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 DUTCHESS

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In the Matter of the Application of
ST. FRANCIS HOSPITAL by Corbally, Gartland and Rappleyea, Esqs., As Agents,

DECISION/ORDER

Petitioners,

-against -

Index No:
5886/2008

KATHLEEN TABER, Assessor, Town of Poughkeepsie, Dutchess County, New York and HYDE PARK CENTRAL SCHOOL DISTRICT, by its Superintendent,

Motion Date:
4/17/09

Respondents.

To Review a Certain Real Property Assessment for the year 2008 under Article 7 of the Real Property Tax Law

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LaCAVA, J.

The following papers numbered 1 to 8 were considered in connection with this motion by petitioner St. Francis Hospital Group (SFH) seeking summary judgment granting it a partial real property tax exemption for the tax year 2008 from respondent Town of Poughkeepsie (Town):

PAPERS	NUMBERED
NOTICE OF MOTION/AFFIDAVIT/EXHIBITS	1
MEMORANDUM OF LAW	2
AFFIDAVIT IN OPPOSITION/EXHIBITS	3

AFFIDAVIT IN OPPOSITION/EXHIBITS	4
AFFIDAVIT IN OPPOSITION/EXHIBITS	5
MEMORANDUM OF LAW	6
REPLY AFFIRMATION/EXHIBITS	7
MEMORANDUM OF LAW	8

In this Article 7 Tax Certiorari proceeding, petitioner seeks an Order granting summary judgment on its petition challenging the failure of respondent, the Town of Poughkeepsie, to grant a partial charitable exemption for the subject premises. The parcel is a medical office building located adjacent to (and connected with) St. Francis Hospital proper, is known on the tax map of the Town of Poughkeepsie as Lot # 6162-09-072632-0002, and is also known as and located at 19 Baker Avenue, Town of Poughkeepsie. Petitioner is the fee simple owner of the several parcels, consisting of the Hospital, a parking structure, and the subject parcel, totaling 28.15 acres and located in the Town of Poughkeepsie. In the 2008 tax roll, the owner of the parcel is listed as St. Francis Hospital, Poughkeepsie Investors LP, 661 University Boulevard, Suite 200, Jupiter, FL 33458.

In October 2005, SFH, concededly a not-for-profit hospital corporation, entered into a ground lease with Poughkeepsie Investors Limited Partnership (PI), a private Florida developer, to demolish an existing office building on land owned by SFH, and build thereon a new medical office building to be known as the Medical Arts Pavilion. The lease was for a term of 50 years from the date of issuance of a certificate of occupancy. In May 2007, a temporary certificate of occupancy was in fact issued by respondent to SFH.

The facility, under the lease, primarily provides licensed physician members of the medical staff with efficient and modern offices to be used for patients whom they are the treating professional. The ground lease between the parties includes conditions which, *inter alia*, restricts the use of the medical building to physicians who have hospital privileges at petitioner's hospital. In addition any occupant of the Medical Arts Pavilion must comply with the Ethical and Religious Directives for Catholic Health Care Services. Upon default of any of these terms, the lease terminates, and the property automatically reverts back to the petitioner. SFH has also leased back from PI a portion of the premises, consisting of approximately 24,183 square feet, with the remainder of the 79,712 square feet remaining with PI. Of that latter portion, however, only 50% has been rented.

For the tax year 2008, SFH filed an Article 7 petition requesting that the Medical Arts Pavilion be exempt "in whole or in part" due to its continued charitable (hospital) use of the facilities. In particular, SFH claimed an exemption for the 32% of the premises which it leased, and it in addition sought a reduction of the assessment of the remaining portion. The application was denied, and an appeal was brought to the Board of Assessment Review, which likewise denied the exemption. The instant action was commenced, and petitioner has subsequently filed a motion for summary judgment, arguing that the portion of the building occupied by it should receive an exemption.

Petitioner's Motion for Summary Judgment

Petitioner now moves for summary judgment, asserting that there are no questions of fact regarding their tax-exempt use of the subject premises. The Town opposes the motion, arguing the existence of facts suitable for resolution at trial, including, in particular, on the issue of the private and commercial use of the subject medical office building.

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 a proceeding pursuant to Article Four 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 on the issue of their entitlement to an exemption." (*Cf. See Sailors' Snug Harbor in City of New York v. Tax Commission of City of New York*, 26 N.Y.2d 444, 449 [1970]).

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) …

The Charitable Exemption

RPTL § 420-a (1) provides that

> 1. (a) 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.

Thus, the burden of proof is upon SFC here to show entitlement to judgment as a matter of law by demonstrating, pursuant to RPTL § 420-a (1), that:

> 1. The real property at issue here is 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
>
> 2. The owning corporation did use the real property exclusively for carrying out thereupon one or more of such purposes.

Charitable Ownership of the Premises

Respondent appears to concede, by failing to contest, that SFH is a not-for profit corporation as provided-for in RPTL § 420-a (1). There has, however, been considerable argument presented by the Town that the premises is not actually owned by SFH, and thus SFH, regardless of its not-for-profit status, may not avail itself of the statute. Respondent in particular points to the Recitals contained in the ground lease, which specify (at B) that

> Lessor desires to lease the Ground Leased Premises from Lessor in order for Lessee to cause the construction of, and to **own**, manage, and operate the Project.

Recital B, emphasis added.

However, notwithstanding such language, the property interest possessed by SFH both before and after the leasehold's creation was and is an ownership interest, while PI's status is nothing more than as a lessee under the ground lease. Recital A, and Article 1, Section 1.3, describe SFH as the fee owner of the premises, which owner (under recital A) desires to lease the premises to the lessee (PI) as a lessor. Clause 6.6, at page 13 of the lease, further describes the interest as a "fee estate." In addition, Clause 10 of the lease, at page 16, bars alienation of the leasehold without SFH's prior consent. And Article 14 makes clear that, upon expiration of the term of the lease, the property reverts back to the lessor (SFH). Finally, as petitioner points out, respondent's own tax records hold the owner of the premises to be SFH.

In sum, these terms, separately and when taken together, particularly with the above-mentioned terms mandating leasing of office space only to SFH-affiliated physicians, and only to those physicians complying with Catholic Health Care ethical requirements, demonstrate that SFH is the owner of the premises, and has merely entered into a ground lease with PI for the operation of a medical office building, which operation is under the general oversight and supervision of SFH.

Exclusive Charitable Use of the Premises

An owner seeking a tax exemption for a property must show not only that the organization owning the premises is a charitable one, but also that the use to which the property is being put is

exclusively a charitable one as well. "In determining whether the real property of a corporation is used exclusively for the exempt purpose, the word 'exclusive' has been held to connote 'principal' or 'primary'." (*Matter of Adult Home at Erie Station v. Assessor, City of Middletown*, 10 N.Y.3d 205 [2008].)

Here, petitioner seeks an partial exemption, for the use to which it has put the portion of the premises leased back to it by PI--24,183 square feet, or some 32% of the premises. Further, since only 51% of the premises as a whole has been sub-let by PI, and by far the largest portion of this sub-leasehold is the portion leased back to SFH, then petitioner is by all accounts the "principal" or "primary" user of the premises--indeed, nearly 2/3 of the subject parcel is being put to use by SFH. (*See Southwinds Retirement Home v. City of Middletown, 2009 NY Slip Op 511180(U) [Supreme Court Orange County, LaCava, J., June 9, 2009]; Congregation Emanu-el of New York v. New York*, 150 Misc. 657 [Supreme Court, N.Y. County, 1934], *aff'd* no op. 243 A.D. 692 [1st Dept. 1935].)

Since SFH's use of the premises is principal or primary, the question then is whether SFH's use of the medical office building is a charitable and hospital use (or reasonably incident thereto.) As Section 4.3 of the Lease sets forth, only licensed physicians who are members of the medical staff of SFH may occupy space in the building. Further, should any physician be found to not be on SFH staff, or to have lost his SFH staff accreditation during the leasehold, upon acquiring knowledge of that fact tenant SFH is permitted under the lease to re-take possession of that non-compliant leasehold. In addition, as set forth previously, Section 4.4 of the Lease provides that all lessees are bound to comply with Catholic Health Care ethical requirements.

Finally, Section 4.5 of the Lease sets forth the general intent of SFH in leasing the premises:

> to provide licensed physician members of the medical staff of the Hospital with efficient and modern offices to be used for patients with respect to whom they are the treating professional.

In addition, in order to avoid duplication and competition, space in the medical office building for many medical and associated services, already available in the Hospital itself,

would only be permitted with the prior written approval of SFH.

In *Pace College v. Boyland*, 4 N.Y.2d 528 (1958), the Court of Appeals held that a for-profit contractor may operate a concession for a non-profit institution, and the non-profit may still be entitled to an exemption, so long as the concession is "reasonably incident" to the non-profit's primary activities. In *Pace*, Pace College had contracted-out operation of its student cafeteria at its New York City campus to a commercial food service. The Court held that the cafeteria was part of the operation of Pace College, and that the

> furnishing of meals to students, faculty and staff on college premises is recognized as entering into their use for educational purposes, nor does it customarily disturb full tax exemption....The reason on account of which part of appellant's tax exemption has been withdrawn is not that it conducts a cafeteria, but that it does so through Horn & Hardart. We think that Pace College is not the less operating this cafeteria for its own educational purposes within the meaning of the Tax Law for the reason that it is done by a means of a commercial restaurant operator, than was the case when the college farmed out this operation to a professional caterer at a commission of 2% on gross sales of food. This is not renting space to some disassociated enterprise, it is part of the conventional operation of a private school, college, hospital or other benevolent institution.
> 4 N.Y.2d, 532-33.

In *Pace*, and like the instant matter, the property leased to the concession was an integral part of the exempt's operation, taking place along side of, and together with, the other, clearly educational (or here, hospital) functions occurring on the premises. The operation of a cafeteria on the Pace campus, whether by College employees, or by a private, for-profit contractor for the College, was necessarily incident to the other, academic functions taking place on the same property; similarly, the management of a medical office complex, solely for physicians on the staff of SFH, and subject to the latter's oversight and supervision in the conduct of their practice, is likewise incident to the hospital functions taking place on the adjacent parcel.

The Court of Appeals has frequently recognized that unrelated activity occurring on a premises may nevertheless be incidental to a non-profit use occurring thereon. In *St. Luke's Hospital v. Boyland*, 12 N.Y.2d 135 [1962], for example, the rental of apartments for the residential use of hospital personnel was found to be reasonably incidental to the operation of the hospital therein. And in *Erie Station, supra*, the Court found that the providing of housing for patients was reasonably incidental to the charitable providing of social work services to those patients, even where those social work services were provided at a different premises than the housing.

Notably, two separate Appellate Division panels have also found varied activities to be incidental to the religious use of a premises. In *In the Matter of the Shrine of Our Lady of Martyrs of Auriesville v. Town of Glen*, 40 A.D.2d 75 [3rd Dept 1972], *aff'd* 33 N.Y.2d 713 [1973], the use of part of the premises for a cafeteria and a parking lot, even though open to the general public, was found to be incidental to the religious use (a shrine and other worship facilities) on the remainder of property. And the Second Department in *Sephardic Congregation of S. Monsey v. Town of Ramapo* , 47 A.D.3d 915 [2nd Dept 2008] recently held that, although part of a premises was being used for residential purposes, that use was reasonably incidental to the religious purposes also carried out therein.

Here, SFH has chosen to offer medical office accommodations to its staff physicians, subject to its control and supervision, at the medical office complex. This use, which currently, due to a high vacancy factor, is the predominant use of the premises, is, like the providing of housing accommodations to its staff in *St. Luke's*, reasonably incident to the hospital use occurring on the adjacent parcel. Thus, petitioner may properly claim a tax exemption for the portion of the premises, 32%, devoted to this use.

The Court thus finds, regarding petitioner's motion, that, at the outset, petitioners have met the initial burden, by showing entitlement to judgment as a matter of law as set forth above. 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 either the ownership or charitable use of the subject premises. In essence, respondent challenged here only the ownership issue, and, as set forth above, has failed to raise a triable issue on that or

any other ground.

Based on the foregoing, it is hereby

ORDERED, that the motion by petitioner for summary judgment against respondent is hereby granted; and it is further

ORDERED, that the petition by petitioner for an Order granting their petition seeking the grant of a partial charitable exemption pursuant to RPTL §§ 420-a, for the tax year 2008, for the 32 % of the subject parcel leased by petitioner, is hereby granted; and it is further

ORDERED, that respondent Town shall grant the partial tax exemption sought by petitioner pursuant to RPTL § 420-a, for the parcel designated on the City tax map as Lot # 6162-09-072632-0002, and is also known as and located at 19 Baker Avenue, Town of Poughkeepsie, for the tax assessment year at issue in the instant petition, namely 2008; 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
June 25,2008

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

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