

Saunders-Gomez v New York City Tax Commn.

2012 NY Slip Op 31459(U)

May 25, 2012

Sup Ct, NY County

Docket Number: 200450/10

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARTIN SHULMAN
Justice

PART 1

Index Number : 200450/2010
TIBY J. SAUNDERS-GOMEZ

INDEX NO. 200450/10

vs
THE TAX COMMISSION

MOTION DATE _____

Sequence Number : 002

MOTION SEQ. NO. 002

REARGUMENT/RECONSIDERATION

The following papers, numbered 1 to _____, were read on this motion to reargue

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

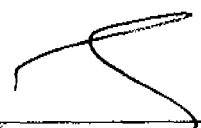
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

MAY 31 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: May 25, 2012

 _____, J.S.C.

HON. MARTIN SHULMAN
 NON-FINAL DISPOSITION

- 1. CHECK ONE: CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X
Tiby J. Saunders-Gomez,
Petitioner/Plaintiff,

-against-

New York City Tax Commission and
New York City Department of Finance,

Respondents/Defendants.
-----X

Index No. 200450/10
Block 2023, Lot 11
Decision & Order

FILED

MAY 31 2012

SHULMAN, J.,

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner, the owner of real property in the Borough of Manhattan as captioned above, moves to reargue this court's decision and order spread upon the record on November 15, 2011, which *inter alia* denied petitioner's motion for discovery in this Real Property Tax Law ("RPTL") Article 7 proceeding¹ and granted respondents' cross-motion to compel petitioner to submit a Statement of Income and Expenses (Real Property Audit Report Form) (hereinafter "certification") for tax year 2010/2011 as required by 22 NYCRR §202.60[c]. Respondents oppose the motion.

At the outset, CPLR 2221(d)(3) provides that motions to reargue "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry." Here, respondents served notice of entry by first class mail on December 13, 2011. Petitioner served the instant motion by first class mail on

¹ Petitioner brought this action by summons and complaint attempting to challenge the assessments for the subject property for tax years 2006/2007 through 2010/2011. This court has treated the summons and complaint as an RPTL Article 7 petition. Tax year 2010/2011 is the only tax year petitioner timely challenged and thus is the only tax year at issue in this proceeding.

February 4, 2012 and as such petitioner's motion to reargue must be denied as untimely.²

Even if the motion had been timely, it would have been denied as lacking in merit. A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. *Foley v. Roche*, 68 AD2d 558 (1st Dept 1979). Motions for leave to reargue are not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented. *Pro Brokerage, Inc. v. Home Ins. Co.*, 99 AD2d 971 (1st Dept 1984); *William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22 (1st Dept 1992).

Petitioner essentially contends that she is entitled to discovery on a *quid pro quo* basis. According to petitioner, this court erred in granting respondents' cross-motion for discovery while denying her motion for discovery. This argument lacks merit inasmuch as statutory authority exists for respondents' cross-motion, *viz.*, 22 NYCRR §202.60[c] expressly requires petitioner to serve and file the requested certification. The same cannot be said for petitioner's motion to compel discovery wherein petitioner primarily sought discovery pertaining to tax assessments for neighboring properties.

Disclosure in special proceedings such as this RPTL Article 7 proceeding is governed by CPLR §408 and the court has greater control over discovery in special

² Prior to serving the instant motion petitioner served a prior notice of motion for reargument on December 15, 2011. This motion lacked a return date and thus was procedurally defective.

proceedings than in other actions. *Matter of General Elec. Co. v Macejka*, 117 AD2d 896, 897 (3d Dept 1986). The information sought must be material and necessary. "The words, 'material and necessary', are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason (citation omitted)."

Real property tax assessments may be challenged on the grounds that the assessment is excessive, unequal or unlawful, or the real property has been misclassified. RPTL §706(1). Here, the discovery petitioner seeks would only be relevant to her claim that the assessment is unequal, *i.e.*, made at a higher proportionate value than that of similar properties. However, petitioner fails to establish any basis for her conclusory assertion that other properties are being assessed differently. As set forth in the November 15, 2011 transcript, it is first necessary to determine if the assessment is excessive, which requires analysis of the subject property's income and expenses. Discovery regarding similar properties is not material and necessary at this juncture.

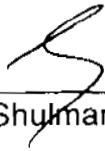
As a final point, this court denied petitioner's motion for discovery without prejudice. Thus, it has not been finally determined that petitioner is not entitled to the discovery she seeks. However, on this motion petitioner does not present anything new that would justify granting her discovery at this time.

For the foregoing reasons, petitioner fails to demonstrate that this court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Accordingly, it is hereby

ORDERED that petitioner's motion to reargue is denied.

The foregoing is this court's decision and order. Courtesy copies of this decision and order have been sent to petitioner and respondents' counsel.

Dated: New York, New York
May 25, 2012



Hon. Martin Shulman, J.S.C.

FILED
MAY 31 2012
NEW YORK
COUNTY CLERK'S OFFICE