

DeGaetano v Jiha

2024 NY Slip Op 32138(U)

June 25, 2024

Supreme Court, New York County

Docket Number: Index No. 156530/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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PHILIP DEGAETANO TRUSTEE, PHILIP DEGAETANO
LIVING TRUST

Petitioners,

- v -

JACQUES JIHA COMMISSIONER, NEW YORK CITY
DEPARTMENT OF FINANCE (DOF),

Respondents.

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INDEX NO. 156530/2020

MOTION DATE N/A¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for TAX ASSESSMENT REVIEW.

Respondents' cross-motion to dismiss the petition is granted.

Background

Petitioners own a property on East 129th Street in Manhattan. They explain that the property's certificate of occupancy, dated June 2, 2003, stated there were three apartments in the property. Petitioners assert that in January 2020, they received a notice of property value from respondents that identified the property as having 11 residential units.

After much back and forth between petitioners and respondents, they claim that the property has been misclassified since 2003. They insist that the property value calculation employed by respondents is not accurate and that petitioners have been overtaxed for the current

¹ The Court cannot ignore the elephant in the room and must address the fact that although this case was only recently transferred to the undersigned, it has been fully briefed and pending for many years. The Court apologizes, on behalf of the court system, for this lengthy and inexcusable delay in the resolution of this proceeding.

year (2020-21) by over \$17,000. Petitioners seek an order directing respondents to reclassify the property and refund petitioner the overpaid tax.

In support of their cross-motion to dismiss, respondents summarize petitioners' objections into three categories. First, they assert that the exclusive route to challenge a property tax assessment is through an Article 7 proceeding, not this Article 78 proceeding. Second, petitioners did not seek a real property tax assessment reduction from the Tax Commission, which is a condition precedent to bringing an Article 7 proceeding. And third, to the extent that petitioners raise a clerical error or error in description, that particular application has not yet been resolved (as of the time of respondents' papers) and so it is not ripe for review.

Respondents emphasize that while filing a request for review ("RFR") (as petitioners did) is an informal way to request a change to a Department of Finance record, it does not supplant the requirement to file a timely application for a correction of error ("CER") with the Tax Commission. They explain that, here, petitioners did utilize this informal process to seek reclassification, to have its tax assessments be reduced and for a refund. When respondents denied that request (NYSCEF Doc. No. 24), petitioners were supposed to file the CER, which is also a condition precedent to file an Article 7 proceeding to seek judicial review.

Respondents admit that with respect to petitioners' ARA (a separate application for administrative review), it has not yet issued a decision and so that request is not ripe for judicial review. This claim, according to respondents, only deals with a clerical error or an error in the description. They emphasize that the substantive issues about the amount of the property tax assessment should be dismissed for the reasons described above.

In opposition to the cross-motion, petitioners claim that Article 7 proceedings are not the exclusive remedy for seeking judicial review of a real property tax assessment. They primarily

rely upon a Second Department case (*Matter of Better World Real Estate Group v. New York City Dept. of Fin.*, 122 AD3d 27 [2d Dept 2014]) for this proposition. Petitioners also argue that respondent failed to timely review and correct the misclassification of petitioners' property. They point out they submitted this application on March 2, 2020 and that respondents' failure to issue a decision by March 15, 2020 rendered any subsequent decision moot.

In reply, respondents contend that the caselaw cited by petitioners is easily distinguishable and that petitioners were required to bring an Article 7 proceeding. They insist that to the extent petitioners seek to challenge a clerical error, that determination has not yet been made. Respondents argue that petitioners improperly conflate the RFR with the CER applications. They explain that the RFR is subject to the deadlines cited by petitioners (under RCNY § 37-04) while the CER is not (this one remains outstanding).

Discussion

“Article 7 of the Real Property Tax Law provides the exclusive procedure for review of property assessments, unless otherwise provided by law” (*Downing St LLC v Soliman*, 222 AD3d 584, 584, 203 NYS3d 4 [1st Dept 2023]). Similar to the petitioner in the *Downing St* case, the petitioners here allege that the classification of their property and their property tax assessments were incorrect. The First Department noted that under such circumstances “That claim should have been raised in an article 7 proceeding” (*id.*). Therefore, the Court grants the cross-motion to dismiss as the portions of the petition that seek to challenge the classification and the property tax assessment had to be brought in an Article 7 proceeding and not in the instant Article 78 proceeding.

The Court observes that the First Department in *Downing St* distinguished the key Second Department matter relied upon by the petitioners here. The First Department noted that

although Downing St had alleged a clerical error, “the petition does not set forth sufficient allegations to establish that the alleged misclassification resulted from any clerical error (*see 9 Orchard Partners* at 527–529, 167 N.Y.S.3d 465; *cf. Matter of Better World Real Estate Group v. New York City Dept. of Fin.*, 122 A.D.3d 27, 992 N.Y.S.2d 247 [2d Dept. 2014])” (*id.*).


In other words, according to the First Department, the Second Department’s holding in *Better World* stands for the proposition that a party may seek Article 78 review of a clerical error but not every purported misclassification. And, here, petitioners plainly seek to challenge the misclassification, demand a revised property tax assessment and the return of monies they claim constitute overpayment. Petitioners did not sufficiently explain how these requests for relief are “clerical” or how they can be brought in an Article 78 proceeding in light of the above-cited case law.

And, to the extent that petitioners seek to challenge the clerical error issue, that decision (at least at the time this proceeding was fully briefed) remained pending and so petitioners had not yet exhausted their administrative remedies. Respondents also rationally pointed out that the deadlines cited by petitioners do not apply to this type of application.

Accordingly, it is hereby

ORDERED that respondents’ cross-motion to dismiss is granted; and it is further

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

<p><u>6/25/2024</u> DATE</p>	 <hr/> ARLENE P. BLUTH, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE