's what has
12 - - - the people in the other building, as you - - -
13 as the panel alluded to, decreed. And it's as simple
14 as that. That's a plain - - -

15 JUDGE PIGOTT: Doesn't it make sense?

16 MR. VALK: That does make sense. However,
17 that's not our situation here.

18 JUDGE PIGOTT: You're - - - you're just
19 stuck with this. You'd really like to do this under
20 SCAR because this - - - you got this lady sitting in
21 a - - - in a single-family home that belongs to her
22 son or son-in-law. I forget the exact facts. And
23 you'd really like to handle this like - - - with SCAR
24 and get it done but I'm sorry; we're going to have to
25 run you through the gauntlet of the same thing we run

1 anything else?

2 MR. VALK: One other - - - one other point
3 if - - - if I may - - -

4 CHIEF JUDGE LIPPMAN: Sure, go ahead.

5 MR. VALK: - - - because I - - - I had
6 initially said it's two prong. Number one, SCAR
7 jurisdiction, number two, subject matter
8 jurisdiction. It's our opinion that subject matter
9 jurisdiction statutes should be construed narrowly.
10 Thank you.

11 CHIEF JUDGE LIPPMAN: Okay. Thanks.

12 Counsel, rebuttal.

13 MR. BYRNES: Thank you, Your Honor, just
14 one quick point. The whole primary residency test, I
15 - - - I just want to point out really is only for the
16 two recently enacted amendments which are
17 partnerships and trusts.

18 CHIEF JUDGE LIPPMAN: Right.

19 MR. BYRNES: This - - - you know, the State
20 Board of Equalization and Assessment, which is
21 currently known as the Office of Real Property Tax
22 Services, has dismissed primary occupancy - - -
23 primary residents as the test for SCAR jurisdiction.
24 They said that by the legislator using owner-occupied
25 as - - - as opposed to domiciliary, that they

1 intended it to be a different meaning altogether.

2 JUDGE PIGOTT: Can you draw a deed?

3 MR. BYRNES: I'm sorry?

4 JUDGE PIGOTT: I'm kidding.

5 CHIEF JUDGE LIPPMAN: Okay, counsel.

6 MR. BYRNES: That's it. Thank you.

7 CHIEF JUDGE LIPPMAN: Thank you both.

8 Appreciate it.

9 MR. VALK: Thank you.

10 (Court is adjourned)

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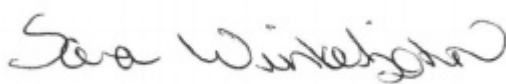
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Manouel v. Board of Assessors, No. 22 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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