

Matter of SL Babylon, LLC v Ball

2020 NY Slip Op 35739(U)

June 29, 2020

Supreme Court, Suffolk County

Docket Number: Index No. 19-5818

Judge: Joseph Farneti

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY

P R E S E N T :

Hon. JOSEPH FARNETI
Acting Justice of the Supreme Court

MOTION DATE 12/6/19 (#001)
MOTION DATE 2/6/20 (#002)
ADJ. DATE 2/27/20
Mot. Seq. #001 - MotD
Mot. Seq. #002 - MotD

In the Matter of the Application of

SL BABYLON, LLC

Plaintiff/Petitioner,

- against -

JOAN M. BALL, in her official capacity as THE
ASSESSOR OF THE TOWN OF BABYLON,
THE BOARD OF ASSESSMENT REVIEW OF
THE TOWN OF BABYLON, THE BOARD OF
EDUCATION OF THE WEST BABYLON
UNION FREE SCHOOL DISTRICT, and THE
TOWN OF BABYLON and its taxable districts,
COUNTY OF SUFFOLK, NEW YORK,

Defendants/Respondents,

for a declaratory judgment and relief pursuant to
article 78 of the Civil Practice Law and Rules of
New York.

EGAN & GOLDEN, LLP
Attorney for Petitioner
96 South Ocean Avenue
Patchogue, New York 11772

SCOTT DeSIMONE, P.C.
Attorney for Town of Babylon Respondents
and of counsel to Board of Education of West
Babylon Union Free School District
41780 Route 25
P.O. Box 233
Peconic, New York 11958

DENNIS M. BROWN
Suffolk County Attorney
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788

Upon the following papers numbered 1 to 7 read on this motion to dismiss; Notice of Motion/Order to Show Cause and supporting papers 1-3; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers _____; Repeating Affidavits and supporting papers 4-7; Other summons, complaint & petition, dated Nov. 1, 2019, and supporting papers; petitioner's memorandum of law; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion by defendants/respondents Joan M. Ball, in her official capacity as the Assessor of the Town of Babylon, The Board of Assessment Review of the Town of Babylon, The Board of Education of the West Babylon Union Free School District, and the Town of Babylon and its

taxing districts, for an order dismissing the causes of action contained in the combined complaint and petition (i) relative to the plaintiff/petitioner's claimed entitlement to a partial real property tax exemption pursuant to RPTL 487, (ii) relative to the plaintiff/petitioner's claimed entitlement to a full real property tax exemption pursuant to RPTL 420-a, and (iii) to the extent they seek declaratory relief to challenge the denial of an exemption pursuant to RPTL 420-a, is granted to the extent of dismissing the first and fourth causes of action against them, and is otherwise denied.

In this hybrid article 78 proceeding and action for declaratory and injunctive relief (hereinafter, "proceeding"), the plaintiff/petitioner (hereinafter, "petitioner"), who owns and operates a solar photovoltaic energy facility on a portion of St. John's Cemetery in West Babylon, New York, challenges the removal of the RPTL 420-a religious tax exemption on the property and the imposition of real property taxes on both the property and the facility. According to the petitioner, St. John's Cemetery is exempt from taxation under RPTL 420-a, which provides a mandatory tax exemption for real property owned by a corporation or association organized or conducted exclusively for religious (and other designated) purposes. The petitioner also claims that the facility is a "solar energy system" within the meaning of RPTL 487; RPTL 487 (2) provides that any real property which includes a solar energy system "shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of [such system] for a period of fifteen years."

It appears from the combined complaint and petition (hereinafter, "petition") that the tax parcel on which the facility is located is owned by St. John's Cemetery, a special act corporation wholly owned by the Roman Catholic Church. On December 29, 2014, the petitioner entered into a ground lease with St. John's Cemetery to develop a solar energy system on an unused 45-acre portion of the parcel known as St. John's Annex. The petitioner alleges that the lease required the petitioner to restore the property to its original condition at the end of the lease term to allow the land to be used for future burials, and obligated the petitioner for any increase in taxes incurred in connection with the facility.

On or about June 26, 2015, the petitioner, ostensibly on behalf of the owner, submitted an application to the Town for a 15-year exemption from real property taxes relating to the establishment of its facility, effectively asking the Town to forego any net increase in tax revenue relative to the construction of its solar energy system for 15 years. By letter dated August 20, 2015, the Town, without specifically addressing the application, indicated its position that the owner would be required to enter into a contract for payment in lieu of taxes (PILOT) pursuant to RPTL 487 (9) (a), and that the 45-acre portion of the property on which the facility was to be constructed would become taxable as it would no longer be used in a manner consistent with the exempt purposes set forth in RPTL 420-a. The Town continued to treat the property as tax exempt for all purposes for tax years 2016/17 and 2017/18, and the facility became operational on December 4, 2017.

For tax year 2018/19, however, the Town placed the parcel on its tax rolls and assessed the owner a tax, inclusive of the facility, in the amount of \$942,547.30. On or about February 16, 2018, the petitioner submitted its second application for a tax exemption relative to its solar energy system. By

letter dated April 24, 2018, the Town denied the application, on the grounds (i) pursuant to RPTL 487 (6), that the application had not been submitted by the owner of the property, (ii) pursuant to RPTL 487 (4), that the petitioner had not demonstrated that the system meets the guidelines set by the president of the authority, and (iii) pursuant to RPTL 487 (9) (a), that despite the Town having lawfully advised of its intention to require a PILOT agreement, neither the petitioner nor the owner had entered into any such agreement. The petitioner proceeded to pay the amount due, under protest. On or about February 28, 2019, the petitioner submitted its third application for a tax exemption relative to its solar energy system; the Town, however, took no action on the application. On July 1, 2019, the Town published the 2019 certified tax roll, which reflected the same assessed value on the parcel, inclusive of the facility, as shown on the 2018 tax bill. On July 24, 2019, the petitioner commenced a proceeding to review the 2019 assessment under RPTL article 7 (*Matter of SL Babylon v Board of Assessors*, Sup Ct, Suffolk County, Index No. 19-614287). This proceeding followed.

The petitioner pleads five causes of action in its petition. The first, which is based on the petitioner's claimed entitlement to an exemption under RPTL 487, is to direct the respondents to reverse the assessments on the 2018 and 2019 assessment rolls to reflect a \$0 taxable value on the facility and the parcel, and to list the same exemption from taxation on all subsequent annual assessment rolls through 2033. The second is for judgment declaring that the Town's demand that the petitioner enter into a PILOT agreement is unlawful because it was untimely made under RPTL 487 (9) (a). The third is for judgment nullifying the Town's 2018 and 2019 statements of taxes for the parcel on the ground that they were contrary to law, irrational, and arbitrary and capricious, in that they were based on the erroneous assertion that the petitioner's solar energy system is real property. The fourth is for judgment nullifying the Town's decision to remove St. John's Cemetery's mandatory tax exemption under RPTL 420-a as unlawful, arbitrary and capricious, and not supported by sufficient evidence. The fifth is for injunctive relief based on an alleged violation of the petitioner's rights to equal protection under the law.

The respondents¹ now move, pre-answer, to dismiss the petitioner's first and fourth causes of action.² As to the first cause of action, the respondents contend, in part, that a challenge to an allegedly wrongful denial of a partial property tax exemption can only be made pursuant to the articles 5 and 7 of the RPTL – not by means of a CPLR article 78 proceeding or a declaratory judgment action – and that the petitioner failed to exhaust its administrative remedies by filing a timely grievance or complaint in

¹ As used prospectively in this Order, the term "respondents" will refer to the named defendants/respondents exclusive of the County of Suffolk. According to the Court's computer records, a notice of appearance was filed on behalf of the County of Suffolk on or about November 20, 2019, although it is unclear whether the notice of appearance was served or whether the County of Suffolk has since answered the petition.

² Although the respondents' notice of motion is phrased in far broader terms, it is difficult, even on careful review of the petition and the motion to dismiss, to ascertain which causes of action (or parts of causes of action) their motion is intended to address. Since the petitioner, in its opposition, characterizes the motion as one to dismiss the first and fourth causes of action, and the respondents, in their reply, do not object to that characterization, the Court will treat the motion as directed solely to those causes of action.

accordance with RPTL 524. As to the fourth cause of action, the respondents contend, in part, that the petitioner lacks standing to seek judicial review denying an exemption under RPTL 420-a, as it is not the owner of the property.

A motion to dismiss, whether in an action or a special proceeding, is a procedural vehicle to test the sufficiency of a pleading.

To dismiss a pleading on CPLR 3211 (a) grounds, it must appear either that the pleading is defective on its face or, though adequate on its face, lacks merit or requires dismissal on some other basis (Siegel, NY Prac § 257 [5th ed]). On a motion pursuant to CPLR 3211 (a) to dismiss a complaint for lack of standing, “the burden is on the moving defendant to establish, *prima facie*, the plaintiff’s lack of standing, rather than on the plaintiff to affirmatively establish its standing in order for the motion to be denied [and] the motion will be defeated if the plaintiff’s submissions raise a question of fact as to its standing” (*Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 59-60, 13 NYS3d 163, 170 [2015]). Pursuant to CPLR 3211 (f), the mere making of a motion during the time in which to respond automatically extends the responding time for 10 days after service of notice of entry of the Order disposing of the motion, and a motion made against any part of a pleading extends the time to serve a responsive pleading to all of it (John R. Higgitt, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C3211:68).

CPLR 7804 (f) provides that the respondent in an article 78 proceeding may, within the time allowed for answer, move to dismiss the petition based on an “objection in point of law,” such as failure to exhaust administrative remedies (Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C7804:7). On a pre-answer motion to dismiss an article 78 petition, whether on standing grounds or otherwise, only the petition is to be considered and all of its allegations are deemed to be true (*Matter of East End Resources v Town of Southold Planning Bd.*, 81 AD3d 947, 917 NYS2d 315 [2011]; *Matter of Long Is. Contractors’ Assn. v Town of Riverhead*, 17 AD3d 590, 793 NYS2d 494 [2005]; *Matter of Massiello v Town Bd. of Town of Lake George*, 257 AD2d 962, 684 NYS2d 330 [1999]). If the motion is denied, “the court shall permit the respondent to answer” (CPLR 7804 [f]; see also *Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of Nassau County*, 63 NY2d 100, 480 NYS2d 190 [1984]).

The first cause of action is dismissed. The respondents correctly note that the exemption contemplated by RPTL 487 is a partial exemption, as it applies only to the improvements, not the land, and only to general taxes, not to special ad valorem levies or special assessments (see RPTL 102 [14], [15], [20]; 490; see also *Matter of Luther Forest Corp. v McGuinness*, 164 AD2d 629, 565 NYS2d 570 [1991]; cf. RPTL 420-a). Generally, a taxpayer’s exclusive remedy to redress the wrongful denial of a partial exemption is to commence a tax certiorari proceeding under RPTL article 7 (*Matter of LAPC Lofts v City of Buffalo Dept. of Assessment & Taxation*, 155 AD3d 1539, 65 NYS3d 361 [2017]; *Matter of Laurel Hill Farms v Board of Assessors of Nassau County*, 51 AD3d 794, 857 NYS2d 711 [2008]; *Stabile v Half Hollow Hills Cent. Sch. Dist. of Huntington & Babylon*, 83 AD2d 945, 442

NYS2d 778 [1981]). “It is through article 7 that taxpayers must assert instances of illegality, overvaluation, or inequality” (*id.* at 945, 442 NYS2d at 780; accord *Matter of Board of Mgrs. of Greens of N. Hills Condominium v. Board of Assessors of County of Nassau*, 202 AD2d 417, 608 NYS2d 694, *lv denied* 83 NY2d 757, 615 NYS2d 874 [1994]). When “only a partial exemption is claimed, the assessing officer has jurisdiction of the property in question, and collateral attack of his determination will not be permitted” (*Stabile v. Half Hollow Hills Cent. Sch. Dist. of Huntington & Babylon*, *supra* at 946, 442 NYS2d at 780). Although there are exceptions to the general rule—when the tax is claimed to be unconstitutional, and when the jurisdiction or methodology of the taxing authority is being challenged (*e.g.* *1688 Rojav Realty v. Frankel*, 32 Misc 3d 1247, 938 NYS2d 228 [2011])—none applies here.³ While the Court might otherwise convert this proceeding into its appropriate form (*see* CPLR 103 [c]), here no grievance or complaint was filed with respect to the 2018 assessment⁴ (*see* RPTL 524). Since the petitioner seeks relief afforded by a RPTL article 7 tax certiorari proceeding but failed to satisfy a condition precedent to the commencement of such a proceeding (*see* RPTL 706 [2]; *Matter of Circulo Hous. Dev. Fund Corp. v. Assessor of City of Long Beach, Nassau County, NY*, 96 AD3d 1053, 947 NYS2d 559 [2012]), conversion is not available; rather, dismissal is proper.

The fourth cause of action is dismissed as well. In support of their claim that the petitioner lacks standing to seek judicial review because it is not the owner of the property, the respondents cite RPTL 420-a (11), which provides that when property is not granted an exemption under RPTL 420-a, “the owner may seek judicial review pursuant to article seven of this chapter or article seventy-eight of the civil practice law and rules” [emphasis added]. Even were the Court to find that RPTL 420-a (11) does not limit judicial review to owners, it is evident that the petitioner is without standing to challenge the assessment.⁵ Standing to review an assessment of real property, whether in the context of RPTL article 7 or CPLR article 78, rests on the petitioner’s status as an “aggrieved” person (RPTL 704 [1]; Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C7802:5; *see Matter of Steel*

³ To the extent that constitutionality may be an issue, it is already a subject of a separate cause of action (the fifth); jurisdiction is not a issue as the property remains “subject to some degree of taxation” (*Hewlett Assoc. v. City of New York*, 57 NY2d 356, 364, 456 NYS2d 704, 707 [1982]); and any objection to methodology is inapplicable because the petitioner is challenging the assessment as to only one property (*see Matter of Cayuga Grandview Beach Coop. Corp. v. Town Bd. of Town of Springport*, 51 AD3d 1364, 857 NYS2d 862, *lv denied* 11 NY3d 702, 864 NYS2d 389 [2008]; *Matter of General Elec. Co. v. MacIsaac*, 292 AD2d 689, 739 NYS2d 768 [2002]).

⁴ The Court notes again that at the time this proceeding was commenced, there was already an article 7 proceeding pending relative to the 2019 assessment. Whether the petitioner failed to file a proper grievance or complaint for the 2019/20 tax year and therefore, failed to satisfy a condition precedent for the commencement of that proceeding will, presumably, be decided in the context of that proceeding.

⁵ Pursuant to RPTL 102 (2), an “assessment” is a determination made by assessors as to the valuation of real property, “including the valuation of exempt real property,” regardless of whether the property “is subject to taxation.”

Los III/Goya Foods v Board of Assessors of County of Nassau, 10.NY3d 445, 859 NYS2d 576 [2008] [RPTL article 7]; *Matter of Hudson Prop. Owners' Coalition v Slocum*, 92 AD3d 1198, 939 NYS2d 177 [2012] [CPLR article 78]). A person is "aggrieved" when an assessment has a "direct adverse affect on the challenger's pecuniary interests" (*Matter of Waldbaum, Inc. v Finance Adm'r of City of N.Y.*, 74 NY2d 128, 132, 544 NYS2d 561, 563 [1989]). The petitioner alleges that it paid the taxes due for the 2018/19 tax year because it was required under the terms of its lease to do so. However, section 13.6 of the lease – a copy of which was submitted in support of the petition – says otherwise:

Landlord represents and warrants that it is a tax-exempt organization and that the Premises are exempt from real estate taxes. Landlord shall be responsible for maintaining its tax-exempt status * * * to the extent permitted by law, and shall be responsible for any Taxes resulting from the loss of such status.

Section 13.1 defines "Taxes" to include "all real property taxes [and] assessments * * * which may now or hereafter be levied, imposed or assessed against the Premises due to this Lease." As the parties to the lease specifically provided that legal responsibility for the subject tax liability was to remain with St. John's Cemetery, the impact of the assessment on the petitioner's pecuniary interests is insufficient to render it "aggrieved."

[O]nly a lessee who is obligated to pay an assessment is sure to lose something from his own property or means. * * * [W]hile paying taxes always has a direct adverse effect on one's pecuniary interest, that alone has never been enough. Accordingly, in the absence of a direct contractual obligation, the assessment's remote and consequential impact on petitioner is inadequate to confer standing.

(*Matter of Larchmont Pancake House v Board of Assessors and/or Assessor of Town of Mamaroneck*, 33 NY3d 228, 239, 100 NYS3d 680, 685 [2019] [internal quotation marks and citations omitted]).

The respondents shall serve their answer within 10 days after service upon them of a copy of this Order with notice of its entry, after which time any party may, pursuant to CPLR 7804 (f), re-notice for hearing any portions of the remaining causes of action as may be for article 78 relief.

Dated: June 29, 2020


Hon. Joseph Farneti
Acting Justice Supreme Court

___ FINAL DISPOSITION ___ NON-FINAL DISPOSITION