

Matter of Town of Stony Point v State of New York Dept. of Fin.
2012 NY Slip Op 31478(U)
April 16, 2012
Sup Ct, Albany County
Docket Number: 7678-11
Judge: George B. Ceresia Jr
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of the

TOWN OF STONY POINT, TOWN BOARD OF THE
TOWN OF STONY POINT, and THE OFFICE OF
THE ASSESSOR OF THE TOWN OF STONY POINT,

Petitioners-Plaintiffs,

For an Order and Judgment Pursuant to
CPLR Article 78 and Other Relief

Index No. 7678-11
RJI No. 01-11-ST3226

-against-

STATE OF NEW YORK DEPARTMENT OF FINANCE,
OFFICE OF REAL PROPERTY SERVICES, THOMAS
H. MATTOX, COMMISSIONER OF TAXATION AND
FINANCE, and NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL,

Respondents-Defendants.

Special Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

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DECISION/JUDGMENT

George B. Ceresia, Jr., Justice

“In order to apportion tax levies for a school district encompassing more than one municipality, the Real Property Tax Law directs a district superintendent to determine the full valuation of real property for each segment of the municipalities included in the school district by dividing the taxable assessed valuation of the real property in that part of the municipality by the state equalization rate established for the entire municipality (see RPTL 1314[1][a]). Where a municipality’s state equalization rate does not accurately reflect the level of assessment within a particular segment of a school district (thereby resulting in a disproportionate tax burden), the State Board is authorized to calculate a special equalization rate for that segment (see RPTL 1226; 1314[2]). The State Board may undertake such an adjustment only where there would ‘be at least a 10 percent change in the share of the levy of at least one segment of the taxing jurisdiction as the result of the use of the segment special equalization rate in place of the equalization rate which would otherwise be used for purposes of apportionment’ (9 NYCRR § 186-5.5[a])” (Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs., 5 NY3d 36, 39-40 [2005]).

In February 2011, petitioner-plaintiff Town of Stony Point submitted an application to respondent Office of Real Property Tax Services (hereinafter ORPTS) for a segment special equalization rate pursuant to RPTL 1314(2). In its application, the Town of Stony Point requested a special equalization rate for that portion of the Town of Haverstraw that

lies within the North Rockland Central School District after reviewing a study, which indicated that residents of the Town of Stony Point paid an average of 17% more in school taxes than their counterparts in the Town of Haverstraw with homes of the same market value (see Verified Petition/Complaint, Ex. C).¹ ORPTS analyzed the application and denied the Town of Stony Point's request because the figures generated using market value survey data (instead of the state equalization rate) resulted in less than a 10% change in the share of the levy of all the segments. More specifically, ORPTS found that the market value method would only result in a 3.4% greater share of taxes for the Town of Haverstraw and a 4.2% smaller share of taxes for the Town of Stony Point (see Verified Petition/Complaint, Ex. A, p. 3). Additionally, ORPTS calculated estimated segment rates using the property type and sales ratio methods, but concluded that these methods would also result in impacts of less than 10% for any one municipality in the North Rockland Central School District (see Verified Petition/Complaint, Ex. A, p. 3-4).

Thereafter, in December 2011, petitioners/plaintiffs commenced the instant "hybrid" CPLR article 78 proceeding/declaratory judgment action. Respondents/defendants moved to dismiss the petition/complaint pursuant to CPLR 3211(a)(2), (3), (7), and (10).

DISCUSSION

It is well-settled that "[a] legislative enactment must be challenged in an action for a

¹ The North Rockland Central School District covers the Town of Stony Point and portions of the Town of Haverstraw.

declaratory judgment with[in] its six-year statute of limitations, while a quasi-legislative act of an administrative agency requires CPLR article 78 review, which has a four-month limitations period” (Matter of Federation of Mental Health Ctrs. v DeBuono, 275 AD2d 557, 559-560 [2000] [internal citations omitted]; see Via Health Home Care, Inc. v New York State Dept. of Health, 33 AD3d 1100, 1101 [2006]). Here, petitioners’ five causes of action challenge, among other things, the constitutionality of respondents’ 10% rule contained in 9 NYCRR § 186-5.5(a), which was last amended on April 27, 2004, and became effective, as amended, on May 12, 2004. Accordingly, irrespective of whether petitioners’ challenge is viewed in the context of a declaratory judgment action, or a CPLR article 78 proceeding, it must be rejected as untimely because 9 NYCRR 186-5.5, as amended, was promulgated over seven years ago (see CPLR 213[1]; 217[1]; Via Health Home Care, Inc. v New York State Dept. of Health, 33 AD3d at 1102; Matter of Federation of Mental Health Ctrs. v DeBuono, 275 AD2d at 559, fn 2).

To the extent petitioners’ argue that ORPTS’s final determination was arbitrary and capricious, and void as against public policy, this Court lacks subject matter jurisdiction. Judicial review of equalization rate determinations is governed by RPTL 1218, which provides, in pertinent part:

A final determination of the state board of real property tax services relating to state equalization rates may be **reviewed by commencing an action in the appellate division of the supreme court** in the manner provided by article seventy-eight of the civil practice law and rules upon application of the county, city, town or village for which the rate or rates was

established.

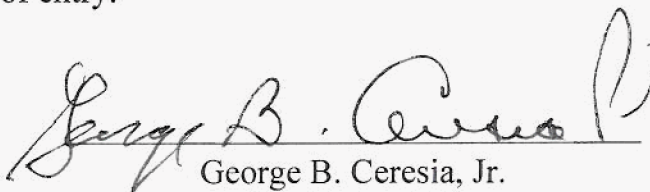
(emphasis supplied). Stated differently, “[t]he plain language of the statute mandates that a CPLR article 78 proceeding to review a determination of the Board relating to equalization rates be instituted in the Appellate Division, and if commenced in the wrong court, it is properly dismissed” (Matter of Feiner v New York State Off. of Real Prop. Servs., 25 AD3d 1005, 1006 [2006], lv denied 6 NY3d 712 [2006]). Thus, dismissal is warranted pursuant to CPLR 3211(a)(2) (see e.g. Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs., 2 Misc3d 669, 671 [2003]).

Accordingly it is

ADJUDGED that the petition/complaint is dismissed and the relief requested therein is in all respects denied.

This Decision/Judgment is being returned to the Attorneys for Respondents/Defendants. All original supporting documentation is being filed with the County Clerk’s Office. The signing of this Decision/Judgment shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that rule relating to filing, entry and notice of entry.

Dated: Troy, New York
April 16, 2012


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order to Show Cause, signed by the Hon. Richard Platkin, Acting J.S.C. on December 12, 2011; Summons, dated December 8, 2011; Notice of Petition, dated December 8, 2011; Verified Petition/Complaint, dated December 8, 2011, with annexed exhibits; Memorandum of Law in Support, dated December 8, 2011;
2. Notice of Motion to Dismiss, dated January 25, 2012; Memorandum of Law in Support of Respondents' Motion to Dismiss, dated January 25, 2012;
3. Affirmation of Mary E. Marzolla, Esq. in Opposition to Defendants/Respondents' Motion to Dismiss, dated February 9, 2012, with annexed exhibit; Petitioners/Plaintiffs' Memorandum of Law in Opposition to Respondents/Defendants Motion to Dismiss and in Further Support of Petitioners/Plaintiffs Hybrid Action and Proceeding, dated February 10, 2012; and
4. Reply Memorandum of Law in Further Support of Respondents' Motion to Dismiss, dated February 14, 2012.