

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

**FILED AND
ENTERED ON
DATE
April 4, 2005
WESTCHESTER
COUNTY CLERK**

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MIRIAM OSBORN MEMORIAL HOME ASSOCIATION,

Petitioner,

-against-

THE ASSESSOR OF THE CITY OF RYE, THE
BOARD OF ASSESSMENT REVIEW OF THE CITY
OF RYE, AND THE CITY OF RYE,

Index No: 17175/97
18077/98
16567/99
16113/00
16626/01
18115/02
16987/03

Respondents,

DECISION & ORDER

-and-

THE RYE CITY SCHOOL DISTRICT,

Intervenor-Respondent.

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DICKERSON, J.

TRIAL ORDER NUMBER 3: ADMISSIBILITY OF TESTIMONY OF A LAW PROFESSOR

In this tax certiorari proceeding the Petitioner, The Miriam Osborn Memorial Home Association [" The Osborn "], seeks the restoration of a 100% real property tax exemption which it enjoyed from 1908 to 1996.

In 1996, however, the Assessor of the Respondent, The City of Rye, revoked The Osborn's real property tax exemption, 20% of which was subsequently restored by the Board of Assessment Review of the City of Rye. An issue of considerable importance herein is the scope of Real Property Tax Law § 420-a[1][a] [" R.P.T.L. § 420-a "][a subject previously addressed, in part, by the Appellate Division [see e.g., Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, 275 A.D. 2d 714, 715, 713 N.Y.S. 2d 186 (2d Dept. 2000)] and this Court [Miriam Osborn Memorial Home Association v. Assessor of the City of Rye, 6 Misc. 3d 1035(A), 2005 WL 562748 (West. Sup. 2005)] and its application to the operation of The Osborn during the tax years 1997-2003.

The Scope Of R.P.T.L. § 420-a

R.P.T.L. § 420-a provides that " Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section."

Charitable Exemption: The Professor's Proposed Testimony

The Petitioner would like to present the testimony of Professor Peter deL. Swords, Lecturer in Law at Columbia University School of Law having " taught the class ' Nonprofit Institutions ' for my entire twenty-seven year teaching career at Columbia University " and whose " publications include Charitable Real Property Tax Exemptions in New York State (1981) "¹. It is Professor Swords' intention to offer " expert testimony in this case concerning the meaning of the term ' charitable ', both from a historical perspective as well as with a particular focus on the meaning of that term as used in Section 420-a of the New York Real Property Tax Law, in an effort to determine whether the property owned and operated by The Osborn is being used for ' charitable ' purposes "². It is also Professor Swords' intention to offer the conclusion that " it is my opinion that the use of The Osborn's property is ' charitable '. The fact that The Osborn provides health care, housing and financial security to the non-penurious as well as the poor does not vitiate my conclusion, as the law has clearly rejected any suggestion that provision of services to the poor is the *sine qua non* of a ' charitable ' organization " based upon his " knowledge of Anglo-American law and history concerning the meaning of the word ' charitable ', a review of legal papers served and/or filed in this case, a visit to The Osborn's campus, and meetings and follow-up conversations with The Osborn's staff "³.

Motion To Preclude

The Respondents have moved this Court for an Order precluding the testimony of Professor Swords " because (his proposed) testimony is both an opinion of the law and an interpretation of the statute at issue (and hence) it is improper and must be precluded " ⁴. In response the Petitioner argues that " Professor Swords is not being called to state that the Osborn's property is entitled to an exemption, but rather to testify as to one of the three criteria for a ' charitable ' exemption under New York Real Property Tax Law Section 420-a; namely, whether, under the facts and circumstances of this case, the use of The Osborn's property is charitable " ⁵. Petitioner also contends that Professor Swords' Expert Report ⁶ makes clear that " he will be testifying not on an issue of pure law, but rather, on the application of the law to the facts which he himself perceived and analyzed " ⁷.

Interfering With The Court's Duties

Expert opinions which embody legal conclusions interfere with the Court's duty to interpret statutes and reach legal conclusions [See e.g., Marquart v. Yeshiva Machezikel Torah D'Chasidel Belz, 53 A.D. 2d 688, 689, 385 N.Y.S. 2d 319 (2nd Dept. 1976)(the trial court made a reversible error " in allowing the expert witness to usurp its function as the sole determiner of the law "); Measom v. Greenwich & Perry

Street Housing Corp., 268 A.D. 2d 156, 159, 712 N.Y.S. 2d 1 (1st Dept. 2000)(" The trial court erred in deferring to the opinion of the cooperative corporation's expert as to the legality of the apartment. Expert testimony as to a legal conclusion is impermissible (See People v. Kirsh, 176 A.D. 2d 652, 653, 575 N.Y.S. 2d 306, *app. denied*, 79 N.Y. 2d 949, 583 N.Y.S. 2d 203, 592 N. E. 2d 811). The apartment's legality presented a pure question of law involving statutory interpretation, which, in the first instance, is the responsibility of the court (Matter of Newark Valley Central School District v. Public Employment Relations Bd., 83 N.Y. 2d 315, 320, 610 N.Y.S. 2d 134; Greater Johnstown School District v. Frontier Ins. Co., Inc., 252 A.D. 2d 615, 675 N.Y.S. 2d 212)"); Caplan v. Winslett, 218 A.D. 2d 148, 155, 637 N.Y.S. 2d 967 (1st Dept. 1996) (" To interpose such a functionary was error for the same reason that a trial court should not rely on the testimony of a legal expert on a question of domestic law, regardless of the witness' vast experience. "); Ross v. Manhattan Chelsea Associates, 194 A.D. 2d 332, 333, 598 N.Y.S. 2d 502 (1st Dept. 1993) (" First, the trial court committed reversible error in permitting plaintiffs' expert witness...to testify regarding the meaning and applicability of the Building Code to prove that defendants' negligence caused plaintiffs' decedent's injuries ")].

The Court's Responsibility To Interpret The Law

In Colon v. Rent-A-Center, Inc., 276 A.D. 2d 58, 61-62, 716 N.Y.S. 2d 7 (1st Dept. 2000), the First Department stated: " As the late Judge Murray Gurfein noted in Marx & Co. v. Diners' Club, 550 F. 2d 505, *cert. denied* 434 U.S. 861, 98 S. Ct. 188, 54 L. Ed. 2d 134, expert witnesses should not be called to offer opinion as to the legal obligations of parties under a contract; that is an issue to be determined by the trial court. Expert opinion as to a legal conclusion is impermissible. Likewise, the interpretation of a statute is purely a question of law, and is the responsibility of the court, not the trier of facts ...especially where legislative intent is called into question (Matter of Newark Val. Cent. School Dist. v. Public Empl. Relations Bd., 83 N.Y. 2d 315, 320, 610 N.Y.S. 2d 134, 632 N.E. 2d 443)". Federal case law is to the same effect [See e.g., United States v. Bilzerian, 925 F. 2d 1285, 1294, (2d Cir. 1991)(" As a general rule an expert's testimony on issues of law is inadmissible....that although an expert may opine on an issue of fact within the jury's province, he may not give testimony stating ultimate legal conclusions based on those facts "); Rondout Valley Central School District v. The Coneco Corporation, 321 F. Supp. 2d 469, 480 (N.D.N.Y. 2004) (" Often the distinction between fact and legal conclusion is blurred. TC Sys., 213 F. Supp. 2d at 181-82. However, to make it abundantly clear for the parties, it is axiomatic that an expert is not permitted to provide legal opinions, legal

conclusions, or interpret legal terms; those roles fall solely within the province of the court. Hygh v. Jacob, 961 F. 2d 359, 363-64 (2nd Cir. 1992) (citation omitted); See also TC Sys., 213 F. Supp. 2d at 181 (" It is well established within this Circuit that expert testimony cannot " usurp the role of the trial judge in instructing the [fact finder] as to the applicable law "...[and] may not give testimony stating ultimate legal conclusions based upon the facts.') (citation omitted) ")].

Professor Swords' Proposed Testimony Will Be Precluded

Professor Swords' proposed testimony clearly violates the longstanding prohibition against an expert giving an opinion as to a legal conclusion [e.g., " It is my opinion that the use of The Osborn's property is ' charitable ' " ⁸]. In addition, statutory interpretation is an exclusive function of the court and, hence, Professor Swords' interpretation of R.P.T.L. § 420-a would be improper as a matter of law and quite unnecessary [" interpretation of a statute is purely a question of law, and is the responsibility of the Court, not the trier of fact " ⁹]. Therefore, it is impermissible and reversible error to admit expert testimony as to a legal conclusion and statutory interpretation¹⁰.

Accordingly, Professor Swords will not be permitted to testify regarding the meaning of the word " charitable " as it is " used in Section 420-a of the New York Real Property Tax Law "¹¹ nor will he be permitted to offer an opinion as to " whether the property owned and operated by The Osborn is being used for ' charitable purposes ' " ¹² since such testimony is based upon the same impermissible legal interpretation of the word " charitable " as that word is used in R.P.T.L. § 420-a.

The foregoing constitutes the decision and order of this Court.

Dated: April 4, 2005
White Plains, N.Y.

HON. THOMAS A. DICKERSON
SUPREME COURT JUSTICE

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ENDNOTES

1. Expert Report of Peter deL. Swords dated December 29, 2004 [Swords Expert Report] at p. 2.
2. Swords Expert Report at p. 2.
3. Swords Expert Report at pp. 2-3.
4. Letter of Robert A. Weiner dated February 25, 2005 [" Weiner Ltr. I "]. See also letter of Robert A. Weiner dated March 29, 2005 [" Weiner Ltr. II "].
5. Letter of Peter G. Bergmann dated March 25, 2005 [" Bergmann Ltr. "] at p. 2.
6. Swords Expert Report attached to Bergmann Ltr.
7. Bergmann Ltr. at p. 2.
8. Swords Expert Report at para. 3.
9. Colon v. Rent-A-Center, Inc., 276 A.D. 2d 58, 61-62, 716 N.Y.S. 2d 7 (1st Dept. 2000).
10. Measom v. Greenwich & Perry Street Housing Corp., 268 A.D. 2d 156, 159, 712 N.Y.S. 2d 1 (1st Dept. 2000).
11. Swords Expert Report at p. 2.
12. Swords Expert Report at p. 2.