

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of
TBS REALTY MANAGEMENT LLC,

DECISION/ORDER

Petitioners,

-against -

Index No:
3034/07

VILLAGE OF HILLBURN, (Municipal
Corporation), its ASSESSOR AND BOARD
OF ASSESSMENT REVIEW,

Motion Date:
10/13/09

Respondents.

To Review a Certain Real Property
Assessment for the year 2007 under
Article 7 of the Real Property Tax Law

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In the Matter of the Application of
TBS REALTY MANAGEMENT LLC,

Petitioners,

-against -

Index No:
3626/08

VILLAGE OF HILLBURN, (Municipal
Corporation), its ASSESSOR AND BOARD
OF ASSESSMENT REVIEW,

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 3 were considered in connection with this motion by petitioners TBS Realty Management LLC (TBS) seeking summary judgment from respondent Village of Hillburn (Hillburn):

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT/EXHIBITS	1
AFFIRMATION IN OPPOSITION/EXHIBITS	2
REPLY AFFIRMATION	3

In this Article 7 Tax Certiorari proceeding, petitioners seek an Order granting summary judgment on its petition challenging the assessment by respondent Village of subject premises. The parcel is a commercial plot, known alternately on the tax map of the Village as Lot #847.19-2-2 and Lot #47.19-2-2, and is also known as and located at 201 Route 59, Hillburn, Town of Ramapo. Petitioners are the fee simple owners of the parcel, a light industrial/warehouse building of approximately 90,000 square feet, having purchased same in March 2006 from the prior owner, Doane Pet Care Company (Doane). The purchase price of the property, petitioner asserts, was established in a transaction alleged to have been at arm's length, in that neither petitioner's principal, nor any other member of petitioner's firm, had had any prior dealings with the principals of the former owner, Doane, (indeed, they did not even meet until title was closed), and that in fact all of the price negotiations were conducted through a real estate broker. Both parties were represented, throughout, by unaffiliated counsel, and no financing was taken back by the seller (indeed the price was paid entirely in cash.) Finally, the Real Property Transfer Report (RP-5217) filed by the parties with the New York State Office of Real Property Services (ORPS) reflected that the sale was conducted at arm's length.

The purchase price for the subject premises was \$3,500,000.00; application of the 2007 and 2008 Equalization Rates (20.94% and 19.54% respectively) to this purchase price yields equalized values, as alleged by petitioner, of \$732,000.00 and \$683,900.00 respectively for tax years 2007 and 2008. The assessed value for the subject property for the tax year 2007 and 2008 was \$2,552,000.00; application of those same equalization rates to the assessed value for those tax years yields equalized market values, as asserted by respondent, of \$12,187,200 and \$13,060,400.00 respectively. Petitioner duly protested the assessments for tax

year 2007 and 2008 and, upon denial of their protest, filed the instant action.

Petitioners' Motion for Summary Judgment

Petitioner now moves for summary judgment, asserting that there are no questions of fact regarding the fact that, based upon the value of the property established at an arm's length sale, the Village has over-assessed their property. The Village opposes the motion, arguing the existence of facts suitable for resolution at trial, including, in particular, on the issue that the arm's length nature of the transaction, as well as subsequent improvements to the property.

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 7 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 a reduction in the challenged assessment. (*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) ...

Recent Sale the Best Evidence of Value

Here, the petitioners allege that the 2007 and 2008 assessments simply, and significantly, exceed the fair market value of the subject premises, when calculated by application of the 2007 and 2008 equalization rates to the sale price of the property in 2006. It has indeed consistently been held that a petitioner may establish its entitlement to summary judgment by showing that the recent sale price of the property was the best evidence of the value of the property." (See *JB Park Place Realty, LLC v. Village of Bronxville*, 50 A.D.3d 689 [2nd Dept. 2008]). This Court has held similarly--"Amongst the recognized valuation methods "[t]he best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy." *JB Park Place Realty LLC v. Assessor of Village of Bronxville*, 13 Misc.3d 1233(A) (Supreme Court, Westchester County, 2006, citing *Matter of FMC Corporation v. Unmack*, 92 N.Y. 2d 179, 189 [1998]); see also *Matter of 325 Highland LLC v. Assessor of the City of Mount Vernon*, 5 Misc. 3d 1018(Supreme Court, Westchester County, 2004).

As the Court noted in *Plaza Hotel Associates v. Wellington Associates, Inc.*, 37 N.Y. 2d 273, 277 (1975):

The rule has evolved and is now well settled "that the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the 'highest rank' to determine the true value of the property at that time."

Similarly, in *Matter of Allied Corp. v. Town of Camillus*, 80 N.Y. 2d 351, 356, the Court stated "The best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy"(see also *Matter of Reckson Operating Partnership, L.P. v. Assessor of Town of Greenburgh*, 289 A.D. 2d 248 [2d Dept. 2001] "The Supreme Court properly granted the respondents' motion for summary judgment, since they established that the recent sale price of the property was the best evidence of value of the property"; *Matter of Robert Lovett v. Assessor of Town of Islip*, 298 A.D. 2d

521 [2d Dept. 2002] "The Supreme Court correctly determined that the 1994 sale price of the subject property was the best evidence of its value").

Here, as set forth in greater detail above, petitioner argues that it participated in an arm's length transaction in purchasing the subject premises in May 2006, as evidenced by the fact that petitioner had no business dealings with the principals of the former owner, Doane, prior to the sale transaction; that they did not meet each other until title was closed; that all of the negotiations were conducted through a real estate broker; that both parties were represented, throughout, by separate counsel; and that no unusual financing arrangements were involved. Petitioner thus argues that a sale of the premises for \$3,500,000.00 under the aforesaid circumstances, a mere months prior to the taxable status date for the 2007 tax year (July 1, 2006), and less than 18 months prior to the taxable status date for the 2008 tax year (July 1, 2007), is the best evidence of the value of the property during the tax years at issue herein.

Respondent's sole rejoinder to petitioner's properly-submitted proof on the issue of the probative value of the sale is to state that they "believe" that:

- a) the seller was motivated to sell based on the moving of the business after the sale, and the price represents a sale under hardship;
- b) the prior and current owners modified the use of the property "**decreasing** (*sic*) seriously the value of the building".

As petitioner properly notes, however, respondent's submission fails in two essential respects. First, it offers nothing on personal knowledge, and only the sheerest speculation (counsel's "belief"), neither in admissible form, that the sale price was motivated by factors such that it represents a distress sale. Further, while arguing that the improvements noted in the building permits represent evidence of a change in value, petitioner incongruously argues that they resulted in a **decrease** in the value of the property. The building department documents themselves, in addition, may be hearsay (while they are undoubtedly business records, respondent did not take the time to demonstrate that the records are admissible as such under CPLR §4518), and, as petitioner points out in reply, there is no affidavit from anyone

with personal knowledge as to what actual improvements were made to the property (indeed, many of the reports are illegible such that even the general details of the supposed improvements cannot be deciphered.) Petitioner also properly notes that, in any event, the documents fail to demonstrate that whatever work was done, was done prior to the taxable status date for the 2007 tax year, nor that any work that was done from 2006 to 2008 added even a single dollar in value to the subject premises.

The Court thus finds, regarding petitioners' motion, that, at the outset, petitioners have met the initial burden, by demonstrating entitlement to judgment as a matter of law, based on the arm's length nature of the sale, the recent nature of the sale, and the price at which the property was sold. 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]), based on the abject failure of respondent to impugn the arm's length nature of the transaction, material issues of fact do not exist as to the proper assessed value of the subject premises in the tax years at issue.

Based on the foregoing, it is hereby

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

ORDERED, that the petitioners' application to declare invalid and void the 2007 and 2008 real property assessment upon the subject property is granted; and it is further

ORDERED, insofar as petitioners seek an Order compelling Respondents to roll back the subject 2007 and 2008 assessments to the level represented by the application of the 2007 and 2008 Equalization Rates (20.94% and 19.54% respectively) to the 2006 purchase price of the subject premises of \$3,500,000.00, such request is granted to the extent that the instant matter is remitted back to respondents for new assessments for calendar years 2007 and 2008, which assessments are to be determined by taking the 2007 and 2008 Equalization Rates as set forth above and applying same to the 2006 purchase price of \$3,500,000.00; 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 22, 2009

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

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