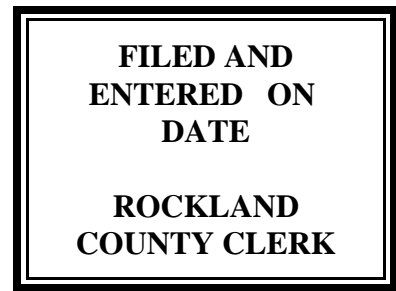


SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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OTRADA, INC., AMERICAN RUSSIAN AID
ASSOCIATION,

Plaintiff,



Index No: 5133/03

-against-

**DECISION, ORDER
& JUDGMENT**

ASSESSOR OF THE TOWN OF RAMAPO,
THE TOWN OF RAMAPO and THE BOARD
OF ASSESSMENT REVIEW FOR THE TOWN
OF RAMAPO,

Defendants.

-----X

DICKERSON, J.

OTRADA II : 100% TAX EXEMPTION RESTORED TO 2004 & 2005

The Plaintiff [" Otrada "] filed a Notice of Motion pursuant to CPLR §§ 2221, 4404 and 5015 requesting reargument of this Court's post-trial decision, order and judgement dated October 3, 2005 [" the First Decision "] [See Otrada Inc. v. Assessor, Town of Ramapo, 9 Misc. 3d 1116(A), 2005 WL 2428362 (Rockland Sup. 2005)] or, in the alternative, granting leave to the Plaintiff to commence a declaratory judgement action for the 2004/2005 tax years, *nunc pro tunc*, and to bar the Defendants from

raising the defense of the statute of limitations. In response the Defendants filed a Notice of Cross-Motion also requesting reargument of the First Decision.

After careful consideration of the Plaintiff's Notice of Motion, the Defendant's Notice of Cross Motion and all the papers submitted in support of and in opposition thereto, and the underlying trial record and post trial memoranda, and the excellent presentations of counsel made at oral argument held on February 15, 2006, this Court grants the Plaintiff's motion to reargue and, upon reargument, grants the relief sought therein to the extent of modifying the First Decision by restoring a 100% tax exemption for the years 2004 and 2005 as well as 2003, and granting the Defendant's cross motion to reargue and, upon reargument, denying the relief sought therein.

Factual Background

By way of a Declaratory Judgement action, the Plaintiff initially sought relief from this Court requesting that the subject property be declared fully exempt from taxation from March 1, 2003 through the entry of judgement to be rendered by this Court [" WHEREFORE, the Plaintiff demands judgement against the defendants declaring its subject real property to be declared fully exempt from real estate taxation from March 1, 2003 through the date of judgement to be rendered in this action..."¹]. In the First Decision, after trial, this Court held that the subject property would

receive a 100% exemption for the 2003 tax year only, as plaintiff did not file separate proceedings for the 2004 and 2005 tax years.

Plaintiff's Notice of Motion

Subsequently, the Plaintiff filed the instant Notice of Motion, contending that the Court erred in finding that the subject property was entitled to receive a 100% tax exemption solely for the 2003 tax year, and not for years 2004 and 2005. The Plaintiff claims that in a Real Property Tax Law [" RPTL "] Article 7 action a separate proceeding must be brought for each tax year and tax roll challenged. However, there is no such requirement for declaratory judgement actions. The Plaintiff states that the property owner does not have to submit an application for exemption on forms described by the State Board of Equalization and Assessment in a declaratory judgement action [See e.g. Khal Bnei Emunim v. Town of Fallsburg, 78 N.Y.2d 194, 573 N.Y.S.2d 43 (1991)].

Alternative Relief Sought

Additionally, the Plaintiff asks the Court to take into consideration the fact that it may now be effectively barred from bringing claims for the 2004/05 tax roll, since the statute of limitations has passed. The Plaintiff seeks, as alternative relief, a determination by this Court that it be allowed to commence a declaratory judgement action for that year, *nunc*

pro tunc, and that the Defendant be barred from raising the statute of limitations as a defense.

Defendant's Notice of Cross-Motion

In its Notice of Cross-Motion, the Defendant contends that the Plaintiff's argument distinguishing the relief available in a declaratory judgement action from that available in an RPTL Article 7 proceeding is misplaced. The Defendant states that each tax year must stand alone, citing People ex. Rel. Watchtower Bible & Tract Society, Inc. v. Haring, 286 A.D. 676, 146 N.Y.S.2d 151 (3d Dept. 1955); F.O.R. Holding Co. v. Board of Assessors, 45 A.D.2d 875, 357 N.Y.S.2d 875 (2d Dept.), appeal dismissed, 35 N.Y. 2d 959 (1974).²

Alternative Relief Should Be Denied

Regarding the Plaintiff's request to be allowed to commence a declaratory judgement action for the 2004/05 tax year *nunc pro tunc*, the Defendant contends that no legal or factual basis exists for this extraordinary relief and that no basis exists for the Court to determine a tolling of the statute of limitations at this time for an action that has not yet been commenced.

Shifting Burdens

The Defendant claims that this Court's findings that the burden of proof shifted and that the Defendant was required to prove why the Assessor chose to reduce the exemption were incorrect as a matter of law. Defendant further contends that even if the burden was to shift to the municipality, the Town of Ramapo met its burden of proving that the disputed use of the premises was not for an exempt purpose.

DISCUSSION

Most cases challenging assessments are brought pursuant to an RPTL Article 7³. Pursuant to RPTL § 702 a special proceeding brought to review a real property tax assessment shall be commenced within thirty days after the final completion and filing of the assessment roll containing such assessment. Thus, in an RPTL Article 7 action, a separate proceeding must be brought for each tax year and tax roll challenged.

Declaratory Judgment Actions

There is no such statutory requirement for declaratory judgement actions, and CPLR § 3017(b) provides that the complaint shall specify the further or consequential relief which could be claimed and the nature and

extent of such relief. CPLR § 3017(b) provides, " Declaratory judgement. In an action for a declaratory judgement, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested and state whether further or consequential relief is or could be claimed and the nature and extent of any such relief which is claimed. "

Claims For Further Or Consequential Relief

24B Carmody Wait 2d, *Declaratory Judgements*, Section 147:168 is instructive, stating that " [a] cause of action for a declaratory judgement may thus properly embrace in a single cause of action claims for further or consequential relief which otherwise would be regarded as separate causes of action, including claims for injunctive relief, and it is usual to combine, with a request for declaration of rights, a request for such other relief as is necessary to make effective rights declared. A declaratory judgement should give real relief so that a second action for enforcement of the rights declared need not be brought. "

No Statutory Filing Requirement

The Court of Appeals held that in a declaratory judgement action, wherein the Petitioner sought a declaration that real property was exempt from taxation, the property owner does not have to submit an application for

exemption on forms described by the State Board of Equalization and Assessment [See Khal Bnei Emunim v. Town of Fallsburg, 78 N.Y.2d 194, 203, 573 N.Y.S.2d 43 (1991) (" [T]here is no provision in RPTL § 420-a conditioning entitlement to a mandatory property tax exemption upon the filing of an application. The language is clear and unambiguous; the property described therein owned and used as therein provided ' shall be exempt from taxation '. It is noted that in amending the Real Property Tax Law in 1981 (see L.1981, ch. 919) to, *inter alia*, renumber former section 420 as 420-a and to add section 420-b, including the provisions of subdivision (7) requiring the filing of an application for exemption, no such requirement was imposed in respect to exemptions under section 420-a. Thus it may reasonably be inferred that the Legislature did not intend to impose any such requirement in respect to mandatory class exemptions. Indeed, an administrative agency may not promulgate a regulation that adds a requirement that does not exist under statute "].

No Prejudice Shown

Hence, in the instant matter, there exists no statutory requirement that the Petitioner file for an exemption separately for the years 2004 and 2005. Although this action for a declaratory judgement was commenced in 2003, the prayer for relief in the complaint was for a judgement declaring the " subject real property to be declared exempt from real estate taxation from March 1, 2003 through the entry of judgement to be rendered in this

action. "4. Therefore, the prayer for relief in the complaint requested exemption not only for 2003, but for any other tax year up through judgement in the trial of this action, which was 2005. Certainly, the Complaint's prayer for relief put the Defendants on notice that the Plaintiff was seeking relief not only for the 2003 tax year but for the 2004 and 2005 tax years as well. Hence, the Defendants were not prejudiced as they had the opportunity to question and did question the witnesses at trial as to tax years " through the entry of judgement in this action. "

Conclusion

The prayer for relief in this declaratory judgement action included not only tax year 2003, but for tax years 2004 and 2005 as well. Since the proof taken at trial was not restricted to the 2003 tax year, in that the questions posed to the witnesses and the answers given by them related to tax years prior to 2003 and up through 2005, judgement is granted in favor of the Plaintiff such that the subject property is to receive a 100% exemption for the 2004 and 2005 tax years as well as the 2003 tax year. The Defendants' cross-motion is denied in its entirety. 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 judgment of this Court.

Dated: March 1, 2006
White Plains, N.Y.

HON. THOMAS A. DICKERSON
JUSTICE SUPREME COURT

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ENDNOTES

1. Complaint at pp. 2-3.
2. Affirmation In Opposition of Michael B. Specht dated November 11, 2005 [" Specht Aff. I "] at para. 4.
3. See e.g., Matter of Markin v. Assessor of the Town of Orangetown, 6 Misc. 3d 1042(A) (Rockland Sup. 2005)(" What is the proper remedy available to Petitioners? Must Petitioners proceed by way of RPTL Article 7 or may they collaterally attack the Assessor's methods by way of a CPLR Article 78 proceeding? ").
4. Complaint at pp. 2-3.