

**Matter of Greentree Found. v Assessors &
Bd. of Assessors of County of Nassau**

2007 NY Slip Op 34029(U)

December 4, 2007

Supreme Court, Nassau County

Docket Number: 2909-07/

Judge: Ute W. Lally

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SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

md

Present:

HON. UTE WOLFF LALLY

Justice.

IAS PART 8
NASSAU COUNTY
INDEX NO. 12909/07

In the Matter of the Application of
GREENTREE FOUNDATION,

Petitioner,

MOTION DATE: 8/15/07
MOTION SEQUENCE NO. 1
X X X

- against -

THE ASSESSORS and THE BOARD OF
ASSESSORS OF THE COUNTY OF NASSAU,

Respondent(s).

The following papers read on this motion to :

Notice of Motion/Order to show cause	1-3
Answering Affidavits	4-6a
Memorandum.	7-8a

Upon the foregoing papers, it is ordered that this application by petitioner for an order pursuant to CPLR Article 78, *inter alia*, annulling various determinations of the respondents Assessor and the Board of Assessors of the County of Nassau, dated February 6, 2007 which, *inter alia*, denied its application for a real property tax exemption pursuant to Real Property Tax and Proceedings Law § 420-a is denied.

In the late 1990s, the petitioner acquired a 400-plus acre parcel located in Manhasset, New York which it uses as a retreat, conference center and meeting place for non-profit, international, national and local humanitarian, charitable and human rights organizations, including the United Nations.

The property also contains over 200 acres of open space and

"forested acres," which, according to Greentree, enhances the conferencing activities conducted by providing a serene, contemplative and secure environment for those who attend meetings there. In 2006, the property - to which unrestricted public access is not permitted - Hosted some thirty-seven events spanning approximately sixty-six days.

In December of 2006, Greentree filed an application pursuant to Real Property Tax Law [RPTL] § 420-a for a real property tax exemption for the calendar years 2007-2008.

By letters dated February 6, 2007, the respondent Nassau County Department of Assessment denied the petitioner's application for tax exempt status for the 2007-2008 tax year.

The record reveals that Greentree has previously and regularly submitted applications for tax exempt status on several occasions (i.e., for tax years spanning 2001-2002 through 2006-2007) - all of which were uniformly denied by the Assessor and then unsuccessfully challenged in the Supreme Court, Nassau County.

Moreover, the two Supreme Court dismissals subsequently appealed to the Appellate Division, Second Department were both unanimously affirmed in terse memorandum decisions, which concluded that the assessor's decisions were rational (see, *Greentree Foundation v. Assessor of County of Nassau*, 1 AD3d 357; *Greentree Foundation v. Assessor of County of Nassau*, 302 AD2d 523).

By verified petition dated July, 2007, Greentree has commenced yet another proceeding pursuant to CPLR Article 78 seeking to annul the denial of its latest tax exemption application (tax years 2007-2008). The petitioner's current application should also be denied.

In order "[t]o qualify for exemption under section 420-a, a party must demonstrate first, that the nonprofit corporation is '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 second, that the property is 'used exclusively for carrying out thereupon one or more of such purposes'" (*Legion of Christ, Inc. v. Town of*

Mount Pleasant, 1 NY3d 406, 411 [2004]; *Hapletah v. Assessor of Town of Fallsburg*, 79 NY2d 244, 249 [1992]; *Mohonk Trust v. Board of Assessors of Town of Gardiner*, 47 NY2d 476, 482 [1979]).

It is settled that "tax exemption statutes are to be construed strictly against the taxpayer (*Hapletah v. Assessor of Town of Fallsburg*, *supra*, at 249; *Symphony Space, Inc. v. Tishelman*, 60 NY2d 33, 36 [1983]; *World Buddhist Ch'an Jing Center, Inc. v. Schoeberl*, ___ AD3d ___, 2007 WL 3197084 [3rd Dept. 2007]), and that "exclusions are never presumed or preferred" (*Mobil Oil Corp. v. Finance Adm'r of City of New York*, 58 NY2d 95, 99 [1983] see, *Charter Development Co., L.L.C. v. City of Buffalo*, 6 NY3d 578, 582 [2006])).

Accordingly, "the taxpayer bears the burden of demonstrating entitlement to the exemption sought" (*United Church Residences of Fredonia, New York, Inc. v. Newell*, 43 AD3d 1403; *Ecclesia Word Ministries Intern., Inc. v. Brophy*, 21 AD3d 372; *Greentree Foundation v. Assessor of County of Nassau*, *supra*, 1 AD3d 357).

Here, the record contains evidence from which it could be rationally concluded that, *inter alia*, the property is utilized in a limited sense by certain third-party organizations in terms of time devoted to the allegedly qualifying activities; that the open or forested acreage owned by the petitioner is not integral to the purportedly exempt activities conducted; that certain restrictions have been placed on the public's access to the property which are not required to promote and/or further the property's alleged exempt activities and claimed public uses (*cf.*, *Symphony Space, Inc. v. Tishelman*, *supra*, at 39; *North Manursing Wildlife Sanctuary, Inc. v. City of North Manursing Wildlife Sanctuary, Inc. v. City of Rye*, 48 NY2d 135, 140 [1979]; *Chylinski-Polubinski Trust, Inc. v. Board of Assessment Review for Town of De Kalb*, 21 AD3d 620, 622); and that in light of these and other pertinent factors, the various on-site activities conducted do not establish that the property is exclusively utilized for an exempt purpose within the meaning of RPTL § 420-a (*United Church Residences of Fredonia, New York, Inc. v. Newell*, *supra*; *Chylinski-Polubinski Trust, Inc. v. Board of Assessment Review for Town of De Kalb*, *supra* see also, *World Buddhist Ch'an Jing Center, Inc. v. Schoeberl*, *supra*).

