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COURT OF APPEALS
STATE OF NEW YORK

MATTER OF BI-COSTAL PROPERTIES,

Appellants,

-against-

NO. 33

SOLIMAN,

Respondents.

265 East 161st Street
Bronx, New York
March 12, 2026

Before:

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

Appearances:

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1 CHIEF JUDGE WILSON: The first one on the
2 calendar today is matter of Bi-Coastal Properties v.
3 Soliman.

4 MR. KAMMERMAN: Good morning, Your Honor.

5 Todd Kammerman of Goldberg & Bokor for the
6 appellant. I'd like to respectfully request three minutes
7 for rebuttal.

8 CHIEF JUDGE WILSON: Yes.

9 MR. KAMMERMAN: May it please the court.

10 It is impossible to reconcile the Department of
11 Finance's litigation position with the plain language of
12 their own enacted 2016 clerical error rule. The Department
13 of Finance advances in their argument an irrational and
14 unreasonable interpretation of that rule by arguing that it
15 only applies to ministerial and unintentional errors.

16 JUDGE RIVERA: Can you just clarify what is the
17 nature of the error that you say was committed?

18 MR. KAMMERMAN: So there are two errors here.
19 The main error is that the property was entitled to a J-51
20 exemption benefits. So the Department of Finance failed to
21 process that exemption after the DHCR issued a certificate
22 of eligibility calling for those thirty-four years of
23 exemption benefits.

24 The Department of Finance also failed to place a
25 physical increase on the assessments after the work that

1 was done on the property.

2 The plain language - - - as I was saying before,
3 the Department of Finance is arguing that its clerical
4 error rule only applies to ministerial and unintentional
5 errors. That it may not correct a substantive or legal
6 error under New York City Administrative Code - - -

7 JUDGE TROUTMAN: So why is it that you say that a
8 substantive error can be corrected with respect to that
9 enactment, as opposed to RPTL 7?

10 MR. KAMMERMAN: Well, the plain language of the
11 clerical error rule defines - - - let me back up. The
12 clerical error rule defines clerical errors and errors in
13 description.

14 JUDGE TROUTMAN: Does it include substantive - -
15 -

16 MR. KAMMERMAN: Yes, it does.

17 JUDGE TROUTMAN: - - - disputes?

18 MR. KAMMERMAN: It does. For example, aside from
19 the specific examples that are at issue here, for example,
20 B-11. It allows for the correction of a violation of a
21 statutory cap while increasing an assessment.

22 JUDGE SINGAS: Yeah. But that seems like a
23 numerical error. I think if we adopt your view, it's so
24 expansive that I find it hard to see where the limit would
25 be. What wouldn't be a clerical error in your view?

1 MR. KAMMERMAN: Well, respectfully, I disagree.
2 The - - - when it says to violate a statutory cap, that's
3 not a numerical error. That is using a wrong formula. And
4 it - - - the plain language of the rule says it's violating
5 the statute.

6 CHIEF JUDGE WILSON: Wait. You mean a numerical
7 formula?

8 MR. KAMMERMAN: Yes. For example, in a tax class
9 1 property - - -

10 CHIEF JUDGE WILSON: Uh-huh.

11 MR. KAMMERMAN: - - - a - - - an assessment
12 cannot increase more than six percent in one year, or
13 twenty percent over a period of five years.

14 JUDGE RIVERA: So are you saying there was a
15 wrong formula applied here?

16 MR. KAMMERMAN: No. But their argument is that
17 11-206 can never be used to correct a - - - an error that
18 is more than an error of mere - - - that is not - - -

19 JUDGE RIVERA: But if it - - -

20 JUDGE HALLIGAN: So - - -

21 JUDGE RIVERA: - - - if it's a wrong formula,
22 then you just apply the other formula and you're just
23 pushing through the numbers, right?

24 MR. KAMMERMAN: Well, but it is a violation of
25 law.

1 JUDGE RIVERA: Where's the judgment? Where's the
2 judgment part of that? Or the exercise of discretion in
3 that?

4 MR. KAMMERMAN: Well, it's a - - - they are - - -

5 JUDGE RIVERA: But I - - - I use formula X, but I
6 should have used formula Y. So now I'm just going to use
7 formula Y. Where's the discretion or judgment in that,
8 once you've corrected that - - -

9 MR. KAMMERMAN: Well, they - - -

10 JUDGE RIVERA: - - - there's an obvious mistake
11 in the - - -

12 MR. KAMMERMAN: - - - they violated the law. We
13 don't know if they did it on purpose. We don't know if
14 they did it by accident.

15 JUDGE HALLIGAN: What are the limits under your
16 reading of what can be deemed a clerical error?

17 MR. KAMMERMAN: My limit?

18 JUDGE HALLIGAN: You're saying it can include
19 substantive mistakes. So are there any limits as to what
20 is encompassed under your reading?

21 MR. KAMMERMAN: Yeah. Yes, there are.

22 JUDGE HALLIGAN: And what are they?

23 MR. KAMMERMAN: The the limits are what the
24 Department of Finance defined in their rule. They give a
25 list of fourteen things that can be corrected. They also

1 give a list of things that cannot be corrected. For
2 example, you know, the normal yearly valuation errors, they
3 used wrong comparables, or they used - - -

4 JUDGE HALLIGAN: So the affidavit appended to the
5 motion to dismiss the petition, says that the installation
6 of only replacement windows, in the absence of other
7 accompanying improvements, doesn't justify a rental income
8 increase.

9 How is that a clerical error? That seems like a
10 substantive determination to me.

11 MR. KAMMERMAN: Well, the question here is, did
12 the Department of Finance violate their discretion when
13 they said that such an error can be corrected. B-2 is an
14 error in description, and it's - - -

15 JUDGE CANNATARO: I'm sorry. When you say, "such
16 an error", if you're referring to the one that was just
17 quoted by Judge Halligan - - -

18 MR. KAMMERMAN: Yes.

19 JUDGE CANNATARO: - - - the installation of the
20 windows. Which section talks about that type of error?

21 MR. KAMMERMAN: B-2.

22 JUDGE CANNATARO: B-2?

23 MR. KAMMERMAN: The failure to place a physical
24 increase on an assessment when there was work done.

25 JUDGE CANNATARO: But - - -

1 JUDGE HALLIGAN: But that - - -

2 JUDGE CANNATARO: - - - they acknowledge the
3 physical change. They just elect not to adjust the
4 assessment for it.

5 JUDGE HALLIGAN: Because they think that it
6 doesn't justify a rental income increase. That just seems
7 to me to be a quintessential exercise of judgment, not - -
8 -

9 MR. KAMMERMAN: But the - - -

10 JUDGE HALLIGAN: - - - mistake. They're not
11 saying you didn't put the windows in when you had explained
12 that you did. They're saying it's not sufficient to get
13 what you want.

14 MR. KAMMERMAN: That's not what B-2 means. B-2
15 means that they didn't place a physical change on the
16 assessment. And they did not do that here.

17 JUDGE HALLIGAN: Are you - - -

18 JUDGE GARCIA: And what - - - I'm sorry. What's
19 the physical change they should have put on the assessment,
20 in your view?

21 MR. KAMMERMAN: When - - - there's - - - and we
22 described this in our brief. There are two kinds of
23 increases, a physical increase and an equalization
24 increase. A physical increase is when an assessment isn't
25 - - - is raised because of physical work that's done to the

1 property.

2 An equalization increase is an increase because
3 market values are generally going up in the neighborhood.

4 JUDGE HALLIGAN: Now, what's confusing me,
5 though, is it seems to me they're saying, on these facts,
6 you don't get the increase. As opposed to somehow we
7 forgot to include it when we meant to and should have.

8 That's where I'm having a hard time following
9 you.

10 MR. KAMMERMAN: Well, the question is why is the
11 rule limited to only - - -

12 JUDGE CANNATARO: Well, hold on. I have a
13 different question as an addendum to what you just heard.

14 It seems to me like this rule can be read to say,
15 where a discretionary determination is made to adjust the
16 assessment because of a physical change - - - which to me
17 seems utterly discretionary - - - and then, they fail to do
18 it, that that might be encompassed within the meaning of
19 this rule. You know you got the adjustment. They told you
20 you were getting the adjustment, or you have reason to
21 believe it in any event, and then it doesn't appear.

22 But what we seem to be looking at this issue as -
23 - - as is as an initial discretionary determination about
24 whether or not an adjustment will be given.

25 And I still fail to see how that falls under the



1 rule.

2 MR. KAMMERMAN: Well, again, this rule includes
3 correcting errors that in - - - that encompass discretion.
4 And I'll give you - - -

5 JUDGE CANNATARO: Yeah. But what - - -

6 MR. KAMMERMAN: - - - I'll give you an example.

7 JUDGE CANNATARO: - - - what's the error? What's
8 the error?

9 MR. KAMMERMAN: R - - -

10 JUDGE CANNATARO: Go ahead. I'm sorry.

11 MR. KAMMERMAN: - - - RPTL 550 subsection 2(c)
12 which the clerical error rule includes all clerical errors
13 defined by the RPTL in that section.

14 It says an erroneous determination of a special
15 assessment on an entry - - - "an entry on a tax roll which
16 is - - - which is incorrect by reason of a mistake in the
17 determination or transcription of a special assessment".

18 It talks about determination. There's no
19 limitation in this rule to errors of mere form. And
20 additionally, if you look at the administrative denial
21 here. The administrative denial did not deny this based on
22 their discretion. We, in fact - - - we don't know why it
23 was denied here. All the administrative denial has is a
24 conclusory statement that says there's no clerical error or
25 error in description.

1 And this court has been clear numerous times,
2 over decades, that an administrative denial must be clear
3 before it can be ruled upon. And any - - - and the only
4 thing at issue in an Article 78 proceeding is what is in
5 the administrative record.

6 So what does that denial mean when they say
7 there's no clerical error or error in description? Is it a
8 substantive denial saying the decision here was correct?
9 Or does it mean, well, maybe there was a mistake, maybe
10 there wasn't, but it doesn't fall under this rule.

11 CHIEF JUDGE WILSON: Could you have pursued this
12 on - - - your same claims under the RPTL?

13 MR. KAMMERMAN: You could have pursued this under
14 the RPTL. But the Department of Finance, when they - - -

15 CHIEF JUDGE WILSON: And so what do you do with
16 all our case law saying that for challenges, the RPTL is
17 exclusive?

18 MR. KAMMERMAN: So the RPT - - - well, those
19 cases that they cite are wildly off point. And I'll
20 explain why. The RPTL says Article 7, 700, subsection 1
21 says that everything must be brought under that article
22 unless otherwise provided by law. And the New York City
23 Administrative Code 11-206, here is that "otherwise
24 provided by law"? The cases that - - -

25 JUDGE RIVERA: And - - - and you read that

1 provision to mean that you have the option of proceeding
2 under either?

3 MR. KAMMERMAN: Yes. What - - - I - - -
4 depending on what the error is. For example, the errors
5 that the clerical error rule says cannot be corrected under
6 11-206, then Article 7 is exclusive.

7 JUDGE RIVERA: But if it's a pure clerical error,
8 your position is, then you have the option of whether or
9 not to proceed under 206, or the RPTL?

10 MR. KAMMERMAN: If it is an error, like the
11 failure to place a physical on assessment, you can proceed
12 under either. That is correct.

13 So here, we don't know what happened because the
14 administrative decision doesn't say. It doesn't say. Does
15 it say that the assessor, in his judgment, believed that a
16 physical increase wasn't - - -

17 CHIEF JUDGE WILSON: And so just to be clear, you
18 view the "as otherwise provided by law", to authorize a
19 municipality to completely displace the RPTL if it wishes?

20 MR. KAMMERMAN: No.

21 CHIEF JUDGE WILSON: Well - - -

22 MR. KAMMERMAN: Well - - -

23 CHIEF JUDGE WILSON: - - - why couldn't it have
24 written a regulation that is not limited to clerical
25 errors, but said any assessment you want to challenge,

1 substantive or otherwise?

2 MR. KAMMERMAN: Well, the question is then what
3 does "otherwise provided by law" mean?

4 CHIEF JUDGE WILSON: That's what I'm asking.
5 Yep.

6 MR. KAMMERMAN: It doesn't - - - it doesn't have
7 no meaning.

8 CHIEF JUDGE WILSON: Correct.

9 MR. KAMMERMAN: It means that, for example, RPTL
10 5 is not under Article 7.

11 CHIEF JUDGE WILSON: Uh-huh.

12 MR. KAMMERMAN: And that outside of New York City
13 is the way that they can correct many of these other
14 errors.

15 CHIEF JUDGE WILSON: Right.

16 MR. KAMMERMAN: New York City has - - - is - - -
17 New York City, given its size, is able to allow to - - - to
18 promulgate other rules, and they promulgated 11-206.

19 CHIEF JUDGE WILSON: Or it could mean because of
20 something specific in its charter?

21 MR. KAMMERMAN: What?

22 CHIEF JUDGE WILSON: Or it means because of
23 something specific in its charter, or something - - -

24 MR. KAMMERMAN: I think the RPTL allows special
25 assessment units to make certain rules.

1 CHIEF JUDGE WILSON: Well, to bypass the RPTL
2 entirely?

3 I'm just trying to understand how broadly you
4 think "as otherwise provided by law" reads.

5 MR. KAMMERMAN: I think it is - - - I don't think
6 anyone is arguing here that 11-206 is not a valid exercise
7 by the City of New York.

8 CHIEF JUDGE WILSON: Well, I think their - - - I
9 think the argument is about what it - - -

10 MR. KAMMERMAN: Right. The argument is what - -
11 - about what it means.

12 CHIEF JUDGE WILSON: Yeah.

13 MR. KAMMERMAN: Right?

14 CHIEF JUDGE WILSON: But I'm trying to ask you
15 something different that you don't seem to want to answer,
16 which is okay.

17 MR. KAMMERMAN: How broad could it be? I'm not
18 sure.

19 CHIEF JUDGE WILSON: Okay.

20 JUDGE CANNATARO: Can I ask you, could this
21 current challenge - - - would it still be viable under the
22 2025 amendment to the rule; do you think?

23 MR. KAMMERMAN: The 2025 amendment purports to
24 prohibit any correction that's not ministerial. So you
25 know, the - - - you know, this court has held many times

1 that an administrative agency has the discretion to
2 interpret a rule like 11-206.

3 JUDGE CANNATARO: Yeah. I guess my issue is
4 there are moments in your argument up to now where I get
5 the impression that you're arguing that - - - that this is
6 ministerial. What happened here was a ministerial failure.
7 Or am I misinterpreting what you're saying?

8 MR. KAMMERMAN: Well, I - - - it may very well be
9 a ministerial failure. When the - - -

10 JUDGE HALLIGAN: How is that so? Over here.

11 MR. KAMMERMAN: I'll explain.

12 JUDGE HALLIGAN: Okay.

13 MR. KAMMERMAN: Because when the - - - the
14 certificate of eligibility called for J-51 exemption
15 benefits, it was transmitted by DHCR, the Department of
16 Housing, to the Department of Finance. We don't know
17 whether they just lost it. We don't know whether they
18 substantive - - -

19 JUDGE HALLIGAN: Well, in the affidavit they gave
20 you a substantive reason - - -

21 MR. KAMMERMAN: Yeah. But the affidavit is - - -

22 JUDGE HALLIGAN: - - - for the determination.

23 MR. KAMMERMAN: - - - bootstrapping. This court
24 has said numerous times that we are limited to the facts in
25 the administrative denial.

1 JUDGE HALLIGAN: Okay. So - - -

2 MR. KAMMERMAN: And - - - and - - -

3 JUDGE HALLIGAN: - - - so if I can. So your
4 objection is that the, I think, it was one-sentence
5 statement was not sufficient and required the explication
6 that was given in the affidavit?

7 MR. KAMMERMAN: No. My - - - this court, for
8 example - - -

9 JUDGE HALLIGAN: If - - - let me. If the
10 statement in the affirmation had been included initially,
11 would that have been still ministerial in your view?

12 MR. KAMMERMAN: Well, so the - - - this is the
13 issue with the affidavit they put in. The affidavit they
14 put in for Mr. Abrams, he's the chief assessor. He was
15 speaking in generalities. He was not the assessor who
16 worked on - - - as far as I know, was not the assessor who
17 worked on this assessment. And I think it's telling that
18 they didn't have that assessor put it in.

19 We don't know what happened here. We don't know
20 whether the assessor who was working on it, in his
21 judgment, really believed it wasn't a - - - it wasn't
22 entitled to J-51 benefits, or if he accidentally threw the
23 COV in the garbage and forgot to check the right box. We
24 don't know.

25 JUDGE CANNATARO: Would that get - - - would that

1 get corrected on an Article 78? Where I get - - - would
2 think that you're confined to the administrative record
3 that's available.

4 MR. KAMMERMAN: Would that be correctable?

5 JUDGE CANNATARO: I mean, is that something that
6 you can resolve as a factual matter, what happened in the
7 denial of this adjustment?

8 MR. KAMMERMAN: No. No. Well, this court in
9 Trump Equitable said a fundamental principle of law is that
10 this court - - - that a court is powerless to sustain an
11 administrative decision on grounds that were not invoked in
12 that decision.

13 JUDGE CANNATARO: Meaning?

14 MR. KAMMERMAN: Meaning we are limited. And even
15 - - - even in the DOF's brief they quote this court's
16 decision in Yarbough v. Franco that says, "judicial review
17 of administrative of determinations is confined to the
18 facts and record adduced before the agency".

19 JUDGE CANNATARO: That's my point.

20 MR. KAMMERMAN: Right. We don't know what
21 happened. All they said is there's no clerical error or
22 error in description. They don't say why. What does that
23 mean? Again, was it substantive? Was it procedural?
24 Because they say this error, there may have - - -

25 JUDGE RIVERA: So then - - - so then your

1 position is that the problem is you don't know if it fits
2 under 206 because they didn't explain.

3 MR. KAMMERMAN: They didn't explain.

4 JUDGE RIVERA: Not that it - - -

5 MR. KAMMERMAN: Well - - -

6 JUDGE RIVERA: - - - not that it most certainly
7 fits - - -

8 MR. KAMMERMAN: Well - - - well - - -

9 JUDGE RIVERA: - - - within 206?

10 MR. KAMMERMAN: We believe - - -

11 JUDGE RIVERA: You're now taking the position
12 that we do not know?

13 MR. KAMMERMAN: Well, we do not know.

14 JUDGE RIVERA: Okay.

15 MR. KAMMERMAN: But the Department of Finance has
16 been inconsistent in its behavior. It argues that you
17 can't fix substantive errors under this rule or errors of
18 law. And it has. The First Department in the Fordham Hill
19 case made it clear that the Department of Finance was
20 acting disparately.

21 And if I could bring up, this case is very
22 different than a case - - - it's not in our briefing. But
23 a case that the court heard last year, in 410 East 78th
24 Street. Where there was, I believe it was a five-to-two
25 decision.

1 And the regulation there is very different than
2 the regulation here. The issue there was - - - there was a
3 regulation that said an owner seeking to file an amended
4 registration statement must file an application to
5 establish the, quote, propriety of such amendment. And
6 that was the regulation.

7 What did it mean? What did "propriety" mean?
8 And they were - - - and the DHCR was arguing that they - -
9 - it was limited to clerical errors.

10 And this court, the majority, found that they
11 could do that. The rule was vague. But here the rule is
12 not vague. It lays out fourteen different errors. And it
13 - - - and the plain language of the rule does not limit it
14 to ministerial or errors of form. It doesn't carve out
15 discretionary errors.

16 An error of law could be a discretionary error.
17 You could interpret the law wrong. And in fact, the
18 Department of Finance has done that in a - - - we point out
19 in our brief - - - in the Oversight matter, in the 88th 3rd
20 Realty matter, where they violated statutory caps. And
21 they say no. And it wasn't a mathematical error. The rule
22 there was to - - - for a certain classification, you only
23 count residential units, not residential, plus commercial
24 units in a building. And the Department of Finance issued
25 administrative decisions saying we do both, even though the

1 Statute 1805(2) says the exact opposite.

2 And they violated the law that's in their
3 discretion. They decided to say the law says one way, but
4 we're going to do it differently.

5 CHIEF JUDGE WILSON: Thank you, Counsel.

6 MS. CHAN: Good morning, Your Honors.

7 May it please the court. Andrea Chan for the
8 Commissioner of Finance and the City of New York.

9 Your Honors just asked the petitioner's counsel,
10 where is the error? And petitioner's counsel could not
11 identify where the clerical error is in this case.

12 JUDGE HALLIGAN: What about the argument that we
13 can't tell from the determination what the reason is? It
14 just says, "we've determined the issue in your application
15 is not due to a clerical error. Error in description". Is
16 that enough?

17 MS. CHAN: That is enough, Your Honor.

18 JUDGE HALLIGAN: Why?

19 MS. CHAN: It is because the Department of
20 Finance, in saying that there is no clerical error in this
21 case, it is following the authority that defines clerical
22 error. This court - - -

23 JUDGE HALLIGAN: Well, there's no way to know, is
24 there, whether what has happened is - - - is in fact a
25 clerical error, or was a substantive determination from the

1 sentence here?

2 MS. CHAN: Well, that's a good point, Your Honor.
3 And petitioner's counsel actually said we don't know if
4 they did it on purpose or they did it by accident. And
5 that's the heart of this case, Your Honor, because you
6 don't know. That's how we know we're in the wrong forum.

7 JUDGE CANNATARO: So procedurally, let's assume
8 for a second that some might think that that denial was
9 terse and doesn't really clue you in to what the thinking
10 was at DOF about this. You're saying that that sort of
11 absence, that lack in the record is more amenable to
12 resolution in RPTL 7, as opposed to an Article 78? Is that
13 your argument?

14 MS. CHAN: You're absolutely correct, Your Honor.
15 RPTL Article 7 was designed by the legislature - - -

16 JUDGE HALLIGAN: Is that a good incentive to set,
17 though? I mean, wouldn't it be more efficient to just
18 provide a reason beyond this bare assertion from the
19 outset?

20 MS. CHAN: 11-206, Your Honor, is not an avenue
21 for taxpayers to correct clerical errors. It was a power
22 granted to the commissioner to correct clerical errors. So
23 it's a very - - - it's very limited in scope as opposed to,
24 by contrast, RPTL Article 7.

25 JUDGE HALLIGAN: So you're saying there would be



1 no benefit to an additional sentence, which explains why?

2 MS. CHAN: I can't disagree that there would be
3 no benefit, Your Honor.

4 JUDGE HALLIGAN: Okay. So why not a rule that
5 promotes that?

6 MS. CHAN: A rule that - - -

7 JUDGE HALLIGAN: In other words - - -

8 MS. CHAN: - - - promotes?

9 JUDGE HALLIGAN: - - - why not encourage the
10 agency to add that extra sentence?

11 MS. CHAN: I can certainly encourage, Your Honor,
12 the agency - - -

13 JUDGE HALLIGAN: Yes. No.

14 MS. CHAN: - - - to do it.

15 JUDGE HALLIGAN: I appreciate that. But I mean,
16 why not take a view about what the proper avenue is that
17 encourages that sentence to be added?

18 MS. CHAN: I do think clarity is important, Your
19 Honor. However, when you look at what the legislature and
20 what this court has already prescribed as the exclusive
21 remedy to challenging real property tax assessments, it's
22 very clear. There is a complete, deliberate process that
23 exists. Taxpayers actually get two opportunities to
24 challenge their tax assessment. Once at the tax
25 commission. It's actually a condition precedent to seeking

1 judicial review. They have to exhaust their administrative
2 remedy.

3 And then they have to follow - - - there are
4 deadlines and rules and specialized forms. There's a - - -

5 CHIEF JUDGE WILSON: Well, how do you read - - -
6 how do you read "or otherwise provided by law" in 700?

7 MS. CHAN: There are exceptions, Your Honor.
8 There are exceptions. And the - - -

9 CHIEF JUDGE WILSON: Well, I guess my question is
10 - - -

11 MS. CHAN: Yes.

12 CHIEF JUDGE WILSON: - - - would it allow the
13 city to bypass the RPTL if it chose to?

14 MS. CHAN: In limited circumstances. And the
15 court has specified where those are. It's either where the
16 assessment is void; where the taxing authority has exceeded
17 its power; or in the case where the taxpayer is challenging
18 a grander methodology that's including several properties,
19 as opposed to specific properties - - -

20 JUDGE GARCIA: Let me put that question - - -

21 MS. CHAN: - - - like they are here.

22 JUDGE GARCIA: - - - a different way. If this
23 was - - - and this is a hypothetical. If you agreed in a
24 case that you had a clerical error, could the person who
25 claims to be aggrieved by that error bring in Article 78,



1 or would they have to use RPTL 7?

2 MS. CHAN: Well, it's actually the main reason
3 we're here, Your Honor. Because until matter of Better
4 World, there was no confusion. It was very clear where
5 this stark distinction lied.

6 JUDGE GARCIA: But in answer to my quest - - -

7 MS. CHAN: Yes.

8 JUDGE GARCIA: Under the old rule - - -

9 MS. CHAN: Yes.

10 JUDGE CANNATARO: - - - you have a - - - you have
11 - - - you know, before the 2025 amendments.

12 MS. CHAN: Yes.

13 JUDGE GARCIA: You have a transposed number or
14 something. Same process. They go, they say you transposed
15 a number here, and the city says, no, we didn't. Can you
16 bring an Article 78, or do you have to use RPTL 7?

17 MS. CHAN: Under the 2016 rules, and under Better
18 World, if there is a true clerical error, under that - - -
19 under that precedent, if it's still to remain, then you can
20 bring an application to the Department of Finance to review
21 the clerical error. And if the - - - if there is a
22 clerical error, they would correct it if there's a a
23 dispute. And there - - - as there is now, and there's a
24 determination, there is an agency determination. So that's
25 reviewable by Article 78.



1 But I would say, Your Honor, that that has to be
2 limited in scope. And you hear this from Justice Balkin in
3 Better World in his - - -

4 JUDGE GARCIA: So that - - - to go to the Chief
5 Judge's question, the city could carve out whatever it
6 wants from RPTL 7? I mean, it does it with clerical errors
7 here, but if it just said, you know, no RPTL 7. Any
8 challenge you have, here's the alternate proceeding.

9 MS. CHAN: No, Your Honor, absolutely not.

10 JUDGE GARCIA: But what's the limit?

11 MS. CHAN: The - - - well, that is what the
12 problem is with Better World. It - - - that was when it
13 first expanded the scope. Until then, the court of appeals
14 had delineated only two exceptions.

15 Once Matter of Better World was decided, it
16 expanded the scope. And that's the problem with trying to
17 bring substantive claims through 11-206. Once you open
18 that door, which has happened here, you will not just open
19 the floodgates, there will be a deluge of - - -

20 JUDGE GARCIA: Well, I think their argument is
21 you opened the door.

22 JUDGE CANNATARO: Yeah. Somewhat related. With
23 the benefit of hindsight, do you think it's possible that
24 the 2016 version of 5302(b)2 might be - - - might have been
25 drafted in excess of DOF's administrative authority?

1 MS. CHAN: There's - - - and I have two parts to
2 that. I have two - - - two part - - - two answers to that
3 question, Your Honor.

4 JUDGE CANNATARO: Okay. I'll sit back.

5 MS. CHAN: I don't think it exceeded the
6 authority. In hindsight, could it have been drafted
7 better? Perhaps. It was drafted in response to Better
8 World. It was drafted in response. But when you read the
9 examples, Your Honor - - -

10 JUDGE RIVERA: Let me ask - - -

11 MS. CHAN: - - - and you read the rule - - -

12 JUDGE RIVERA: Let me ask you this.

13 MS. CHAN: - - - it still - - -

14 JUDGE RIVERA: Let me ask you this. If we were
15 to agree with you, in terms of the actual dispute that it's
16 a clerical error, do we have to address anything regarding
17 the scope? Isn't that for another case? Or do we need to
18 decide that here?

19 MS. CHAN: Did - - - need to decide what, Your
20 Honor?

21 JUDGE RIVERA: Well, I think the questioning - -
22 - this line of questioning you're getting from the bench.
23 About what would be - - - how - - - let me put it this way.
24 How far the city could go in trying to carve-out a path
25 under the RPTL? For someone challenging your



1 determinations?

2 MS. CHAN: It would have to be very limited, Your
3 Honor. And limited to what a clerical error actually is.

4 JUDGE RIVERA: Okay. I'm not being clear.

5 Let's assume we agree with you - - -

6 MS. CHAN: Yes.

7 JUDGE RIVERA: - - - that in this case - - -

8 MS. CHAN: Yes.

9 JUDGE RIVERA: - - - this was a true clerical
10 error. Do we then have to expound on the scope of "unless
11 otherwise provided by law", and how far your DOF's
12 authority can go? Or the city's authority can go - - -
13 excuse me - - - to try and fit within this carve-out for
14 some other law?

15 MS. CHAN: I would hope so Your Honor, because I
16 think that the - - - we need - - -

17 JUDGE RIVERA: We do.

18 MS. CHAN: - - - we need guidance. Yes. I think
19 the lower courts, the municipalities, and the taxpayers
20 need guidance on where to reestablish the distinction
21 between clerical error and what are substantive - - -

22 JUDGE RIVERA: No, no, no. That's not my - - -
23 that's not my question. My question is - - -

24 MS. CHAN: I'm sorry.

25 JUDGE RIVERA: - - - if we agree with you that



1 this is a clerical - - -

2 MS. CHAN: Okay.

3 JUDGE RIVERA: - - - isn't that just where we
4 stop? Why do we have to do anything else?

5 MS. CHAN: I think it - - - I think that the
6 court needs to give - - - I understand you - - -

7 JUDGE RIVERA: I'm sorry. It's not a clerical.

8 MS. CHAN: Yeah. It's not a - - - okay.

9 JUDGE RIVERA: I'm sorry.

10 MS. CHAN: That's why I was confused.

11 JUDGE RIVERA: Yes. I - - - my apologies for the
12 confusion.

13 JUDGE SINGAS: Can I ask you on B-2?

14 JUDGE RIVERA: I'm sorry. Just to clarify. If
15 we agree with your position, that it's not a - - - do we
16 have to go any further?

17 MS. CHAN: Well, if you agree with my position,
18 I'd - - - I'd gladly take it.

19 JUDGE RIVERA: Regarding the scope. I'm sorry.

20 MS. CHAN: Regarding the scope.

21 JUDGE RIVERA: I am not being clear. My
22 apologies to you.

23 If we agree with your position that this is not a
24 clerical error that falls under 206, do we have to then
25 otherwise expound on the scope of the carve-out, and what

1 DOF and the city's authority would be?

2 MS. CHAN: No. No.

3 JUDGE RIVERA: My apologies.

4 MS. CHAN: No, Your Honor. Because then it goes
5 to Article 7.

6 JUDGE GARCIA: But if we disagree with you - - -

7 MS. CHAN: Uh-huh.

8 JUDGE GARCIA: - - - and we say, well, whatever
9 you think a clerical error means, this is, under your
10 definition, as we interpret it, a clerical error. Then do
11 we decide? Can you carve this type of issue out of RPTL 7?

12 MS. CHAN: I think it would be helpful. I think
13 it would be helpful, Your Honor. I mean, the - - - and to
14 get to your question, but just prior.

15 I do not think that the Department of Finance did
16 go outside of the scope and - - - it could the examples - -
17 - could the rule had been drafted in a clear way?

18 JUDGE SINGAS: Yeah. To that point. I mean - -
19 -

20 MS. CHAN: Yes.

21 JUDGE SINGAS: - - - if it's not a paradigm of,
22 you know, draftsmanship, and it is a remedial regulation,
23 then why not construe any ambiguity in their favor?

24 MS. CHAN: Because petitioner's interpretation -
25 - - their construction of the examples, is completely out

1 of harmony with the enabling statute. It is - - - this is
2 not within - - - petitioner's interpretation is not within
3 the spirit of 11-206.

4 Clerical errors are supposed to be obvious,
5 plain, and readily apparent. The court pronounced that in
6 - - - in Hermance, in Chamberlain, in Nostrand, and in many
7 other recent cases. There is a universal understanding to
8 what clerical error or error in description is, and this
9 isn't it.

10 And more importantly, Your Honors, the taxpayers
11 have always - - - this taxpayer always had a remedy.
12 Taxpayers always have a remedy. And that's through Article
13 7. There is a process that was designed deliberately by
14 the legislature, and they did so for a reason. They did so
15 - - -

16 JUDGE SINGAS: Yeah. But again, I mean, looking
17 at B-2, where it says, "or put on as an equalization
18 change". I'm not really sure what that means. Can you
19 enlighten me?

20 MS. CHAN: Yes. Are you referring to physical
21 change not on - - -

22 JUDGE SINGAS: Yes.

23 MS. CHAN: - - - not put on the assessment roll?

24 JUDGE SINGAS: Yes.

25 MS. CHAN: Yes. What that means is, Your Honor,

1 is if a physical change was actually warranted. If the
2 assessor had determined that a physical change should be
3 put on, but it inadvertently, for some reason, either
4 didn't - - - didn't put it on, forgot to put it on, put it
5 on a different parcel, a different tax class - - -

6 JUDGE HALLIGAN: So in other words, in - - -

7 MS. CHAN: - - - that's a - - -

8 JUDGE HALLIGAN: - - - in this case - - -

9 MS. CHAN: Yes.

10 JUDGE HALLIGAN: - - - the assessor had
11 concluded, if we at the replacement windows, that that was
12 sufficient, but then forgot to adjust the assessment, that
13 would fall under B-2; is that right?

14 MS. CHAN: Yeah. If they forgot? Yes.

15 JUDGE HALLIGAN: Yes.

16 MS. CHAN: Yes.

17 JUDGE HALLIGAN: In other words, they determined
18 that in fact it was sufficient?

19 MS. CHAN: Yes.

20 JUDGE HALLIGAN: Was a physical change that
21 warranted an adjustment in the assessment, but then just
22 didn't make the mathematical adjustment because they
23 forgot. That, would fall under B-2?

24 MS. CHAN: Right. It would be more of not - - -
25 you know, checking the right box, essentially. But yes, if

1 they had determined it should have - - -

2 JUDGE HALLIGAN: So they added the number up
3 wrong, and they - - -

4 MS. CHAN: Right. Added an extra zero.
5 Transposed numbers. Exactly.

6 JUDGE RIVERA: And you all would figure that out
7 because once they received the determination, they would
8 challenge it, that correct? And that's how you would
9 figure out, oh, yes, there was an error?

10 MS. CHAN: Right. That's correct. That's
11 correct, Your Honor. That's correct.

12 And the reason why - - - the reason why
13 substantive claims should not be reviewed under 11-206 but
14 Article 7 is because when you think of the grander picture,
15 Your Honor, there are one million properties in the City,
16 tens and thousands of petitions that are filed challenging
17 the real property tax assessments. That covers - - - in
18 2025 alone, that covers \$284 billion in aggregate.

19 JUDGE HALLIGAN: So your adversary argues that
20 this is not a substantive issue. You say it is. Why is
21 that? Why are you correct?

22 MS. CHAN: That this is a substantive - - -

23 JUDGE HALLIGAN: That's what you're arguing.

24 MS. CHAN: Yes. Absolutely.

25 JUDGE HALLIGAN: Okay. Great. Why is that so?

1 MS. CHAN: Well, it's actually specifically in
2 the statute, Your Honor. They are claiming that they
3 didn't receive a J-51 exemption.

4 JUDGE HALLIGAN: Yes.

5 MS. CHAN: And when you turn to - - - so
6 specifically in the RPTL, RPTL 701 4(b) real property that
7 has failed to receive all or a portion of a partial
8 exemption, falls under the ground of excessive.

9 And then you read RPTL 706. The grounds for
10 reviewing and assessment shall be the - - - at - - - shall
11 be that the assessment to be reviewed is, for example, one
12 of the grounds is excessive.

13 And then when you read RPTL 700, the - - - an
14 excessive - - - the challenge to an excessive assessment.
15 This shall be reviewed - - - this - - - to review this
16 excessive assessment of real property shall be brought as
17 provided in this article unless otherwise - - -

18 JUDGE TROUTMAN: So your characterization of the
19 challenge here is what?

20 MS. CHAN: The characterization is that the
21 taxpayer wanted a J-51 exemption. They failed to receive
22 that exemption, and that is specifically provided for in
23 the RPTL. And there's a cause of action that is designated
24 for taxpayers to seek relief. The taxpayers have a form of
25 relief. And again, the - - -

1 JUDGE TROUTMAN: And so your view is that is the
2 sole avenue for review?

3 MS. CHAN: In this case, yes. This is RPTL
4 Article 7 is the primary remedy. And actually this court
5 has - - - has spelled it out many times. This court has
6 said that this is - - - Article 7 is the exclusive avenue
7 for judicial review of real property tax assessments.

8 CHIEF JUDGE WILSON: And I take it that if this
9 had proceeded first to the tax commission and then through
10 the RPTL, the record here would look quite different; is
11 that fair?

12 MS. CHAN: Oh, absolutely, Your Honor. There's
13 so much more that goes into an Article 7 proceeding. The -
14 - - and the petitioner - - - there's a hearing at the tax
15 commission. The petitioners have the opportunity to
16 provide additional information. So if there was an error,
17 they probably would have spotted it right then and there.
18 And then if they didn't settle at the tax commission, they
19 would have went to judicial review. And there's even more
20 requirements.

21 CHIEF JUDGE WILSON: I'm sort of going back to
22 the point we were discussing much earlier, which is I
23 think, that everybody seems to agree that we don't know
24 from this record what the basis was, but had this gone
25 through the - - - RPTL procedure, tax commission first, et

1 cetera, we'd actually have quite a full record?

2 MS. CHAN: Yes, absolutely.

3 CHIEF JUDGE WILSON: And the standard of review
4 would be somewhat different?

5 MS. CHAN: It would. It's actually a de novo
6 review. It's a de novo review under Article 7. The
7 taxpayers actually have more of an opportunity to get a
8 clean slate and judicial review because it's - - - which
9 doesn't exist under 11-206. That's absolutely correct,
10 Your Honor.

11 JUDGE RIVERA: Is there a mechanism for the
12 commissioner to expand on the reasoning other than moving
13 through an Article 7? Is there internally a method for
14 that? He says we got this sentence. We don't know. We
15 don't know what the basis is.

16 MS. CHAN: To expand in the determination?

17 JUDGE RIVERA: Yes, yes, yes.

18 MS. CHAN: The determination?

19 JUDGE RIVERA: They have asked for further
20 explanation before moving forward to an Article 7. Or
21 that's not - - - there's no administrative pathway for
22 that?

23 MS. CHAN: There really is no mechanism, Your
24 Honor. 11-206 - - -

25 JUDGE RIVERA: Okay.

1 MS. CHAN: - - - it really designed for this.
2 And that therein lies the problem. And - - -

3 JUDGE RIVERA: But I'm saying as a general
4 matter?

5 MS. CHAN: Yes. Yes. So you're - - -

6 JUDGE RIVERA: Someone gets a determination and
7 they feel like, well, I don't - - - there's no reasoning
8 here. It's a conclusory sentence. There's no internal
9 mechanism for further explanation. To request further
10 explanation, that's all I'm asking.

11 MS. CHAN: Oh, I don't believe so.

12 JUDGE RIVERA: I don't know if the commissioner
13 has some particular regs around that.

14 MS. CHAN: There aren't, Your Honor.

15 JUDGE RIVERA: Okay.

16 MS. CHAN: There's no regulation. No, there's no
17 additional regulations. There's no additional regulations.

18 JUDGE RIVERA: Thank you.

19 MS. CHAN: And what I would say, Your Honors, to
20 - - - just to close. Is that there are consequences.
21 There are consequences to this. And the Court of Appeals
22 has said that the - - - the municipality needs to be able
23 to close the tax roll with confidence. It needs to be able
24 to stabilize the tax rates. It needs to be able to plan
25 and predict its budget.

1 We're not denying any taxpayer its remedy. They
2 have a remedy, and they have a forum. And we're just
3 asking that they use the correct one.

4 CHIEF JUDGE WILSON: Thank you.

5 MS. CHAN: Thank you, Your Honors.

6 MR. KAMMERMAN: If 11-206 wasn't designed for
7 this, then why did the Department of Finance put in their
8 rule that they will fix the failure to process a partial
9 exemption? If - - -

10 JUDGE TROUTMAN: The one thing she just pointed
11 out is that there is a review available. So if your client
12 has the ability to have the issue reviewed, what's the harm
13 of proceeding through RPTL 7?

14 MR. KAMMERMAN: We're time barred. RPTL 7, you
15 have a - - -

16 JUDGE TROUTMAN: So - - -

17 MR. KAMMERMAN: - - - you have a month and a half
18 from - - -

19 JUDGE TROUTMAN: Correct. So you have to make
20 your assessment earlier with respect to the facts. So in
21 this instance you would be time barred. But if you go back
22 to when the harm occurred it could have been timely sought.

23 MR. KAMMERMAN: Well, that's a game of "gotcha".
24 And I'll explain why.

25 JUDGE TROUTMAN: Okay.

1 MR. KAMMERMAN: The CR says you can look six
2 years back to correct the failure to process an exemption.
3 So it is disingenuous for them to come here and say that we
4 should have done - - - we should have done a Article 7,
5 when they give you an alternative. They gave us the
6 alternative. We didn't make it up.

7 There are consequences to the rule that they
8 enacted.

9 JUDGE RIVERA: Well, there are consequences
10 should you be incorrect about believing you fit under the
11 alternative?

12 MR. KAMMERMAN: Well, we do fit under the
13 alternative because the - - -

14 JUDGE RIVERA: But you concede that if you're
15 wrong, and it's now untimely, there - - - those are the
16 consequences?

17 MR. KAMMERMAN: Of course. If you use a
18 procedure that's not available to you, that's correct.

19 CHIEF JUDGE WILSON: Could you have proceeded
20 under both simultaneously?

21 MR. KAMMERMAN: Perhaps. But I'm sure they would
22 then - - - then make an argument to the court that we're
23 forum shopping. But yes, I believe you could.

24 But the fact of the matter is - - - and it's
25 really, really important to look at the CRs statement of

1 basis and purpose from 2016. And they say that they're - -
2 - they're - - - they would exercise - - - in the past they
3 exercised their authority under 11-206 very narrowly. And
4 they are promulgating this new regulation to greatly expand
5 what they'll do under 11-206. And they will look six years
6 back. And that any correction under this rule is separate
7 and apart from an appeal to the tax commission, which means
8 separate and apart from Article 7.

9 They said we could do this. And in fact, not
10 only did they say that we could do this, they've done this.
11 They correct under - - - under 11-206 and the CR, they
12 correct errors all the time that are not just errors of
13 form or ministerial. The First Department has recognized
14 that in Fordham Hill.

15 And what we basically have here is what Chief - -
16 - the Chief Judge wrote in the 410 East 78th Street case.
17 That DOF's behavior is nothing more than standardless, ad
18 hoc, irrational, and inconsistent regulatory action. They
19 do - - - they will correct an error for one - - -

20 CHIEF JUDGE WILSON: That sure sounds like a
21 dissent that five of my colleagues rejected.

22 MR. KAMMERMAN: It was a dissent. But I - - -
23 but I think the clerical error rule here bridges the gap
24 between the majority and the dissent in that case.
25 Because, as I said, the regulation there didn't define - -

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- didn't give examples of what they could correct. And they did so here.

And they give examples of substantive errors, of legal errors. Like I said, they made legal errors where they basically say our policy is something, and it's diametrically opposed to the statute it's operating under. We give those examples in our reply brief.

CHIEF JUDGE WILSON: Okay.

MR. KAMMERMAN: And then on - - - in article - - - in the proceeding they say, you know what, it must be corrected.

CHIEF JUDGE WILSON: Thank you.

MR. KAMMERMAN: Thank you, Your Honor.

(Court is adjourned)

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

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Bi-Costal Properties v. Soliman, No. 33 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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