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COURT OF APPEALS

STATE OF NEW YORK

BROOKDALE PHYSICIANS

Appellant,

-against-

NO. 7

DEPARTMENT OF FINANCE,

Respondent.

20 Eagle Street
Albany, New York
January 5, 2023

Before:

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

Appearances:

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Official Court Transcriber



1 ACTING CHIEF JUDGE CANNATARO: Number 7,
2 Brookdale Physicians v. Department of Finance. Counsel?

3 MS. CHAN: Good afternoon, Your Honors.

4 ACTING CHIEF JUDGE CANNATARO: Good afternoon.

5 MS. CHAN: If I may, I'd like to reserve one
6 minute for rebuttal.

7 ACTING CHIEF JUDGE CANNATARO: You have a minute.

8 MS. CHAN: Thank you, Your Honor.

9 May it please the Court. Andrea Chan for
10 Appellant, New York City Department of Finance.

11 Your Honors, the case before you presents a very
12 important question in the realm of tax exemption law,
13 specifically under Real Property Tax Law 420-a.

14 ACTING CHIEF JUDGE CANNATARO: Ms. Chan, is it
15 420-a(1), or 420-a(2), or both that we're talking about
16 here?

17 MS. CHAN: We're talking about both, Your Honor.
18 And the petitioner does not qualify for either. I would
19 say specifically, if you had to let me choose one, I would
20 say a(2).

21 But under a(1), the - - -

22 ACTING CHIEF JUDGE CANNATARO: Can we talk about
23 a(2) for a second?

24 MS. CHAN: Yes.

25 ACTING CHIEF JUDGE CANNATARO: Because when I



1 look at the 2017 letter denying the exemption, it speaks of
2 leasing beyond the operating cost of the property, which
3 that led me to think that it was a(2) - - -

4 MS. CHAN: Yeah.

5 ACTING CHIEF JUDGE CANNATARO: - - - but upon
6 further examination, I'm not sure a(2) applies here. So
7 can you tell me why a(2) would even apply to this
8 situation, where a not-for-profit is leasing to a for-
9 profit?

10 MS. CHAN: It actually does specifically apply to
11 a(2), Your Honor, because under RPTL 420-a(2), when a
12 property is leased or otherwise used for a purpose that's
13 not exempt, it is automatically subject to taxation.
14 That's what puts petitioner directly under a(2).

15 JUDGE SINGAS: Doesn't that go against all of our
16 precedent?

17 MS. CHAN: How so, Your Honor?

18 ACTING CHIEF JUDGE CANNATARO: Well, to jump in,
19 I'll give one example.

20 We have a case from 1980, Sisters of Saint
21 Joseph, which seems to say a(2) only applies where one not-
22 for-profit is leasing to another not-for-profit, ostensibly
23 for a different use.

24 Here, we have a not-for-profit leasing to a for-
25 profit, so that leads me to the conclusion that if



1 something is going to apply, it would only be a(1).

2 MS. CHAN: Your Honor, under the - - - the plain
3 language of the statute, when a property is leased or
4 otherwise used for a nonexempt purpose, then it's subject
5 to taxation.

6 What Your Honor is referring to is the
7 subcategories underneath. If the not-for-profit is leasing
8 to another not-for-profit, then we implicate Sisters of
9 Saint Joseph.

10 ACTING CHIEF JUDGE CANNATARO: And a(2). I mean
11 - - -

12 MS. CHAN: And a(2).

13 ACTING CHIEF JUDGE CANNATARO: Our language from
14 Sisters of Saint Joseph is a(2), subdivision 2 - - -

15 MS. CHAN: Yes.

16 ACTING CHIEF JUDGE CANNATARO: - - - is
17 specifically - - - specifically applicable where one tax
18 exempt organization leases its property to another. That's
19 the language.

20 And to me, when I read that, I say, "This isn't
21 that case; this is a different case".

22 MS. CHAN: What Sisters of Saint Joseph is
23 referring to, Your Honor, is - - - is when a not-for-profit
24 is leasing to another not-for-profit. Then what we need to
25 look to is whether or not the income exceeds the caring,



1 maintenance, and depreciation cost.

2 But if you look - - - if you look further up in
3 the statute, Your Honor, first, you're correct. You look
4 at RPTL 420-a(1), is it owned by a not-for-profit? Is it
5 used exclusively for that not-for-profit's purpose? In
6 this case, it isn't.

7 And then when you look at a(2), because what's
8 happening here is the Schulman Fund is leasing to a for-
9 profit. This is a not-for-profit exemption. The Schulman
10 Fund is supposed to be using the property specifically for
11 its charitable purpose, but it - - -

12 ACTING CHIEF JUDGE CANNATARO: So could we go to
13 a(1), because - - -

14 MS. CHAN: Yes.

15 ACTING CHIEF JUDGE CANNATARO: - - - under a(1),
16 you could lease it, and there's a reading, I think, at
17 least a reasonable, colorable reading of it, that you can
18 lease it at - - - you know, at a market rate, at a profit,
19 as long as you satisfy all the other conditions that are
20 attached in a(1). It can't be used for the benefit of one
21 of the officers or directors, and it has to be used for a
22 listed purpose. You know, there's requirements, but
23 leasing it at a profit doesn't seem to be one of the
24 requirements in a(1).

25 MS. CHAN: Respectfully, Your Honor, it - - - it



1 actually is. Because if you look at, for instance, this
2 Court's precedent in Matter of Lackawanna, the local
3 development corporation was leasing to a for-profit
4 manufacturing company, arguing that somehow by leasing to a
5 for-profit corporation, that furthered its charitable
6 purpose of spurring economic development.

7 This Court very wisely held that no, a not-for-
8 profit cannot lease to a for-profit business under a not-
9 for-profit exemption.

10 ACTING CHIEF JUDGE CANNATARO: But what if the
11 for-profit business is engaging in a permitted purpose,
12 i.e. a hospital purpose? Because this was a dialysis
13 center, which my understanding is Brookdale Hospital
14 doesn't have a dialysis unit in the hospital.

15 Is it a plausible reading to say, well, they're
16 engaged in hospital activity, so that is one of the
17 permitted uses, even for a for-profit company?

18 MS. CHAN: It's not, Your Honor, and for two
19 reasons.

20 First, we must be clear, the Petitioner has
21 blurred the lines of who the parties are in this
22 litigation.

23 The Schulman Fund is the owner of the property.
24 The Schulman's Fund purpose is what we're looking at.
25 Brookdale Hospital and the Nursing Institute are not owners



1 of this property; they're not even parties to this
2 litigation. We shouldn't be looking at a hospital purpose;
3 we should be asking, does the for-profit dialysis center -
4 - - does that further the Schulman Fund's purpose of
5 managing assets and charitable fundraising? It does not.

6 The Schulman Fund is a landlord that is renting
7 its property to a commercial business.

8 If we think for a moment, expanding this for - -
9 -

10 JUDGE GARCIA: Counsel, was that the basis for
11 the determination before you got into court?

12 I'm having a little trouble understanding - - -
13 what are we reviewing here? What are the courts looking
14 at? Are they looking at your agency determination, which
15 as far as I can tell, is on page 55 of the record in an
16 email, or are we looking at everything else you put in
17 after the fact?

18 MS. CHAN: In this Court's precedent in Greater
19 Jamaica, Your Honor, the Court looked at not just the
20 agency determination, but the affirmation of the
21 corporation council. And all of the - - -

22 JUDGE GARCIA: Really what they looked at there
23 were almost admissions. They looked at the petition and
24 what the response to the petition was, because they took
25 that, to me it seems, like admissions in the case.



1 So they said, well, the petitioners came in, who
2 were the taxpayers, and they made what seemed to be these
3 representations and their petition, and you can use those
4 to elucidate your agency determination.

5 But there was an extensive agency determination
6 letter in that case, which is really standing alone, the
7 Court said was enough.

8 Here, I see an email, which doesn't go into any
9 of the things you're now claiming as the basis for the
10 determination, and it seems to me quite different, and also
11 quite different from an initial determination.

12 To let an agency send out this email, the other
13 side has to bring in action, and then you can come up with
14 the additional reasons why you're taking the exemption
15 away.

16 MS. CHAN: This is not the first time that this -
17 - - that this property has been litigated though, Your
18 Honor, respectfully - - -

19 JUDGE GARCIA: But you lost, right?

20 MS. CHAN: Yes, Your Honor.

21 But the 2017 determination, it reflects back to
22 the 2014 decision. And even the lower court, Justice Chan,
23 in her 2018 decision, references the prior court's
24 decision, and - - -

25 JUDGE GARCIA: So -- okay. How does that affect



1 what's in front of the agency at the time you made this
2 determination? Not what's in your papers in this
3 proceeding.

4 MS. CHAN: Yes, Your Honor.

5 What was in front of the agency at the time was
6 the known fact that this was a for-profit dialysis center.
7 And it knows that because when you look at Mr. Oberman's
8 email, he says, looking back at the court's prior decision
9 - - -

10 JUDGE GARCIA: That's not what you said in your
11 email, though, as the basis for your revocation.

12 MS. CHAN: I understand, Your Honor.

13 What the Department of Finance did was it - - -
14 it looked at the 2014 decision of the lower court and said,
15 assuming that this now needs to be treated as a not-for-
16 profit, which it isn't, then we will then look at whether
17 or not the income exceeds the - - - so you - - -

18 JUDGE GARCIA: So that's your basis then? That's
19 the basis for your decision is that fact?

20 MS. CHAN: It's not the full basis, Your Honor,
21 because on this record, if you look at the uncontested
22 facts in this case, undisputed by Petitioner, the
23 Petitioner does not qualify, even under the plain language
24 of the statute.

25 And Your Honor, the Appellate Division decision



1 made very serious, significant errors in its decision. It
2 did not conduct a proper analysis under 420-a. It
3 conflicts with this Court's precedent in Lackawanna by not
4 looking at the actual and physical use of the property. It
5 conflicts with Genesee Hospital by allowing the commercial
6 practice of medicine to take place on a tax exempt
7 property. And it flies directly - - - directly in the face
8 of Stuyvesant Square Thrift Shop in Greater Jamaica by
9 holding that just because the Schulman Fund places its
10 profits back into the charity, that somehow profits should
11 be excusable.

12 ACTING CHIEF JUDGE CANNATARO: Thank you, Ms.
13 Chan.

14 MS. CHAN: Thank You, Your Honors.

15 MR. KASTNER: Good afternoon, Your Honors.

16 Menachem Kastner, Cozier O'Connor, representing
17 the Brookdale Dialysis.

18 Clearly, if you look at the determinations Judge
19 Garcia pointed out, they take that determination, and they
20 reference at the end, we made a mistake; we blurred. We
21 say it was a - - - we feel the court below was a nonexempt
22 or nonexempt. Mea culpa, I made a mistake. But in any
23 event, we're coming - - - we want to see the profits that
24 were realized.

25 When you're using the words profits that were



1 realized, you're under a(2) automatically. That's where
2 you fall into. Profits realized is part of a(2), not a
3 part of a(1). a(1) speaks about whether any employee,
4 officer, director has gotten a pecuniary - - -

5 JUDGE GARCIA: What about this argument, which
6 seems to be something like, there's law of the case here
7 and findings that could inform their decision here,
8 although not mentioned in this email in prior litigation?

9 MR. KASTNER: I didn't follow your question. I
10 apologize.

11 JUDGE GARCIA: So it seems to be an argument that
12 this email is also informed by prior determinations in
13 unsuccessful litigation by the city in this - - -

14 MR. KASTNER: I don't see the nexus, Your Honor,
15 respectfully.

16 They lost the first proceeding. They brought
17 three times revocation, one they backtracked on. The judge
18 in the first proceeding actually laid out the breadcrumbs
19 on what they should follow. He said, you didn't look into
20 the use; look into the use. No one looked into the use.
21 That is fundamental. Mental adult homes by this Court found
22 that it's use, and it's not profits that count.

23 They then sent us another letter revoking. And
24 then after I wrote a letter to them, they undid the
25 revocation, and they came back with a third attempt on it.



1 What they're missing is the burden of proof is
2 not on me to show what my client is, who's running what.
3 The burden of proof, because this is a revocation case, is
4 upon them. They abysmally failed to meet their revocation
5 requirements.

6 ACTING CHIEF JUDGE CANNATARO: So does this is
7 going beyond burden of proof, did - - - are you saying
8 alternatively or additionally that they - - - they failed
9 to even allege the right basis for revocation?

10 MR. KASTNER: Correct, Your Honor. If I may.

11 At the Appellate Division in their brief, they
12 say, "Rather than failing to undertake such an examination
13 of the use, the City Department of Finance embraced the
14 2014 decision, believing it to have determined that the
15 lease premises are occupied and used for purposes that
16 qualified the building for exemption under 420-1a".

17 They can concede, they gave in, they accepted,
18 that the use was proper. Once you accept the use is
19 proper, you're automatically under 420-a(1). You don't get
20 to 420-a(2).

21 We met the mandatory exemption requirements under
22 the case law.

23 Lackawanna was a totally different case that they
24 bring up. There, the entity was no longer doing the
25 purpose that it was, it wasn't a charitable entity, and it



1 was leased - - - subleased to a manufacturing plant.

2 When they say we blurred the line of who Schulman
3 is and what they do, this was never raised. It's not part
4 of page 55 of the record.

5 What seems to be doing - - - happening here is
6 they do their homework after the exam. They make - - -

7 ACTING CHIEF JUDGE CANNATARO: They don't get to
8 make that argument now, is that - - - is that what you're
9 saying?

10 What is the purpose of Schulman? Are they
11 engaged - - -

12 MR. KASTNER: Schulman - - -

13 ACTING CHIEF JUDGE CANNATARO: - - - in a
14 hospital activity?

15 MR. KASTNER: No.

16 ACTING CHIEF JUDGE CANNATARO: What are they
17 doing?

18 MR. KASTNER: If they had done what they were
19 supposed to do, Schulman's certificate of incorporation is
20 a public document, specifically says it is to administer
21 health to the - - - to the community, and it goes into
22 depth.

23 It's not just as in Stuyvesant Thrift Shop, where
24 it was an entity that just handed out money to these eight
25 other corporations. They are integral in doing the work.



1 However, even more so - - -

2 JUDGE RIVERA: I'm sorry. Is Schulman in the
3 business of - - -

4 MR. KASTNER: Is Schulman - - -

5 JUDGE RIVERA: Excuse me.

6 Is Schulman in the business, not-for-profit, of
7 course, of delivering medical services?

8 MR. KASTNER: Schulman is in charge of making
9 sure the hospital services are done properly, and that both
10 - - -

11 JUDGE RIVERA: What does that mean? Because I am
12 confused. I thought that Schulman basically worked on the
13 fundraising. Be careful what you admit to here, because it
14 is a not-for-profit, and it's tax - - - you're claiming
15 it's tax - - - it's excluded from taxation, both federal
16 and state.

17 MR. KASTNER: Respectfully, Your Honor, under the
18 Srogi case by the Court of Appeals - - -

19 JUDGE RIVERA: No, no, no. I'm asking you - - -

20 MR. KASTNER: Oh, I'm sorry.

21 JUDGE RIVERA: - - - what - - - what is the
22 purpose of Schulman? It is organized to do what? I
23 thought it was - - -

24 MR. KASTNER: Organize - - -

25 JUDGE RIVERA: - - - to fundraise and be the



1 money manager?

2 MR. KASTNER: It is organized to fundraise,
3 oversee the operations of both the Institute, as well as
4 the Hospital. It is involved heavily in, you know,
5 organizing what's going on with these two other aspects.
6 And it's all under one umbrella from the Brookdale Center.
7 It's one parent corporation.

8 JUDGE RIVERA: So it does more than fundraise and
9 money manage? Just to be clear. She may argue there's
10 more to their argument, but I understood them to be saying
11 that's Schulman's mandate, that's their purpose.

12 MR. KASTNER: They are not - - - they are in
13 charge of overseeing the work of the other two not-for-
14 profit organizations. There is one entity overseeing what
15 they do. It is involved in the daily operations of the
16 hospital.

17 JUDGE RIVERA: You mean they - - - they make
18 decisions regarding the provisional medical services - - -

19 MR. KASTNER: No.

20 JUDGE RIVERA: - - - or do they read the budget?

21 MR. KASTNER: The latter, Your Honor.

22 JUDGE RIVERA: Okay.

23 MR. KASTNER: The latter, Your Honor.

24 JUDGE RIVERA: So they're focused on the
25 financial health - - - sorry - - - for the other two



1 entities?

2 MR. KASTNER: Correct, is my understanding.

3 JUDGE RIVERA: All right.

4 MR. KASTNER: And under the Srogi case by this
5 Court, the fact that they oversee - - - that was exactly
6 the same type of a case, where there was an entity - - -
7 properties that owned the property. Hospital is running
8 it. And the Court there held it was the alter ego type of
9 case in that situation, that that is totally proper, and it
10 falls within the exemption.

11 What's happening here is their kneejerk reaction
12 every time to whatever someone brings up into court, and
13 they come up - - - like the Schuman one, it was never
14 argued before.

15 JUDGE WILSON: So couldn't we ask - - -

16 MR. KASTNER: a in Srogi, it's proper. It wasn't
17 argued, et cetera.

18 JUDGE WILSON: Let me ask you this, could you - -
19 - could you maintain the tax-exempt status and rent to an
20 auto repair shop?

21 MR. KASTNER: Can you maintain the - - - well, it
22 depends what the exempt - - - if - - - the answer would be
23 no if it was a - - - an exempt - - - if the entity was an
24 exempt ownership - - - was an exempt one, and put in a auto
25 shop that had nothing to do at all with the exempt purpose



1 of the cooperation that owned it or that was conducting,
2 because you have the word conducting in the statute, I
3 would say, standing here right now, that that would not
4 meet the exemption.

5 JUDGE WILSON: And what if it was a for-profit
6 business auto shop that repaired only hospital vehicles and
7 - - - and vehicles owned by hospital employees?

8 MR. KASTNER: In that situation, depending if it
9 met the qualifications like we have in this case, I would
10 say yes, it would be exempt.

11 If it was an auto shop that the people working
12 the auto shop were employees of the hospital, were paid by
13 the hospital, and it was ambulances - - -

14 JUDGE WILSON: No. It's a separate - - -
15 separate corporation. Yeah, a separate corporation that's
16 a for-profit corporation. They're not employees of the
17 hospital.

18 MR. KASTNER: If it was an - - - I would say if
19 it was an auto shop having nothing to do with the purpose
20 of the hospital, I would say it should not be in that
21 situation.

22 However - - -

23 JUDGE WILSON: What if eighty percent of the
24 vehicles repaired were affiliated with the hospital, and
25 twenty percent were not, or just me?



1 MR. KASTNER: I would say in that situation that
2 it would meet the - - - the purpose, because exclusively,
3 as we all know, in the statute, means primarily.

4 And in the Watchtower case, the Adult Homes case,
5 and various other cases from this Court, found that ninety
6 percent, the ten percent does not override the exemption
7 and - - - and bring it out.

8 So I would argue in that case, if eighty percent,
9 as in our situation, the eighty percent number, it would be
10 exempt. It would be probably exempt in that situation,
11 because it's exclusive, means it's primarily not - - -

12 JUDGE RIVERA: What if the hospital had a
13 dialysis center, but not as expansive as the one the
14 company leased to here? Would that matter?

15 MR. KASTNER: If the hospital had it's own
16 dialysis center - - -

17 JUDGE RIVERA: Correct. But just couldn't
18 handle, perhaps, all of the potential patients that would
19 want to use that. There's a spillover, some are referred
20 across the street. What about in that case?

21 MR. KASTNER: Sorry.

22 If it was the same amount, you had - - - they
23 were servicing also hospital, they were using their own
24 machines at the hospital, they were going into the hospital
25 with their own machines because there was need for that, I



1 would say in that situation it would be exempt.

2 JUDGE RIVERA: So why isn't that competition?
3 Why isn't that subsidizing a for-profit? Why isn't - - -
4 I'm a little confused why you say yes to that. I
5 understand your answers in response to Judge Wilson, but
6 this one confuses me.

7 MR. KASTNER: If the hospital had its own
8 dialysis center, but there was extra need for more machines
9 and more help, and the people who were working in the other
10 - - - the separate entity were also employees of the
11 hospital, and we are the same - - -

12 JUDGE RIVERA: You're not. Let's just - - - it's
13 just a private company.

14 MR. KASTNER: Private company - - -

15 JUDGE RIVERA: It's leased across the street to a
16 private company that is not - - - because they solely - - -
17 because they are located in that building across the
18 street, pays no taxes. If they were in a different
19 building owned by a private individual who's not a not-for-
20 profit, they would be paying taxes.

21 MR. KASTNER: I would say that they could be
22 exempt. I would say they would be exempt.

23 JUDGE RIVERA: Again, because it's a important
24 medical service?

25 MR. KASTNER: It's part of the medical services,



1 it's in sync with what the hospital does - - -

2 JUDGE RIVERA: But what if you lease to the - - -
3 to a pharmacy? And the hospital has its own pharmacy.
4 There's lots of pharmacies, you know.

5 MR. KASTNER: If, again - - -

6 JUDGE RIVERA: You're always going to have an
7 overflow is my point with that one.

8 MR. KASTNER: If it met the same indicia that we
9 have in this situation, where the employees were staffing
10 employees, they were being paid by the hospital, and down
11 the line - - - I would say in that situation that it would
12 be exempt.

13 ACTING CHIEF JUDGE CANNATARO: Thank you,
14 Counsel.

15 MS. CHAN: Briefly, Your Honor, I'd like to piggy
16 back off of the hypotheticals that were just posed, and
17 implore this Court to look at the consequences of this
18 decision, and by extension, what those hypotheticals would
19 mean.

20 If this decision were to be affirmed, the
21 Schulman Fund could purchase property after property and
22 lease to other outpatient medical services, to a physical
23 therapy clinic, to a rehabilitation - - -

24 JUDGE SINGAS: Is that really true though,
25 Counselor? Aren't we just looking to see if you sustained



1 your burden?

2 MS. CHAN: Your Honor, I respectfully disagree.
3 Because the consequences of the Appellate Division decision
4 are very, very severe and - - -

5 JUDGE GARCIA: We don't have to agree with the
6 Appellate Division.

7 My question is, and still affirm the finding - -
8 - the holding, in a way, if we just look at the four
9 corners of your page 55 email, are any of these issues
10 about the break, repair, and all of that? Is any of that
11 before us? Is any of the ownership and the use - - - is
12 that anywhere in your email on page 55?

13 MS. CHAN: The 2017 email, Your Honor, it relates
14 back to the 2013 determination, which found that - - -

15 JUDGE GARCIA: Does it reference that in the way
16 you're saying?

17 MS. CHAN: It references the lower court's
18 decision in 2014. And Justice Chan's decision also
19 references the decision in 2014.

20 And Your Honors, I - - -

21 JUDGE GARCIA: In what way is that reference
22 incorporating your arguments into this document?

23 MS. CHAN: Could you repeat the question, Your
24 Honor?

25 JUDGE GARCIA: In what way is your reference in



1 the mail incorporating all of the arguments you've made in
2 front of us into the information you provide to the
3 taxpayer on April 4th, 2017?

4 MS. CHAN: Because the 2017 determination, Your
5 Honor, if it hadn't been for the initial revocation that
6 the for - - - that the Department of Finance determined
7 that the property was being used as a for-profit basis, it
8 wouldn't have looked at it in that manner.

9 JUDGE GARCIA: A few things. I don't see a
10 reference to the 2017 decision in this email. I see the
11 numbers about the income - - -

12 MS. CHAN: Right.

13 JUDGE GARCIA: - - - and then a line at the end
14 that says, "Based on this information, the exemption
15 application is denied, based on the fact that the income
16 exceeds the expenses for the property". That's the reason
17 you give in this email.

18 MS. CHAN: The language I'm referring to, Your
19 Honors, is when it says from the court's order a few years
20 back. That's what I'm referring to when I say it relates
21 back to the prior litigation.

22 And I do understand the Court's concerns, they're
23 valid concerns, Your Honor, but I respectfully ask that it
24 be balanced against the severe mistakes that the Appellate
25 Division made. And the legislature is warning. The



1 legislature warned us about the proliferation of tax
2 exemptions and how much this will erode the municipal tax
3 base.

4 JUDGE GARCIA: Again, what you say in the actual
5 email is, "Under the court order from a few years back,"
6 that's the language, "the for-profit entity was determined
7 to be treated as a not-for-profit organization for purposes
8 of the lease".

9 Well, how does that put them on notice that
10 that's an adverse finding in any way? Especially when at
11 the end of the email you say the reason for our decision is
12 this financial calculation?

13 MS. CHAN: I understand, Your Honor. The
14 Department of Finance did misinterpret the lower court's
15 determination. It did. It did.

16 It looked at it, presumed that it should be
17 treated as a not-for-profit, but on the undisputed facts -
18 - -

19 JUDGE GARCIA: And you can correct that in the -
20 - - in the Article 78 proceeding?

21 MS. CHAN: Your Honor, I would have to say when
22 you balance what is at stake here, what this precedent will
23 set, and what the legislature's mandate to construe the tax
24 exemption - - -

25 JUDGE GARCIA: The precedent be be more careful



1 when you're revoking a twenty-year exemption? Why isn't
2 that the precedent we would set?

3 MS. CHAN: Well, the initial revocation, Your
4 Honor, in 2013 did specify that.

5 This property has been enjoying a tax exemption
6 since 1996 on the backs of other remaining taxpayers.
7 Whenever a tax exemption is taken off the rolls, it shifts
8 the burden of taxation to the other remaining tax-paying
9 citizens.

10 ACTING CHIEF JUDGE CANNATARO: Thank you.

11 MS. CHAN: Thank you, Your Honors.

12 (Court is adjourned)

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

I, Xavier Austin Reyna, certify that the foregoing transcript of proceedings in the Court of Appeals of Brookdale Physicians v. Department of Finance, No. 7 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: 

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