

Smiley v Nassau County Board of Assessors

2007 NY Slip Op 34232(U)

December 17, 2007

Supreme Court, Nassau County

Docket Number: 6796-07/

Judge: Daniel Martin

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

LAWRENCE A. SMILEY, AS GENERAL
PARTNER OF L.E.S. MUTTONTOWN
ROAD FAMILY LIMITED PARTNERSHIP.

TRIAL/IAS, PART 31
NASSAU COUNTY

Petitioner.

- against -

Sequence No.: 001
Index No.: 006796/07
XXX

NASSAU COUNTY BOARD OF ASSESSORS
& NASSAU COUNTY DEPARTMENT OF
ASSESSMENT.

Respondents.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Petition and Affidavits Annexed	X
Notice of Cross-Motion and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Hybrid proceeding and action for damages by the petitioner Lawrence A. Smiley, as general partner of L.E.S. Muttontown Road Family Limited Partnership ["the petitioner"] for stated relief pursuant to Real Property Tax Law Article 7 and/or a writ of mandamus pursuant to CPLR Article 78 compelling the respondent Nassau County Board of Assessors and the Nassau County Department of Assessment ["the respondents"] to: (1) implement and abide by a decision rendered after a small claims assessment review hearing (Thirkield, J. H.O.), dated November 27, 2006 which, *inter alia*, reduced the petitioner's assessment for the 2006/2007 tax years and recognized the petitioner's standing to maintain a SCAR proceeding within the meaning of Real Property Tax Law § 730; (2) further compelling the respondents to grant the petitioner a partial STAR exemption (RPTL § 425), and/or in effect, for relief setting aside the respondents' January, 2007 denial of the petitioner's application for a partial STAR exemption; and (3) for further relief awarding the petitioner punitive damages in the amount of \$1 million is granted in part and denied in part as set forth below.

The petitioner Lawrence A. Smiley, as general partner of L.E.S. Muttontown Road Family Limited Partnership ["the petitioner"], has commenced the within hybrid action and proceeding, styled as one pursuant to CPLR Article 78 and/ or article 7, *et., seq.*, of the Real

Property Tax Law (A. Pet., ¶ 18), for a writ of mandamus compelling the respondent Nassau County Board of Assessors and the Nassau County Department of Assessment [collectively “the respondents”] to implement and abide by a decision rendered after a small claims assessment review hearing (Thirkield, J. H.O.), dated November 11, 2006 which, *inter alia*, (i) recognized the petitioner-partnership’s standing and eligibility to maintain a SCAR proceeding within the meaning of Real Property Tax Law § 730; and (ii) then reduced the petitioner’s assessment for the 2006/2007 tax years.

The respondents have currently declined to implement or enforce the hearing officer’s SCAR decision on the theory that the JHO lacked jurisdiction over the petition, since a family limited partnership allegedly cannot qualify as an “owner-occupier” within the meaning of Real Property Tax Law § 730 (A. Pet., Exh., “H”)(*see, Tyrrell v. Town of Greenville*, 108 A.D.2d 1092, 1093).

The respondents have also determined – for the same reason – that petitioner’s residence is ineligible for the so-called partial “STAR” school exemption, *i.e.*, that a family limited partnership cannot qualify as an owner-occupant pursuant to the applicable provision of Real Property Tax Law § 425.

Notably, prior to transferring the subject residence to the family limited partnership, the petitioner had received the STAR exemption in connection with the property.

It is undisputed that the respondents denied the petitioner’s subsequent application for STAR relief by undated letter received by the respondents in January of 2007 (A. Pet., ¶28; Exh., “J”).

Thereafter, by notice of petition dated April, 2007, the petitioner commenced the within hybrid proceeding and action, styled as one pursuant to CPLR Article 78 and/or Article 7 of the Real Property Tax Law (A. Pet., ¶ 18).

Among other things, the petitioner asserts that: (1) the respondents have arbitrarily denied him partial STAR relief and erroneously refused to enforce and recognize the SCAR hearing decision; and (2) that sections 425 and 730 of the Real Property Tax Law are unconstitutional to the extent that SCAR and STAR relief has been denied to residential properties like his, held in “bifurcate” and/or “beneficial” form through “family limited partnerships” (*see, Rubinstein v. Assessor*, ___ Misc.3d ___ [NOR], *New York Law Journal*, October, 23, 2003 at 23, col. 1)[Supreme Court, Rockland County 2003]).

The petitioner further claims entitlement to an award of punitive damages in the amount of \$1 million based upon allegedly malicious and retaliatory conduct supposedly perpetrated by the respondents in connection with the assessment of his property (A. Pet. ¶ 14).

The petition is granted to the extent indicated below.

The record establishes that, as to the SCAR issue, the JHO had before him – as a factually-based question – whether the subject property was being utilized “exclusively for residential purposes” pursuant to Real Property Tax Law § 730[1][b] and permissibly concluded that it was.

There is nothing in the record which indicates that the subject property has been devoted to anything other than residential use. Indeed, the record supports the conclusion that the partnership was created solely for tax and estate planning purposes; that it does not engage in any commercial business activities; and that it serves and exists solely as the Smiley family’s personal and primary residence.

The Court similarly rejects the assertion that, under the circumstances presented here, a family limited partnership cannot, as a matter of law, “owner-occupy” a residential property for the purposes of qualifying for expedited, SCAR relief. It bears noting that Real Property Tax Law § 730 does not identify or limit the manner in which property devoted “exclusively to residential purposes” must be owned or held as a prerequisite to the availability of SCAR relief.

Rather, Real Property Tax Law § 730[1] provides that, “[a]n owner of real property claiming to be aggrieved by an assessment on real property on the ground that such assessment is unequal or excessive may file a petition for review pursuant to this article * * *” [emphasis added]). Significantly, Real Property Law § 730[9] expressly authorizes the filing of SCAR petitions in analogous circumstances where applicants beneficially own otherwise qualifying, residential property, *e.g.*, where such property is held in trust for the “benefit of a person or persons.”

Upon the particular facts presented here, a construction of the statute’s neutral language which excludes residential property merely because it is titled in family limited partnerships, would be inconsistent with the underlying objectives of the SCAR statute, *i.e.*, to afford homeowners “speedy and inexpensive relief * * * through a simplified review procedure” (Town of New Castle v. Kaufmann, 72 N.Y.2d 684, 686-[1988]; McNamara v. Board of Assessors of Town of Smithtown, 272 A.D.2d 617; Meola v. Assessor of Town of Colonie, 207 A.D.2d 593, 594).

It is settled that when a proposed “construction would thwart the settled purposes of the statute * * * literal and narrow interpretations should be avoided” (Town of New Castle v. Kaufmann, *supra*, at 686).

Lastly, there is no question that pursuant to the statutory SCAR scheme, the respondents are not afforded the discretion to simply ignore or decline to enforce a legally constituted ruling issued by a judicial hearing officer (*cf.*, Tyrrell v. Town of Greenville, *supra*, 108 A.D.2d 1092).

Since it has been demonstrated that there exists a clear legal right to the relief sought (*see generally*, Klostermann v. Cuomo, 61 N.Y.2d 525, 539 [1984]), mandamus will lie to compel the respondents to recognize and enforce the hearing officer's decision.

With respect to the STAR exemption, the petition asserts, *inter alia*, that family limited partnerships fit within the existing definitional language of the statute and that qualifying them for STAR benefits is consistent with the legislative objectives underlying Real Property Tax Law § 425. The Court agrees.

Initially, while the respondents contend that the claims advanced herein are exclusively redressable in a proceeding pursuant to RPTL Article 7 (*see*, Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v. Town of Fallsburg, 78 N.Y.2d 194, 204 [1991]; AES Somerset, LLC v. Town of Somerset, 24 A.D.3d 1263, 1264), the Court notes that: (1) the amended petition is styled as a proceeding brought alternatively under both CPLR Article 78 and RPTL Article 7 (A. Pet., ¶ 18); and (2) the respondents have not argued – much less demonstrated – that the proceeding as presently constituted is time-barred by the 30-day limitations period applicable to Article 7 proceedings (Bonventre, ¶¶ 47-50, 59)(*see*, RPTL § 702[2]; Cassos v. King, 15 A.D.3d 758, 759; Rubin v. Board of Assessors of Town of Shandaken, 175 A.D.2d 494, 495 *cf.*, Brimberg v. Commissioner of Finance of City of New York, ___ A.D.3d ___ 2007 WL 4200444 [1st Dept. 2007]).

Assuming that the respondents are relying on a limitations-based theory by advancing this claim, it is settled that the party relying on a statute of limitations defense bears “the initial burden of establishing *prima facie* that the time in which to sue has expired” which entails proof – not offered here – demonstrating “when the petitioner's causes of action accrued” (In re Schwartz, 44 A.D.3d 779).

Alternatively, and to the extent the respondents are simply asserting that the procedural vehicle selected by the petitioner is technically incorrect, the Court may convert the instant matter to the proper procedural form (*see*, CPLR 103[c] EMP of Cadillac, LLC v. Assessor of Village of Spring, 15 A.D.3d 336, 338 *cf.*, In re Wicks Construction, Inc., 295 A.D.2d 527, 528 *see also*, Rubin v. Board of Assessors of Town of Shandaken, *supra*, at 495; Rodriguez v. New York City Transit Authority, 269 A.D.2d 600; Krugman v. Board of Assessors of Village of Atlantic, 141 A.D.2d 175, 179-180).

Turning then, to the relevant statutory language, the Court notes that RPTL § 425[3][a] provides in part, that in order to “qualify for exemption pursuant to this section, the property must be *a one, two or three family residence, a farm dwelling or residential property held in condominium or cooperative form of ownership*” [emphases added].

The property must, additionally serve as “the primary residence of one or more of the

owners” thereof (RPTL § 425[3][b]). The petitioner’s submissions have established compliance with the foregoing statutory requisites.

It is settled that the STAR program was “intended to provide a property tax exemption to all primary residences * * *”(Legislative Memorandum, New York State Assembly, 2003 McKinney’s Session Laws, ch., 443, at 1924). Moreover, the “interpretation of * * * [exemption] statutes ‘should not be so narrow and literal as to defeat [their] settled purpose * * *’”(Hapletah v. Assessor of Town of Fallsburg, 79 N.Y.2d 244, 249 [1992], *quoting from*, People ex rel. Watchtower Bible & Tract Socy. v Haring, 8 N.Y.2d 350, 358 [1960] *see also*, Legion of Christ, Inc. v. Town of Mount Pleasant, 1 N.Y.3d 406, 412 [2004]).

With respect to “one, two or three family residence family,” the statute does not prescribe or list any mandatory form or method by which title to a “family residence” must be held. Nor does the statute make reference to or mandate individual ownership by joint tenants, tenants in common or tenants by the entireties, but rather, emphasizes the residential nature of the property and number of families residing therein.

Although the term “owner” is undefined, the legislature has seen fit to provide STAR exemptions to certain applicants who cannot demonstrate formal, legal ownership of otherwise qualifying, residential property, but who – in reality – are clearly the effective or beneficial owner-occupants of the properties, namely, trust beneficiaries (RPTL § 425[3][c]); “farm dwellings” held in partnership or corporate form (RPTL § 425[3][d]); and cooperative shareholders (RPTL § 425[2][k])(*see*, Rubinstein v. Assessor, *supra* *cf.*, Brodie v. Office of Assessor, *supra*).

Accordingly, the legislature has plainly concluded that authorizing exemptions for parties whose primary residences are formally titled in other entities, is entirely consistent with the underlying objectives of the STAR program, *i.e.*, to “provide a property tax exemption to all primary residences * * *.”

Here, as noted previously, the record supports the conclusion that the subject property serves as the primary residence of the individuals who are members of the family partnership; that pursuant to the partnership agreement, the subject residence serves as the partnership’s principal place of business; that the partnership conducts no business activities, produces no products and provides no services (A. Pet., ¶ 23), and that the partners (the Smileys) are personally responsible for paying the assessed taxes (A. Pet., ¶ 25).

The narrow assertion that a family limited partnership can never owner-occupy a residence within meaning of RPTL § 425 – even when all “partners” are primary residents of the subject property – exalts form over substance and thereby serves to “thwart the settled purposes of the statute” (Town of New Castle v. Kaufmann, *supra*, at 686; Hapletah v. Assessor of Town

of Fallsburg, *supra*; Rubinstein v. Assessor, *supra cf.*, Proforma Partners, LP v. Skadden Arps Slate Meagher & Flom, LLP, 280 A.D.2d 303, 304 [“a partnership's legal residence is where it maintains its principal place of business”]; CPLR 503[d)].

The fact that legislative efforts – unsuccessful to date – may have been made to expressly include family limited partnerships within the explicit scope of the statute, does not preclude the granting of relief based upon the existing and relevant language of the current legislation (Resps’ Ans., Exhs., “D”, “E”).

In short, the constellation of relevant factors presented supports the availability of a STAR exemption in connection with the petitioner’s otherwise qualifying, family limited partnership.

Since the respondents’ January, 2007 determination denying partial STAR relief lacks rational support in the record, it should be vacated and the exemption granted to the extent that petitioner otherwise qualifies for its benefits.

In light of the Court’s determination, it is unnecessary to reach the petitioners’ constitutional assertions, as to which, it appears, the “requisite statutory notification” to the New York State Attorney General has not been provided (*see*, CPLR 1012[b]; Executive Law §71 *see generally*, Matter of Tiffany B., 111 A.D.2d 168 *see*, In re April S., 307 A.D.2d 204, 205; A & J Produce Corp. v. Commissioner of Finance of City of New York, 199 A.D.2d 99; Rubinstein v Assessor, *supra cf.*, McGee v. Korman, 70 N.Y.2d 225, 230 [1987] *cf.*, Statutes § 150).

However, the cause of action for \$1 million in punitive damages based on alleged retaliatory conduct, is dismissed (A. Pet., ¶¶ 97-98).

The Court agrees that the assertions made in support of this claim do not raise a viable claim as to the respondents’ alleged retaliatory intent. In any event, it is settled that “that the State and its political subdivisions are not subject to punitive damages” (Clark-Fitzpatrick, Inc. v. Long Island R. Co., 70 N.Y.2d 382, 386 [1987]; Sharapata v. Town of Islip, 56 N.Y.2d 332, 335-336 [1982]; Kovachevich v. New York City Housing Authority, 290 A.D.2d 325).

The Court has considered the parties’ remaining contentions and concludes that they are lacking in merit.

Accordingly, it is,

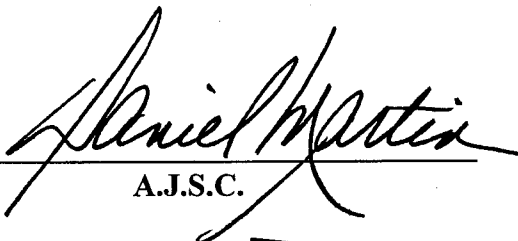
ORDERED that the branch of the petition which is for a writ of mandamus compelling the respondents to implement and abide by a decision rendered after a small claims assessment review hearing (Thirkield, J. H.O.), dated November 27, 2006, is granted, and it is further,

ORDERED that the branch of the petition which is for, in effect, review and annulment

of the respondents' January, 2007 determination denying the petitioner's application for a STAR exemption is granted; the determination is annulled and it is declared that the petitioner is entitled to the partial exemption sought; and it is further,

ORDERED that the branch of the petition which is to recover punitive damages, is dismissed.

So Ordered.


A.J.S.C.

Dated: December 17, 2007

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DEC 21 2007
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