Matter of Columbus/Amsterdam Assoc. v Tax Commn. of City of N. Y.
2008 NY Slip Op 30934(U)
March 10, 2008
Supreme Court, New York County
Docket Number: 0055028/1990
Judge: Walter Tolub
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SCANNED ON 3/14/2008

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: TOLUB, Justice — PART 15

COLUMBUS / AMSTERDAM ASSOC.

INDEX NO. 055028/90

MOTION DATE

- v -

MOTION SEQ. NO. 01

THE TAX COMMISSION OF THE CITY OF NEW YORK, ETAL

MOTION CAL. NO.

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
MAR 14 2008
NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 3/10/08

WALTER B. TOLUB J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

In the Matter of the Application of

COLUMBUS / AMSTERDAM ASSOCIATES,

Petitioner,

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK AND THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK

Respondents.

Index No. 55028/1990

Mtn Seq. 001

FILED
MAR 14 2008
NEW YORK
COUNTY CLERK'S OFFICE

WALTER B. TOLUB, J.:

By this application, petitioner moves pursuant to Real Property Tax Law § 720(1)(a) and § 1512 of the New York City Charter for an order (1) granting the illegality claim set forth in its petition; (2) voiding the increase in the 1990/1991 tentative actual assessment of Petitioner's property; (3) restoring the property's final actual assessment for 1990/1991 to the original tentative assessment amount of $2,475,000; (4) directing the payment of the appropriate refund of the overpayment of taxes with appropriate interest; and (5) preserving petitioner's right to continue its challenge against the property's $2,475,000 actual assessment.

Petitioner is the owner of land identified on the New York City Tax map as Manhattan Block 1151, Lot 29 (the property). Petitioner acquired this parcel of land for $13,030,500 in 1989.

On January 15, 1990, the Department of Finance published its

tentative 1990/1991 assessment roll, setting the subject property's actual assessment at $2,475,000 based upon a 45% assessment ration. In May of 1990, respondent released the final assessment, valuing the property at $5,860,000.

Petitioner challenged the assessment in 1990. Seventeen years later, petitioner asserts that the increase was illegal because it (1) did not comply with the mandatory notice requirements set forth in the New York City Charter under § 1512; and (2) violated the equal protection clauses of both federal and state constitutions because the increase constituted selective reassessment after the sale of the property ("selective reassessment" or "welcome stranger"). Respondents, in opposition, assert that the initial petition filed by petitioner does not include facts to support a claim of selective reassessment, thereby rendering it time-barred, and further claim that even if petitioner's claim was timely, it is unsupported by any evidence of disparate treatment.

Discussion

The policy of selective reassessment, which can take many different forms, has been held as both discriminatory and violative of state and federal equal protection laws (see, MGD Holdings HAV, LLC v. Assessor of the Town of Haverstraw, 8 Misc 3d. 1013 (A), 2005 NY Slip Op. 51089(U)). Courts have routinely found selective reassessment where there are high coefficients of

dispersion,[1] reassessments based on condominium conversion,[2] and where the reassessments are based on more than the value of improvements[3] (id). Of particular importance to this case however, are those cases which have held that reassessing individual properties at their market rate at the time of sale constitutes selective reassessment (see, Matter of Krugman v. Board of Assessors of the Village of Atlantic Beach, 141 AD2d 175 [2nd Dept 1998], *app. dismissed*, 73 NY2d 872 [1989]; Matter of Stern v City of Rye, 268 AD2d 482 [2nd Dept 2000]; Matter of Feldman v. Assessor of the Town of Bedford, 236 AD2d 399 [2nd

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[1] A coefficient of dispersion is a statistical function that generally compares ""the closeness of assessment ratios of individual parcels to each other" (9 NYCRR 185-4.2[b]). A high coefficient of dispersion indicates a high degree of variance with respect to the assessment ratios under consideration. A low coefficient of dispersion indicates a low degree of variance. In other words, a low coefficient of dispersion indicates that the parcels under consideration are being assessed at close to an equal rate (see, 9 NYCRR 185-4.4)" (Waccabuc Construction Corporation v. Assessor of Town of Lewisboro, 166 AD2d 523 [2nd Dept 1990]).

[2] Courts in this state have held that increasing the assessment value of a property after the conversion to condominium ownership is violative of the Real Property Law, and ultimately constitutes selective reassessment (Towne House Village Condominium v. Assessor of Town of Islip, 200 A.D.2d 749, 750 [2nd Dept 1994]).

[3] Numerous cases in this State have repeatedly held that reassessments should be limited to the value of the actual improvements and should not be based on re-evaluation of the property after the improvements are made (see for example, Matter of DeLeonardis v. Assessor of the City of Mount Vernon, 226 AD2d 530 [2nd 1996]; Nash v. Assessor of Town of Southampton, 168 AD2d 102 [2nd Dept 1992]; Matter of Stern v. City of Rye, 268 AD2d 482 [2nd Dept 2000]).

Dept 1997]; Matter of DeLeonardis v. City of Mount Vernon, 226 AD2d 530 [2nd Dept 2006], *lv. to app. denied*, 88 NY2d 811 [1986]; Matter of Reszin Adams v. Welch, 272 AD2d 642 [3rd Dept 2000]; Matter of Averbach v. Board of Assessors, 176 AD2d 1151 [3rd Dept 1991]).

Given the short time frame between the point of sale of the subject property, the tentative assessment, and the increased final assessment, it is this court's opinion that a very real question exists as to whether the subject property was selectively reassessed after its sale. It is also this court's opinion that the challenge, although made long after the initial challenge to the assessment, is not untimely. Contrary to respondent's assertions, petitioner's initial assessment challenge contained charges of excessive assessment, unlawful assessment, unequal assessment and misclassification - all of which could very easily fall within the ambit of "selective reassessment" regardless of whether the exact words appear in the petition. As such, counsel is directed to appear for a conference to schedule a hearing in order for this court to determine the actual value of the subject property at the time the 1990/1991 tentative and final assessments were determined. Once the actual value is determined, this court will determine whether the final 1990/1991 assessment was appropriate.

The balance of the relief sought within petitioner's order

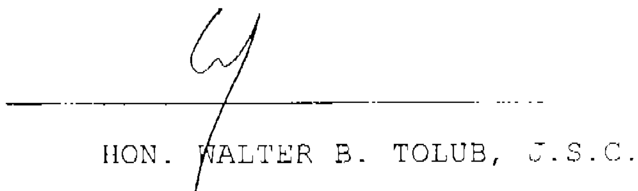
[* 6]

to show cause, is, at this juncture, denied.[4]

Counsel is directed to appear in IA Part 15, 60 Centre Street, Room 335, New York, New York, at 9:30 a.m. on April 11, 2008 to schedule a hearing in this matter.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 3/10/08



HON. WALTER B. TOLUB, J.S.C.

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[4] It may be that following the completion of the hearing, some of petitioner's claims for relief may be able to be revived. The exception however, are those claims predicated upon the argument that respondents' assessment was illegal because respondents failed to comply with the applicable notice provisions under the New York City Charter. It is clear to this court that petitioner had notice of the increased final assessment amount - or else there would never have been a tax challenge filed in the first instance.