Matter of Keytex N.Y., Inc. v Tax Commn. of the City of N.Y.
2016 NY Slip Op 31916(U)
October 12, 2016
Supreme Court, Kings County
Docket Number: 405494/2014
Judge: Michael L. Pesce

At an IAS Term, Part 76 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12th day of October, 2016.

P R E S E N T:

HON. MICHAEL L. PESCE,
Justice.

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IN THE MATTER OF
KEYTEX NEW YORK, INC.,

Petitioner,

- against -

Index Nos. 405494/2014
403985/2015

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

Respondents.

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The following e-filed papers read herein:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	3-8
Opposing Affidavits (Affirmations)	13-20
Reply Affidavits (Affirmations)	22-26
Affidavit (Affirmation)	
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Upon the foregoing papers, in these consolidated RPTL article 7 tax certiorari proceedings commenced by petitioner Keytex New York, Inc. (petitioner), respondents the Tax Commission of the City of New York (the Tax Commission) and the Commissioner of Finance of the City of New York (collectively, respondents) move, under motion sequence

number one, for an order, pursuant to CPLR 3211 (a) (3), dismissing the petitions, with prejudice, based on the ground that petitioner lacks standing to commence these proceedings.

FACTS AND PROCEDURAL BACKGROUND

Pursuant to a deed dated March 26, 2002, Coney Island Avenue, LLC (the Owner) is the owner of real property located at 586 Coney Island Avenue, in Brooklyn, New York, which is designated on the tax map of the City of New York as Kings County, Block 5361, Lot 14 (the property) and is within Tax Class 4. Pursuant to a lease, dated April 24, 2007, the Owner, as the landlord, leased the property to petitioner, as the tenant, for a term of 20 years with three five-year renewal options, commencing on May 1, 2007. The property was leased to petitioner for use a laundromat and drop-off dry-cleaning business. Petitioner is the sole tenant at the property, which is a one-story commercial building consisting of the main laundromat facility and a covered parking garage.

The lease was executed by Dennis (Dosuk) Key (Key), as the president of petitioner, and by Arthur Fogel (Fogel), the former secretary and former 50% member of the Owner. Aleksandr Slutskiy (Slutskiy), who, at that time, was the other 50% member of the Owner, consented to all of the lease terms at the time of its execution. The lease set forth that the amount of rent to be paid by petitioner was set forth in Schedule "A" which was attached to the lease. Schedule "A" of the rider to the lease (Schedule A) lists the amounts of annual and monthly rent due for each year beginning with the year of May 1, 2007 to April 30, 2008 up to the year of May 1, 2041 to April 30, 2042.

Paragraph 46 of the rider to the lease provided as follows:

> "The parties hereby acknowledge that the rent as indicated in this lease agreement *shall be inclusive of real estate taxes*. Tenant shall pay as additional rent any and all tax increases over and above the base year from 7/1/06-6/30/07, except, however, increase attributable to sale of the Building at a higher price than Seller's cost" (emphasis added).

While the Owner actually has remitted and continues to remit the payments for the amount of taxes due on the property to respondents twice a year, petitioner asserts that pursuant to its agreement with the Owner and as expressly set forth in the lease, it had paid and continues to pay all of the taxes on the property to the Owner as part of its rent payments. From the commencement of the lease in May 2007 to December 2013, petitioner made its rent payments to the Owner by one check each month. According to petitioner, each of these checks included its monthly rent portion and the monthly tax portion. Beginning in January 2014 and continuing thereafter, petitioner paid the monthly rent amount and the monthly tax amount by two separate checks. As explained by Key, this was done in order to clearly distinguish petitioner's tax payments from its rent payments.

With the oral permission of the Owner, petitioner submitted applications for the correction of the assessed value of the property to the Tax Commission on February 24, 2014 and on January 28, 2015, alleging that the assessments for the July 1, 2014 to June 30, 2015 fiscal year and the July 1, 2015 to June 30, 2016 fiscal year, respectively, were excessive by reason of overvaluation, and were misclassified, unequal, and unlawful. In its Addendum to Application for Correction in these applications, petitioner set forth that it was "a lessee

of [the] entire property who pays all property charges, such as taxes, insurance and maintenance, in addition to rent ('net lessee') and [wa]s not barred by the lease or otherwise from contesting the assessment." The Tax Commission rendered a final determination confirming the assessments on May 25, 2014 for the 2014/15 tax assessments and on May 25, 2015 with respect to the 2015/16 tax assessments.

In February 2015, in order to separate the rent portion from the tax portion owed by petitioner pursuant to the lease, the Owner and petitioner executed an Addendum to Schedule "A" on Lease Rider (the Addendum). The Addendum stated that the property tax originally used to calculate the rent schedule in 2007 was $31,463.58 (11.306% of $278,291), and it set forth an Adjusted Rent Schedule Not Including Property Taxes for each year from May 1, 2007 to April 30, 2042, which listed the total annual rent and monthly rent for each of these years without including the amount of property taxes in the amounts that petitioner paid for such rent.

On October 21, 2014, petitioner filed its first tax certiorari petition, challenging the assessment for the 2014/2015 tax year. On October 16, 2015, petitioner filed its second tax certiorari petition, challenging the assessment for the 2015/2016 tax year. On March 4, 2016, respondents filed their instant motion to dismiss the petitions.

DISCUSSION

CPLR 3211 (a) (3) provides that a party may move to dismiss a claim against it on the ground that the party asserting the claim lacks the legal capacity to sue. A lack of legal

capacity to sue includes a lack of standing to sue. RPTL 704 (1) provides that "[a]ny person claiming to be aggrieved by any assessment of real property upon any assessment roll may commence a proceeding under . . . article [7] . . ." Administrative Code of the City of New York § 11-231 (a) similarly provides that "[a]ny person or corporation claiming to be aggrieved by the assessed valuation of real property may commence a proceeding to review or correct on the merits a final determination of the tax commission . . ."

In support of their motion, respondents argue that petitioner, as a nonowner lessee, is not an "aggrieved" person within the meaning of RPTL 704 (1) or Administrative Code § 11-231, and that it lacked the capacity to commence and maintain the instant petitions under RPTL article 7 for the relevant tax years in its own name. It is well established that "[a] person is 'aggrieved' when an assessment has 'a direct adverse affect on the challenger's pecuniary interests'" (*Steel Los III/Goya Foods, Inc. v Bd. of Assessors of County of Nassau*, 10 NY3d 445, 452-453 [2008], quoting *Matter of Waldbaum, Inc. v Finance Adm'r of City of N.Y.*, 74 NY2d 128, 132 [1989]; *see also Matter of Big "V" Supermarkets, Store #217 v Assessor of Town of E. Greenbush*, 114 AD2d 726, 727 [3d Dept 1985]). In determining whether petitioner qualifies as an "aggrieved" person with standing to bring the instant petitions, the court notes that "'"[t]he Tax Law relating to review of assessments is remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality"'" (*Matter of Waldbaum, Inc.*,

74 NY2d 128, 133 [1989], quoting *Matter of Great E. Mall v Condon*, 36 NY2d 544, 548 [1975], quoting *People ex rel. New York City Omnibus Corp. v Miller*, 282 NY 5, 9 [1939]).

Petitioner, in opposition to respondents' motion, argues that it is an "aggrieved" person with standing to bring the instant petitions because the language of the lease places the responsibility for paying the entire real estate tax liability assessed against the property upon it, and, pursuant to the lease, it has been paying the full amount of the real property taxes levied against the property. It contends that, therefore, the challenged assessments have had a direct adverse impact on its pecuniary interests.

Respondents, in arguing that petitioner lacks standing, rely upon the seminal case of *Matter of Waldbaum, Inc.* (74 NY2d at 133), wherein the Court of Appeals held that a fractional lessee lacks standing to bring a tax certiorari proceeding unless the assessment has a direct adverse effect on the lessee's pecuniary interests and either "the lease expressly confers the right to assert the lessor's undivided property interest in a challenge of the assessment, or . . . the lessee is required to pay directly the taxes levied against the lessor's undivided parcel." They assert that pursuant to this holding in *Matter of Waldbaum, Inc.* (74 NY2d at 133), petitioner lacks standing. They claim that the lease between petitioner and the Owner did not obligate petitioner to pay for the total tax levied against the property and did not provide that petitioner could challenge the assessments on behalf of the Owner.

Petitioner, in opposition, argues that it does not lack standing pursuant to this holding in *Matter of Waldbaum, Inc.* (74 NY2d at 133). It points to the fact that it holds an undivided nonfractionated leasehold in contrast to the facts in *Matter of Waldbaum, Inc.* (74 NY2d at 132), wherein the petitioner-lessee therein held only a fractionated interest in the leasehold. It also maintains that it is required to pay the entire tax liability levied against the whole property, whereas in *Matter of Waldbaum, Inc.* (74 NY2d at 134), the lease did not require the petitioner-lessee to pay the entire tax liability levied against the whole of the assessed property.

Significantly, the fact that the lessee was a fractional lessee was at the heart of the Court of Appeals' finding in *Matter of Waldbaum, Inc.* (74 NY2d at 134) that the partial lessee therein lacked standing. The Court of Appeals found it "necessary . . . as a matter of sound policy and interpretation to condition a partial lessee's procedural standing in such matters on a direct obligation to pay the lessor's taxes or on a contractual authorization to pursue a tax certiorari proceeding, representing the undivided assessment unit, in the lessor's stead in order to avoid a fracturing of challenges against an assessment; to prevent duplicative petitions . . . ; to protect the taxing authority from multiple litigation as to the same parcel by parties of unknown relation to the taxes premises; and to ensure that the assessment consequences are proportionately spread among all entities having obligations flowing out of a divided assessment unit." Here, this policy is not implicated since petitioner is a not a partial lessee and there is no risk of multiple litigation. In fact, Slutskiy, in an

affidavit submitted by him, asserts that petitioner is the only party with an economic incentive to pursue the tax protests and that he gave petitioner his full authorization to challenge the entire assessment of the property. He further asserts that he and the other members of the Owner gave this authorization because they believe that the Owner has no financial incentive to bring these proceedings since petitioner is responsible for the entire tax liability.

Moreover, in *Matter of Waldbaum, Inc.* (74 NY2d at 133), the Court of Appeals specifically set forth that a lessee of an undivided assessment unit has standing to challenge the assessments on property where it is "legally bound by the lease to pay the entire assessment on behalf of the owner." It expressly held that in order for a nonowner lessee to be "aggrieved" under RPTL article 7, the lessee must, "by contractual rearrangement of the obligation, [have been] made wholly responsible for the entire tax levy in the stead of the owner-taxpayer" (*id.*).

The dispute between petitioner and respondents as to standing centers on whether petitioner was responsible under the lease to pay the entire tax assessment on the property. While petitioner claims that it was responsible under the lease to pay the entire amount of taxes on the property and did, in fact, pay this entire amount, respondents contend that petitioner was only responsible for paying the amount of additional taxes above the base amount.

Respondents' contention that petitioner lacks standing due to its lack of responsibility to pay the entire amount of taxes on the property is predicated on their interpretation and construction of paragraph 46 of the rider to the lease. In this regard, it is noted that "'"[t]he fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent"'" (*Willsey v Gjuraj*, 65 AD3d 1228, 1229-1230 [2d Dept 2009], quoting *Franklin Apt. Assoc., Inc. v Westbrook Tenants Corp.*, 43 AD3d 860, 861 [2d Dept 2007], quoting *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]). "When the terms of a written contract [such as a lease] are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations" (*Franklin Apt. Assoc., Inc.*, 43 AD3d at 861). "The construction and interpretation of an unambiguous written contract is an issue of law within the province of the court" (*id.*; *see also W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990]). "Thus, a written [lease] agreement that is complete, clear and unambiguous on its face must be [construed and is unenforceable] according to the plain meaning of its terms" (*Greenfield*, 98 NY2d at 569; *Willsey*, 65 AD3d at 1230).

Respondents construe paragraph 46 of the rider to the lease as requiring petitioner to only have to pay the rent increases and to not have to pay the base tax. This interpretation of this provision is contrary to the plain and unambiguous language of the first sentence of this paragraph which stated that "the rent as indicated in this lease agreement shall be

inclusive of real estate taxes." As asserted by petitioner, this sentence, by its plain meaning, indicates that the rent amounts which were to be paid by it and which were listed in Schedule A included the base real estate taxes.

Petitioner, in support of its assertion, has submitted Slutskiy's affidavit, wherein Slutskiy, attests that Schedule A included the full real property tax liability due at the time of the signing of the lease. Slutskiy further attests that in addition to paying the then current property tax amount, which corresponded to the fiscal period of July 1, 2006 to June 30, 2007, petitioner agreed to pay all increases in taxes for the duration of the lease.

Petitioner has also submitted Key's affidavit, wherein Key points to the fact that petitioner is the sole unfractionated net lessee of the entire property, and attests that the first sentence of paragraph 46 of the rider to the lease, which expressly provided that the rent as indicated in the lease was "inclusive of real estate taxes," meant that Schedule A reflected the negotiated rent plus the full real estate liability at the time of the signing of the lease. Key further asserts that the purpose of his and Slutskiy's subsequent execution of the Addendum was to clarify that the tax portion of the annual rents stated on the original Schedule A was $31,463.58. He additionally asserts that the second sentence in paragraph 46 of the rider to the lease, which required petitioner "to pay as additional rent any and all tax increases over and above the base year from [July 1, 2006 to June 30, 2007]," meant that in addition to the amounts due as per Schedule A of the rider to the lease, petitioner was responsible for any

future increases in taxes. He contends that pursuant to these two sentences in paragraph 46, petitioner is required to pay 100% of all property taxes on the property.

Furthermore, petitioner has shown that it made monthly payments to the Owner by check, which included both the rent amount and the real property tax amount. Petitioner has substantiated that it paid the entire tax liability in addition to the rent by its submission of copies of bank statements and cancelled checks drawn by it and payable to the Owner during the period between January 2013 and December 2015. Petitioner attests that these payments covered both the rent under the lease and the entire amount of property tax levied against the property. According to the rent schedule in Schedule A, the rent portion of petitioner's liability increased by three percent on May 1 of each year. Petitioner has annexed a summary of month-by-month payments made by it to the Owner and calculations of rent plus tax amounts according to the lease schedule and the Finance Department Tax Bills. Key asserts that to the extent that there were minor discrepancies in calculating the tax amount due, the Owner and petitioner agreed to settle these discrepancies by having petitioner make payments of $165 in October 2014 and $1,143.45 in April 2015, and petitioner has provided copies of cancelled checks reflecting these payments.

Key points out that in January 2014, petitioner and the Owner agreed that the rent portion and the property tax portion of the amounts due from petitioner to the Owner would be invoiced by the Owner to petitioner and paid by petitioner separately in order to clearly distinguish its tax liability from its rent liability. Petitioner has annexed copies of these

separate rent checks, which support its contention that the tax liability had been previously encompassed in its rental payments and that it was then continuing to pay the whole amount of tax liability on the property via separate checks.

Respondents, argue, however, that the first sentence of paragraph 46 of the rider to the lease does not actually require petitioner to pay the real property taxes for the property, but, rather, only shows that the Owner may have been taking into account its own tax costs when it fixed the amount of rent it was charging petitioner. They assert that this language demonstrates that petitioner was not being held legally responsible for the payment of the base taxes and was only required to pay the amounts listed in Schedule A for its monthly rent. This argument is unavailing since (as discussed above) petitioner has shown that the amounts listed in Schedule A encompassed both the amount due for rent and the amount due for base taxes.

Respondents further argue that the fact that there is a tax escalation clause, in the second sentence of paragraph 46 of the rider to the lease, which requires petitioner to pay all tax increases above the base year, indicates that the intention of the first sentence of this paragraph could not have been to legally require petitioner to pay all of the taxes on the property since if petitioner were already contractually obligated to pay all taxes on the property, this second sentence would have been unnecessary. This argument is rejected since the language of the second sentence and its context within this paragraph indicate that its

purpose was simply to require petitioner to pay all tax increases over and above the amount of taxes due in the base year.

Respondents also argue that if the Owner and petitioner had intended for petitioner to pay all taxes on the property, the lease could easily have so stated. Contrary to this argument, however, the lease actually did state that the rent included the real estate taxes, which necessarily encompassed the base taxes, and merely differentiated between those taxes which petitioner would be required to pay at the outset of the lease and those which petitioner would be required to pay as the amount of taxes escalated in future years during the term of the lease.

Respondents contend that Schedule A supports their interpretation of paragraph 46 of the lease, noting that this was the only schedule in effect on the subject taxable status dates (i.e., January 5, 2014 and January 5, 2015), and that on such taxable status dates, the petitioner and the Owner had not yet executed the Addendum. They state that Schedule A only listed time periods and annual and monthly rental amounts that petitioner was required to pay the Owner, and that there was no mention in Schedule A that petitioner was responsible for any payment of taxes. They further note that page one of the lease stated that the "annual rental rate" was that set forth in Schedule A, and argue that this indicated that Schedule A listed only the annual rent that petitioner was required to pay. This argument is of no moment, however, since paragraph 46 of the rider to the lease expressly provided that the rent as indicated in this lease agreement (i.e., as set forth in Schedule A) included real

estate taxes. Thus, the designation of the monies that petitioner was required to pay as rent in Schedule A included taxes pursuant to paragraph 46 of the rider to the lease.

Respondents also point to section D, #37 of petitioner's Real Property Tax Audit Report Form, in which petitioner, in response to the question: "Is there any part of the property subject to a net lease?" wrote "Yes, the copy of the lease is attached. Please note that the lease is not a 'triple net,' LL is responsible for base tax and other administrative expenses, insurance, and outdoor repairs." Respondents note that in the Petitioner's Certification section of this Real Property Tax Audit Report Form, petitioner, on December 10, 2015, swore to and certified that the information set forth therein, which included this response, were true and accurate. Petitioner's response to this question in its Real Property Tax Audit Report Form, however, does not show that it did not pay the full taxes on the property. Rather, this response is ambiguous because it refers to "administrative expenses." Notably, Black's Law Dictionary (10th ed 2014) defines a triple net lease as "[a] lease in which the lessee pays all the expenses, including mortgage interest and amortization, leaving the lessor with an amount free of all claims." Moreover, the Real Property Tax Audit Report Form is a statement of income and expenses and not a statement of the taxes paid by petitioner.

While respondents further rely upon the fact that petitioner affirmatively typed "No" in section 2 of each of its Tax Commission applications where they both asked: "Is the entire property subject to a net lease in which the lessee is obligated to pay all property charges,

such as taxes, insurance and maintenance, in addition to rent?," this does not show that petitioner did not pay all real property taxes since this general question encompassed insurance and maintenance. Significantly, in petitioner's Applicant Section of its Tax Commission applications, which directly asked if the applicant was a "lessee of the entire property who pays all property charges," petitioner responded "yes."

Respondents also assert that petitioner only began paying with two checks in January 2014, shortly before it submitted its first application to the Tax Commission on February 24, 2014, and that petitioner and the Owner only executed the Addendum in February 2015, after petitioner submitted that application to the Tax Commission. They attempt to argue that this was done in order to create a false impression that the rents included the base taxes on the property. The court rejects this argument. The mere fact that petitioner made an effort to clarify the portion of its rents which were dedicated to the payment of taxes does not indicate that the lease did not already require that a portion of the rent payments be allocated to taxes pursuant to paragraph 46 of the rider to the lease.

Thus, the court concludes that respondents, by arguing that petitioner did not contractually undertake to be legally responsible for the payment of the full amount of the taxes due on the property, but only agreed to pay those taxes that exceeded the base tax amount, misconstrue and contort the plain meaning of the language of paragraph 46 of the rider to the lease. The court finds that the lease is unambiguous with respect to petitioner's responsibility to pay for the full real estate tax liability.

Moreover, "[t]he best evidence of the intent of parties to a contract is their conduct after the contract is formed" (*Waverly Corp. v City of New York*, 48 AD3d 261, 265 [1st Dept 2008]). Here, the dealings between petitioner and the Owner show that petitioner was obligated to pay the entire property tax liability. Specifically, petitioner's business records, in the form of cancelled checks and bank statements, show that after the lease was executed, there were regular payments by petitioner to the Owner of both the rent amount and the entire property tax amount assessed against the property. This is consistent with petitioner and the Owner's stated understandings of the meaning of paragraph 46 of the rider to the lease, as set forth in Key and Slutskiy's respective affidavits.

Respondents further contend that even if petitioner actually paid the full amount of real property taxes on the property, it still lacks standing to commence the RPTL article 7 proceedings for the 2014/15 and 2015/16 tax years because the lease did not create a legal obligation on the part of petitioner to pay the full amount of these taxes directly to the taxing authority. They assert that, instead, such payment was made by petitioner only based on the "understanding" between it and the Owner and did not legally obligate petitioner to pay the base taxes to the Department of Finance. They maintain that pursuant to the legal standard as enunciated in *Matter of Waldbaum, Inc.* (74 NY2d at 132), in order to confer standing on a lessee to bring a RPTL article 7 proceeding, the lessee must be legally bound to pay the tax directly to the taxing authority, and that the mere "understanding" between petitioner and the Owner, which was not reduced to a writing, did not create a legal obligation on the part of

petitioner to pay the base real property taxes. They assert that petitioner did not pay the taxes directly to the Department of Finance, but, instead, petitioner paid all of its monthly checks directly to the Owner. They point to the fact that the Department of Finance Quarterly Property Tax Bills during the 2014/15 and 2015/16 tax years were sent to Fogel, who, as noted above, was the corporate secretary of the Owner.

Respondents' contention is devoid of merit. There is no requirement set forth in *Matter of Waldbaum, Inc.* (74 NY2d at 132) or otherwise that in order to be an aggrieved person with standing to bring a RPTL article 7 proceeding, a nonfractional lessee must be required under the lease to directly pay the taxing authority. Rather, the tax payments may be paid by the lessee as an element of rent to the lessor (*see Matter of Big "V" Supermarkets, Store #217*, 114 AD2d at 727). The lessee need not remit the tax payments directly to the Department of Finance; it is sufficient that it is paying them to the lessor to be used for the payment of its taxes. The focus of the standing inquiry is whether the petitioner's pecuniary interests are directly adversely affected by the assessments (*see Matter of Waldbaum, Inc.*, 74 NY2d at 132).

"The cases have uniformly held that lessees of entire parcels who are obligated to pay property taxes have a pecuniary interest and, therefore, are aggrieved by unlawful assessment" (*Matter of Ames Dept. Stores v Assessor of Town of Concord*, 102 AD2d 9, 11 [4th Dept 1984]; *see also Matter of Arlen Realty & Dev. Corp. v Board of Assessors of Town of Smithtown*, 74 AD2d 905, 905 [2d Dept 1980]; *Matter of Onteora Club v Board of*

Assessors of Town of Hunter, 29 AD2d 251, 253-254 [3d Dept 1968]). Thus, a nonfractional lessee who is responsible under its lease for taxes on the leased premises is an "aggrieved person" under RPTL 704 (1) (*see Matter of Malik v Tax Commn. of the City of N.Y.*, 68 AD3d 870, 871 [2d Dept 2009]; *Matter of Big "V" Supermarkets, Store #217*, 114 AD2d at 727).

Here, petitioner is a nonfractional lessee of the property and it is challenging the total assessments of the property. Since the lease, by its plain terms, unambiguously required petitioner to pay all of the real estate taxes levied against the property, any tax assessment directly affects petitioner's pecuniary interests (*see Matter of Malik*, 68 AD3d at 871). The adverse impact of the alleged excessive assessments on petitioner's pecuniary interests are not "a remote and consequential result," but are "a direct one" (*Matter of Waldbaum, Inc.*, 74 NY2d at 133). Therefore, as a nonfractional lessee contractually obligated to pay the taxes levied against the lessor's undivided parcel, and whose pecuniary interests are directly adversely affected, petitioner is an "aggrieved" person within the meaning of RPTL 704 (1) and has standing to challenge the assessments at issue in these proceedings (*see Matter of Waldbaum, Inc.*, 74 NY2d at 134; *Matter of Malik*, 68 AD3d at 871; *Matter of EFCO Prods. v Cullen*, 161 AD2d 44, 46 [2d Dept 1990], *appeal dismissed* 77 NY2d 822 [1991]; *Matter of Big "V" Supermarkets, Store #217*, 114 AD2d at 727; *Matter of Mack v Assessor of Town of Ramapo*, 72 AD2d 604, 605 [2d Dept 1979]).

CONCLUSION

Accordingly, respondents' motion for an order dismissing the petitions, with prejudice, based on the ground that petitioner lacks standing to commence these proceedings is denied.

This constitutes the decision and order of the court.

ENTER,

J. S. C.

[redacted]