

Matter of TAP, Inc. v Dimitriadis

2007 NY Slip Op 31041(U)

April 30, 2007

Supreme Court, Rensselaer County

Docket Number: 0218643/2007

Judge: George B. Ceresia

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF RENSSELAER

In the Matter of the Application of
TAP, INC.,

Petitioner,

-against-

Index No.: 218643

RJI No.: 41-0447-2006

TINA DIMITRIADIS, ASSESSOR OF THE
CITY OF TROY and THE CITY OF TROY,

Respondents.

To review a certain real property assessment for the
year 2006 under Article 7 of the Real Property Tax Law.

All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

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DECISION/ORDER

George B. Ceresia, Jr., Justice

Petitioner commenced the instant tax certiorari proceeding to challenge the denial of a real property tax exemption for a 20 unit apartment building. Respondents have

moved for summary judgment dismissing the proceeding on the ground that the use of the premises as established at the tax grievance hearing does not qualify for a tax exemption. The property in question consists of a former school building which was built in 1888 and is listed in the National Register of Historic Buildings. Petitioner acquired the building in 1991 and renovated it to be used as low income housing.

Summary judgment is a drastic remedy which should only be granted when it is clear that there are no triable issues of fact (see Andre v Pomeroy, 35 NY2d 361, 364 [1974]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; see also Bush v St. Clare's Hosp., 82 NY2d 738, 739 [1993]). In order to meet this burden when seeking dismissal of a cause of action, a party must submit evidence which negates any meritorious cause of action encompassed by the pleadings (Franceschi v Consolidated Rail Corp., 142 AD2d 915 [1988]; see also Hirsh v Bert's Bikes and Sports, 227 AD2d 956 [1996]; Wilder v Rensselaer Polytechnic Inst., 175 AD2d 534 [1991]). It is only when the movant has established a right to judgment as a matter of law that the burden shifts to the opponent of the motion to establish, by admissible proof, the existence of genuine issues of material fact (see Zuckerman v City of New York, 49 NY2d 557 [1980]). The Court will then view the evidence in a light most favorable to the party opposing the motion, giving that party the benefit of every

reasonable inference, and determine whether there is any triable issue of fact (see Boyce v Vazquez, 249 AD2d 724, 726 [1998]; Martin v Briggs, 235 AD2d 192, 196 [1997]; Simpson v Simpson, 222 AD2d 984, 986 [1995]).

Pursuant to Real Property Tax Law § 420-a (1) (a), property used exclusively for charitable purposes is entitled to a real property tax exemption.

“In order for an entity to be entitled to this tax exemption, (1) the entity must be organized exclusively for purposes enumerated in the statute, (2) the property in question must be used primarily for the furtherance of such purposes, (3) no pecuniary profit, apart from reasonable compensation, may inure to the benefit of any officers, members, or employees, and (4) the entity may not be simply used as a guise for profit-making operations (see Matter of Miriam Osborn Mem. Home Assn. v Assessor of City of Rye, 275 AD2d 714 [2000]).” (Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City of Middletown, 36 AD3d 699, 700-701 [2d Dept 2007]).

Respondents do not contend that petitioner is not organized for a proper charitable purpose, that its officers, members or employees profit from the corporation or that it is a guise for profit-making operations. Rather, respondents contend that the use of real property as residential rental property precludes a finding that the property is used primarily for charitable purposes.

Respondents rely upon the fact that petitioner’s application for a tax exemption stated that the property was used for educational purposes and that the testimony of petitioner’s executive director admitted that the property was not used for educational purposes. The testimony further indicated that only two apartments were rented at public assistance rates and that three or four tenants received federal housing subsidies.

Respondents contend that such proof establishes that the property is not entitled to the requested exemption.

While petitioner's application sought an exemption on educational use grounds, at the hearing the executive director stated that he only checked that basis because it seemed the most applicable. The instant proceeding involves a trial de novo of all issues (see People ex rel. MacCracken v Miller, 291 NY 55, 60 [1943]) and therefore is not limited to the issues raised in petitioner's application. Moreover, respondents were on notice as of the time of the grievance hearing that petitioner did not claim that the premises were used for educational purposes.

TAP's certificate of incorporation lists its purposes as including assisting persons in the City of Troy by providing information about programs operated for their benefit, including Urban Renewal programs and assisting homeowners, tenants and neighborhood groups in obtaining advice and financial assistance enabling them to physically improve their homes, buildings and neighborhoods. Some of TAP's primary objectives include promoting architectural preservation and fair housing. Renovation of the subject historical building with state and federal grants to provide low income housing is certainly consistent with and promotes such charitable purposes.

It is recognized that providing rental housing to needy persons at below market rent constitutes a charitable use of real property entitling it to a tax exemption (see e.g. Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City

of Middletown, 36 AD3d 699 [2d Dept 2007]; Matter of Pacer Inc. v Planning Bd. of City of Middletown, 217 AD2d 47, 49 [3d Dept 1995]; United Church Residences of Fredonia New York, Inc. v Newell, 12 Misc 3d 1193(A) [2006]; cf. Matter of Nassau County Hispanic Found. (Board of Assessors), 198 AD2d 357, 358 [2d Dept 1993]).

The testimony of the executive director indicated that TAP was not charging enough rent to cover all of its expenses, including its replacement reserves. He also testified that the rental amounts were limited and greatly reduced from what they could be. Such testimony certainly implies that the rents are below market value. Nor does the fact that some of its residents received subsidies eliminate the charitable use (see Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City of Middletown, 36 AD3d at 700-701 [50% of residents subsidized]; United Church Residences of Fredonia New York, Inc. v Newell, 12 Misc.3d 1193(A) [100% of tenants subsidized]). Rather, the relevant issue is whether the subsidies bring the total rental up to market value (see Matter of Nassau County Hispanic Found. (Board of Assessors), 198 AD2d at 358). Respondents have failed to offer any proof that the rental units are offered at market value or that they are not rented predominantly to low income persons.

It is therefore determined that respondents have failed to meet their burden of establishing that the property is not used for a charitable purpose.

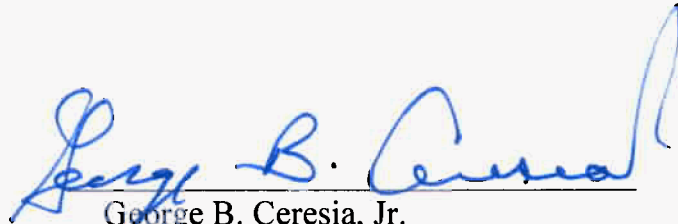
Accordingly it is

ORDERED that the motion for summary judgment dismissing the petition is

hereby denied.

This shall constitute the Decision and Order of the Court. All papers are returned to the attorneys for the petitioner, who are directed to enter this Decision/Order without notice and to serve the attorneys for respondents with a copy of this Decision/Order with notice of entry.

Dated: Troy, New York
April 30, 2007



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

Notice of Motion dated January 23, 2007; Affidavit of Tina Dimitriadis sworn to January 23, 2007 with Exhibits A-I annexed;
Memorandum of Law dated January 23, 2007;

Affirmation of Scott M. Ronda, Esq. dated February 7, 2007;
Affidavit of Joseph Fama sworn to February 7, 2007;
Memorandum of Law dated February 7, 2007 with Exhibits annexed;

Reply Affidavit of Tina Dimitriadis sworn to February 13, 2007.