SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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IN THE MATTER OF THE APPLICATION OF 325 HIGHLAND LLC,

Petitioner,

-against-

THE ASSESSOR OF, THE BOARD OF ASSESSMENT REVIEW OF AND THE CITY OF MOUNT VERNON, NEW YORK,

Respondents.

FOR REVIEW OF THE ASSESSMENT OF CERTAIN REAL PROPERTY IN THE CITY OF MOUNT VERNON, NEW YORK.

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DECISION, ORDER AND JUDGEMENT
Index Nos. 19751-03
20684-02

DICKERSON, J.

RECENT SALES AS BEST EVIDENCE OF VALUE

The Petitioner, 325 Highland LLC, owns a parcel of property located in the City of Mount Vernon, New York, identified as Section 169.26, Block 4048, Lot 1 [" the Subject Property "] and has moved herein for summary judgment. Stated, simply, the Petitioner believes that if an " arm's

length “ sale of real property is the best evidence of value, then the real property assessments of $78,000 [2002] and $50,000 [2003], imposed on the Subject Property by the Respondents, the Assessor of, the Board of Assessment Review of, and the City of Mount Vernon, New York [“ the Respondents “] “ should be reduced to reflect the sale price multiplied by the applicable Equalization Rate ”[1].

The Arm’s Length Transaction

The Subject Property was purchased in January 2002 by the Petitioner through a broker[2] for $640,000. The sale was determined to be an arm’s length transaction by the State of New York Office of Real Property Services [“ NYORPS “][3]. The Respondents have not disputed that the sale was at arm’s length.

A Home For The Elderly

The structure located on the Subject Property, built in 1910, was erected as a home for the elderly with social care services[4]. Evidently, no certificate of occupancy ever existed for the premises, but its use as a “ home for the elderly is grand-fathered ” in and “ shall continue to be so unless ceased for a period in excess of a year ”[5].

According to the Petitioner, at the time of the sale, the property had lost its protection of being “grand-fathered” because its use as a home for

the elderly had been abandoned for a period in excess of a year. Petitioner argues that since the property lost its “grand-fathered” status and was, in addition, a vacant abandoned nursing home it has decreased in value[6].

Evidence Of The “ Highest Rank “

It is well settled that “the purchase price set in the course of an arms’s length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ‘ highest rank ’ to determine the true value of the property at that time.” [see Plaza Hotel Associates v. Wellington Assocs., 37 N.Y. 2d 273, 277, 372 N.Y.S. 2d 35 (1975) quoting, Matter of Woolworth Co. v. Tax Comm., 20 N.Y. 2d 561, 565, 285 N.Y.S. 2d 604 (1967); Matter of Reckson Operating Partnership, LP v. Assessor of the Town of Greenburgh, 289 A.D. 2d 248, 734 N.Y.S. 2d 478 (2nd Dept 2001); Matter of Robert Lovett v. Assessor of the Town of Islip, 298 A.D. 2d 521, 748 N.Y.S. 2d 517 (2nd Dept 2002)].

Something Must Be Abnormal Here

The question then is whether the purchase price can be “ explained away as abnormal in any fashion .....”. It is Respondents’ position that “ there is room for substantial doubt ”[7] as to whether the recent sales price represents the fair market value of the subject property. Respondents

argue that " the sales price certainly can be said to be ' abnormal ' in light of petitioner's own views of the value of the property "[8], since less than a year after purchasing the property for $640,000, Petitioner listed the property for $1,250,000, then $1,150,000, and most recently for $1,850,000[9]. The Respondents question why Petitioner appears to put a greater value on the property today than when purchased in 2002, arguing that the purchase price was not representative of the true fair market value, or it was a distressed sale, or " some other unusual factor was present ", or the seller was not well informed when making his decision[10]. The Respondents conclude that the sales price must be " abnormal " in light of Petitioner's own views of the value of the property[11] and, hence, since there are material questions of fact as to the true market value of the subject property, summary judgement should not be granted.

What is Abnormal?

In Plaza Hotel Associates, supra, at 37 N.Y. 2d 278, the Court of Appeals provided some guidance as to when an arm's length transaction might be explained away as abnormal [" despite the seemingly complicated terms of the agreements, however, we do not share the belief that the complexities were so unusual as to take the case outside the scope of the general rule "]. The Court of Appeals stated further that " it is not a function of the courts to insure the profitability of business

transactions, nor do they have the power to remedy a failure of the parties to foresee far-ranging changes in the economy “.

Contemplation of Future Use Irrelevant

The Respondents assert that contemplated future use [restyled as “ inherent value[12] “] should be considered in establishing value [“ Bearing out the seller’s views of the inherent value of the property in its condition at the time of sale, he recently brought an application for site plan approval to the Planning Board to permit a conversion of the property to condominiums, and such application was approved “[13]]. In addition, the Petitioner’s real estate listings[14] for the subject property, clearly, contemplated some future use. For example, one such listing stated that the “ City has expressed interest in working with new owner to develop building or land to allow for home ownership. Veterans/assisted living also possible. Seller looking for quick cash close without contingencies. Possibility of renting building out to healthy seniors room by room. Also may be able to develop property using low income tax credits....”[15]

Whatever it’s future use may be [condominium units or rooms for “ healthy seniors “] the law is clear that “ value is determined by assessing the condition of the property according to its state on the taxable status date, without regard to future potentialities or possibilities, and may not be assessed on the basis of some use contemplated in the future “

[Adirondack Mountain Reserve v. Board of Assessors of Town of North Hudson, 99 A.D. 2d 600, 601, 471 N.Y.S. 2d 703 (3rd Dept 1984), aff'd 64 N.Y. 2d 727, 485 N.Y.S. 2d 744 (1984)].

The Value Of The Subject Property

The Petitioner's real estate listings of the subject property on three separate occasions for a value substantially higher than the purchase price [paid during an arm's length sales transaction] is not a situation contemplated by the Court of Appeals in Plaza Hotel Associates, supra, as being " so unusual as to take the case outside the scope of the general rule ". The three expired real estate listings, made within a relatively short time period following the arm's length sales transaction, do not provide evidence of market value. The Respondents' argument that " [i]t is possible " that this was a form of distressed sale or that the purchase was affected by " some other unusual factor " or that " it is also possible that the seller was not well informed in making his decision " are mere suppositions without the slightest merit.

The Applicable Equalization Rates

The final equalization rates were issued by the State of New York[16]. The fact that Respondents have challenged the 2002 equalization rate has no impact whatever on its finality and this Court finds that rate to be 4.56%.

The Respondents do not dispute that the final 2003 equalization rate is 4.12%.

Conclusion

The Petitioner's purchase of the subject property in January 2002 for $640,000 was an arm's length transaction, a conclusion well supported by the evidence[17] and not disputed by Respondents. This Court finds no abnormality which would make this case an exception to the general rule that the purchase price set in the course of an arm's length transaction of recent vintage is evidence of the " highest rank " in determining the true value of the property.

Accordingly, Petitioner's motion for Summary Judgement is granted.

The Calculations

Applying the respective equalization rates of 4.56% for 2002 and 4.12% for 2003 to the sales price of $640,000 produces the indicated assessed values as follows:

Equalization Rate	Year	Assessed Value
4.56%	2002	$ 29,184
4.12%	2003	$ 26,368

The amounts of reduction for each year are:

Year	Amount of Reduction
2002	$ 48,816
2003	$ 23,632

The assessment rolls are to be corrected accordingly, and any overpayments of taxes are to be refunded with interest.

The foregoing constitutes the Decision, Order and Judgement of this Court.

Dated: White Plains, NY
November 23, 2004

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HON. THOMAS A. DICKERSON
Supreme Court Justice

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ENDNOTES

1. Petitioner's Notice Of Motion dated July 22, 2004.

2. See Affidavit of Jason Epstein sworn to October 5, 2004 [" the Epstein Aff.](" The subject property was listed for sale with Friedland Realty of Yonkers when it first came to my attention... I then offered $640,000 to purchase the property "). Petitioner contends that the Epstein Aff. demonstrates that the sales transaction is a valid indicator of market value.

3. Affirmation of John E. Watkins, Jr. dated July 22, 2004 at Ex. D [" Watkins Aff. I "]. In addition, the Petitioner contends that the New York State Real Property Transfer Report, RP-5217, which appears as Ex. C to Watkins Aff. I is also evidence that the sale was at arm's length.

4. Watkins Aff. I at Ex. E, Letter of Ms. Soraya Ben-Habib dated July 24, 2002 [" the Ben-Habib letter "].

5. Id.

6. Watkins Aff. I at paras. 11-13.

7. Affirmation of David C. Wilkes [undated] [" Wilkes Aff. "] at para. 8.

8. Wilkes Aff. at para. 8.

9. Wilkes Aff. at para. 2; Affidavit of Anthony V. DeBellis sworn to September 17, 2004 [" DeBellis Aff. "] at paras. 4-7.

10. Wilkes Aff. at para. 3.

11. Wilkes Aff. at para. 8.

12. Wilkes Aff. at para. 4; DeBellis Aff. at para. 8.

13. DeBellis Aff. at para. 8.

14. Wilkes Aff. at Exs. B & C.

15. Wilkes Aff. at Ex. B.

16. Watkins Aff. I at Ex. F.

17. See Ns. 2, 3.