To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

NEW YORK FUNERAL CHAPELS, INC.,

Petitioner,

-against -

THE BOARD OF ASSESSORS AND THE BOARD OF ASSESSMENT REVIEW OF THE CITY OF NEW ROCHELLE,

Respondent(s).

For Review of a Tax Assessment Under Article 7 of the Real Property Tax Law

----------X

In the Matter of the Application of

CAMPBELL FUNERAL CHAPEL, INC. c/o SCI FUNERAL SERVICES,

Petitioner(s),

-against -

THE BOARD OF ASSESSMENT REVIEW and/or ASSESSOR OF THE CITY OF NEW ROCHELLE and THE CITY OF NEW ROCHELLE, COUNTY OF WESTCHESTER, NEW YORK,

Respondents.

For A Review of a Tax Assessment Under Article 7 of the Real Property Tax

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DECISION/ORDER

Index No:
15671/06
15801/07

Index No:
17116/08
17571/09
18950/10

Motion Date:
7/29/11

LaCAVA, J.

The following papers numbered 1 to 5 were considered in connection with respondent City of New Rochelle (City)'s motion to dismiss for lack of standing:

PAPERS	NUMBERED
NOTICE OF MOTION	1
AFFIRMATION IN SUPPORT/EXHIBITS	2
AFFIRMATION IN SUPPORT	3
MEMORANDUM OF LAW	4
REPLY AFFIRMATION	5

In this Article 7 Tax Certiorari action, respondent seeks an Order dismissing the petitions filed by petitioner New York Funeral Chapels, Inc. (NYFC) and associated company Campbell Funeral Chapel, Inc., c/o SCI Funeral Services (Campbell/SCI) challenging the assessments for the tax years 2006 through and including 2010, for property of which they are collectively the owner, said property identified on the tax map of the City as Section 1 Block 228 Lot 29, and otherwise known as 14 LeCount Place, New Rochelle, New York (the subject property). Respondent asserts a lack of standing by NYFC and/or Campbell/SCI, as the latter are not "aggrieved" parties within the meaning of RPTL 704, and for their failure to secure permission pursuant to RPTL §704 from the true owner of the said premises, Frank E. Campbell - The Funeral Church, Inc. (Frank E. Campbell), prior to service upon respondent of the petitions for the several tax years at issue herein.

FACTS

In a deed dated March 17, 1970, George M. Davis and Martha S. Davis transferred, for valuable consideration, the subject premise to Frank E. Campbell – The Funeral Church, Inc. In 2006, as set forth above, petitioner NYFC commenced the instant Article 7 action, seeking assessment reduction for that year; petitioner NYFC did likewise in the following year as well. The authorization annexed to the 2006 petition identifies "New York Funeral Chapels, Inc." as the aggrieved party, and it was executed by "Mike Decell," an employee of NYFC. The 2007 petition does not have an attached authorization. In 2008, as also set forth above, petitioner Campbell/SCI similarly commenced an Article 7 action relating to the instant premises, and in the two years following (2009 and 2010), petitioner Campbell/SCI did likewise. Attached to the 2008 and 2009 petitions are authorizations, signed by "Lorie Derks", identifying "SCI Funeral Services" as the "Aggrieved Party", while attached to the 2010 petition is an authorization signed by "Michael Dresh" identifying "SCI Funeral Services, Inc. # 1030" as the "Aggrieved Party." In no case was an authorization from Frank E. Campbell, or an officer or employee thereof, presented or

appended to the petitions.

Respondent now moves to dismiss the instant petitions pursuant to CPLR §3211 (3), asserting that, pursuant to RPTL §704 and §706, petitioner does not have the legal capacity to sue (i.e. has no standing) since it is not an "aggrieved party", but rather Frank E. Campbell is, and thus the petitions, brought in the names NYFC and Campbell/SCI , and not in the name of the true owner (Frank E. Campbell), were and are defective. Respondent also argues that true owner, Frank E. Campbell, also failed to grant authorization to either NYFC and Campbell/SCI to commence the instant actions. Petitioner argues that NYFC and Campbell/SCI are in fact the aggrieved parties, since NYFC and Campbell are subsidiaries of SCI, the latter which owns the funeral business at the subject premises and, which, through its ownership of Frank E. Campbell, owns the subject premises itself as well.

Respondent's Motion to Dismiss Pursuant to CPLR 3211

A defendant who seeks dismissal of a complaint pursuant to CPLR §3211 on the grounds set forth therein bears the initial burden of proving, prima facie, that the condition or status asserted actually exists (*Cf., Gravel v. Cicola,* 297 A.D.2d 620 [2nd Dept. 2002], *citing Duran v. Mendez*, 277 A.D.2d 348 [2nd Dept. 2000] - party asserting statute of limitations must demonstrate the expiration of the limitations period). The burden then shifts to a plaintiff to aver evidentiary facts establishing that the cause of action falls within an exception to the statute, or to raise an issue of fact as to whether such an exception applies (*Gravel, supra*, at 621, citing *Duran, supra*, regarding the statute of limitations defense).

Here, respondent has argued in essence that petitioners lacked the capacity to bring petitions for the tax years 2006, 2007, 2008, 2009, and 2010 in its own names, since the instant property was actually owned by another entity (Frank E. Campbell). *In Matter of Waldbaum v City of New York*, 74 N.Y.2d 128 (1989), petitioner, a fractional lessee commenced a tax challenge with respect to its leasehold, a substantial portion of a shopping center. The lease did not obligate the petitioner to pay the property taxes, although its rent was subject to increase based on a pro rata share of the tax increases for the parcel as a whole. Upon a motion to dismiss for lack of standing, the trial court, and the Appellate Division, both found that petitioner was an aggrieved party. The Court of Appeals, however, reversed, finding that a fractional lessee lacks standing to bring a tax challenge unless it either has an express grant of authority under the lease to commence such proceedings, or unless it is required to directly pay the taxes on the entire parcel, and, in either instance, unless the tax assessment also has a direct and adverse effect on the lessee's pecuniary interests.

Respondent asserts (and petitioners contest) that the latter are not required to pay the taxes on the premises; respondent also argues (and petitioners likewise contest) that the latter also does not have an express grant of authority to contest the assessment under the lease.

The Motion to Dismiss Is Not Timely

As a threshold issue, however, the Court notes that motions under CPLR §3211 (3) generally must be brought within a certain period of time or they are waived. CPLR §3211 (e) provides:

> (e) Number, time and waiver of objections; motion to plead over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a), and no more than one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) is waived unless raised either by such motion or in the responsive pleading.

This Court recently denied as untimely a similar motion to dismiss for lack of standing by this same respondent in *Matter of Stop & Shop Companies, Inc. v Assessor of the City of New Rochelle*, 2011 NY Slip Op 21184 (Supreme Court, Westchester County, 5/25/2011). Respondent argued there that, notwithstanding the language of §3211 (e), its motion to dismiss for lack of standing was still timely, citing to Matter of *Landesman v. Whitton*, 46 A.D.3d 827 (2nd Dept. 2007). There, this Court stated:

> In *Landesman*, petitioner failed to properly mail notice of the proceedings and the petition to the Superintendent of Schools of the affected school district. Before the trial court, respondent District sought dismissal for such failure, moving pursuant to RPTL §708 (3). Petitioner opposed the motion, arguing *inter alia* that the motion was untimely pursuant to CPLR §3211 (e). The trial court dismissed the petitions, holding that RPTL §708 (3) required the timely service of the superintendent, and further noted
>
> "As to the issue of the timeliness of Respondent's Motion to Dismiss, it is clear that the courts have not required a

> municipality in a tax certiorari proceeding to make a motion to dismiss within the same CPLR § 3211 (e) 60-day time constraint as in other types of actions [See e.g., *Village Square of Penna, Inc. v. Semon*, 290 A.D.2d 184, 736 N.Y.S.2d 539, 541 (3d Dept. 2002), *lv. app. dis*. 98 N.Y.2d 647, 772 N.E.2d 607, 745 N.Y.S.2d 504 (2002) . . . ")].

(13 Misc. 3d 1216A [Supreme Court, Dutchess County, 2006], at p.4.)

The Second Department subsequently affirmed in *Landesman*, noting that RPTL §708 (3) does indeed require such service, and the failure to so serve requires dismissal of the petitions. On the issue of the applicability of CPLR 3211 (e) to the motion to dismiss, the Court stated:

> Since RPTL 712 (1) states that if no answer is served, "all allegations of the petition shall be deemed denied," no answer was required. Therefore, CPLR 3211 (e) does not apply to a tax certiorari proceeding (*see Matter of Village Sq. of Penna v Semon,* 290 AD2d 184, 186, 736 NYS2d 539 [2002]).

Thus, while the trial court in *Landesman* held, on authority of *Matter of Village Square of Penna v Semon*, *supra*, that the 60-day time constraint under CPLR §3211 (e) did not apply to tax certiorari actions, the Second Department cited the same authority to hold that CPLR §3211 (e) did not apply **at all** to tax certiorari actions.

In Stop & Shop, this Court discussed this anomaly in light of *In Matter of Village Square*, the case cited by the Second Department in Landesman, noting:

> the Third Department performed an extensive analysis of the rather clumsy interplay of several statutory provisions, including (1) the recently enacted provision of RPTL 708 (3) that "failure to [mail a copy of the notice of petition and petition to the Superintendent of Schools] shall result in the dismissal of the petition, unless excused for good cause shown" (*see,* L 1996, ch 503, § 1), (2) the provisions of RPTL 712 (1) that "if the respondent fails to serve [an] answer … all allegations of the petition shall be deemed denied" and that "[a] motion to dismiss the petition shall not be denied merely on the ground that an answer has

been deemed made," and (3) the provisions of CPLR 3211 (e) that a motion to dismiss may be made "at any time before service of the responsive pleading is required" and that "an objection that the … notice of petition and petition was not properly served, is waived if, having raised such an objection in a pleading, the objecting party does not move for judgment on that ground within sixty days after serving the pleading, unless the court extends the time upon the ground of undue hardship." (290 A.D.2d, 185-86.) The *Village Square* Court noted two other Third Department cases, *Abramov v. Board of Assessors*, 257 A.D.2d 958 (3rd Dept 1999) and *Rosen v. Assessor of Troy*, 261 A.D.2d 9 (3rd Dept 1999), each of which assumed the applicability of CPLR 3211 (e) generally to RPTL Article 7 matters, but not specifically the 60-day limitation for motions to dismiss. In particular, they held that while RPTL §712 relieved the municipality of the duty of answering, and thus obviated their need to move to dismiss prior to answering, waiver of the defenses noted in CPLR 3211 (a) might still occur where the delay in moving to dismiss caused prejudice to the petitioner. In neither case was their prejudice, however, since the delay was only a matter of five and four months respectively; and the *Village Square* Court noted that the delay in moving in the latter case was similarly short (three months), and thus timely.

In *Stop & Shop*, this Court also cited to *Matter of North Country Housing v. Boar of Assessment Review, Village of Potsdam*, 298 A.D.2d 667 (3rd Dept 2002), where the petitioner had filed petitions against the Town of Potsdam challenging certain tax years, and petitions against the Village of Potsdam for those and other tax years, which matters were all consolidated for trial. Post-trial, and some four years after the challenges had been commenced, respondent first moved to dismiss for failure of petitioner to timely commence one of the Town petitions. The trial court denied the motion as untimely under CPLR 3211 (e), and the Third Department affirmed, holding that the "...defense [of statute of limitations] can be waived if it is not pursued sufficiently early in the proceeding to prevent prejudice to the petitioner." (298 A.D.2d, 670.)

As in *Stop & Shop*, the motion made by respondents here, to

dismiss for lack of standing, has been made not only on the eve of trial, but has been made some five years at most, and some one and one-half years at least, from the commencement of the action. This Court, as in *Stop & Shop*, has little doubt that respondent was again aware that the instant actions might have been commenced by parties who were not the owner of the premises, since the named petitioners were not the same as the named owner in the tax records of respondent City. On the issue of delay, in *Shoecraft v. Town of North Salem*,24 Misc.3d 1233 (A)(Supreme Court, Westchester County, 2009), this Court stated:

> The Court, finally, is also cognizant of the timing of the respondent's motion to dismiss. Respondents assert surprise in discovering, during petitioner's testimony, that she was not the owner of the premises during the tax years at issue, but a lessee, and a General Partner, of the actual owning entity, AKA. However, it appears uncontested that the tax bills for the years at issue were paid to the Town, in a timely fashion, by AKA, not by petitioner individually, and also that the action, since its commencement, was in the name of petitioner in her individual capacity. Having been apprised of the inconsistency (i.e. the apparent disagreement between the tax rolls, the payer of the taxes, and the party challenging the assessment), as early as the filing of the first petition in 2005, it appears that respondent waited until the time of trial to challenge petitioner's status as an aggrieved party; "such waiting suggests gamesmanship, and effected a waiver of their right" to challenge her status and the petitions in any event (*Cf., U.S. Postal Service v. Town of Bedford*, Supreme Court, Westchester County, LaCava, J., March 26, 2008; *Ames Dept. Stores v. Assessor*, 102 A.D.2d 9, 476 N.Y.S.2d 222 [4th Dept. 1984].)

As this Court noted in *Stop & Shop*, persuasive Third Department authority (including *Village Square*, cited with approval by the Second Department in *Landesman* and again this year in *Con Edison v. Pleasant Valley, supra*) holds that, while RPTL §712 relieves a respondent from the duty of answering, and thus abrogates the duty to move withing the 60 day period set forth in CPLR § 3211 (e), it does not relieve respondents from the duty of timely moving pursuant to CPLR §3211 (a), and that denial of such motions are appropriate where such dilatory behavior worked to

prejudice the petitioner. As set forth previously, petitioners here filed petitions under the names NYFC in tax years 2006 and 2007, and Campbell/SCI in tax years 2008, 2009, and 2010. Respondent was surely aware at some definitive point in that period, that the asserted petitioners had names different than that name contained in respondent's tax records, and that therefore those former parties might not have standing to commence these actions. Nevertheless, respondent did not move to dismiss for lack of standing until less than three months prior to the court-ordered exchange of trial appraisals, and less than four months prior to trial. Petitioners were clearly prejudiced by these actions, and thus the instant motion is found to have been untimely.

New York Funeral Chapel is an Aggrieved Party

In any event, as noted above, the burden in the first instance is upon respondent to establish petitioner's lack of capacity to sue. However, respondent's assertion that NYFC has no right to bring an Article 7 challenge fails to meet that burden. While respondent argues that NYFC was neither the owner nor the taxpayer of the subject premises during tax years 2006 and 2007, the fact is that it has had an affidavit from SCI for at least the last six months, in which SCI affirms that it purchased the subject premises, and the funeral business thereon, in 1971, and has operated thereon, under names including NYFC, the funeral business it purchased. The affidavit also sets forth that NYFC is a wholly-owned subsidiary of SCI.

Shoecraft, supra, involved a petitioner who was the former co-owner (with her husband) of a premises, who succeeded him, after his death, as the operating manager of the business entity which was the then-owner of the premises when the tax certiorari petitions were filed. Since the petitions properly named the parcel and the nature of the grievance, and were brought under the name of the actual lessee and resident of the premises, this Court found:

> it would work a manifest injustice to her, were her petitions dismissed for naming herself as petitioner, rather than herself as General Partner of the wholly-owned partnership which she now directs, (or, indeed, as the President of the Corporation which is assertedly the General Partner of that partnership), particularly absent any showing of prejudice whatsoever by respondents....the failure to name a party as petitioner, where the party named instead is a former owner and/or a manager of the actual owning entity (both applicable to petitioner

> here), [is] a technical defect, and thus not only waivable but curable by amendment.

The Court of Appeals dealt with a similar situation in *Miller v. Board of Assessors*, 91 N.Y.2d 82 (1997). In that case, regarding two of the several properties at issue, the Article 7 petitions had inadvertently been filed in the names of two prior owners of the properties, rather than the current owners. The Court simply held:

> Similarly, the error in naming the prior owner of the Robinson property in the petition was a technical defect that was corrected when a written authorization from Robinson was filed (*see, Matter of Divi Hotels Marketing. v Board of Assessors*, 207 AD2d 580; *Matter of Rotblit v Board of Assessors*, supra, 121 AD2d 727).

Notably, the Court cited as authority two Appellate Division cases. The first, *Divi Hotels* (4th Dept. 1994), a case in which petitioner's counsel had inadvertently challenged the assessment before the Board of Assessment Review, and commenced the Article 7 action, in the name of a prior owner, held:

> Because we conclude that Supreme Court should have granted petitioner's motion to amend the petition and denied respondents' motion to dismiss the petition, we reverse. Adopting a broad and practical view, we see this as a simple matter where a taxpayer engaged counsel to pursue such legal proceedings as may be necessary to effect a reduction of the assessed valuation of the taxpayer's property and, pursuant to the taxpayer's request and authorization, the law firm sought administrative relief and, when unsuccessful, brought the current proceeding for judicial review. The petition in both the administrative and judicial proceedings clearly identified the subject realty by tax map section, block and lot number, thereby permitting precise identification of the owner from respondents' own records, and contained allegations to the effect that the respective matters were being pursued on behalf of the owner of the property, a party with undeniable standing, pursuant to authority duly granted. Thus viewed, there can be no reasonable question, first, that we are dealing with a mere misnomer and, second, that no prejudice

> to respondents resulted. Consequently, the amendment should have been permitted *(see, Matter of Sterling Estates v Board of Assessors,* 66 NY2d 122, 127; *Matter of Rotblit v Board of Assessors,* 121 AD2d 727; *Bergman v Horne,* 100 AD2d 526, 527).

As noted in *Shoecraft*, *Rotblit v. Board of Assessors and/or Board of Assessment Review*, 121 A.D.2d 727 (2nd Dept. 1986), also involved an Article 7 action being brought in the name of a former owner. There, the Court stated:

> Under such circumstances, Special Term appropriately deemed the defect in those petitions "technical" rather than "jurisdictional", and permitted the names of the record owners to be substituted for that of Max Rotblit. "'The Tax Law relating to review of assessments is remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality'" (*Matter of Great Eastern Mall v Condon*, 36 NY2d 544, 548, quoting from *People ex rel. New York Omnibus Corp. v Miller*, 282 NY 5, 9). Like an omitted authorization by the petitioner, a defect with respect to the name of the petitioner, where there is proper authorization by the appropriate individual, is a "technical defect which should not operate to bar the proceedings" *(Bergman v Horne*, 100 AD2d 526, 527). The appellant "received 'adequate notice of the commencement of the proceeding', and * * * [no] substantial right of the [appellant] would * * * 'be prejudiced by disregarding the defect'"; and the misnomer may thus be properly cured by amendment of the petitions *(see, National Bank v State Tax Commn.*, 106 AD2d 377, 378).

(*See also, EFCO Products v. Cullen*, 161 A.D.2d 44 [2nd Dept., 1990], where error in failing to bring Article 7 action in name of true owner was deemed "not fatal" and correctable by amendment).

Similarly, in *Great Eastern Mall, Inc. v. Condon*, 36 N.Y.2d 544, 548 (1975), the petition improperly named several of the respondents against whom the petition had been brought. Respondents sought dismissal as a violation of RPTL §704 (1); the Court of Appeals, however, held:

> The position taken by respondents is that the failure of petitioners to comply with this technical pleading requirement of subdivision 2 of section 704 renders the petitions jurisdictionally defective and should result in a dismissal. We refuse to adopt such a harsh and outmoded view of pleading and procedure.
>
> The dual legal concepts that mere technical defects in pleadings should not defeat otherwise meritorious claims, and that substance should be preferred over form, are hardly novel. Nor should the fact that this is a proceeding to review a tax assessment require application of a different rule. As we said some years ago, "[the] Tax Law relating to review of assessments is remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality." *(People ex rel. New York City Omnibus Corp. v Miller*, 282 N Y 5, 9.) Indeed, that view is mandated by CPLR 2001 and 3026, which are applicable to these article 7 proceedings.

(*Cf.*, *Sterling Estates, Inc. v. Board of Assessors*, 66 N.Y.2d 122 [1985], holding that amendment to add previously un-protested properties does **not** involve technical or un-substantial error, and prejudices respondent).

Finally, this Court has also previously held that the naming of an improper party in a petition, where that party is a related company with respect to the true owner of the property, is a defect which may be cured by amendment. In *Orange and Rockland Utilities et al. v. Town of Haverstraw*, Supreme Court, Rockland County, Dickerson, J., November 24, 2004, one of the Intervenor-Petitioners was Mirant New York Inc. However, the titled owner of the subject property was Mirant Bowline LLC, of which LLC Mirant New York Inc. was the sole member. Citing to *Waldbaum, Inc. v. Finance Administrator of New York*, 74 N.Y.2d 128, 133 (1989), this Court noted that "[the] Tax Law relating to review of assessments is remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality", and compared the naming of an improper party to a simple misnomer. (*Cf., Arlen Realty and Development Corp. v. Board of Assessors, Town of Smithtown,* 74 A.D.2d 905 [2nd Dept. 1980], where the Second Department held that a parent corporation had the authority to commence an action for

its wholly-owned subsidiary; *Arlen* also holds that the liberal amendment rules of CPLR § 3025 authorize amendment of an Article 7 petition to add other persons or entities as aggrieved parties; *See also, Orange and Rockland Utilities et al. v. Town of Stony Point et al.,* Supreme Court, Rockland County, Dickerson, J., [May 16, 2005]). Each of these cases note the reasoning behind §704 and §706 -- the prevention of unauthorized initiation of Article 7 proceedings.

At worst, then, petitioner NYFC was the business name, and the subsidiary, of the actual owner of the subject parcel. Here, it would work a manifest injustice to it, were the tax year 2006 and 2007 petitions dismissed for having named itself as petitioner, rather than SCI. It is abundantly clear that the petitions properly named the parcel at issue and the nature of the grievance, and they were brought under the name of the actual operator and resident of the premises. The above-cited cases lead to the conclusion that the failure to name a party as petitioner, where the party named instead is the manager of the premises for, and a subsidiary of, the actual owning entity, is a technical defect, and thus not only waivable but curable by amendment.

Campbell/SCI is also an Aggrieved Party

With regard to tax years 2008 through and including 2010, the question is far more simple. The petitions for those years each list as petitioner Campbell Funeral Chapel Inc., c/o SCI Funeral Services (CFC/SCI.) The respondent's tax bills for 2007 - 2008, supplied by respondent in its moving papers, list the tax payer as CFC, with SCI's mail address. Finally, as noted above, SCI has affirmed that it purchased the subject premises, and the funeral business operated thereon, in 1971, and has continued since to operate thereon said business under names including CFC, the funeral business it purchased, which entity (CFC) is a wholly-owned subsidiary of SCI. Consequently, the entities that have challenged the tax assessment for the subject premises, as reflected on the petitions for 2008 through and including 2010, are aggrieved parties, since they are both the true owner of the premises -- SCI and its subsidiary, CFC, which was the entity billed for (and thus responsible for paying) said taxes for those years. Thus the petitions for tax years 2008 through 2010 are clearly proper.

CONCLUSION

Here, NYFC filed RPTL Article 7 petitions on its own behalf challenging the assessments in the tax years 2006 and 2007, while CFC and SCI made similar filings for tax years 2008, 2009, and 2010. The City of New Rochelle, despite being presented with petitions from parties other than the listed owner challenging the assessments each year, did not seek to dismiss the petitions until

several months prior to the trial of the five years of petitions. Such motion was untimely but, even if it had been timely, petitioner NYFC was a subsidiary of the true owner of the premises, SCI, while petitioners CFC and SCI (as taxpayer and owner) were aggrieved parties which had the right to commence the 2006 through 2010 actions. NYFC's 2006 and 2007 petitions do suffer from a technical defect, naming as they do NYFC and not SCI, but said waiver was both waivable and curable by amendment. Respondent has thus failed to demonstrate that petitioner was not an aggrieved party and therefore lacked standing to commence these actions.

Based upon the foregoing motion, it is hereby

ORDERED, that the motion by respondent to dismiss for lack of standing, is denied; and it is further

ORDERED, that the cross-motion by petitioner to amend the petitions relating to Index #s 15671/06 and 15801/07, to substitute SCI Funeral Services, Inc. as petitioner on each, is granted, conditioned upon payment by petitioner to the Clerk of this Court the statutory fee for motions provided for in CPLR §8020 (a), within thirty (30) days of the within Order; and it is further

ORDERED, that, upon compliance with CPLR §8020 (a), petitions are amended to reflect the addition of SCI Funeral Services, Inc. as petitioner in said petitions, and shall appear henceforth as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
----------X
In the Matter of the Application of
SCI FUNERAL SERVICES, INC.,

Petitioners,

Index No:
15671/06
-against - 15801/07

THE BOARD OF ASSESSORS AND THE BOARD
OF ASSESSMENT REVIEW OF THE CITY OF
NEW ROCHELLE,

Respondents.
----------X

and it is further

ORDERED that the pleadings in the action hereby amended shall stand as the pleadings in the amended action; and it is further

ORDERED that upon service on the Clerk of this Court of a copy of this order with notice of entry and the payment of the appropriate fee, if any, the Clerk shall amend the papers in these actions and shall mark the court records to reflect the amendment; and it is further

ORDERED, that petitioner shall likewise have leave to file , within thirty (30) days of the within ORDER, amended authorizations as set forth in RPTL §706 (2), for each of the tax years at issue, and in conformance with this ORDER; and it is further

ORDERED, that the following dates are to be complied with by all parties:

November 4, 2011	Exchange of trial appraisals and reports of expert witnesses, if any
November 17, 2011	Pre-Trial Conference at Supreme Court, White Plains, NY, 2:30 PM.
December 1, 2011	Submission of Pre-Trial Memoranda.
December 6 & 7, 2011	Trial Date - 10 AM.

In addition, counsel for all parties are required to appear for a mandatory settlement conference on October 13, 2011, in room 1613, at 10:30 a.m., and on all subsequent days as required.

All parties are put on notice that these dates are to be complied with and no adjournments shall be granted, except with specific permission of the Court, for good cause shown.

Failure to timely comply may result in the imposition of sanctions, including the striking of pleadings and/or preclusion of evidence.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
September 14, 2011

HON. JOHN R. LA CAVA, J.S.C.

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