

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

LEGION OF CHRIST, INCORPORATED,

Petitioner,

-against -

THE TOWN OF MOUNT PLEASANT, a Municipal Corporation, its Assessor and Board of Review,

Respondent.

- and -

THE MOUNT PLEASANT CENTRAL SCHOOL DISTRICT,

Intervenor-Respondent.

For a Review under Article 7 of the RPTL of the State of New York of the 2004 assessment of certain real property situated in Respondent Municipal Corporation, located in the County of Westchester and State of New York.

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LaCAVA, J.

The following papers numbered 1 to 6 were considered in connection with this motion by petitioners for an Order granting summary judgment on their petition seeking a religious exemption for tax years 2002 and 2003 pursuant to RPTL §§ 420-a(1) (a) and 420-a(3) :

DECISION/ORDER

Index No:
16307/01
17063/02

Motion Date:
10/5/11

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In this tax certiorari action, petitioner (Legion) seeks an Order granting summary judgment on its petitions seeking to challenge the failure of respondent Town of Mt. Pleasant (the Town) to grant to the Legion a religious use exemption for the tax years 2002 and 2003. In December 1996, the Legion purchased two parcels of land from IBM Corporation. The parcel at issue herein (the Vacant Parcel) was unimproved and consisted of 168 acres of heavily wooded land.¹ The Vacant Parcel is designated on the Town tax map as Section 112.16, Block 1, Lot 1.

As a recognized Order of the Roman Catholic Church, incorporated under Section 402 of the Not-For-Profit Corporation Law, the Legion qualifies as an exempt organization under RPTL § 420-a. Accordingly, from May 1997 through May 2003 the Legion filed tax exemption applications pursuant to RPTL § 420-a (3); however, these applications were denied annually by Respondent's Assessor, and the Board of Assessment Review. The applications premised the parcel's exemption status on a site plan which had been "in good faith contemplated" to utilize the property for outdoor religious activities. Respondents' premised their denials on the absence of a special use permit which, they asserted, was required to develop the property.

In a previous RPTL Article 7 litigation challenging these determinations, the Court of Appeals held that determination of good faith is necessarily fact-specific, and that each taxable year is distinct and separate for RPTL § 420-a (3) purposes. As years pass, they noted, a taxpayer might be required to show a concrete act or acts towards improving the property for tax-exempt purposes within the reasonably foreseeable future. However, while obtaining a special use permit would be evidence of "good faith contemplation", it was not a prerequisite to tax exemption eligibility (*See, Legion of Christ, Inc. v. Town of Mount Pleasant*, 1 N.Y.3d 406 (2004-*Legion I*). Accordingly, the Court remanded the matter to the Appellate Division to determine whether the Legion had taken appropriate steps toward the completion of the religious

1. A second parcel (the Conference Center Parcel) is not a subject of this proceeding.

use plan. On remand, the Second Department found that the Legion had taken such steps, and that it was thus entitled to an exemption for tax years 1998 through 2001 (*Legion of Christ, Inc. v. Town of Mount Pleasant*, 10 A.D.3d 609 (2nd Dept. 2004))².

In May 2003, the Legion had filed applications for a special permit, site plan approval, and a wetlands permit with the Town, to establish Westchester University, a proposed four-year undergraduate college, on the parcel. Their subsequent tax exemption application for the 2004 tax year premised eligibility upon either actual use of the parcel for outdoor religious activities under RPTL § 420-a (1) (a), or a good faith plan to establish Westchester University pursuant to RPTL §420-a (3). The Legion's application was granted for the 2004 tax year; renewal of the exemption for tax year 2005 was, however, denied, and the Legion commenced an action (the prior action) challenging the denial.

In a Decision and Order dated July 10, 2007, relating to the applications for tax years 2004 and 2005, the Court stated:

Here, the Legion is entitled to partial summary judgment if no genuine issue of material fact exists as to the Vacant Parcel's eligibility for a property tax exemption. During the 2004 tax year, the Legion enjoyed an exemption based both upon actual use of the parcel for outdoor religious activities under RPTL § 420-a (1) (a), as well as, and separately, upon the existence of a good faith plan to establish Westchester University pursuant to RPTL §420-a (3). Because the Legion's 2005 renewal application was also premised upon these same two criteria, as stated in *Miriam Osborn Memorial Home Ass'n*, the Town therefore bears the burden of proving that the Vacant Parcel was then no longer eligible for the exemption under either of these two grounds. In other words, the Town herein must set forth new or changed facts which demonstrated the Vacant Parcel's ineligibility for a continued exemption for the tax year 2005.

2. Besides the current petition, one related action is currently pending; valuation proceedings for both of the remaining parcels are pending for tax years 1998 through 2003.

Despite the fact, obvious from even a cursory look at the application, that renewal was sought based on current religious use, and despite uncontested continued religious use by the petitioner of the parcel at the time of the application, there is no evidence before this Court that the petitioner's actual continuing use of the parcel for outdoor religious activities was ever a factor considered by the Town when it denied the 2005 property tax exemption. Specifically, Respondent Assessor's denial letter failed to even mention, much less analyze or discuss, the continued outdoor religious use; rather, the denial only addressed the issue of good faith contemplation of the Westchester University plan.

Irrespective of whether the Legion has diligently pursued its good faith plan for Westchester University, then, the Town still bears the burden of proving its reasons for denying the renewal application insofar as it is based on actual exempt religious use. Petitioner's renewal application for the 2005 tax year stated that no change in exempt use occurred during the 2004 assessment period, and respondent neither contested this statement nor presented any proof to the contrary, although Respondent Assessor Timming's affidavit does note that "the purported use of the Property at the time is necessarily a factual issue." While true, as the party bearing the burden of proof on the denial of a renewal application, respondent must come forward with such facts to avoid imposition of summary judgment.

Thus, from the facts presented to this Court, the Town has failed to meet its burden of proving that the Petitioner was not entitled to a renewal of its property tax exemption for the 2005 tax year, for the continued religious use of the property. Accordingly, the Legion is entitled to partial summary judgment, at least as it relates to that aspect of its application for renewal of its 2004 exemption.

The Legion's instant motion for partial summary judgment involves, as set forth above, an RPTL Article 7 proceeding challenging the Town's denial of the tax exemption application for the Vacant Parcel for the 2002 and 2003 tax years (i.e. the tax years between the ones addressed by the Court of Appeals in *Legion of Christ I*, and the tax years addressed by this Court in the 2007 Decision and Order [the prior action]). Notably, the exemption applications at issue here, filed in May 2001 for the 2002 tax year, and May 2002 for the 2003 tax year, premised exemption eligibility upon the exact same criteria as the 2004 approved application, namely current actual religious use, as well as the Westchester University plan which was, they asserted, in good faith contemplated. This Court found in the prior action that the renewal application was apparently denied only because, according to Respondent's Assessor, he believed that the Legion did not pursue the proposed Westchester University plan in a diligent manner, i.e. they failed to meet the requisite "good faith" standard. In what would seem to have been a concession, the Assessor's letter did not, however, discuss the actual use of the parcel for outdoor religious activities, nor did he premise denial of the application upon such grounds.

Subsequently, the Town also granted the Legion a 2006 tax exemption for this parcel, and the Town further renewed the exemption in 2007. The Court notes that these applications, and the resulting exemptions were based, *inter alia*, upon the continued and continuing tax exempt use of the parcel for religious purposes, as well as the pursuit by the Legion of a good faith plan for approvals for Westchester University. In short, this Court has already found, as a fact integral to the 2007 Decision and Order granting partial summary judgment regarding the issue of the Legion's entitlement to an exemption in the prior action, that:

During the 2004 tax year, the Legion enjoyed an exemption based...upon actual use [in 2003] of the parcel for outdoor religious activities under RPTL § 420-a (1) (a)....

Upon a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent form, establishing entitlement to judgment as a matter of law, and tendering sufficient evidence to eliminate any material issues of fact from the case" (*Way v. George Grantling Chemung Contracting Corp.*, 289 A.D.2d 790, 793 [3rd Dept., 2001]). Unless and until that initial burden is met, there is no need for the non-movant to come forward with "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of

the action" (*id.*; see also, *Rodriguez v Goldstein*, 182 A.D.2d 396, 397 [1st Dept., 1992]).

In *Celardo v. Bell* (222 A.D.2d 547 [2d Dept., 1995]), the Court stated:

It is axiomatic that summary judgment is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957) . If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 A.D.2d 572 (1989) ...

Under CPLR 3212(b), a moving party is entitled to summary judgment "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment" in their favor. In a proceeding pursuant to Article Seven of the Real Property Tax Law, summary judgment is properly granted when there is no genuine issue of material fact and the petitioner is entitled to judgment as a matter of law." (See, *Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

Religious corporations incorporated under Section 402 of the Not-For-Profit Corporation Law are organizations eligible for tax exemption under RPTL § 420-a. (See, *Waltz v. Tax Commission of City of New York*, 24 N.Y.2d 30 [1969]). Both the Court of Appeals, and this Court twice, have previously found the Legion to be such a corporation.

RPTL § 420-a (1) provides that a non-profit corporation is entitled to an exemption if it owns real property and demonstrates that it is

1) conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, [and that] 2) the property is used exclusively for carrying out thereupon one or more of such purposes.

Once an RPTL § 420 exemption has been granted, as was the case in the prior action relating to tax year 2005, the municipality seeking to withdraw the exemption, or to deny renewal thereof, bears the burden of proving that the petitioner is subject to taxation (*Miriam Osborn Memorial Home Ass'n v. Assessor of City of Rye*, 275 A.D.2d 714 (2d Dep't 2000); see also, *Miriam Osborn Memorial Home Ass'n v. Assessor of City of Rye*, (Supreme Court, Westchester County, Dickerson, J., February 3, 2005). By contrast, the burden of proof, here, as relates to tax years 2002 and 2003, lies with petitioner who is seeking an initial property tax exemption³ (*People ex rel. Watchtower Bible & Tract Soc. v. Haring*, 8 N.Y.2d 350 (1960)).

In the instant matter, the Legion is entitled to partial summary judgment if no genuine issue of material fact exists as to the Vacant Parcel's eligibility for a property tax exemption. The Legion's 2001 and 2002 applications were premised upon one of the two criteria argued in later years, namely the current use of the property for religious purposes. The Legion must thus set forth facts which demonstrate the Vacant Parcel's eligibility for an exemption for the tax years 2002 and 2003, due to their then-current religious use of the property, while respondent, upon petitioner's having met their initial burden, must raise some issue of fact with respect to that use. The Court is, as set forth above, well aware that the Legion has already demonstrated to the Court's satisfaction, in the prior action, that such religious use was ongoing and continuous during tax year 2003.

Here, the Court finds, regarding petitioner's motion, that, at the outset, petitioners have met their initial burden of demonstrating entitlement to judgment as a matter of law, by showing that the parcel is and has for many years been used for religious, educational, and recreational purposes, by providing, as its application states, a place of "quiet meditation, reading, studying, and group discussions" for Roman Catholic priests, laymen, and seminarians, as well as an area for outdoor religious activities, including Stations of the Cross, a Rosary path, and a Grotto. The burden therefore shifted to respondents to show the existence of questions of fact on the issue of whether such uses actually took place. Based upon the papers and proof submitted, respondents have failed to raise any reasonable questions of fact in this regard, and their proof therefore falls far short of meeting their burden of establishing triable or material issues of fact.

3. Petitioner was not granted its first tax exemption until tax year 2004.

Respondents, inter alia, assert that no building permits were sought by petitioners for the work done, and therefore the described work, supportive of the religious use, had not been performed. Such assertions are meaningless, however, when the outdoor structures - the Grotto (a statue of Mary on a rock, surrounded by an open space for prayer), the Outdoor Chapel (an open area with movable benches, a stone altar, and a crucifix), and the Stations of the Cross (which were added to an already-existing path) - referred to by petitioners in their application, were not "buildings" within the meaning of § 218-3 of the Zoning Code, and thus did not require building permits. Neither are the assertions of the assessor, the Building Inspector, or the Police Chief enough to raise the existence of such issues, since in the case of each of those persons, their visits to, and observations and pictures of, the parcel, and their opportunities to see the abovementioned structures, were brief, remote to the areas in question, and limited in observation by the wooded nature of the parcel. When viewing respondents' properly submitted proof in a light most favorable to them, and upon bestowing the benefit of every reasonable inference to them (*Boyce v. Vasquez*, 249 A.D.2d 724, 726 [3d Dept., 1998]), material issues of fact do not exist as to whether or not the subject parcel was being used for a religious purpose at the time of the 2001 and 2002 applications.

Thus, from the facts presented to this Court, the Legion has met its burden of proving that they were entitled to a property tax exemption for the 2002 and 2003 tax years, for the continued religious use of the subject property. Accordingly, the Legion is entitled to partial summary judgment, at least as it relates to that aspect of its application for exemptions for tax years 2002 and 2003.

Upon the foregoing papers, it is hereby

ORDERED, that the motion by petitioner for an Order granting partial summary judgment on their petition seeking a religious exemption pursuant to RPTL §§ 420-a(1)(a) and 420-a (3), is hereby granted; and it is further

ORDERED, that respondent Town shall grant the tax exemption sought by petitioner pursuant to both RPTL §§ 420-a(1)(a) and 420-a(3), for the parcel designated on the Town tax map as Section 112.16, Block 1, Lot 1, for the tax years at issue in the instant petitions, namely 2002 and 2003; and it is further

ORDERED, that the assessment rolls are to be corrected accordingly, and overpayments of taxes, if any, are to be refunded with interest.

The foregoing constitutes the Opinion, Decision, and Order of

the Court.

Dated: White Plains, New York
December 16, 2011

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