

**Board of Mgrs. Park Lane Condominium v
Assessor**

2008 NY Slip Op 31905(U)

July 9, 2008

Supreme Court, Nassau County

Docket Number: 3538-05/

Judge: Stephen A. Bucaria

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

BOARD OF MANAGERS PARK LANE
CONDOMINIUM,

TRIAL/IAS, PART 4
NASSAU COUNTY

Petitioner,

INDEX No. 403538/05

MOTION DATE: May 5, 2008
Motion Sequence # 002

-against-

THE ASSESSOR, THE BOARD OF ASSESSORS
AND THE ASSESSMENT REVIEW
COMMISSION OF THE COUNTY OF
NASSAU,

Respondents.

Sec. 38, Blk. 436, Lot 435
CA 73, Units 106, 119, 220, 320, 321

BOARD OF MANAGERS PARK LANE
CONDOMINIUM,

Petitioner,

-against-

THE ASSESSOR, THE BOARD OF ASSESSORS
AND THE ASSESSMENT REVIEW
COMMISSION OF THE COUNTY OF
NASSAU,

Respondents.

Sec. 38, Blk. 436, Lot 435

The following papers read on this motion:

Notice of Motion..... X
 Affirmation in Opposition..... X
 Reply Affirmation X

PRELIMINARY STATEMENT

The petitioner in both actions moves for a consolidation of the real estate tax certiorari proceedings pursuant to Civil Practice Law and Rules § 602(a), and for leave to serve an amended and supplementary appraisal report in accordance with the Uniform Rules of Court § 202.59(h). The respondents oppose the motion, claiming that the 2005/2006 proceeding, involving five of eighty-five units should not be consolidated with the open 2006/2007 proceeding, which involves all of the units. Respondents further oppose consolidation of the 2007/2008 and the 2008/2009 tax years on the grounds that the Petitioner has not filed the requisite Certified Income and Expense Statements for either of those years, and that a Petition for 2008/09 has not yet been filed.

Petitioner's reply annexes a copy of the Statement filed for the 2006 (2006/07) tax year, which states that the property does not produce income and no income and expense statement is required. The nature of the property, as a residential condominium development, has not changed, and thus there is no need for filing such a statement.

BACKGROUND

These tax certiorari proceedings involve condominium units in the Park Lane Condominium Complex at 99 So. Park Avenue, Rockville Centre. Constructed in 1984, there are a total of eighty-five units allocated among four separate buildings. Because they are of three stories or less, and were originally built as condominiums, they constitute Class I property under Real Property Tax Law § 1801(1)(b). For the tax year 2005/06 (Proceeding 1) the petitioner was the Board of Managers, but protests were filed for only five units. For the subsequent years, the Board of Managers filed on behalf of all eighty-five units.

Proceeding 1 was on the Court calendar for July 25, 2006. On that date it was placed on the County status calendar for April 24, 2007. On the call of that calendar, it was adjourned to July 26, 2007 for appraisal exchange. By mutual application, the matter was adjourned to November 15, 2007, again, for appraisal exchange.

By letters dated May 7, 2007 and July 26, 2007, counsel for the petitioner advised the County that they would prepare appraisals of all units for the 2006/07 and 2007/08 tax

years, and that they anticipated that the resolution of the five units protested for 2005/06 could occur upon completion of the determination of the two later tax years, when the value of the entire complex would be determined. This issue was discussed on January 28, 2008 when the parties appeared before the Court. At that time, counsel for the respondents stated that he "repeatedly" advised counsel for the petitioner that there was no agreement with respect to an exchange involving all units, and that all they were prepared to try were the five units for the 2005/06 tax year.

Given the circumstances, and the fact that, based upon correspondence to which the respondents apparently did not take exception, the Court granted a mistrial for the purpose of allowing the petitioner to complete appraisals satisfactory for the trial of the five units protested for the 2005/06 tax year. The matter was originally scheduled for trial de novo on August 4, 2008.

Respondent moved to settle order and petitioner served a proposed counter-order. On April 1, 2008 the Court denied the respondents' motion and scheduled the trial of Proceeding 1 for June 30, 2008. The 2006/07 tax year, under calendar number 2007T3566, has not as yet been called on the appraisal calendar. Proceedings for 2007/2008 and 2008/2009 tax years are also pending, but do not appear to be on the calendar.

Petitioners seek to consolidate tax years 2005/2006 — 2008/09 for trial on August 4, 2008, the original date assigned.

DISCUSSION

The present application for consolidation raises a number of issues, some spoken and others not. In the spirit of judicial economy, consolidation or joint trials are generally favored where there are common questions of law or fact. (J & A Vending Inc. v. J.A.M. Vending, Inc., 268 A.D.2d 505, 2nd Dept., 2000). Once the moving party has established that there are common questions which warrant consolidation or a joint trial, the burden shifts to the opposing party to show that granting the application would prove prejudicial to them. (Alsol Enterprises, Ltd. v. Premier Lincoln-Mercury, Inc., 11 A.D.3d 494, 2nd Dept., 2004). The Court there noted that delay occasioned by the consolidation or joint trial is not adequate to constitute prejudice, *Id.* (see also, Dukhvalov v. Pshierer, 15 A.D.3d 334, 2nd Dept., 2005).

Those actions for which Petitions and Notes of Issue have been filed shall be consolidated for trial. Appraisals of five units for the 2006/07 tax year, and for the full eighty-five units for the remaining years are to be exchanged not later than August 4, 2008. This leads to further issues which are not directly addressed in the motion, but are essential to the orderly resolution of these matters.

As Class I property, each condominium unit is a separate property. (Real Property Law § 339-y(1)(a)). Consistent with that classification, § 202.59(d)(2) states that "(a) separate note of issue shall be filed for each property for each tax year". Herein, the record reveals that there are common questions of fact and law that permits this Court, pursuant to RPTL § 710, to consolidate all 85 actions into one, requiring a single Note of Issue for each tax year under review.

The respondents' position is that only tax year 2005/06 is under review, because the petitioner only filed notes of issue for the original five units. There is nothing to prevent the petitioner from filing notes of issue for the subsequent years. The assessment roll for 2006/07 — 2008/09 were finalized as of the first day of April in each year 2006 through 2008. Subject to the requirement of filing notes of issue, the owner of each condominium unit is an aggrieved person in an actual case or controversy. As such, judicial economy dictates that they should be permitted to file notes of issue and proceed to trial for each of those years, except for the tax year 2008-09, for which no petition has been filed. The respondents have not demonstrated that they will suffer any prejudice as a result.

In an effort to avoid further delays, the Court is compelled to address another issue. Exh. "3" to the motion is a single handwritten sheet, represented to be a portion of the respondents' appraisal. It reflects estimated market values for each of the five units under consideration for the 2005/06 tax year through the 2008/09 tax year. While it evidences the fact, that by whatever method employed, respondents' appraiser is capable of estimating individual values per unit through the 2008/09 tax year, inasmuch as no petition for the 2008/09 tax year has yet been filed, that portion of the relief sought must be **denied**, as it is not ripe for determination.

The petitioner's affirmation in support of the motion (at ¶ 16) states that "(s)ince the entire complex was valued by the Cost approach with a value per square foot of the building it is easy to calculate the total square foot value for each of the five individual units". During the January 28, 2008 conference, the petitioner's appraiser described the methodology by which he arrived at a single value for the entire premises. The Court expressed its unwillingness to extrapolate the square foot value for each of the five original units from the value of the entire complex. It is no more willing to do this for the full eighty-five units than it was for the original five.

The Replacement Cost New Less Depreciation (Cost) Approach is notable for its deficiencies, and its general inapplicability, except with respect to new properties, or those which are specialties for which neither comparable sales nor rental information is available. (The Appraisal of Real Estate, 12th ed., pp. 353 — 357). Neither have the Courts favored the utilization of this Approach for other than specialty properties. (**Phelps Dodge Industries, Inc. v. Kondzielaski**, 131 A.D.2d 675, 2nd Dept., 1987).

Recourse to the Department of Assessment website, as a starting point, identifies sales of units within the complex as a basis for their assessment. As individually deeded parcels, condominium sales information within the complex, and elsewhere, is readily available. In the face of such comparable sales information, the Court is unwilling to resort to the Cost Approach on this twenty-four year old complex.

CONCLUSION

The petitioner has shown that the valuation of the properties for the tax years for which the assessment roll has been finalized involve common questions of law and fact. The respondents have not shown that they would be prejudiced by consideration of all those years in a single trial.

The Court accepts the representation made for the 2006/07 year that the premises remain non-income-producing property by the respective owners , and the Statement filed for the 2006 tax year is accepted for the subsequent years under review.

The subject properties are not new and are not a specialty property. Valuations based upon the Cost Approach will not be considered as evidence of fair market value for any unit during any of the years under review.

The parties are to exchange appraisal reports not later than August 4, 2008 and appear on that date for a pre-trial conference.

This constitutes the Decision and Order of the Court.

Dated JUN 19 2008

Stephen A. Bucaria
J.S.C.